Hacettepe University Graduate School of Social Sciences

Department of International Relations

LIBERAL THEORIES OF SELF-DETERMINATION: TOWARDS PEACEFUL SETTLEMENT OF SELF-DETERMINATION DISPUTES

Selçuk RUSCUKLU

Master's Thesis

Ankara, 2019

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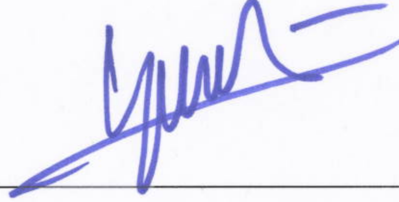
ACCEPTANCE AND APPROVAL

The jury finds that Selçuk Ruscuklu has on the date of 19 June 2019 successfully passed the defense examination and approves his Master's Thesis titled "Liberal Theories of Self-Determination: Towards Peaceful Settlement of Self-Determination Disputes".



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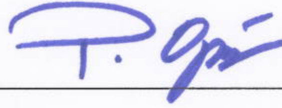

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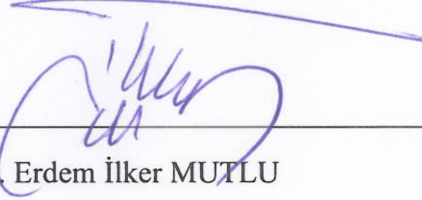

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Bu çalışmadaki bütün bilgi ve belgeleri akademik kurallar çerçevesinde elde ettiğimi, görsel, işitsel ve yazılı tüm bilgi ve sonuçları bilimsel ahlak kurallarına uygun olarak sunduğumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduğumu, tezimin kaynak gösterilen durumlar dışında özgün olduğunu, **Doç. Dr. Mine Pınar GÖZEN ERCAN** danışmanlığında tarafımdan üretildiğini ve Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Yazım Yönergesine göre yazıldığını beyan ederim.

Selçuk RUSCUKLU

ABSTRACT

RUSCUKLU, Selçuk. *Liberal Theories of Self-Determination: Towards Peaceful Settlement of Self-Determination Disputes,* Master's Thesis, Ankara, 2019.

The right to self-determination has stood the test of the time and is still a topic of academic discussion even though the decolonization process is thought to have ended long ago. Today's debates on self-determination are largely focused on what justifies a group's right to self-determination and under what conditions such claims are regarded to be legitimate beyond the decolonization context. After scrutinizing the history of the self-determination concept and examining relevant international legal instruments promulgated during the United Nations era, this thesis evaluates the mainstream liberal theories of self-determination. Upon finding that the Remedial Right Theory does not rest upon morally acceptable philosophical foundations, this thesis suggests a revision of the remedial right paradigm in order to improve it by eliminating the requirement for a moral threshold that the group has to endure before being able to exercise its right to external self-determination.

Keywords

Primary Right Theories, Remedial Right Theories, Self-determination

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ABBREVIATIONS

ARMM	Autonomous Region in Muslim Mindanao
HIIK	Heidelberg Institute for International Conflict Research
ICJ	International Court of Justice
IMT	International Monitoring Team
MILF	Moro Islamic Liberation Front
MIM	Mindanao Independence Movement
MNLF	Moro National Liberation Front
NATO	North Atlantic Treaty Organization
OIC	Organization for Islamic Cooperation
OLBARMM	Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao
OPAPP	Office of the Presidential Adviser on the Peace Process
UN	United Nations
UNGA	United Nations General Assembly
UNMIK	United Nations Interim Administration Mission in Kosovo
US	United States

INTRODUCTION

Exercising the right to external self-determination beyond the decolonization context has had profound impact on the geopolitical map of the world. Without the influence of the right, the peoples in existing states would not have a path to create new states. Therefore, the right to external self-determination arguably is of vital function and importance in the framework of the state-centric Westphalian system.

The right of groups within a state to external self-determination has been an issue of concern in international politics. Particularly in the last decade, the attempts of such groups to unilaterally break away from their states have intensified the debate over what justifies a group's right to external self-determination and under what conditions such claims are regarded to be legitimate.

The core of the legal texts on self-determination 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", as laid down by Article 2 of the United Nations General Assembly (UNGA) Resolution 1514 (1960) entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples"; Principle 5 of the UNGA Resolution 2625 (1970) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"; Article 1 of the International Covenant on Economic, Social and Cultural Rights (1966); as well as Article 1 International Covenant on Civil and Political Rights (1966). However, reconciliation between self-determination and other international norms such as state sovereignty and territorial integrity is not an easy task considering that the former is commonly regarded as *jus cogens* while the latter two are thought to be steadfast foundations of the existing states system. The attempt to set the limits of the right to external self-determination is therefore a difficult one.

As past disputes over the range, holders and execution of the right to external self-determination have shown, it has an undesirable potential to initiate widespread

violence between the parties to such disputes. Legal scholars, academics and human rights advocates have been examining the jurisdiction of international law in order to come up with a principled solution which would help to avoid or mitigate such likelihood of violence inherent in such disputes.

The literature on liberal normative theories of self-determination suggests that a group of authors on the one hand uphold a primary right to internal self-determination only, whereas others advocate a primary right to both internal and external self-determination without distinction between the two types. Philpott (1995, 1998), for instance, proposes a primary right to internal self-determination while noting that a group's break away from an existing state by a right to external self-determination is only possible under exceptional circumstances. It is therefore important to be aware of the distinction while assessing different theoretical approaches.

Despite the argument that these two camps converge in terms of their basic conclusion that citizens' collective right to internal self-determination should be upheld in liberal democracies (Brando & Morales-Gálvez, 2019), these two camps have divergent points of origin. The prominent disagreement remains as Remedial Right Theories require a moral justification in order to permit a group to break away from an existing state whereas Primary Right Theories do not see any requirement for enabling a group to depart from a larger political entity.

Although liberal normative theories of self-determination focus on nature, bearers and scope of the right extensively, theoretical discussion is made usually without reference to the moral deadlock that emerges due to customary remedial approach to the right, according to which a people living in a sovereign state must have been exposed to serious grievances before they are entitled to exercise their right to external self-determination. Liberal theories of self-determination seem to neglect practical impact of their theoretical assumptions on the use of and exposure to violence that result from this requirement for injustice before operationalizing the right. None of the liberal normative theories on the right to self-determination discusses the use of violent means in pursuit of claims to self-determination

(Pavković & Radan, 2016, p. 448) despite the fact that violent conflicts of contemporary times mostly occur within states, rather than between states. Although the reasons for resorting to violence vary, violence associated with claims of the right to self-determination appears to be one of the leading reasons (Babbit, 2006, p. 185).

In the light of the foregoing, this thesis attempts to answer the following question: how could the remedial right paradigm be improved in order to mitigate violence associated with claims of the right to external self-determination? A comprehensive answer to this question requires (i) a close examination of the origin of the concept of self-determination and the trajectory it followed since its birth; (ii) an elaboration of relevant legislation along with its history of development; (iii) an inquiry of current practices; and (iv) an evaluation of other liberal standpoints.

In connection with its central question, this thesis also aims to answer the following sub-questions: How have the legal texts on self-determination evolved into their present-day status? How are relevant legal instruments interpreted and applied by customary international law? What is the philosophical foundation of the remedial right paradigm? Do alternative liberal approaches to the right to external self-determination provide a practical solution to the problem posed by the remedial right paradigm?

This thesis therefore aims to fill a gap in the literature by exploring how the inclusion of "denial of internal self-determination" as an additional justification for external self-determination according to the Remedial Right Theory would decrease the use of violence by a parent state and exposure to violence by a right-holding group in association with claims of external self-determination. The conclusion reached by this thesis, with complementing further studies, may help to initiate the creation of an institutional setup by which international responses to claims of self-determination are regulated in an orchestrated manner. This thesis, therefore, seeks to demonstrate that the inclusion of "violation or denial of the right to internal self-determination" into the parameters of the justifications for the right to external self-determination might improve the existing remedial right paradigm by eliminating the requirement

for a moral threshold that the group has to endure before being able to exercise its right to external self-determination.

A revised and updated remedial right paradigm may then may help minimize violence associated with conflicts over the right considering that (i) Primary Right Theories seem unlikely to replace the customary Remedial Right Theory due to principles of territorial integrity and state sovereignty, and (ii) customary international law is aligned with the "remedial right" approach (Roseberry, 2013) that requires a group seeking to exercise the right to put up with deliberate, sustained and systematic human rights violations before the group can exercise its right to external self-determination as a last resort.

In exploring how such a change in liberal normative theorizing on self-determination practically dissuade parties of a conflict from resorting to violent means, this thesis will adopt the method of process tracing in order to assess the proposition stemming from the existing Remedial Right Theory. Process tracing involves detailed empirical analysis of how causal mechanisms operate under particular circumstances. The researcher outlines the process and explores the extent to which the outlined process overlaps with expectations (that are created from existing theories) about how a mechanism works. Mechanism is commonly defined as "a set of hypotheses that could be the explanation for some social phenomenon, the explanation being in terms of interactions between individuals and other individuals, or between individuals and some social aggregate" (Hedstroem & Swedberg, 1998, p. 25). Also described as repeated processes that establish connections between circumstances and particular consequences, mechanisms establish links between phenomena. Process tracing allows greater understanding of theories in connection with causal mechanisms functioning at analytical level, rather than at higher overarching theoretical level. Studying mechanisms help strengthen the credibility of a theory by providing granular explanations (Checkel, 2009, p. 115).

Researchers can apply process tracing on case studies in order to (i) understand causal dynamics that led to particular outcome of a specific historical case, or (ii) provide

insights into generalizable causal mechanisms that connect causes and outcomes within causally similar cases. The method typically has three components: theorization about causal mechanisms; observation and analysis of empirical findings from functioning of theorizations; and use of comparative methods in order to ensure generalizations of findings to other similar cases (Beach, 2017).

In line with this methodological approach, data collected from primary and secondary sources as well as a case study, namely, the Moro Liberation Movement, will be qualitatively analyzed by processing tracing. To this end, the thesis benefits both from primary sources including conventions, the UNGA resolutions, declarations, official documents and reports, as well as secondary sources including, but not limited to, journal articles, books, and official web sites for an analysis of the history and development of the concept, and for an analysis of the right to self-determination from a legal point of view. Although alternative theoretical approaches provide useful insights, they suggest non-liberal interpretations of a right which was born out of liberal thinking. For instance, from a Realist point of view peoples can enjoy the right as long as it serves to the interests of great powers, which implies that only those conceptions of the right, which are acceptable to those holding the power in the international system are applicable. Such limitation imposed on the right constitutes the basis of why this thesis focuses on liberal theories of self-determination and why Liberalism founds the basis for a theoretical analysis of the right to external self-determination.

At the heart of Classical Liberal Theory lies the protection of individual rights by governments (Freeman, 1999). This is translated into liberal international relations as substantial influence of domestic transnational social pressures on state behavior (Moravcsik, 2011). Nevertheless, Liberalism is accused of being a kind of intellectual imperialism of Western rationality, which assumes that universal moral norms are applicable all over the world regardless of time and space. This view blames liberalism for concealing roots of injustice in order to perpetuate this imperial quest, and emphasizes that institutions created based on seemingly liberal values actually inhibit freedom. Most prominent among these criticisms is the argument that

liberalism is not conducive to fully realize individual sovereignty, which is defined as freedom to live someone's live as s/he sees appropriate (Brighouse, 1999).

Taking into account such criticisms aimed at the basic premises of liberalism, Critical Moral Liberalism attempts to build a type of liberalism that adheres to the basics of liberal tradition by evaluating insights provided by various theorists ranging from feminism and post-modernism to Marxism to even political liberalism itself. Critical Moral Liberalism argues that the critical positions against it are actually in support of the core values upheld by liberalism. For example, before condemning oppression, one needs to hold a belief that all humans are equal and have the right to live according to their will, a belief which is one of the anchors of liberalism. Critical Moral Liberalism defends that condemnation of oppression requires a moral view that is universally valid; therefore, if there is objection to having such moral view, oppression cannot be condemned (Mulgan, 2001). From this point of view, such criticisms are considered important and supportive mechanisms within the liberal tradition that help liberalism to become self-aware and self-correcting in the face of new and changing forms of subjugation (Schaff, 1999).

Critical Moral Liberalism is moral in the sense that it attempts to promote realization of a universal good (individual sovereignty) and universal moral right of all humans to live their lives based on their own judgement about how they should conduct themselves. Individual sovereignty is set as a precondition for a good life, and all humans have the right to govern themselves as they are rational (Allen, 1998).

Critical Moral Liberalism is critical in the sense that liberal perception of threats to freedom and means to protect freedom are changing over time. Accordingly, it recognizes that liberal thinking needs to be revised to prevent existing liberal rights from posing a threat to freedom. As Reiman (1997) puts it, Critical Moral Liberalism is "open to the need to revise its current version of what must be done to protect all individuals' rights to govern their lives by their own judgments" (p. 23).

The critical version of liberalism calls for readjustment of the paradigm that has shaped normative theorizing and political activities about group rights and offers an enhanced normative framework which provides an alternative theory of state obligation towards oppressed groups (Jung, 2010). In the context of this thesis, which is situated at the juncture of political, moral and legal realms, Critical Moral Liberalism is particularly useful for questioning whether or not the existing right to self-determination, which at first glance seems to be liberating individuals, is actually posing a threat to their freedom.

Accordingly, this thesis is structured as follows: The first chapter presents the concept and evolution of self-determination until the United Nations (UN) era. The chapter argues that the conceptual development of the right might not have ended yet. The second chapter investigates existing UN legal instruments and their collective impact on the applicability of the right to external self-determination. This chapter shows that the current legal status of self-determination is limited as a qualified right for peoples who are subjected to deliberate, sustained and systematic human rights abuses by states. Afterwards, the third chapter analyzes and criticizes the philosophical foundations of the remedial right approach that requires human suffering in order to justify the exercise of the right to external self-determination. The chapter argues that present practices of the right does not rest upon morally acceptable philosophical foundations as the stability of the global political system is preferred over the well-being of peoples. In doing so, it investigates whether or not other variants of the liberal approach could eliminate the moral problem posed by the remedial right approach. The chapter finds that other liberal approaches to the right of external self-determination and customary international law are substantially divergent from one another. Therefore, a revision of the remedial right approach is proposed as a practical solution in order to eliminate the condition of human suffering before the right can be exercised. The Moro Liberation Movement is studied as a case to demonstrate that a revised version of the Remedial Right Theory could curb the violence prone potential of the right to self-determination and pave the way for a peaceful reconciliation of disputes.

This thesis concludes that Primary Right Theories are radical and unlikely to be applied in view of customary international law and practices, unless there is a fundamental change in the understandings of sovereignty and territorial integrity. To abolish the need for human suffering, this thesis proposes an enhanced version of the Remedial Right Theory, according to which the denial of the right to internal self-determination is counted as an additional justification, *inter alia*, for exercising the right to external self-determination. This suggestion is based on the argument that such inclusion would reduce resort to non-peaceful means for exercising the right to self-determination.

It should be noted that the terms self-determination and secession are used by some authors interchangeably, while others make a distinction between these terms. Since it is pointed out that the term secession may also carry a negative connotation which may also be used to refer to an illegal act (Coleman, 2014), external self-determination is used to refer a legitimate withdrawal from an existing state for the purpose of this thesis. The terminology needs to be further clarified according to whether it is used for colonial, non-colonial, unilateral (non-negotiated) or consensual (negotiated) contexts. This thesis aims to study the right to external self-determination in its sense of unilateral withdrawal of a territory from an existing state (parent state) in order to create a new state.

CHAPTER 1

HISTORY AND EVOLUTION OF SELF-DETERMINATION UNTIL THE UNITED NATIONS ERA

In the context of international law and politics, the right to external self-determination involves partial withdrawal of a territory, regardless of its colonial or non-colonial characteristics, from a parent state for the purpose of creating a new state. The process of new state creation can be counted as one of the outcomes of the right to external self-determination, considering that the motivation to withdraw is pushed from the inside out. While such withdrawal has a political dimension in the sense of a territorial reshaping of an existing state, it also has a legal dimension in the sense that the sovereignty exercised over that withdrawing territory is passed on to others. The nature of such change may vary, although all external self-determination attempts are grounded on a transfer of sovereignty. Typically, a withdrawal of territory may occur with or without the mutual consent of the parties over colonial or non-colonial territories. On the condition that a parent state shows consent for a partial withdrawal of its territory and that there is no threat of use of force, we can refer to a consensual withdrawal. This type can also be further divided into two categories as constitutional and politically negotiated (Anderson, 2016, p. 1190).

The constitutional one involves incorporation of a framework for withdrawal in the state's constitution or an amendment of the state's constitution as needed. These procedures stipulate how the state's territory can be lawfully separated into other political entities (Kreptul, 2003). The politically negotiated one requires the willingness of a parent state and the group that wishes to break away by their right to external self-determination to negotiate a political resolution for situations where the parent state has been unable to provide other resolutions permitted by its constitution (Young, 1994, p. 773). Both types of withdrawal occur under the consent of the parent state and the process is peaceful, without the likelihood of conflict, as political negotiation or constitutional rights form the basis of these withdrawals.

In the context of the decolonization process, withdrawal of territories inhabited by peoples who are geographically, culturally and ethnically distinct from their administering states are regarded as consistent with international law by the UNGA Resolution 1514 (1960), entitled "United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples", as those peoples have been subject to foreign occupation and subjugation.

What stirs academic, political and legal debate is mostly related to external self-determination cases in a non-decolonization context where a group's wish to break away unilaterally from an existing state based on a claimed right to self-determination lacks the parent state's consent. This is primarily because (i) reconciliation lacks between a parent state and a group that wishes to break away on the grounds that it has a right to external self-determination, which results in conflict, and (ii) principles of state sovereignty and territorial integrity are treated as inviolably entrenched in the existing international political order.

It is therefore useful to examine the pre-UN history of the contested concept of self-determination to understand how and why it has evolved into its current status before a close examination of the legal foundations of the right to self-determination in the UN era. The word "self-determination" was borrowed from the German *selbstbestimmung,* which was a widely mentioned term during the Enlightenment Period in order to refer to linkages between reasoning, emancipation and individualization (Weitz, 2015, pp. 462-469). Although its linguistic origin is known, controversies remain about its conceptual origins. Suggestions with regard to the starting point of the concept range from a clan's collective decision-taking, law-making and leading in hunter-gatherer societies (Schaaf, 1988, p. 323) and coalition of wealthy male citizens in Greek city-states in order to shape their political destiny (Umozurike, 1972, p. 4) to the writings of Marsilius of Padua, a fourteenth-century political figure, who was of the opinion that a ruler's power is legitimized by the consent of the ruled (Sinha, 1973, p. 260) as well as to Stanislaw of Skarbimierz, a fifteenth century scholar, who propounded that non-Christians hold their right to independence (Przetacznik, 1990, p. 56).

Foot prints of contemporary concept of self-determination can be found in both several historical instances such as the Glorious Revolution (or Revolution of 1688), the American Revolution (or the United States War of Independence), the French Revolution and in theorizations by prominent political figures such as Vladimir Lenin and Woodrow Wilson, as discussed below.

The Glorious Revolution refers to the religious and political events between 1688 and 1689 that led to the dethroning of the English Monarch King James II and his succession by his daughter Mary and her husband William. King James was blatantly Catholic, and his religion based political decisions, such as suspension of opposition leaders' legal rights, showed that he disregarded non-Catholic population. Alienation of other non-Catholic groups was tolerated with the hope that King James was going to be succeeded by her eldest daughter Mary who was a Protestant. However, this hope faded away after the birth of the King's son. Offended by the King's actions and concerned about the continuation of Catholic succession to the King James's throne after the birth of his son, several opposition leaders decided to invite William of Orange from the Netherlands, who was Mary's husband, to bring an army to England. William's presence in England weakened public support to James, who fled immediately after. William and his wife Mary were jointly enthroned after King James fled, and they were asked to convene a parliament as the ruling power of England. The permanent establishment of a parliament not only marked a shift from absolute monarchy to a constitutional monarchy, but also enabled the creation of the Declaration of Rights and the consequent Bill of Rights. Accordingly, the rulers made a vow to abide by the laws enacted by the Parliament, monarch's discretionary suspension of laws was abolished, and arbitrary relinquishment of laws was condemned (Speck, 1987; Editors of Encyclopedia Britannica, 2019).

The course of events and its consequences lend support to the proposition that the Revolution's philosophical basis is built on John Locke's thinking embedded in his *Two Treatises of Government*, in which Locke argues that a government is an institutional set-up that should function for the benefit of its citizens and continue to serve with their consent (Schwoerer, 1990, pp. 531-535; Locke, 1947, p. 149).

Preservation of physical integrity of citizens as well as their liberties and private property should be among the ultimate goals of a government. Locke further argues that violation of these principles renders a government illegitimate, and a corrective action can be taken to re-establish a new government in order to restore commitment to these principles. However, this corrective action is justified only after the rulership has abused its power and/or committed wrongdoings against the will and benefit of the ruled (Locke, 1947, p. 225; Summers, 2014, pp. 142-143).

The Glorious Revolution along with a concomitant philosophical backing by Locke not only enabled public questioning of divine right of kings (later to be coined by political scientists as divine right theory) according to which monarchs are not accountable to any authority, including the will of the people, and hold the right to rule thanks to the power granted by God, but also demonstrated telltale signs of a representative government (Straka, 1962, p. 638). From this point of view, it can be argued that the Glorious Revolution is counted as an early ancestor of the contemporary concept of self-determination.

The American Revolution in 1776 is another historical moment that had similar impact on the concept. Thirteen British colonies in North America were uncomfortable with their tax obligations to Great Britain not because the taxes were too high but because the peoples of those colonies were not represented in the British Parliament. The famous slogan “no taxation without representation” was at the core of the insurrection by Thirteen Colonies. Following a political protest called as the Boston Tea Party—during which British tea shipped to America was dumped by protestors into the Boston Harbor in December 1773—relations between the Great Britain and those colonies further deteriorated (Thomas, 1991). The British Parliament, considering this act an illegal attempt to weaken British authority, employed British regular forces that clashed with the militias formed by the American Colonists. These clashes slowly transformed into an all-out war fought under the leadership of George Washington against the Great Britain which resulted in the independence of the thirteen colonies in April 1776 and the subsequent adoption of the Declaration of Independence by the Continental Congress at

Philadelphia on 4 July 1776 announcing the establishment of the United States of America (Miller, 1943).

What makes the American Revolution relevant in the context of self-determination is the Declaration of Independence (United States of America, 1776) which provides the grounds for various elements that constitute the modern-day concept:

> When in the course of human events, it becomes necessary for one people to dissolve the political bonds which had connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
>
> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving the just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

The Declaration no longer recognized the divine rights of rulers, which had been irrefutable and unquestionable, and emphasized citizens' right to disengage with their existing political leadership to select/create another one in the case that their life, freedom, and well-being were under threat by the leadership's misconduct (Raič, 2002, p. 173). It was however underlined that "reason" would guide the use of this right, which drew borderlines in order to prevent attempts at overthrowing governments inappropriately in the face of short-term challenges (McGee, 1993, p. 321). This stance was later reinforced by Thomas Jefferson, one of the pioneers of the Revolution, who pointed out that constitutions should not be regarded as heavenly

texts, amendment of which cannot be considered. He did not hesitate to even offer revision of the American constitution at periodic intervals (Brodie, 1974, p. 121), which suggests rectifying government's mishandling of public affairs from within, without abolishing the government. This is a reflection of Jefferson's opinion that political formations created by predecessors in past times should not have a binding force on the affairs of the present times (Boorstin, 1948, pp. 207-211; Falkowski, 1991, p. 209).

The American Revolution pushed self-determination one step further in the sense that it brought a fresh look at the constitutionality and constitutional evolution as needed in the context of peoples' determining of their political fate. Beyond the more restrictive nature of the Glorious Revolution, which called for political change as an ultimate remedy, the American Revolution added a constitutional aspect to self-determination.

Another contribution to the modern notion of self-determination was the French Revolution that occurred in 1789. A series of consecutive events, starting with French belligerency in the Seven Years War that took place between 1754 and 1763, French military and financial assistance to the American Revolution of 1776, inclement weather conditions in the winter of 1788-1789 followed by grain shortages and French monarch's poor management of economic affairs culminated in a long-continued economic depression, which forced Louis XVI of France to take steps towards a financial reform package that involved the removal of the privileged class's exemption from land tax (Censer & Hunt, 2004, pp. 8-9; Hufton, 1983, p. 303; Rudé, 1955). Louis XVI decided to convene the Estates General, an assembly which represented the three sections of the French society, namely the nobility (privileged class), clergy (religious officials) and the Third Estate (the majority of the people) in order to obtain unanimous support for the proposed reform. The gathering of the Estates General was particularly important as the last convention had taken place 174 years ago (Davidson, 2016, p. 28; Schusterman, 2013, pp. 18-32). The nobility, who had been enjoying privileges granted by the existing traditional system, objected to abandon these concessions. The Third Estate in response began to question the

nobility's veto power, arguing that the majority of people was represented by the Third Estate, which should necessitate equal representation and remove voting power based on status. The dispute over the voting mechanism of the Estates General overshadowed the original purpose of the gathering and caused animosity between the three representative sections of the society. Non-functioning of and power struggles in the Estates General led to nothing but a deadlock, which paved the way for the Third Estate to declare that it entitled itself as the National Assembly and pledged to achieve a constitutional reform. While the meetings of the National Assembly continued at the Versailles, rumors of a supposedly imminent military coup attempt spread across the capital city. Widespread fear and panic resulted in a popular uprising followed by acquisition of military posts by civilians and country-wide revolutionary movements. Encouraged by the rebellion of the peasants who had been exploited for years, the National Assembly abolished the feudal order on 4 August 1789 and right after adopted the Declaration of the Rights of Man and the Citizen (Summers, 2014, p. 149; Doyle, 2002, p. 85).

As proclaimed by Article III of the Declaration, all sovereignty stems from the nation, and neither an individual nor a group of people are entitled to authority unless the nation expressly gives them authorization (France, 1789). A revolutionary decree five years later reinforced the Declaration by stating that all peoples in France and in French colonies, regardless of their color, enjoy the rights protected by the Constitution (Lewis, 1962, p. 129).

These developments during the French Revolution reflected the emphasis that the people are the source of sovereignty and they should be entitled to have a representative government that is accountable to the people (Sureda, 1973, p. 18). The Declaration of the Rights of Man and the Citizen was grounded on the democratic philosophical and political thinking of Jean-Jacques Rousseau—also referred to as the Revolution's founding father. Rousseauian philosophy argued that the citizens could only be freed from the executive tyranny on the condition that the executive power submits to the common will of the people (Umozurike, 1972, pp. 9-10).

At this point, it is useful to note also the criticism against the French version of self-determination. Although it came into being with good intentions in the shape of a democratic reform, it was soon after was misused as a justification for annexation of territory (Stirk, 2015, p. 60-66). For example, Alsace in 1790 and Avignon and Comtat Venessin in 1791 were seized by French forces on the grounds that a plebiscite that was previously held in those regions evidenced that the peoples collectively desired for French annexation (Kolla, 2013, pp. 717-720; Laponce, 2001, pp. 33-38). However, the “other” peoples of France in French colonies in the meantime were deprived from their freedom to decide whether or not they would like to stay under French sovereignty, contrary to what the Declaration of the Rights of Man and the Citizen had proclaimed (Cassese, 1995, pp. 12-13). Self-determination in the context of French Revolution was seemingly deviated from its original purpose and utilized as a tool by the French state. Despite these criticisms, the French Revolution represents a milestone in the historical development of self-determination in the sense that it reinforced questioning of unequal representation of people and empowerment of citizens to select their government system.

Traces of further development of self-determination can be found in the conceptualization of Vladimir Lenin, the founder of the Communist Party, the leader of the Bolshevik Revolution of Russia in 1917 and the first head of the Soviet Union, in the early periods of the twentieth century (Pelinka & Ronen, 1997, p. 48). The right of peoples to self-determination was mentioned in the *Declaration of the Rights of the Peoples of Russia* on 15 November 1917. The framework of Bolshevik thinking was set out in the Declaration which remarked that the Tsarist Empire had planted seeds of hatred between the peoples of Russia and pointed out to the need for replacing the order of distrust and provocation with an order of openness and honesty that would create an environment of mutual trust. The Declaration went on to express a set of principles ranging from acceptance of “equality and sovereignty of the peoples of Russia” to commitment to the “right of the peoples of Russia to free self-determination, even to the point of separation and the formation of an independent state” (Daniels, 1985).

In broad terms, conceptualization by Lenin and socialist thinkers of the time can be examined from three different angles. First, self-determination was regarded as a post-war settlement tool in order to resolve territorial disputes that arose in the wake of warfare between sovereign states. Accordingly, the peoples of the annexed territories would be asked to determine under whose sovereignty they would like to be ruled. Second, peoples grouped and defined by nationality were free to determine their political destiny, by which they can also break away from an existing political unit in order to create their own political entity. Third, self-determination could emancipate colonial peoples from alien rule and enable them to reach their freedom to establish political independence (Cassese, 1995, pp. 16-17).

The novelty in Leninist thinking is apparently not within the first angle, as it repeated what the French Revolution had already demonstrated, namely, holding plebiscites in conquered territories to reinforce claims of state sovereignty. The innovation is indicated in the remaining two angles can be counted as further contributions to the concept, because declaring colonialism as unlawful and granting a self-determination right (including a right to unilaterally break away from a state) to national and/or ethnic groups at the time were particularly new (Anderson, 2016, p. 1197).

Although Lenin himself did not envision a political map of the world that fell into many pieces by nationalist or ethnic borders, he treated self-determination as a transitory process by which the nations were freed from oppression. With this transitory process, Lenin thought, the oppressed peoples' domination would prevail and the walls between nations would break up, followed by an integration of nations, which would eventually abolish discrimination by classes (Hill, 1957, p. 141). This is why Lenin regarded plebiscites as systematic and amicable handover of sovereignty that not only would resolve territorial disputes but also empower ethnic or national groups in their pursuit of determining their political fate and defended establishment of federations with the expectation that they would later culminate in subsequent integration of nations (Connor, 1984, p. 47; Page, 1950, pp. 342-354).

In practice, though, it is understood from Lenin's later stance that the revolutionary purposes in the Soviet Russia and the right to self-determination were in disagreement. Lenin expressly enunciated that the political struggles towards national self-determination and democratic demands should take the backseat for the sake of the socialist quest for overthrowing bourgeoisie. In other words, full achievement of socialism—the final political objective of the Lenin's Soviet Union—outweighed the national self-determination (Starushenko, 1963, pp. 64-69). People's self-determination was not a goal but a tool that was designed first to destroy the building erected by the Tsarist Empire and later re-erect it according to Leninist principles of reconstruction (Mälksoo, 2017, p. 6). This policy was also marked in the Soviet Constitution. Although the constituent republics were given a right to self-determination in the form of secession from the Union, the conditions for exercising this right were both numerous and difficult to satisfy, which rendered the constitutional provisions a lip service only. The second angle of the Leninist thought was criticized for being supportive of self-determination only if it served as a catalyzer for class struggle. Lenin was therefore blamed for utilizing self-determination as a strategic tool (Blay, 1994, pp. 285-286; Kreptul, 2003, pp. 69-70; Janowsky, 1945, pp. 69-104).

Contrary to the second aspect of Leninist self-determination, the third one, namely granting sovereignty to colonial peoples living under alien subjugation, was more practical among the Soviet politicians. Lenin's (1968) own work hints that the rise of liberation movements among the oppressed and colonial peoples and the break-up trend among empires in the wake of World War I were noted by the Soviet policymakers who correspondingly devised policies that would facilitate, by Soviet recognition of their claims to independence and sovereignty, emergence of oppressed and/or colonial peoples as actors in the international political milieu (p. 11). This would involve ensuring representation of all colonial peoples in international political events and non-interference by European powers of the time in domestic affairs of those people.

Although the third aspect was espoused by Soviet policymakers simply because it dovetailed with both the state's political interests and ideological goals, the idea of anti-colonialism and extension of the self-determination concept to the colonial and oppressed peoples comes to the forefront as the most important contribution of the Leninist thinking, which later had a profound impact on international law and international political landscape. Colonialism, which was once a common and tolerable practice in international relations, turned into an unacceptable and unlawful act in the following decades. Incorporation of anti-colonialism into international law therefore owes to Soviet adoption of self-determination as a foreign policy (Salo, 1991; p. 2; Cassese, 1995, p. 19).

In parallel with Lenin's conceptualization of self-determination, Woodrow Wilson, the then President of the United States (US), put forward his own deliberations. Contrary to Leninist thinking that was grounded on the philosophy of socialism, Wilson came up with ideas that had been nurtured in the cradle of Western democracy. As opposed to Leninist treatment of self-determination as a stepping stone towards the ultimate socialist goal of integration of nations, Wilson based his conceptualization on the democratic idea of "the consent of the governed". Accordingly, people would have a voice in whom they would like to be represented. In this regard, this was an expansion of the idea of accountability of the ruling power to the represented people, which was disseminated during its predecessors, the American and French Revolutions[1] (Unterberger, 1996, pp. 926-930). Furthermore, Weitz (1995) claims that Wilson, concerned about the spread of Soviet propagation of self-determination throughout Europe, purposefully formulated it based on Anglo-American philosophy rooted in the works of Locke and Mill (p. 485). Distinct from the Leninist thought, Wilsonian concept of self-determination envisaged a political system that was democratically created by will and consent of free citizens.

[1] The difference between Anglo-American and European notions of nation should be noted. The former involves a community of organization, life or tradition whereas the latter involves a community of blood and origin. Wilson refers to Anglo-American notion based on the "consent of the governed" rather than the French one based on the "sovereignty of the people" (Pomerance, 1976, pp. 17-18).

However, Wilsonian interpretation of self-determination underwent a series of changes beginning from its proclamation. Originally, his pre-war concept referred to a right of a population to select its form of government. He combined the ideal of universal democracy with what is today known as internal self-determination. As the collapse of empires along national lines was not foreseen at that time, nationality was not an element for consideration. Therefore, the idea of self-government excluded external self-determination and the right of every people to be free from alien subjugation (Pomerance, 1976, p. 20).

After the outbreak and consequences of World War I, Wilson was determined to ensure that peoples had the liberty to choose under which government they would maintain their lives. He defended that peoples should not be traded from one sovereign state to another as if they were commodities, and they should not be obliged to be simply transferred to a sovereignty which they are not committed to (Cassese, 1995, p. 20), which seems to be a reverberation of what had been achieved during the French Revolution. What underpinned this view was the argument that each nation should have its own state. For example, in the post-World War I context, the peoples of the collapsed Ottoman Empire, if significantly concentrated based on nationality, were to be asked about their political destiny and territorial disputes were to be settled considering the interests of the populations of these territories rather than the negotiated adjustments between rival states (Radan, 2002, pp. 26-27; Brown, 1920, p. 237).

However, such a wide interpretation of the principle was contradictory to the realpolitik calculations in the post-war circumstances in which allies expected to be rewarded while enemies were supposed to be sanctioned (Lynch, 2002, pp. 432-433; Hannum, 1993, p. 4). For instance, the US was not in favor of a dismemberment of the Austro-Hungarian Monarchy as the emergence of many small states was regarded as a threat to world peace (Kisch, 1947, p. 236).

Furthermore, Wilson's political entourage advised him to deemphasize his all-encompassing ideal that each nation should enjoy its sovereign state. For instance, the

Secretary of State Sir Robert Lansing (1921, p. 87), in his frequently-cited comment, revealed his astonishment:

> The more I think about the President's declaration as to the right of "self-determination", the more convinced I am of the dangers of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands … and create trouble in many lands.
>
> What effect will it have on the Irish, the Indians, the Egyptians and the nationalists among the Boers? Will it not breed discontent, disorder and rebellion? Will not the Mohammedans of Syria and Palestine and possibly of Morocco and Tripoli rely on it? How can it be harmonized with Zionism, to which the President is practically committed?
>
> The phrase is simply loaded with dynamite. It will raise hopes that can never be realized. It will, I fear, cost thousands of lives … What a calamity the phrase was ever uttered! What a misery it will cause!

Wilson increasingly came to realize that a system based on national or ethnic lines could not be applied coherently for practical political reasons, and hence, had to substantially cut down on the scope of what he had drafted in his Fourteen Points Address on 8 January 1918 in order to limit how the principle was applied (Samaddar, 2005, p. 84).

In the context of colonial claims in the post-war political arena, however, he considered self-determination as an important factor for settlements of claims even though his view was different from Lenin's stance that defended entitlement of all colonies to sovereignty. Wilson instead came up with his orderly liberal reformism (Levin, 1968, p. 247), according to which Western states' economic and political grip on the colonial territories was to be gradually loosened and eventually terminated on the condition that existing power arrangements were not subject to major impairment by possible liberation of colonial peoples (Cassese, 1995, p. 21). Implications of Wilson's proposals on the Treaty of Versailles can be found in the adoption of a three-stage approach about claims for statehood in territories held by the Triple Alliance. Accordingly, identifiable peoples were to be granted statehood, plebiscite was to be held for the disputed borders, and special minority regimes were to protect small ethnic groups with supervision by the Council of the League of Nations. Application of this approach was limited to territories that had been subjugated by the

defeated powers, not the victors. Meanwhile, the colonies of defeated powers were to be administered under the Mandates System of the League of Nations and control of these territories was entrusted to the Allies (Whelan, 1994, pp. 99-101).

Wilsonian self-determination was harshly criticized in many aspects. It was argued that his formulation was encompassed with uncertainty and the proposed solutions were vague. He was unaware of the potential consequences of his one-size-fits-all proposition on international politics. He was also blamed for producing his concept of self-determination with the purpose of implementing it outside of his home country. Despite these criticisms, Wilson’s contribution was to bring self-determination into the international agenda and upholding the core idea that peoples should be free to choose their government democratically (Cassese, 1995, 21-23).

Notwithstanding these historical developments, self-determination could not find a place in the Covenant of the League of Nations at the time and remained no more than a political principle. It became an international legal principle only after World War II, following its incorporation into the 1945 UN Charter under Article 1 (Lorca, 2014, p. 488).

It is noteworthy that in the immediate aftermath of World War I, the dispute between Sweden and Finland over Åland Islands is particularly remarkable in the development of the concept. In a nutshell, the Åland Islands had been, along with Finland, part of the Kingdom of Sweden until 1809 when Sweden had to leave these territories to Russian Empire following a defeat at the Napoleonic Wars. After the annexation, Finland (including the Åland Islands) was granted autonomy. After the Crimean War, however, Russian Empire was obliged by the Treaty of Paris in 1856 to demilitarize the islands due its strategic position in the Baltic Sea. After Finland declared independence in December 1917 in the wake of the Bolshevik Revolution in Russia, the Åland Islands were still part of Finland. The Ålanders, the majority of whom were Swedish-speaking inhabitants, appealed to the Finnish Parliament to demonstrate their desire to disengage from Finland and reunion with Sweden, by their right of national self-determination. The dispute was then referred to the League of Nations

which appointed an International Committee of Jurists whose task was to give an advisory opinion on the dispute between Finland and Sweden about the status of Åland Islands (Barros, 1968).

The Report of the International Committee of Jurists entrusted by the Council of the League (October 1920) concluded that the Ålanders' claim for self-determination was beyond the sole jurisdiction of Finland and that the League of Nations was competent to make recommendations concerning the dispute. In addition, however, the opinion of the Committee of Jurists included very significant deliberations that was going to radically influence the development of the self-determination principle:

> From the point of view of both domestic and international law, the formation, transformation and dismemberment of States as a result of revolutions and wars create situations of fact which, to a large extent, cannot be met by the application of the normal rules of positive law.
> Under such circumstances, the principle of self-determination of peoples may be called into play. New aspirations of certain sections of a nation, which are sometimes based on old traditions or on a common language and civilization, may come to the surface and produce effects which must be taken into account in the interests of the internal and external peace of nations (International Committee of Jurists, 1920, p. 6).

While taking into account that self-determination was a political principle that could not be used as justification for disintegration of clearly established states, the Report of the Committee of Jurists made a distinction between normal and abnormal situations and argued that when the statehood of the sovereign became questionable due to *abnormal* circumstances such as revolutions or major wars, self-determination appeared as a legal criterion for settlement of disputes. This meant that self-determination remained passive but was activated in periods of political transformation, when statehood was at stake, in order to restore the political normality so that neither the sovereignty of existing states nor the stability of the international order was not disturbed under normal situations (Koskenniemi, 1994, p. 246).

After the International Committee of Jurists' attestation of the League's competence, the League of Nations formed a Commission of Rapporteurs, to put into effect the legal principles suggested by the Committee of Jurists. After a fact-finding mission,

the Report Presented to the Council of the League of Nations by the Commission of Rapporteurs concluded that self-determination could be realized externally in the form of separation on the conditions for realization of self-determination internally were no longer possible. While agreeing with the International Committee of Jurists on the point that separation of a group from a state can be considered as an exceptional solution only when the state “lacks either the will or the power to enact and apply just and effective guarantees”, the Rapporteurs (1921) found that the circumstances did not require application of the principle of external self-determination because the Finnish state expressed its consent to grant Ålanders satisfactory guarantees (p. 28).

The resolution issued by the League of Nations confirmed sovereignty of Finland over the Åland Islands conditional upon further guarantees to be granted by the government of Finland to Ålanders in matters mentioned in the Report of the Commission of Rapporteurs. Although the League’s final decision seems to be influenced by the Report of the Commission of Rapporteurs, which disagreed with the findings of the Committee of Jurists that imply possibility of external self-determination (Sureda, 1973, pp. 111-117), the Åland Islands case demonstrates a number of significant points that merit attention. First, the case is an important because it involved a first international legal discussion of the self-determination and implies a transition from a political principle into a legal one (Berman, 1988, pp. 72-76). Second, the League’s involvement in dispute settlement showed that self-determination claims in non-colonial context were considered to be beyond domestic jurisdiction of states (Kirgis, 1994, p. 304). Third, and most importantly, the case marked the birth of the remedial secession doctrine according to which extraordinary situations are conducive to the realization of self-determination through secession as a last resort (Weller, 2015, p. 201).

The historical milestones elaborated in the foregoing part support a linear progression of the concept. The seeds of self-determination were sown as popular opposition to the divine right of rulers, an attempt to reverse the top-down political rule with the bottom-up movement. Therefore, opposition to autocracy, despotism and elitism lie

in the core of self-determination. It is furthermore derived from these influential events that self-determination remained distant from conservatism, in the sense that opportunities should be provided for evolution of political entities as in the cases of the Glorious, American and French Revolutions. Such progressive vision continued in the UN era in the form of condemnation and prohibition of colonialism, as will be discussed in the following chapter. Considering the long-lasting impact of self-determination on the international political and legal landscape, it is can be argued that this linear progression is likely to continue in the face of the unilateral declarations of independence based on claims of self-determination in non-colonial contexts (Anderson, 2016, p. 1201).

CHAPTER 2

SELF-DETERMINATION IN THE UNITED NATIONS LEGAL INSTRUMENTS

In the light of the foregoing chapter outlining the prominent milestones of the self-determination concept, this chapter will look into its development in legal texts during the UN era and the impact of these legal instruments on how the right to external self-determination is applied today. Before examining these legal instruments, there are two important matters that are worthy of consideration. The first one is how one should interpret words and phrases in analyzing the building blocks of self-determination. Article 31 of the Vienna Convention on the Law of Treaties (1969) stipulates that normal rules of interpretation should be employed to the extent possible, which means that words and phrases should be understood in their ordinary lexical meaning with respect to the particular legal instrument's objects and purposes. In cases where words and phrases become too vague to be understood, Crawford (2012) and Radan (2002) advise that reference could be made to preparatory works and minutes, as specified in Article 32 of the 1969 Vienna Convention (pp. 383-384; p. 31).

The second one is how one should assess various international legal instruments in the case of self-determination. Article 38 of the Statute of the International Court of Justice (ICJ) is enlightening in this regard. The ICJ, when deciding the disputes that are submitted for its decision, pursues the following order: (a) general or particular international conventions are treated as "establishing rules expressly recognized by the contesting states"; (b) international custom is regarded as "evidence of a general practice accepted as law"; (c) "the general principles of law recognized by civilized nations"; and (d) "judicial decisions and the teachings of the most highly qualified publicists of the various nations" are set as complementary tools in identifying rules of law (UN, 1945). The legal texts that came into being during the UN era will therefore be examined by this chapter in consideration of the foregoing guidance.

It should also be noted that despite the existence of other legal texts that were issued by regional organizations such as the Helsinki Final Act by Organization for Security and Co-operation in Europe or the African Charter on Human and Peoples' Rights (Banjul Charter) by the Organization of African Unity, reference was not made to these texts in order to avoid discussing differences in interpretation of the self-determination concept at regional level, which is beyond the scope of this thesis.

2.1. THE UNITED NATIONS CHARTER

The UN Charter is the first legal instrument wherein the phrase "self-determination of peoples" appeared (Duursma, 1996, p. 12). "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" is counted as one of the four purposes, according to Article 1 under Chapter I of the Charter which sets out the purposes and principles of the UN. "Self-determination of peoples" reappears in Article 55 under Chapter IX devoted to international economic and social co-operation:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
> a. higher standards of living, full employment, and conditions of economic and social progress and development;
> b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
> c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

As can be understood from the clear expression "respect for the principle of equal rights and self-determination of peoples" in Article 1(2) of the Charter, self-determination emerged as a principle at the beginning of the UN Era and simply being mentioned in a legally binding text did not render self-determination a right immediately. Legal scholars agree that the principle of self-determination was regarded as *lex desiderata* rather than a rule under international law (Hannum, 1990, p. 33; Cassese, 1979, p. 138).

However, neither Article 1 clearly elaborates what this purpose necessitates, nor Article 55 provides an explicit description of the meaning of self-determination. Articles 73 and 76 of the Charter, if considered in conjunction with Articles 1 and 55, can provide a better understanding of self-determination. In Article 73, the member states which “have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government” are committed to “develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions”. Although not expressly written, it is understood that self-government of peoples in colonial territories is intended. Article 76(b) almost rephrases the same formulation and lays down that the objective of the UN trusteeship system[2] as:

> to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement.

Self-government and independence of peoples in non-self-governing colonial territories was of secondary importance compared to the sovereignty of metropolitan (exercising sovereignty over colonial territories) and trustee powers over those territories. It therefore becomes evident that the Charter did not call for external self-determination in territories with trusteeship or colonial status. The intention of the Charter was gradual advancement of such territories towards self-government, but independence was neither an objective nor a right (Pomerance, 1982, p. 11; Quane, 1998, p. 544).

Differently from the status of peoples in non-self-governing territories, another important question is whether or not the principle of self-determination stipulated in the Charter could be enforced for peoples in self-governing territories, namely, peoples in already independent states. The Charter is unable to answer this question.

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[2] The Charter perpetuated the mandate system that had been set up by its predecessor, the League of Nations, and renamed it the International Trusteeship System under Chapter XII of the Charter.

The argument that all peoples—regardless of their status as independent or non-self-governing—have the right to participation in determining their political fate might be misleading, because both democratic and non-democratic states were admitted as parties to the Charter. Therefore, the Charter seems to provide no prescription for any kind of self-determination in its internal sense (determining political and constitutional systems freely) for peoples in existing states (Raič, 2002, p. 238).

In sum, it is not possible to refer to the text of the UN Charter for self-determination in its internal or external sense. Self-determination, without a description, is defined only as a principle and other articles relevant to the concept—namely, Articles 73 and 76—purport that self-determination is basically related to non-self-governing peoples and has no linkages to any minority, ethnic or national right to separate from sovereign states (Welhengama, 2000, p. 257). This is also supported by the minutes of the drafting committee of the Charter, in which it is expressly stated that any kind of self-determination that implies separation was excluded (Ofuatey-Kodjoe, 1977, p. 109). Considering that the drafters of the Charter elevated their territorial integrity above all, this is not surprising.

2.2. RESOLUTION 1514

Transformation of self-determination from a principle into a right occurred with the UNGA Resolution 1514 (1960) entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples", also known as the Colonial Declaration, owing to which colonialism was declared unlawful and external self-determination in colonial context was incorporated into the UN legal framework (Summers, 2014, pp. 203-205).

Article 1 provides that alien subjugation, domination and exploitation of peoples breach fundamental human rights and are against not only the UN Charter but also world peace and cooperation among states. Such situations as colonialism and apartheid undermine the quest for world peace and cooperation. Article 2 establishes 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". Despite the plain language, which was to be repeated verbatim in subsequent legal documents, authors are in disagreement about whether or not self-determination's stretch is limited to colonial context only. Tomuschat (1993), for example, holds that right to self-determination can be enjoyed by all peoples (p. 2), whereas Quane (1988) posits that Article 2 should not be interpreted too widely to include peoples other than those in non-self-governing territories (p. 548).

Article 6 deals with the unclarity about the scope of the right accorded by Article 2, stipulating that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations". The term "country" mentioned in Article 6 can be construed to suggest that further fragmentation of territories under colonial rule should be avoided during the independence-gaining process. It is also possible to interpret it as a clause restricting the use of right to colonial sphere only. However, the latter reading of the Article creates a paradoxical situation, in which peoples who have been subject to alien subjugation, domination and exploitation are authorized to exercise external self-determination whereas "all peoples" are entitled to "the right of self-determination". It is understood from the positions taken by the states' representatives during the drafting process of the Declaration that any grounds that would pave the way for external self-determination beyond colonial context was carefully sidestepped (Welhengama, 2000, p. 261).

In addition to the overarching objective of preserving the international political system based on the territorial integrity of states, it is argued that there were two factors that prevented the Colonial Declaration to allow for external self-determination beyond the colonial context. The first one was the desire to evade the risk of conflict between indigenous peoples especially in the African continent where tribal bonds had been strong. The second one was the concern that such tribal conflicts would disrupt the decolonization process. Advocates of the Declaration realized that external self-determination claims that could lead to inter-ethnic violence would possibly be used by colonial powers as justification for reoccupation. At the time of the Declaration, therefore, the non-self-governing peoples' desire for

emancipation from foreign occupation overlapped with the international community's wish to observe territorial integrity of states (Anaya, 1991, pp. 403-406; Nanda, 1981, p. 275).

Before moving on to the next legal instrument on the subject matter, one question merits discussion. In cases of internal colonialism, which means exposure of indigenous communities (within existing states) to high poverty rates, failure to access employment opportunities, insufficient health care or similar aggravations (Hechter, 1975, pp. 30-34), could the Declaration on Granting of Independence to Colonial Countries and Peoples be used to justify for external self-determination? Does this type of domestic colonialism provide grounds for external self-determination in cases where a group of people in a unitary and sovereign state are mistreated in economic, social and administrative aspects? Despite rare suggestions that a right to external self-determination should be accorded to peoples that have been subjected to internal colonialism (Iorns, 1992, pp. 298-301), it seems not possible to invoke the Colonial Declaration as justification for external self-determination under situations of internal colonialism because "the national unity and territorial integrity of a country" is held above all and "any attempt aimed at the partial or total disruption" thereof is precluded by Article 6 of the Declaration. Otherwise, pursuant to Article 1, it would have been possible for disadvantaged groups within existing states to claim external self-determination arguing that they had been suffering "subjugation, domination, and exploitation".

Furthermore, due attention should also be paid to the accompanying UNGA Resolution 1541 (1960) entitled "Principles which Should Guide Members in Determining whether or not an Obligation Exists to Transmit the Information Called for in Article 73e of the Charter of the United Nations" calling for member states to report on their overseas colonial territories. Resolution 1541 includes several provisions prohibiting any prospects for external self-determination claims based on alleged internal colonialism. Principle IV of the Resolution obliges states to "transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it", reminding that this

obligation is required by international law. However, Coleman (2014) argues that this definition of colonial territories was distorted to include those colonies of the European powers only (p. 19). Therefore, decolonization era saw independence of territories that were located offshore or geographically separate from the mainland. Coleman (2014) argues that this allowed non-European states to develop the Salt Water (or Blue Water) Thesis, according to which only geographic separation was regarded as a determinant of decolonization (p. 19).

This interpretation enabled non-European states to claim that they cannot be named colonial powers (such as Indonesian control of adjacent West Papuan territory). In response, Castellino (2000) points out that subsequent Principle V added such other elements as administrative, political, juridical, economic and historical factors to be considered in addition to geographical, ethnic and/or cultural distinctiveness when granting independence to colonial territories, which should refute the Salt Water Thesis (pp. 27-28).

Albeit restricted to the situation of non-self-governing territories, Resolution 1541 is particularly important as it helps understanding of how “full measure of government” is achieved. Principle VI of Resolution 1541 lays down available options for peoples who are in a position or status of subordination:

> A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:
>
> (a) Emergence as a sovereign independent State;
> (b) Free association with an independent State; or
> (c) Integration with an independent State.

It is argued that the document does not receive sufficient scholarly attention although it clarifies what “full measure of government”, a frequently mentioned phrase in the literature, means and entails. As Castellino (2000) argues, the lack of interest may be attributed to the fact that the document was aimed at removing the colonial status of non-self-governing territories and that it is difficult to make generalizations beyond that context (pp. 30-31).

2.3. INTERNATIONAL HUMAN RIGHTS COVENANTS

The International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights (also known as the Twin Covenants) were unanimously adopted by the UNGA, with Resolution 2200 (1966). These two legal instruments built upon the 1948 Universal Declaration of Human Rights, in pursuit of making economic, social, and cultural, civil and political rights peremptory norms[3] of international law.

Self-determination was mentioned in the first sentence of the common Article 1(1) of the Twin Covenants, which states that "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". Common Article 1(2) further states, again referring to all peoples who "may, for their own ends, freely dispose of their natural wealth and resources", which ostensibly endorses the obligation mentioned in the second part of Article 1(1). Common Article 1(3) demands that states which are parties to the Covenant promote "the realization of the right of self-determination" in non-self-governing and trust territories and "respect that right, in conformity with the provisions of the Charter of the United Nations".

As previously discussed, by Articles 73 and 76 the UN Charter has established that self-determination was to be observed for peoples in non-self-governing and trust territories. Differently from the UN Charter where self-determination is identified as a principle, the Twin Covenants describes it as a right. Besides, one can argue that Article 1(3) of the Twin Covenants permits a right to external self-determination unilaterally by peoples under colonial rule, if self-determination is transformed from a principle into a right, as plainly indicated by the text (Buchheit, 1978, pp. 83-84; Simpson, 1996, pp. 255-269).

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[3] Article 53 of the Vienna Convention on the Law of Treaties defines peremptory norms as those "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" (Orakhelashvili, 2006, pp. 8-9).

More importantly, the right is not limited to colonized or oppressed people but given to all peoples. Considering that self-determination is equated with the independence of colonized peoples solely during the decolonization period, the term “all peoples” remains open to interpretation and causes controversy even today because what exactly constitutes “people” is not known by looking at legal documents and state practice (Castellino, 2000, p. 32).

Despite the fact that the Covenants reformulated right holders as “all peoples”, regardless of whether or not they had been subject to subjugation or alien rule, some authors (see, Morphet, 1989, pp. 77-78; Duursma, 1996, pp. 33-34) argue that it is not possible to refer to the Covenants for self-determination beyond colonial context, by pointing out the debate among the drafters of the Covenants which clarifies that the description of self-determination in Common Article 1 meant self-government or internal self-determination and that it did not allow external self-determination for sub-state national groups, which was “in conformity with the provisions of the Charter of the United Nations”.

There are several points that make the Twin Covenants an important milestone among the UN legal instruments relating to self-determination. The first is that they put down on paper the understanding that people should be able to steer their political fate before any rights are properly enjoyed. The right of self-determination was not only regarded as a political and civil right but also suggested as a stepping stone towards economic, social and cultural rights. This was why right of self-determination is the only right that is common to both Covenants. The second is that the Covenants oblige State Parties to admit existence of outsiders by promoting and respecting their right (Castellino, 2000, pp. 31-33), considering that the right to self-determination is exercised by non-state actors, namely the peoples that are not insiders of the international sovereign states system. Finally, and most importantly, they are the only legally binding documents although there are numerous encouraging references to self-determination in various documents of international nature in which a right of self-determination is proclaimed (Hannum, 1998, p. 773).

2.4. RESOLUTION 2625

UNGA Resolution 2625 (1970) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"—also known as the Friendly Relations Declaration—aims at clarifying purposes and principles of the UN. In this regard, Principle 5 of Resolution 2625 is related to the "equal rights and self-determination" of peoples,[4] wherein its Paragraph 1 repeats that self-determination is a right applying to "all peoples", with a wording almost identical to that was already established by Article 1(1) of the Twin Covenants.

Paragraph 2 of Principle 5, while noting that the principle would be violated and fundamental human rights would be denied in cases where peoples are subject to alien subjugation, domination and exploitation, creates an obligation for member States as follows:

> Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:
> (a) To promote friendly relations and co-operation among States; and
> (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned.

Modes of implementing the right of self-determination are described in Paragraph 4 as (i) establishment as sovereign and independent state, (ii) free association or integration with an independent State, or (iii) emergence into any other political status freely determined by a people. Interestingly, this description does not specifically restrict the right to the colonial context, which may mean that the right to external self-determination could be discussed for non-colonial situations with reference to "establishment as sovereign and independent state" (Anderson, 2016, p. 1216).

[4] Principles set forth in the Friendly Relations Declaration are (1) the prohibition of the threat or use of force, (2) the peaceful settlement of disputes, (3) non-intervention, (4) the duty to cooperate, (5) equal rights and self-determination, (6) the sovereign equality of states, and (7) good faith and the fulfilment of obligations (Rosenstock, 1971, p. 713).

Every State is obliged by Paragraph 5 to “refrain from any forcible action which deprives peoples [...] of their right to self-determination and freedom and independence”. Again, the right is accorded to peoples without restriction and mentioned in conjunction with “freedom and independence”. Paragraph 5 continues to allow peoples “to seek and to receive support in accordance with the purposes and principles of the Charter” in cases where they stand against and resist to any forcible action by states in their pursuit of exercising their right to self-determination. However, the extent and nature of support which peoples are allowed to receive from other member states in their pursuit of exercising the right to self-determination is unclear. Castellino (2000) argues that third party states have limited options in support of self-determination. These include providing public support for self-determination movements or acting in collaboration with other UN member states as well as the UN Security Council through measures mentioned under Chapter VII of the UN Charter. Providing arms to peoples conducting self-determination movements is not among these options and against the spirit of the Charter and the Declaration which both discourage use of force in international politics (p. 37).

The wording of Paragraph 5 causes confusion about the precedence of self-determination vis-à-vis territorial integrity of sovereign states. Paragraph 7 of Principle 5 immediately clarifies, negating the possibility that self-determination is prioritized over territorial integrity:

> Nothing in the foregoing paragraphs shall 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 as to race, creed or colour.

Paragraph 7 declares a government illegitimate and in violation of the right of self-determination if the population is not fully represented by that government or is discriminated against on the grounds of “race, creed or color”. Therefore, the member states are obliged to observe their peoples’ freedom from discrimination. Cassese (1995) argues that among the sub-groups living in a sovereign state which are

prevented from access to political decision making, only racial and religious groups have a right to self-determination in its internal sense while linguistic or national sub-groups do not have such a right (pp. 112-114). In contrast, arguing that Paragraph 7 of the Friendly Relations Declaration should be construed in the light of Article 1 of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, which defines racial discrimination as “any distinction, exclusion or restriction or preference based on race, colour, descent, or national or ethnic origin”, Anderson (2016) maintains that other factors such as language, culture and customs, which constitute national identity and ethnicity should be also covered by the definition of discrimination in Paragraph 7 (p. 1217).

Accordingly, sovereignty and territorial integrity of member states are reinforced by Paragraph 7 of the Friendly Relations Declaration on the condition that states are “in compliance with the principle of equal rights and self-determination of peoples […] and thus possessed of a government representing the whole population belonging to the territory without distinction as to race, creed or colour”. In the contrary case where a state is discriminating against a group of people on the grounds of their race, language, culture or religion, it is argued that Paragraph 7 impliedly allows such peoples exposed to discrimination to exercise their right to self-determination in its external sense, which would mean impairing political unity and territorial integrity of states (Kooijmans 1996, pp. 212-213; Buchheit, 1978, pp. 92-93; Rosenstock, 1971, p. 732).

However, this implied right to external self-determination by sub-groups within a sovereign and independent state is not unconditional. There are implied requirements that need to be met before any sub-group can claim a right to external self-determination. First of all, for such a right to emerge, discrimination or distinction by the state against a sub-group of people must be intentional, continuous and systematic, with no possibility of peaceful reconciliation between the sub-group and the state. This means a government must consciously expose its peoples to ill-treatment. In other words, the state’s bad faith against its peoples is required. Therefore, unintentional cases of discrimination will not count as sustained

mistreatment of peoples. In addition, the parties to the dispute must have lost any prospect for an amicable settlement, preventing hopes for non-violent resolution (Murswiek, 1993, p. 26; Doehring, 1994, p. 66; Kooijmans 1996, p. 216; Nanda, 1981, p. 276). These initial requirements are regarded as the threshold before triggering a right to be exercised in line with Paragraph 7, guaranteeing that external self-determination is not allowed unless particularly appalling circumstances are present.

Another implied requirement is that the above mentioned intentional, continuous and systematic discrimination or distinction by the state against a sub-group of people must be adequately contemporaneous, meaning that there must be a meaningful time connection between the alleged discrimination and the claim for external self-determination. For example, a group of people's claim for a right to external self-determination on the grounds of an alleged discrimination that supposedly took place hundreds of years ago would not be credible. Although the exact time interval necessary for expiration of a right is debatable, this requirement prevents peoples to seek a right to external self-determination limitlessly. The shorter the time interval between a case of gross discrimination and a claim for self-determination is, the stronger the validity of such claim becomes (Anderson, 2016, p. 1218; Coleman, 2014).

A third requirement is that a guarantee should be provided by the group seeking external self-determination to protect human rights of minorities which may potentially emerge in the new state in the event of successful break away. This requirement, called as internal consistency principle, ensures that minorities that previously constituted a part of an oppressive state are not exposed to the same situation again, considering that the population of the newly emerging state will not possibly be ethnically homogenous. This principle ensures that self-determination is applied by the emerging state compatibly with the legal texts on self-determination (Tierney, 1999, p. 214; Kolodner, 1994, p. 161; Horowitz, 1985, p. 267).

In addition to the above requirements, the group in pursuit of external self-determination must observe the rules for statehood according to international law. In other words, the newly emerging state as a result of external self-determination must have a claim for a defined territory with a permanent population governed by a functioning government and with a capacity to enter into relations with other sovereign states, as per Article 1 of the 1933 Montevideo Convention on the Rights and Duties of States (Dugard, 1987, p. 7; Grant, 1999, pp. 413-414). These criteria for statehood must be satisfied in accordance with peremptory norms of international law, particularly, the prohibition on the illegal use of force (Raič, 2002, pp. 156-157). Non-compliance with one of the above criteria may hinder the realization of statehood in legal terms and may dissuade other states from granting recognition to the newly emerging state (Radan, 2002, p. 245).

The final paragraph of Principle 5 declares that "*every state* shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country". It is noteworthy that a group of authors argue that this paragraph is aimed at not peoples but states; therefore, peoples seeking external self-determination is not precluded by this paragraph from exercising their right (Radan, 2002, p. 56; White, 1981, p. 159; Musgrave, 1997, p. 76).

Such interpretation of the relevant paragraphs of the Friendly Relations Declaration suggests that state sovereignty and territorial integrity are overridden by self-determination in cases of intentional, continuous and systematic human right violations against peoples. In doing so, the Declaration establishes a balance between internal and external forms of self-determination: state's denial of a people's right to internal self-determination may justify people's exercising external self-determination (Cassese, 1995, p. 120; Kirgis, 1994, pp. 305-306). This view is further endorsed by the argument that the protection of a state's territorial integrity or political unity is conditional upon a government's representativeness of the whole people. Otherwise, special circumstances may entail prioritization of self-determination over territorial integrity. This renders particular self-determination movements persuasively legitimate in the non-colonial context (Nanda, 1981, pp. 269-270).

Buchheit (1978) points out that the Declaration's Paragraph 7 of Principle 5 was the first international legal document to seemingly recognize external self-determination under special circumstances (p. 92). However, a group of authors disagree with such view, and assert that the Declaration's Paragraph 7 cannot be interpreted to allow external self-determination. It is argued, for instance, that the target audience of the Friendly Relations Declaration was not all peoples but those who were populations of territories that the UN considered as colonies; therefore, it is not possible to conclude that state sovereignty can be disregarded for the sake of external self-determination beyond the decolonization context (Binder, 1993, p. 238). Another dissenting view is expressed by Del Mar (2013), who contends that construing Paragraph 7 as a legal foundation of external self-determination would qualify as an "overly expansive reading" of the Declaration which was meant to be restrictive (pp. 94-95). Moreover, Tancredi (2008) comments that whether or not such a broad reading would be compatible with state practice is questionable (pp. 37-39). Horowitz (2003) underlines the wording of Paragraph 7—"…self-determination of the peoples as described above…"—referring to the preceding paragraphs whose description did not provide for any grounds for self-determination beyond decolonization context (p. 64). This is in concordance with the restrictive language of the preceding paragraphs under Principle 5 of the Declaration, which do not aim to pave the way for "new rights". Last but not least, Hannum (1998) claims that international law does not accord a right to external self-determination, while also admitting that international law does not prohibit external self-determination either (pp. 776-777).

At the junction of opposing views, one may ask a critical question: why did Paragraph 7 of the Declaration not support external self-determination expressly? Why a right to external self-determination is inferred by *argumentum a contrario*? In other words, why do scholars have to propound that the right exists because it is not disproven by international law? Referring to the drafting process of the Declaration, Anderson (2016) notes the differences of opinion between those states which endorsed the inclusion of external self-determination in the text of the Declaration and those states which stood against it (p. 1228). Accordingly, the Eastern Bloc countries such as the Soviet Union, Czechoslovakia, Romania and Poland, which

were characteristically known to have a welcoming attitude towards self-determination, submitted jointly a draft paragraph which stipulated that "each people has the right to determine freely their political status, including the right to establish an independent and national state" without requiring any kind of human right violations or discrimination against peoples (Buchheit, 1978, p. 121). However, African and Western states stood against such attitude, arguing that self-determination did not yield such a far reaching right. These conflicting views pushed the Dutch representative to suggest, for the purpose of satisfying these two poles, that external self-determination beyond colonial context could be allowed only if basic human rights and fundamental freedoms were breached (Raič, 2002, p. 320). Paragraph 7 was therefore phrased in order both to reconcile these two opposing groups of states and to avoid any explicit reference to external self-determination out of the decolonization context.

Despite dissenting scholarly opinions, there is considerable support in favor of a right to external self-determination beyond the decolonization context on the basis of Principle 5 of the Friendly Relations Declaration. This right, however, is accorded to peoples who have been exposed by the state to intentional, continuous and systematic discrimination or distinction because of their race, creed or color. This right to external self-determination is therefore called "remedial", which can be invoked only by peoples under extraordinary circumstances as described above.

2.5. RESOLUTION 50/6

UNGA Resolution 50/6 (1995) entitled "Declaration on the Occasion of the 50th Anniversary of the United Nations", or the Fiftieth Anniversary Declaration in short, emphasizes that the mission of the UN, which is to rescue future generations from the calamity of wars, after fifty years is still relevant. Following an introduction where the UN's success at preventing a conflict at the global scale is underlined, the Declaration requests that the commemoration of the fiftieth anniversary of the UN be regarded as an opportunity to refresh vigor and instrumentality of the Organization in

"promoting peace, development, equality and justice", which are to guide future cooperation.

Correspondingly, Article 1 of the Declaration provides that the UN will:

> continue to reaffirm the right of self-determination of all peoples, taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right to self-determination. This shall not be construed as authorizing or encouraging any action that 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.

It is evident that the spirit of Paragraph 7 of the Friendly Relations Declaration, stipulating the right of all peoples to self-determination, was preserved in Article 1 of the Fiftieth Anniversary Declaration. The difference between the two is how peoples are qualified for a right, which is mentioned at the end of both. While Paragraph 7 of the Friendly Relations Declaration required discrimination on the grounds of "race, creed, or color", Article 1 of the Fiftieth Anniversary Declaration broadened this by "distinction of any kind". Therefore, the vagueness posed by the former was cleared by the latter, removing the limitation on the types of discrimination or distinction against peoples and acknowledging all forms of discrimination unacceptable. This may include, but is not limited to, "racial, linguistic, cultural, customary, religious, or other forms of discrimination along ethnic or national lines" (Nanda, 2001, pp. 324-325).

Peoples within sovereign states, on the condition that they are subject to intentional, continuous and systematic distinction of "any kind", are therefore legitimately allowed to take action to exercise their inalienable right to external self-determination. However, it is necessary to remind that external form of self-determination is considered to be a remedy of last resort, which could be invoked

only under special circumstances, as discussed in the foregoing section[5]. In sum, the Fiftieth Anniversary Declaration not only reaffirmed the content provided by the Friendly Relations Declaration but also modernized the old concept of self-determination which was conservatively considered to be confined to the decolonization era.

2.6. RESOLUTION 61/295

Following a twenty-five years of drafting process (Summers, 2014, p. 254), UNGA Resolution 61/295 entitled "Declaration on the Rights of Indigenous Peoples", or Indigenous Declaration in short, played a pivotal role in extending the scope of self-determination. Article 3 of the Indigenous Declaration stipulates that "Indigenous 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". Article 4 affirms that "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions".

Indigenous Declaration was particularly important among the legal texts on self-determination in the sense that the recognition of the right in recent times broke down the outmoded conception of self-determination associated with colonialism. Coulter (2010), for instance, calls it "probably the most important development of the right since the era of decolonization" (p. 2). It is obvious that Indigenous Declaration accorded to indigenous peoples a right to self-determination in its internal sense, meaning autonomy or self-government. Apparently, this right does not include any prospects for external self-determination.

The question that begs discussion here is whether indigenous peoples may seek a right to external self-determination in cases where their right to autonomy or self-

[5] The possibility of resolution between the parties to the dispute should be unlikely; there should be meaningful time interval between the alleged discrimination and claim for external self-determination; the newly emerging state should explicitly guarantee protection of minorities in the new state; and the newly emerging state should satisfy statehood criteria.

government is denied. Does such denial allow indigenous peoples to exercise self-determination in its external sense? Article 46(1) of Indigenous Declaration explicitly provides that:

> Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or 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.

Article 46(1) ostensibly links Indigenous Declaration to the UN Charter, which prioritizes territorial integrity and sovereignty of states over self-determination of peoples. Therefore, Article 46(1) per se precludes external self-determination for indigenous peoples. This view is also endorsed by Eide (2009) who expresses that the possibility of interpreting the right to self-determination of indigenous peoples in a way to enable its external meaning is eliminated by Article 46(1) (p. 255). Boronow (2012) also supports this view, positing that international law recognizes indigenous self-determination as a right limited to an internal one, except for extraordinary circumstances (p. 1381).

However, a group of authors is of the opinion that this view is rejected by Article 45 of Indigenous Declaration, which stipulates that "Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future". After clarifying that indigenous peoples do qualify as "peoples" in the eye of international law from social, cultural and ethnological perspectives, Myntti (2000) claims that they are also entitled to enjoy a right to self-determination of peoples as granted and observed by international law (p. 114). This does not necessarily mean that they are automatically entitled to exercise such right externally. Like other peoples, only mistreatment of indigenous people by highly oppressive governments may enable them to claim this right. Similarly, Borgia and Vargiu (2012) propound that indigenous peoples are by no means different from other peoples and that they are theoretically not precluded from claiming their right to external self-determination in case of gross violations of human rights (p. 202). Titanji (2009) clearly puts that if indigenous peoples are not granted the opportunity

to exercise their right to internal of self-determination, then they should be permitted to exercise their right to external self-determination (pp. 71-72).

Therefore, it can be argued that Article 45 of the Declaration reserves the right to external self-determination for indigenous peoples in extreme cases where they are the objects of systematic discrimination and their fundamental rights are abused. This conclusion was also drawn by the World Council of Indigenous Peoples, stating that a right to external self-determination may arise when abusiveness and unrepresentativeness of a government is so dramatic that makes the situation no different than classic colonialism. In this vein, during the drafting process of the Declaration, the Australian Delegation admitted that gross and systematic violations of the rights of a group, which can be labeled as people, will culminate in a right to external self-determination (Summers, 2014, p. 269).

2.7. ASSESSMENT OF UNITED NATIONS LEGAL INSTRUMENTS

Before reaching the conclusion that international law provides a right to external self-determination beyond the decolonization context based on interpretations of the UNGA Resolutions, it is necessary to discuss respective strengths and authority of legal instruments pertaining to the subject matter. There is no doubt over the binding force of treaties, the UN Charter and the Twin Covenants in our case, which is recognized by states and scholars without hesitation. This can be explained by the fact that states, as parties to a treaty, have shown express consent before adopting it. From this point of view, the UN Charter and the Twin Covenants impose obligations on the signatories.[6] Nonetheless, it should be reminded that both treaties only guarantee a right to self-determination for colonized territories and non-self-governing territories under the sacred cause of decolonization. As discussed in the foregoing parts, it is not possible to refer to these treaties for external self-determination beyond decolonization context. Therefore, one should examine the

[6] It is further argued that even though a state is not a signatory, it may be bound by these treaties because a principle stipulated by those treaties has become a customary norm (Meron, 1989, pp. 80-81; Duursma, 1996, p. 78).

legal strength of UNGA Resolutions in order to have an understanding of the status of self-determination in non-colonial contexts in international law.

To what extent the UNGA Resolutions are regarded a binding force has been an important discussion topic among scholars. There are two approaches or schools of thought. One of them, called the traditional approach, disagrees with the presupposition that the UNGA Resolutions have legal power (Gross, 1984, pp. 214-220). While agreeing that the UNGA is authorized by the Charter to make recommendations, Haight (1975) posits that it is not a lawmaking organ of the Organization and its Resolutions therefore cannot have any binding legal effect (p. 597). The other school of thought, called the progressive approach, defends that UNGA resolutions carry legal currency. For instance, Asamoah (1966) is of the view that the decisions taken by the Assembly are and can be binding (pp. 2-3). Ellis (1985) finds the orthodox arguments against the lawmaking power of the UNGA resolutions unconvincing (p. 684). Saffo (1979) further asserts that UNGA resolutions frequently bear legal effects beyond their advisory status (p. 508). Despite that fact that the UNGA is not designated as a lawmaking organ according to Chapter IV of the UN Charter, under which functions and powers of the Assembly are elaborated, a group of authors still suggest that resolutions adopted by the UNGA can have an impact upon lawmaking process. For example, Sloan (1991) holds that since every resolution constitutes a portion of the material out of which custom is developed, international law is therefore resourced by the UNGA resolutions (p. 41). Marchildon and Maxwell (1992) support this view, positing that resolutions are regarded as indicative of state practice and therefore of customary international law (p. 604).

In addition, referring again to Article 38 of the ICJ Statute, which lists international custom evidencing general state practice as one of the sources of international law, it is argued that it is possible to interpret the phrase “state practice” widely to include non-physical acts taken by states. In other words, state practice may not necessarily be physical acts only. For instance, Akehurst’s (1975) definition of state practice encompasses statements, claims and declarations made abstractly along with physical

acts and state's national laws and judgements (p. 53). Likewise, Bailey (1967) asserts that diplomatic acts and formal announcements of states constitute general practice of states, which eventually create the rules that form customary law (p. 235). Crawford (2012) goes on to claim that custom even includes diplomatic communications, press releases, the opinions of legal advisors along with practices followed by international organizations (p. 24). Dixon (2013) endorses this view, contending that state practice involves not only statements with respect to concrete disputes, but also legal statements made abstractly, such as those which were made prior to adoption of a UNGA resolution (pp. 32-33).

Based on this non-restrictive interpretation of "state practice", it can well be argued that the UNGA Resolutions are regarded as an integral part of state practice and counted as a legitimate source of international law. This stance becomes compellingly convincing particularly when resolutions are of declaratory nature or when adoption of a resolution occurs unanimously (Summers, 2014, p. 222). It is strongly presumed that the content of such declarations adopted by consensus are legally binding (Bokor-Szego, 1978, pp. 73-74). For example, Falk (1966) maintains that adoption by consensus is substituting state consent as the foundation for international legal obligations. Bleicher (1969) argues that giving consent to a UNGA resolution engenders legally binding obligations even in absence of state practice (p. 447). For this reason, one may argue that those resolutions which were adopted by consensus (such as the Friendly Relations Declaration) have legally binding power. However, it is important to note that the legally binding nature of rules and principles in a UNGA Declaration is negated in a case where they are opposed by state practice consistently (Ellis, 1985, pp. 688-691).

The foregoing discussion indicates that the law-making process in the international sphere could well be influenced by the Assembly resolutions based on the presupposition that they reflect state practice and connote international consensus. In connection with the above discussion, it is also of value to briefly discuss the contemporary legal status of the right to self-determination.

2.7.1. Self-determination as *Jus Cogens*

It is not surprising that scholars are in disagreement about whether or not self-determination has become a peremptory norm of international law. Anaya (1991) states that self-determination is commonly regarded as an "applicable norm of highest order" (p. 132). Blay (1994) notes that it has emerged as a functioning legal right and possibly has reached the level of *jus cogens* (p. 275). Doehring (1994) and Cassese (1995) comment that the right of self-determination is predominantly labeled as being part of peremptory norms of international law (p. 70; p. 140). Leathley (2007, p. 177) goes on to claim that self-determination has the highest status as a norm of *jus cogens*. Agreeing that self-determination is regarded as *jus cogens* today, Moris (1997, p. 204) points out that it imposes binding obligations on states. Contrary to those authors, Pomerance (1982) contends that the suggestion that self-determination as jus cogens lacks legal basis (p. 70-71). Despite admitting that legal obligations which are against self-determination are invalid, Summers (2014) considers calling self-determination as a peremptory norm "problematic" (p. 84). Hannum (1994) also holds that whether or not the right of self-determination has reached the level of *jus cogens* is open to debate (p. 31). Anderson (2016) maintains that the growing agreement among scholars that the norm of self-determination has evolved into *jus cogens* is compatible with other fundamental principles of international law such as the prohibition of genocide, racial discrimination, apartheid and torture in contemporary times (pp. 1234-1235). Considering those opposing views, however, it is difficult to argue that self-determination has become a peremptory norm beyond the colonial context wherein the right meant being free from alien colonial control (Kirgis, 1994, p. 305).

2.7.2. Self-determination as *Erga Omnes*

The concept of *erga omnes* in international law was first mentioned in Paragraphs 33 and 34 of the ICJ's "Judgement for the Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium vs. Spain)", dated 5 February 1970. ICJ briefly described *obligations erga omnes* as those owed by all states "towards the international community as a whole" and advised that "all states can be held to have a

legal interest in their protection". Scholarly definition of the concept was suggested by Cassese (1995) as follows: "Obligations which (i) are incumbent on a State towards all the other members of the international community, (ii) must be fulfilled regardless of the behavior of other states in the same field, and (iii) give rise to a claim for their execution that accrues to any other member of the international community" (p. 132).

It is therefore understood that obligations *erga omnes* differ from those obligations that originate from the principle of reciprocity between pairs of states or from bilateral commitments. ICJ, in a later case, established that the right to self-determination in decolonization context also possesses *erga omnes* status. The East Timor case is the most cited example. Australia concluded a treaty with Indonesia for the purpose of exploring and exploiting resources in the Timor Gap, the continental shelf between Australia and East Timor. Portugal[7] took legal action against Australia on the grounds that Australia not only violated the rights of Portugal as the administering state of East Timor but also infringed the East Timorese people's right to self-determination and right to sovereignty over natural resources. The Court decided that it could not entertain the dispute because Indonesia's consent to jurisdiction was absent (Knop, 2002, pp. 190-191). Although the Court dismissed the case, Paragraph 29 of the ICJ's Judgment dated 30 June 1995 on the Case Concerning East Timor (Portugal vs. Australia) clearly puts that "In the Court's view, Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, is irreproachable".

Although the *erga omnes* character of the right to self-determination was acknowledged by the Court, it is argued that the self-determination concept has already evolved beyond the framework of decolonization process (Zyberi, 2009, p. 432). The answer could be found in the "Wall" case, where the ICJ was asked by the UNGA to provide its advisory opinion on the legal implications of constructing a wall or fence, sponsored by the Israeli government, around the West Bank for

[7] East Timor, as a non-self-governing territory according to under Chapter XI of the UN Charter, was administered by Portugal until Indonesian invasion in 1975.

security purposes. Paragraphs 155 and 156 of ICJ's Advisory Opinion dated 9 July 2004 on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory" reaffirmed that the right to self-determination existed for the Palestinian people and called for, by repeating the *erga omnes* status of the right, the Israeli government to respect the Palestinians' right to self-determination, and opined that the construction of the wall was against the obligations under international law. As argued by Sterio (2015), the opinion was particularly important because not only the Court signaled that it stood ready to proclaim the right to self-determination beyond the decolonization context, but also repeated the *erga omnes* character of the right in the same context (pp. 301-302).

Although the Court made contributions, by proclaiming *erga omnes* status of the right to self-determination, to how the right and obligations associated with it should be interpreted, it is argued that the Court failed to clearly define what is exactly entailed by the obligations *erga omnes*. Referring to the language used by the Court, it is vague that these obligations require any state violating the right to stop further violation of the right and other states to take measures for fulfilment of the right (Zyberi, 2009, pp. 439-444).

It is also useful to briefly discuss the distinction between the two concepts, *jus cogens* and *erga omnes*. It is suggested that other non-peremptory rules which contradict *jus cogens* rules are invalidated and overridden by peremptory rules. On the other hand, violation of *erga omnes* rules gives every other state the right to make claims as a party to a dispute (Byers, 1997, pp. 211-212). A similar view was expressed in Article 48 of the "Draft Articles on Responsibility of States for Internationally Wrongful Acts" adopted by the UN's International Law Commission in 2001 which refers to the relationship between the peremptory norms and the obligations owed to the international community as a whole. Accordingly, in the case of a breach of erga omnes obligations, any state is permitted to take on responsibility and call for reparation for the injured (Saul, 2011, p. 633). It is further suggested that *erga omnes* rules encapsulate *jus cogens* rules, but *erga omnes* rules do not necessarily bear a *jus cogens* character (Byers, 1997, pp. 211-212). Moreover, peremptory norms and

obligations owed to the international community as a whole overlap substantially (Tams, 2005, p. 140).

2.7.3. Self-determination and the *Uti Possidetis Juris*

Another relevant question with regard to the legal status of external self-determination in a post-colonial setting is whether a state that emerged exercising this right should abide by the former administrative boundaries (district, provincial or federal) of the parent state. For a comprehensive answer to this question, the principle of *uti possidetis* needs to be briefly examined first.

According to the *uti possidetis* principle, a state that comes into existence by independence from colonial rule keeps intact the previously established borders which had separated administrative units within the territory or territories in question. The principle basically regulates the transfer of sovereignty over a territory in the context of creation of a new independent state (Shawt, 1996, pp. 97-98).

The principle was used during the early nineteenth century specifically during the decolonization process in Latin America, when the territories that had been colonized by Spain and Portugal gained their independence. Two essential objectives were central to this principle: (i) to avoid recolonization by European powers on the grounds that former colonies were terra nullius and can be rightfully occupied, and (ii) to prevent any conflicts over boundaries between newly emerged states. Therefore, the preservation of colonial boundaries after the transfer of sovereignty from the colonizers to the colonized demonstrated that these administrative boundaries were henceforth recognized as international ones. As a result, the principle of *uti possidetis* became an international demarcation method (Raič, 2002, p. 298; Radan, 2002, pp. 245-246).

The principle was later applied during the decolonization process in the African continent. The main objective was to keep colonial boundaries after the independence of formerly colonial territories. This was particularly important in Africa because the colonizers had divided the territories without paying attention to ethnic and tribal

bonds residing within. Such groups were mostly separated at the discretion of the metropolitan powers among multiple territories. Any possibility of challenging the colonial boundaries would amount to opening the Pandora’s box. The status of the decolonization process in the African continent was therefore highly prone to interethnic conflict, which could have been regarded as an opportunity for denying independence of former colonies and reoccupation by the metropolitan powers. This view was also endorsed in the Cairo Declaration adopted by the governments of the member states of the Organization of African Unity in 1964, stipulating that “all Member States pledge themselves to respect the borders existing on their achievement of the national independence” (Brownlie, 1979, pp. 9-12).

The principle was later mentioned and supported by the ICJ in its judgement, dated 22 December 1986, about the “Case Concerning the Frontier Dispute (Burkina Faso vs. Mali)”. Paragraph 20 of the judgement provides the justification for the adoption of *uti possidetis* as follows:

> The principle is not a special rule which pertains only to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles following the withdrawal of the administering power.

In short, the observation of the *uti possidetis* principle during the respective decolonization processes in Latin America and Africa can be used for arguing that states gaining their independence by exercising their right to external self-determination in the context of decolonization must preserve the administrative borders drawn prior to independence, as per customary international law (Anderson, 2015, p. 20).

However, whether the principle identically applies to cases in a post-colonial context is doubtful. In cases that occur in such a context, an automatic transformation of domestic administrative boundaries into international borders would mean creation of a new rule in international law. Application of *uti possidetis* principle in a non-decolonization context is an “unprincipled extension” of the principle that was

applied in the decolonization era (Radan, 2002, pp. 245-246). The haziness of state practice about the extension of *uti possidetis* to cases in the post-colonial context became evident with the dissolution of Yugoslavia. It is argued that the Arbitration Commission's description of *uti possidetis* as a general principle of international law lacks legal foundation, because the Commission not only carried a colonial principle into a substantially different situation but also modified it largely. While *uti possidetis* functioned as a delimitation principle in the decolonization process, the Arbitration Commission rendered it a contradictory rule for identifying units of statehood. In addition, this version of the principle was established without the consent of the relevant parties and gained binding force as a solution (Lalonde, 2002, pp. 202-203).

These well-directed criticisms reinforce the doubts cast over whether the principle has gained customary law status that has to be observed in external self-determination cases in a non-decolonization context. This means that a state emerging by exercising the right to external self-determination is currently not legally obliged to preserve the internal administrative boundaries. It can therefore be defended that the extension of *uti possidetis* principle has not yet attained the status of *de lege lata*, although it is safe to label it as an emerging *de lege ferenda* (Anderson, 2015, p. 22).

2.7.4. Conclusion

Examining the above legal instruments that came into being during the UN era, it is possible to reach the conclusion that international law provides a right to external self-determination, albeit quite restrictively and exclusively. The source of this conclusion rests on Principle 5 under the Friendly Relations Declaration, with particular emphasis on Paragraph 7, which was later strengthened by Article 1 of the Fiftieth Anniversary Declaration. Accordingly, how "peoples" were interpreted in legal terms was open to debate before the Fiftieth Anniversary Declaration was proclaimed. In legal texts, where mentioned, the term "peoples" was mostly equated with non-self-governing territories in a context where the conception of self-determination was tantamount to liberation of colonized territories. With the adoption

of the Friendly Relations Declaration, the Fiftieth Anniversary Declaration and the Indigenous Declaration, however, it is very difficult to sustain this old conception in modern times. Sub-groups, as "peoples" in sovereign states, are allowed to strive for external self-determination in the case of intentional, continuous and systematic human rights violations by the existing state. In other words, the right to external self-determination at the present time is accorded, as a last resort, to sub-state groups suffering from oppression by their governments. Therefore, uncertainties over how non-colonial external self-determination is operationalized today seem to have been cleared away. Notwithstanding, the ambiguity over if and how states are bound in legal terms continues, owing to the vague language of the legal texts on the right to self-determination. The highly controversial content and scope of the right perpetuates the lack of clarity on the meaning of self-determination in legal terms (Dugard, 1987, p. 160). Arguably, states are enjoying the indeterminate nature of self-determination not only because this vagueness conveniently allows for a case by case interpretation of the right in accordance with circumstances, but also because states are evading any unintended consequences of a clearer normative status of self-determination (Saul, 2001, p. 611).

CHAPTER 3

LIBERAL NORMATIVE THEORIES OF SELF-DETERMINATION

The legal instruments that emerged in the UN era, particularly Friendly Relations Declaration and the Fiftieth Anniversary Declaration, textually provide a right to external self-determination under conditions of sustained and systematic human rights violations. This chapter will investigate which liberal theoretical approach fits the current legal status and practicing of the right to external self-determination. Although various categorizations exist, the literature on liberal normative theories on external self-determination can mainly be grouped under two distinct camps: Primary Right Theories (also known as Choice Theories), and Remedial Right Theories (also known as Just Cause Theories), each of which has its own sub-categories. In order to render the suggested revision for the Remedial Right Theory meaningful within the framework of this thesis, exploring which theoretical approach corresponds to the status quo of external self-determination is vital.

3.1. PRIMARY RIGHT THEORIES

For Primary Right Theories, which are based on basic individual rights and liberties, any group that wishes to invoke the right to self-determination in its both forms—namely, internal self-determination for deciding on their internal affairs, and external self-determination for breaking away from a larger polity—do not need to be subject to any kind of injustice. Primary Right Theories are generally premised upon the reliance on liberal values such as freedom of association (von Mises, 2006, p. 27) and the "No Harm Principle" whose founding father is John Stuart Mill (2003, p. 83).

It can be argued that the theorizing of Althusius laid down the foundations of Primary Right Theories based on the notion of freedom of association. Accordingly, the state does not emerge as a one-piece sovereign entity. Rather, the state is constituted by gathering of micro units (Livingston, 1998, pp. 38-39). Althusius posits that the society is composed of five nested layers, the smallest being the family and the

largest being the state. Assembling of small-size units, such as families, creates medium-size units such as corporations and local communities. Aggregation of these units builds provinces and finally states. However, small-size units do not forfeit their rights when forming larger units. For example, provinces preserve their right to break away from the state if they desire so (Hueglin, 1997, p. 152; Kreptul, 2003, p. 43). Following the same logic, the local communities also preserve their inherent right to withdraw from provinces in a case where forming part of a province is no longer desirable (Buchheit, 1978, p. 50). This liberal right of breaking away from larger polities is also supported by De Tocqueville (2003, p. 356) who refers to the formation of the US by common consent of the states. However, he immediately points out that this voluntary agreement did not require them to relinquish their characteristics and to act as a single piece, arguing that if it is possible for smaller political units to unite in order to constitute a larger political entity, then the reverse case should also be possible.

The second premise of Primary Right Theories is that a group is entitled to the right to internal and external self-determination because each of its members hold individual autonomy, which transforms into an aggregation of individual autonomies. Accordingly, individual moral autonomy establishes a link between democracy and the right to self-determination (Moore, 1998, p. 10). Drawing on John Stuart Mill’s “No Harm Principle”, individual moral autonomy entails that no restraints must be imposed on an individual’s acts and choices on the condition that these acts and choices do no harm to another individual’s rights and freedoms (Philpott, 1995, p. 356). From this perspective, individual rights are not genuinely respected unless an individual is allowed to determine his/her political fate without restriction. Therefore, it is understood from the individual moral autonomy that a person’s choice of adhering to a political association or abandoning it to follow/create another one corresponds to the classic liberal democratic thought (Beran, 1984, p. 26; Webb, 2006, pp. 372-373).

In general terms, Primary Right Theories can be classified under two distinct categories: first, Plebiscitary Primary Right Theory, advocating a seemingly

unlimited right to external self-determination; and second, Nationalist Primary Right Theory, defending that external self-determination should be allowed for groups who share certain inherent characteristics.

Plebiscitary Primary Right Theory defends that external self-determination is a universal right. Accordingly, the bearers of the right do not necessarily need to commonly share any particular characteristics such as nationality, ethnicity or culture. The common ground for the group is each person's uncoerced political choice (Beran, 1988, p. 322). However, Beran (1984) points out that external self-determination is applicable only if it is possible "morally and practically" (p. 30).

Such a liberal right to exercise self-determination has found support among modern scholars whose approach is underpinned by the use of referenda or plebiscites in order to reveal whether or not a group in pursuit of self-determination shares a common will towards this purpose. As implied by liberal democratic thought, if an individual has a right to self-determination, then a majority vote (plebiscite or referendum) within the group in favor of internal or external self-determination is justified (Philpott, 1995, p. 363; 1998, p. 82;) on the grounds that the outcome is representative of the unified will of the individual members of the group. If the outcome of a referendum or plebiscite is positive, then the group is accorded to a right to self-determination, regardless of the parent state's opinion (Qvortrup, 2015).

From a liberal point of view, since every individual has a right to freely choose one political view over another, the group consisting of aggregations of such individuals do not need to suffer from grievances or injustice in order to bear this right, provided that the same level of freedom for other individuals is observed. Based on these foundations, Altman and Wellman (2009) regard external self-determination as morally permissible (pp. 54-58).

The right to freely associate was interpreted from a different angle by McGee (1991) who comments that individuals cannot be forced to stay within associations that they do not want to be part of (p. 463). Therefore, it is advocated that the group should be

entitled to external self-determination in order to form a new government, or to be administered by another government in the case that it no longer wishes to be governed by the present government. Examples from Lichtenstein, Hong Kong and Monaco show that geography and population of the group do not matter either (McGee, 1991, p. 456). The basic idea is that individuals and groups should not have a government imposed upon them (McGee, 1994, p. 24). However, this argument provides an unrestricted justification for external self-determination. It is understood from other theorists that an unconditional use of the right is not promoted. It is argued, for example, that the emerging state(s) should not fail to perform necessary political functions such as protection of minorities as well as fundamental democratic and human rights standards (Philpott, 1998, p. 80; Altman & Wellman 2009, p. 65). This implies that even the Plebiscitary Primary Right Theory places certain restrictions on the right to external self-determination and does not consider it as a purely single-sided matter.

These restrictions have further been elaborated by scholars. For example, a right to external self-determination should be accorded on the condition that a group wishing to break away from a sovereign state, (i) constitutes a majority of a specific part of the state, and that (ii) is able to arrange resources to sustain an independent state (Beran, 1987, p. 42). Wellman (1995) agrees with the first condition suggested by Beran and suggests two additional conditions: (i) the new state, which emerges due to the group's break away from the parent state, should be capable of satisfying certain obligations towards its citizens, such as providing security for them, and (ii) the group's break away from the parent state should not render the parent state incapable of functioning (p. 161). Corlett (2000) submits another list of conditions for a group to be able to exercise self-determination externally: (i) the group constitutes a considerable and conscious majority within the parent state who is willing to depart; (ii) the group's claim to a particular territory within the parent state is morally acceptable; and (iii) the group wishes and agrees to fully bear any financial cost associated with breaking away from the parent state (p. 161).

The second strand of Primary Right Theories is Nationalist Primary Right Theory. While this nationalist approach shares the views of the Plebiscitary Primary Right Theory with regard to the content and nature of the right, it is in disagreement about the bearers of the right to self-determination because it is argued that the right is held collectively by nations, rather than groups as an aggregation of individuals (Moore, 1998, p. 7). Therefore, Nationalist Primary Right Theory marks the right to self-determination as a collective one, grounding its justification on the influence of national membership and identity on groups seeking to use the right.

Following Miller's (1995) definition of nation as "a community constituted by shared belief and mutual commitment, extended in history, active in character, connected to a particular territory, and marked off from other communities by its distinct public culture", Nationalist Primary Right Theory maintains that a nation stands out owing to its distinctive characteristics, shared commitment, common history and territorial connection (p. 27). Accordingly, the foundation of a national right to self-determination is laid by a perception of nationality which (i) is inherently and morally important and valuable for its members, (ii) involves a specific culture and (iii) preserves linkage to a particular piece of land (Miller, 1998, p. 65; Moore, 1998, p. 7). It is further asserted that specific non-political characteristics, such as language, history and culture are the exclusive and commonly shared features of a group of people who is labeled as a nation. Hence, a community satisfying these particularities should therefore be collectively accorded the right to determine how they would like to handle their political affairs and decide their political system based on their collective will (Margalit & Raz, 1990).

3.1.1. The Case of Quebec

As one of the ten provinces of Canada, Quebec's desire for independence has been a prominent and hotly debated topic in Canadian political life for the last thirty years, which paved the way for two independence referenda. In 1976, *Parti Québécois* won the majority in the National Assembly of Quebec following the provincial elections. In 1980, the party decided to hold an independence referendum. Central to this idea

of referendum were two arguments proposed by the *Parti Québécois*. The first one was that the Catholic French culture and language was not properly promoted due to the dominance of Protestant English culture and language among those occupying high-ranking official posts. Therefore, it was argued that cultural and linguistic interests of the French-speaking majority could only be observed by an independent state (McRoberts, 1993). The second argument was that the relationship between Quebec and Canada did not serve the best social, political and economic interests of the Quebeckers. In order to improve socioeconomic well-being of the French-speaking population, it was therefore asserted that a more egalitarian society could be achieved by an independent Quebec which was going to take measures towards closing the gap between the well-off and the poor. At the core of the 1980 referendum was the central themes of emancipation from Anglophone cultural dominance and desire for social democracy (Béland & Lecours, 2008). By the referendum, the Quebeckers were asked whether they give the Government of Quebec the mandate to negotiate sovereignty for Quebec and to establish an economic union with Canada. The result was a defeat for *Parti Québécois* that ran the campaign (Rocher, 2014, pp. 25-45).

The underlying reasons for the second referendum in 1995 emerged quite differently compared to the first one. This time, the failed attempts to renegotiate constitutional amendments, which were aimed to satisfy the requests of the government of Quebec, formed the basis of this renewed vigor. For instance, a constitutional act was passed by the government of Canada in 1982 without the consent of the Provincial Government of Quebec. Later initiatives in 1987–1990 (the Meech Lake Accord) and in 1992 (the Charlottetown Accord) to amend the national constitution did not achieve support from the Quebec legislature, either (Laforest, 1995).

With the 1994 provincial elections, *Parti Québécois* came into power again and ran a campaign for the second referendum. The supporters of sovereignty developed an argument predicated upon the failed constitutional negotiations in the preceding years. It was suggested that the Quebeckers exhausted every possible way domestically and therefore independence was the only remaining solution. The

question was formulated differently from the one asked in the referendum that took place in 1980. The Quebeckers were asked whether they agree that Quebec should become sovereign while optionally establishing economic and political partnership with Canada. The result was again unfavorable for *Parti Québécois* as the "no" side won again, but very narrowly (Rocher, 2014, pp. 25-45).

In 1996, *Parti Québécois* announced that the they were planning to hold a third referendum in the near future, alleging that the likelihood of winning would be higher. As a response to this announcement, the Canadian government initiated a reference to the Supreme Court of Canada[8] on 26 September 1996 in order to find clarification for the legality of Quebec's potential break away from Canada. The following questions were submitted by the Government of Canada for advisory opinion of the Supreme Court:

> Under the Constitution of Canada, can the National Assembly, legislature, or government of Quebec effect the secession of Quebec from Canada unilaterally?
> Does international law give the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?
> In the event of a conflict between domestic and international law on the right of the National Assembly, legislature, or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?[9] (Bayefsky, 2000, p. 13).

On Question 1, the Court responded that Quebec's unilateral break away from Canada was illegal under the Canadian constitution, to which Quebec was a party. The Court, referring to the four fundamental characteristics of the constitution (federalism, democracy, constitutionalism and rule of law, and protection of minorities), ruled that the right of the government of Quebec to pursue secession cannot be denied if a provincial referendum decides in favor of independence and advised that it would have to occur constitutionally, meaning that Quebec and the rest

[8] The Federal Government of Canada is authorized by the Supreme Court Act to refer to the Supreme Court of Canada for hearing and consideration of important legal questions (Bayefsky, 2000, p. 12).
[9] The Court found unnecessary to answer this question as it held that domestic and international law did not conflict.

of Canada would have to negotiate the conditions under which Quebec would gain independence.

On Question 2, after confirming that the right to self-determination was a widely recognized general principle of international law and that it evolved along with the respect for the territorial integrity of states, the Supreme Court ruled that:

> The international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination. Such exceptional circumstances are manifestly inapplicable to Quebec under existing conditions (Supreme Court of Canada, 1998; Bayefsky, 2000, pp. 4-20).

The reading of the Quebec case shows that even in a highly liberal and democratic country like Canada, the government rejected a presupposition of external self-determination by unilateral break away, on the grounds that the right to self-determination is only granted to peoples under special conditions, as elaborated above. Therefore, it is possible to conclude that exercising of external self-determination in post-colonial context in accordance with Primary Right Theories is highly unlikely and far from what is currently foreseen by state practice.

However, it is important to note that depriving a definable group of meaningful access to government is categorized by the Supreme Court as one of the special conditions. Such possibility of exercising external self-determination on the grounds that a group has been "denied of meaningful access to government to pursue their political, economic, social and cultural development" has not materialized yet (Hannum, n.d.). In other words, an external self-determination case based on an alleged denial of a right to internal self-determination has not yet occurred.

3.2. REMEDIAL RIGHT THEORIES

As opposed to Primary Right Theories, Remedial Right Theories basically defend that secession from a *just* state by external self-determination cannot be considered as a general or primary right (Buchanan, 1995, p. 54; 1997, p. 37). Therefore, a group whose fundamental rights have not been subject to infringement by an existing state cannot be accorded a right to external self-determination. This makes external form of the right to self-determination a special one, rather than a general one, considering that it can be invoked when a group has suffered from the state and other remedies do not resolve their grievances (Buchanan, 1995, p. 54; 2004, p. 351-352; Norman, 1998, p. 41). Remedial Right Theorists hold that protection of rights requires stability of institutions, hence there should not be an unrestricted right to external self-determination. Stability is at risk without such restriction, which translates into weaker state guarantee for protection of fundamental individual rights.

The philosophical foundations of Remedial Right Theories can be traced back to Grotius. Despite agreeing that the civil administration should be respected, Grotius, in consideration of the greater good, advocates a right to resist in the face of persecution planned and organized by government against its peoples (Remec, 1960, pp. 213-220). A parallel view was suggested by De Vattel who propounded that citizens are entitled to resist in case of atrocities committed by the sovereign, while arguing that such right would be illegitimate unless the rulership infringes physical integrity or fundamental rights of its citizens (2008, pp. 110-112).

Similarly, Locke (1947, p. 135) posits that a right to resistance would be accorded to those who have been victimized by the aggression of the legislative authority whose acts transformed into oppressive nature. The argument is based on the presupposition that the legislative power should be exerted only for the public good. However, such a right to resistance can be invoked prudently, only after a series of successive abuses, misrepresentation and deception (Locke, 1947, p. 225). Locke’s suggestion is appropriate for situations in which the whole population, rather than a particular section of it, is aggrieved by a government. It is however assumed that external self-

determination would qualify as one of the essential mechanisms of resistance when a government commits sustained injustices against a group (Buchheit, 1978, pp. 54-55).

Following a similar philosophy, the United States Declaration of Independence, penned by Thomas Jefferson, counts life, liberty and pursuit of happiness as inalienable rights of all individuals and stipulates that “whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government”. It is however advised that such a change should not take place hastily and on the grounds of light and temporary causes. In cases of continuous and deliberate acts of oppression, citizens are instructed to “throw off such Government” (United States, 1776). Correspondingly, a remedial right to external self-determination was endorsed by Sedgwick, a nineteenth century philosopher. Such a right is granted under the condition that a segment of people, unlike the rest of the population, has been subject to grave oppression or their interests have been poorly mismanaged, or their rightful demands have been sorely mishandled (Sedgwick, 2012, p. 226).

The most significant advocate of a remedial right to external self-determination in contemporary times is Buchanan who proposes that a group within an existing state is entitled to break away from the state by exercising the right to external self-determination only if (i) human rights of a group’s members are gravely violated in a way that state actions jeopardize the survival of the group members, or (ii) sovereign territory have been unlawfully annexed by the state (1997, p. 37). Buchanan later incorporated an additional condition, namely, persistent infringement by state of intrastate autonomy agreements (2004, pp. 351-352). However, it is argued that meeting one (or more than one) of these conditions should not immediately grant a right. The group in pursuit of external self-determination should ensure that the human rights of citizens in the emerging state is preserved, so that peoples who will become minorities in the emerging state are not again subject to discrimination and oppression. In addition, the emerging state should cooperate with the parent state in order to find peaceful means for negotiating new boundaries, to review and

renegotiate obligations arising from treaties and to divide national debt between the emerging state and the parent state (Buchanan, 1997, p. 37).

Similar determination of criteria was suggested by Birch. Accordingly, one of the below conditions needs to be met before a right to external self-determination could be considered: (i) the territory, whose population shows dissenting opinion to unite with the state, was incorporated into the state by force; (ii) the government has seriously failed to preserve the fundamental rights and security of citizens in the territory; (iii) structural mechanism of the state was unable to respond to legitimate political and economic demands of the territory, either because such demands have been neglected by the authorities or the representative process has treated the territory in a biased manner; or (iv) any prospects for protecting the interests of a segment of population in a state, who may be outvoted by the majority, were rejected by the government (Birch, 1984, pp. 599-600). It is understood that Birch advocated a right for the purpose of rectifying injustices committed by the state.

Along with the above suggestions, there are also rather conservative interpretations of the Remedial Right Theory. Bauhn (1995) agrees with other theorists in the sense that systematic oppression may *prima facie* provide grounds for external self-determination. However, he insists that all domestic exhaustion of remedies should take place before the right could be exercised externally. An automatic right to external self-determination does not emerge in the face of violations of rights committed by a state. Rather, those aggrieved by acts of the state should stay and make efforts at changing the government (Bauhn, 1995, p. 111). Furthermore, Bauhn is of the opinion that the aggrieved group, due to state sponsored oppression, may choose to break their loyalty bonds with the state by legitimately resisting government policies and refusing to fulfil civic duties (such as taxpaying), all of which amount to erosion of state sovereignty. If, however, the state reaction to this attempt is scaled up to a point where the fundamental rights of the group are blatantly violated by government authorities, then external self-determination is justifiable, because the state has demonstrated that it fails to fulfil obligations (such as protection of physical integrity) against its citizens (Bauhn, 1995, p. 112).

Nationalist Remedial Right Theory, the second strand of Remedial Right Theories, admits and complies with the first strand's injustice-based approach to self-determination. However, violation of a national minority group's right to internal self-determination or state's failure to recognize such right constitutionally are regarded as additional justification for external self-determination (Patten, 2002; Seymour, 2007). In doing so, it is defended that the scope of possible holders of the right needs to be narrowed in order to avoid further complications (Patten 2002, p. 560), arguing that an injustice only based approach could create external self-determination movements at micro-level (a group oppressed due to their sexual orientation, for example) with minimal chance of creating well-established independent states. Accordingly, national minorities within a multinational state should remain within the state on the condition that their right to internal self-determination is recognized by the state (Costa, 2003). This approach does not preclude minority nations from exercising a remedial right to external self-determination in cases of human rights violations or unjust annexations. Additionally, ignorance or infringement by state of internal right to self-determination (Seymour 2007, p. 395), or state's inability to create political and legal mechanisms for recognition of a national minority would legitimize right to external self-determination (Patten, 2014, p. 235).

Buchanan (2013) in his later work seems to have agreed with National Remedial Right Theorists, and accordingly postulates that a state's persistent rejection of negotiating feasible form(s) of intrastate self-government arrangements might be counted as additional justification, even in the absence of prior intrastate self-government/autonomy agreements (p. 17). This suggestion forms the basis of the core argument of this thesis. However, the aimed contribution of this thesis to the literature is its argument that propensity to violence in external self-determination cases would be reduced if "persistent denial of a group's right to internal self-determination" is counted as a supplemental justification in addition to the already existing three criteria under the Remedial Right Paradigm.

3.2.1. Kosovo Case

The seeds of Kosovo's struggle for independence were sown throughout the 1990s, which witnessed "extreme suppression, linked with the denial of any political participation, along with gross and consistent patterns of human rights violations" (Weller, 2009, p. 55). The events that eventually led to Kosovo's independence started with the Milošević administration's abolition of Kosovo's autonomy in 1989. The then-autonomous Kosovo Assembly responded that Kosovo was declared as an independent entity within the framework of the Yugoslav Federation, on an equal footing with other counterparts within the Federation. Subsequent independence referendum conducted in September 1991 resulted in favor of independence and sovereignty of Kosovo. However, the Serbian government opposed this movement firmly, taking harsh measures against the peoples of Kosovo such as increasing the intensity of security forces in the region and denying certain cultural rights such as teaching of languages. A number of international governmental organizations were concerned about the escalating human rights situation in Kosovo, which then seemed to be a political tension rather than a violent conflict. Attempts by these organizations to manage this strife however did not succeed (Wolff & Peen Rodt, 2013, p. 801).

This tense environment transformed from a non-violent status into an armed resistance with the formation in 1996 and activities of the Kosovo Liberation Army against Serbian targets. This was followed by Serbian military and paramilitary response, which is described as "atrocities on a massive and systematic scale" against the Kosovar Albanians (Bellamy, 2000, pp. 105-120). Extreme violence and oppression by Serbian forces which involved systematic massacres at increased density and frequency aimed at exterminating the Kosovar Albanians evidenced the Serbian government's ethnic cleansing policy in 1998 (Weller, 2009, pp. 67-76).

Those atrocities committed by the Serbian forces particularly against the civilians sparked off wide public reaction when the Western press and human rights monitors revealed the intensity of violence (Pavković, 2000, p. 193), which paved the way for a NATO decision to initiate a military intervention, suggested as the only resolution.

In February 1999, NATO organized a conference, known as the Rambouillet process, and called for peace talks between the Federal Republic of Yugoslavia and the representatives of Kosovo. The process aimed at reinstating the autonomy of Kosovo and protecting human rights of Kosovar Albanians under the protection of the international community. However, Kosovo representatives were committed to independence whereas Federal Republic of Yugoslavia rejected international involvement in the Kosovo affair considering it an internal matter. The resulting document also known as the Rambouillet Accords proposed administration of Kosovo as an autonomous province by NATO forces (Weller, 1999, pp. 211-251). Despite the Kosovars signed the Accords, the Milošević administration rejected the document and its suggested contents. In response, NATO launched the "Operation Allied Force" that continued from 24 March until 12 June 1999 when the Federal Republic of Yugoslavia showed consent for deployment of NATO troops under the leadership of the UN.

This was followed by the UN Security Council Resolution 1244 authorizing deployment of international civil and security presence under the auspices of the United Nations Interim Administration Mission in Kosovo (UNMIK). Resolution 1244 also established the status of Kosovo, according to which Kosovo would remain part of the Federal Republic of Yugoslavia, with entirely discrete administrative, political and security arrangements.

The Interim Administration Mission aimed at establishing self-government of Kosovars, albeit in a restrictive and conditional manner. The essential objective of the Mission was to ensure involvement of Kosovar Albanians to be progressively integrated into the administration of the territory, in the framework of self-government through elected organs (Gow, 2009, p. 239). Resolution 1244 tasked the UNMIK to ensure self-administration of Kosovo as a separate territorial entity on the one hand, but also respected the Serbian sovereignty over territory of Kosovo on the other (Stahn & Zimmermann, 2001, p. 423). The primary reason was that Resolution 1244 left the final decision on the status of Kosovo to a negotiation process to be conducted between the parties (Dietrich, 2010, p. 126). Why the Security Council

expressly emphasized Serbian sovereignty over Kosovar territory in Resolution 1244 can be clearly understood considering that the Council can take measures necessary only for ensuring international peace and security but is not authorized to decide on legal disputes at international level concerning territorial integrity, sovereignty and statehood (Vidmar, 2009, p. 831). However, this led to a paradoxical situation where Kosovo *de jure* remained part of Serbia[10] while simultaneously was *de facto* supervised by an international mission (Oeter, 2015, p. 67).

The negotiations between Serbians and Kosovar Albanians as envisaged by Resolution 1244 to determine the final status of Kosovo, was initiated by the UN Special Envoy for Kosovo, Martti Ahtisaari in November 2005. In March 2007, in his final report, Ahtisaari concluded that the parties failed to reach a consensus. On the one side, Serbians insisted on the autonomy of Kosovo under Serbian sovereignty, whereas on the other side Kosovar Albanians refused anything other than independence. As a result of this deadlock, Ahtisaari put forth his resolution plan what is referred to as the Ahtisaari Plan. The suggestion was to accord full independence to Kosovo and to keep it under international control, a solution similar to the Bosnian case, while granting extensive social, political and cultural rights to Serbian minorities that remained in Kosovo. However, Serbia turned down the proposal and Russia explicitly threatened to veto the endorsement of the Plan by the Security Council, whereas the US signaled willingness to recognize Kosovo's independence. Encouraged by the US's stance, the Kosovo Assembly proclaimed independence and cut its bonds with Serbia on 17 February 2008 and adopted its constitution on 15 June 2008 to establish itself as a sovereign state (Dietrich, 2010, pp. 126-127). Contrary to Serbian and Russian reactions to the Ahtisaari Plan, the Kosovo political leadership promised to cooperate with the United Nations and the European Union, demonstrating their commitment to the Plan and pledging to incorporate its relevant provisions into Kosovar domestic law (Dietrich, 2010, pp. 126-127).

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[10] Federal Republic of Yugoslavia was renamed Serbia and Montenegro in February 2003. This was followed by a referendum held by Montenegro in May 2006, which resulted with ending its union with Serbia. Serbia declared itself to be the successor of the former state union (BBC 2006).

In addition to the political and cultural discrimination committed against them, the Kosovar Albanians also had to go through gross human rights violations starting from early 1990s till Kosovo's declaration of independence in 2008. These acts were even labeled by some authors as having genocidal characteristics (Bellamy, 2000, p. 105). In the context of people's right to self-determination in a post-colonial world, the emergence of Kosovo as an independent sovereign state by unilateral break away from Serbia on the grounds of subjection to extreme human rights abuses is widely referred to and regarded as representative of the remedial theory of the right to self-determination (Anderson, 2015, p. 40; Wolff & Peen Rodt, 2013, p. 808).

The questions of whether the Kosovo case constituted a precedent for external self-determination movements and whether a remedial right to self-determination has become customary law have been intensively discussed in the literature. It is held that states deliberately ascribed a uniqueness to the Kosovo case in order to curb its potential for becoming a model for other self-determination movements. This *sui generis* argument is interpreted as state practice and is argued to prevent its transformation into a legal standard. This causes states to adopt a pragmatic and case-by-case approach in relation to self-determination cases, accompanied by possible inclination towards holding above territorial integrity of states against the right to self-determination (Thürer & Burri, 2009).

Jaber (2011) appears to support this line of argument by asserting that lack of explicit recognition by states of such a right to remedial self-determination prevents establishment of a right to remedial self-determination as a rule of customary international law. Another view underlines the controversial nature of the tug of war between state sovereignty and self-determination of peoples particularly in the context of a right to remedial self-determination and maintains that it is too soon to comment on whether the Kosovo case has contributed to the development of international law (Muharremi, 2008). Despite cautionary notes of those authors calling for a wait-and-see attitude in order to see further state practice to verify or reject customary legal status of a remedial right to self-determination, it is already labeled by some commentators as an "exception rather than the rule" on the grounds

that a similar rule has not emerged to regulate its implementation. Still, independently from the discussion about whether a remedial right to self-determination has become a norm of international law, it is obvious that the Kosovo case already made an important contribution to the development of the Remedial Right Theory (Wolff & Peen Rodt, 2013, p. 806).

3.3. EVALUATION AND REVISION OF THE REMEDIAL RIGHT THEORY

Despite authors' conservative stance on the validity and replicability for future cases, the Remedial Right Theory, compared to other available theoretical approaches, arguably has the upper hand against other theories for various reasons. First and foremost, in consideration of the violence prone nature of self-determination movements, particularly with its external sense, the Remedial Right Theory is designed to draw clear contours of the right by placing considerable constraint on it, which is the requirement of a group of people's experiencing grave and continued injustices committed by state. According to the Theory, any attempt to break away from the parent state without its consent is a very serious matter and necessitates a well-founded justification (Buchanan, 2017).

In addition, state's failure to provide justice for peoples within its boundaries of authority reasonably explains how its entitlement over territory can be eroded and eventually be removed. In other words, as long as the state ensures that the rights of its peoples are enjoyed without hindrance, the state's claim for territorial integrity becomes unquestionable and goes unchallengeable (Bring, 2003, p. 27). This translates into the presumption that Remedial Right Theory encourages states to act more justly against its peoples in order not to make way for external self-determination as a remedy.

Furthermore, the Remedial Right Theory appears to provide a solution that seemingly fits into the world's state-centric political order, by conditioning the use of the right to external self-determination by peoples. In doing so, it eases the concerns over an

unrestricted use of the right, in a permissive and free-for-all manner, which, in turn, is feared to bring about anarchy and disturb the stability of the international political order. Indeed, considering that almost all legal documents relating to the right to self-determination also tenaciously emphasize the sacred principles of territorial integrity and sovereignty of states, it is defensible that Remedial Right Theory is able to establish a balance protecting the claimants, i.e. the peoples, the parent government, and also the international community. This is an equilibrium predicated on the basis of human rights protection rather than on the basis of strategic calculations of states (Coleman, 2014, pp. 23-24).

This theory also apparently sits close to the conclusion that an external right to self-determination beyond the decolonization context could be deduced from available legal texts for extraordinary circumstances that involve people's exposure to intentional, continuous and systematic discrimination or distinction. This is why such a right is therefore referred to as "remedial" in the literature and is argued to be invoked only by peoples who has suffered from such discrimination or distinction committed by their state.

Despite its several strengths, it is possible to identify at least one fundamental flaw of the Remedial Right approach. Although the likelihood of the Remedial Right Theory to go hand in hand with the legal texts on self-determination is relatively high, this approach fails to respond to an important normative criticism. As aptly pointed out by Anderson (2016), only after a group of people endures deliberate, sustained and systematic human rights violations would they become entitled to their right to external self-determination as an *ultimum remedium* (pp. 1245-1246). Requiring a group of people to suffer from intentional, continuous and orchestrated human rights abuses before they can invoke their right to external self-determination as a last resort evidences that the well-being of the parent state is prioritized over the human rights of those people inhabiting that state and is attributed to the state-centric nature of the international politics. This criticism is further exacerbated by the argument that there is no authorized international body or mechanism to decide on the criteria for determining the graveness of human rights violations required for invoking the right

and on whether or not such human rights violations have reached a certain moral threshold, beyond which the right could be legitimately and effectively invoked (Costa, 2013, p. 66).

These aspects of the Remedial Right approach are contrary to the basic premises of liberal thinking, which provides that governments are tasked to preserve individual rights and liberties, along with the belief that all humans are equal and have the right to live according to their will. By tolerating a certain level of state oppression after which the right could be operationalized by the oppressed, the remedial right paradigm contradicts central liberal values such as natural right to life and liberty.

Such critical reading of this Theory reveals that it actually renders the right to self-determination a threat to freedom. In other words, the remedial right paradigm, which at the first glance seems to be liberating individuals, actually constitutes an impediment to their freedom. This thesis suggests that this problem can be overcome by readjusting and offering an enhanced normative theorizing on state obligation towards oppressed groups, with a view to influence regulating activities about group rights at the political sphere, in line with the critical moral liberalism's call for "the need to revise its current version of what must be done to protect all individuals' rights" (Reiman, 1997, p. 23).

In the light of this, it appears that a revision of the Remedial Right Theory is necessary to render it again compatible with the core liberal values and assumptions. Accordingly, it is suggested that a minor revision of the Remedial Right Theory could help to overcome these shortcomings of the seemingly liberal right to self-determination and prevent it from becoming a different form of subjugation. In order to seat the right to external self-determination upon acceptable philosophical foundations, a supplemental justification for external self-determination, in addition to the justifications already suggested by the Remedial Right Theory, is proposed.

It may be useful to take a step back to remember the three justifications suggested by the Remedial Rights Theory. Theorists of the approach broadly propound that a group

of people's entitlement to an external right to self-determination should be recognized under three "just conditions". First, when a sovereign state's territory is unjustly annexed, the peoples of the territory can reclaim the territory over which they had enjoyed sovereignty. Second, when violations of human rights of a group come to a point where the physical integrity of group members are jeopardized by state action, the group can claim sovereignty over the territory in the face of grave and uninterrupted infringement of their fundamental human rights. Third, when a state violates or revokes the already existing intrastate autonomy arrangements on the basis of the right to external self-determination, the aggrieved group can break away from the parent state.

The fourth condition suggested by this thesis is "persistent denial of a group's right to internal self-determination". In other words, when a state insistently fails to respond to a valid demand by a group of people to exercise their right to self-determination internally, that group can avail themselves of a right to self-determination externally— i.e. break away from the parent state. This proposal, as frequently cited in a number of scholarly works, carries the traces of Cassese's (1995) assertion, wherein he argues that a right to self-determination in its external sense can be allowed: "when the central authorities of a sovereign State persistently refuse to grant participatory rights to a religious or racial group, grossly and systematically trample upon their fundamental rights, and deny the possibility of reaching a peaceful settlement within the framework of State structure" (p. 119). However, Cassese (1995) does not give up on the requirement for injustice before such a right is granted: "denial of the basic right of representation does not give rise per se to the right of secession. In addition, there must be gross breaches of fundamental human rights, and, what is more, the exclusion of any likelihood for a possible peaceful solution within the existing State structure" (p. 120).

As can be noted, differently from this stance, the revised version of the Remedial Right Theory, as suggested by this thesis, does not look for the materialization of grave injustices. Rather, it proposes that exhaustion of possibilities for internal self-determination would be sufficient to claim a right to external self-determination,

arguing that this supplemental condition, while removing the requirement of human suffering before the right can be exercised, may reduce propensity to violence associated with external self-determination movements.[11]

The importance of scrutinizing the practical implications of such theoretical revision becomes even more important considering that none of the normative theories of external self-determination has addressed the link between their theoretical assumptions and the use of violence in pursuit of external self-determination claims (Pavković & Radan, 2016, p. 448), although violent conflicts of the 21st century typically occur within states, rather than between states and that violence associated with claims of right to self-determination appears to be one of the leading reasons (Babbit, 2006, 185). For instance, according to the Conflict Barometer of Heidelberg Institute for International Conflict Research (HIIK) (2018), the root cause of forty conflicts in 2018 worldwide is marked as the "aspired separation of a part of a territory of a state aiming to establish a new state or to merge with another state" (p. 9). Twenty three out of forty are shown on a scale ranging from violent crisis to war, while the remaining seventeen are marked as non-violent or dispute level conflicts (HIIK, 2018, pp. 18-19). From this point of view, claims for self-determination are remarkably (57.5 percent) attached to propensity for violence. This is not surprising, particularly in view of the fact that almost no state is ethnically homogeneous as there are more than six hundred linguistic groups and five thousand ethnic groups within the boundaries of around two hundred world states and taking into account that such groups could be disposed to emerge as political units separate and independent from their parent states (Kymlicka, 1995, p. 1). The argument that an enhanced version of the Remedial Right Theory would help to reduce propensity to violence associated with external self-determination movements will be illustrated by the following case study.

[11] A similar proposal can be found in Seymour's work (2007) in which constitutionalism of internal self-determination for national sub-groups is proposed. Seymour (2007) further argues that denial of a constitutional right should warrant a right to external self-determination by national sub-groups. However, this proposal is targeted at resolving issues by institutionalizing the right within individual countries, only for national groups, and misses the international dimension of the matter. Furthermore, the link between practical implications on violence reduction and the requirement for injustice before the right can be operationalized are not discussed.

3.4. THE MORO NATION'S STRUGGLE FOR SELF-DETERMINATION

When the Spanish colonized the Philippines in the sixteenth century, they noticed that the Muslim natives of the islands shared the same belief and customs of the "Moors" in North Africa, who were colonized by the Spaniards during the early 8th century. Due to the similarity between those two communities, the Muslim inhabitants particularly in the southern parts of Philippines were named "Moro" by the Spanish colonists. The term "Bangsa" means "nation" in the Malay language. Therefore, "Bangsamoro", the combination of the two terms, literally means the "Moro Nation" and traditionally refers to the Muslim natives of the Southern Philippines (McKenna, 1997; p. 55; Lingga, 2004, p. 2).

The Muslim community in the Southern Philippines had enjoyed jurisdiction over their homelands and founded states long before the Spanish colonization of the territory and even before Philippines emerged as a state in the wake of the colonial period. The Moro people possessed long-established administrative and political systems that enabled them to successfully resist for more than three centuries against the Spanish campaigns to colonize them (known as the Spanish-Moro Conflict). Although the territory in which the Moro people inhabited were under occupation for an extended period, Spanish colonization failed to fully capture and exercise sovereignty over the territory (Kapahi & Tañada, 2018, p. 2; Lingga, 2004, pp. 4-5).

When the Spanish-American War resulted in the Spanish defeat, the control of the Philippines was transferred from the Spanish colonial government to the US, together with other colonies such as Cuba, Puerto Rico and Guam by the Treaty of Paris in 1898. The Bangsamoro sustained its resistance to being subjugated to foreign rule under the US administration. In early 1920s, the political leadership of Bangsamoro expressed to the US government its desire to establish its own sovereign state, or to become a federal or unorganized district of the US. However, these attempts were simply ignored by the US administration (Buendia, 2008, p. 2), which accorded independence to the Philippines on 4 July 1946 and incorporated the two Bangsamoro Sultanates into the new state. This was done without consultation and arbitrarily

imposed against the will of the Moro people, regardless of the objections submitted by Bangsamoro leaders (Kamlian, 2003, p. 3).

As soon as the territories of Bangsamoro became a part of the newly established Republic of Philippines, the Philippine government declared those territories (particularly Mindanao region) as a zone for resettlements and corporate investments. As McKenna (2007) notes, in the wake of the independence of the Philippines from the US rule, Christian Filipinos were encouraged by the government to immigrate from northern parts of the country into the Southern Philippines where the Muslim Bangsamoro community constituted the majority of the population. This was followed by land property and resettlement policies pursued by the government which caused the Moro people to become minority in their homelands (pp. 5-6).

In parallel with their displacement caused by the inflow of Christian Filipinos into the Southern Philippines, the Moro people also received ill-treatment from the Philippine government which included unequal distribution of public services among the Muslim community compared to the opportunities provided to the Christian Filipinos. For example, Christian settlers in Mindanao were granted land titles in non-public lands owned by the Moro people. These measures not only considerably contributed to the accumulation of resentment and distrust among the Moro people (Kapahi & Tañada, 2018, p. 2) but also created further social and economic problems. Majul (2010) argues that educational and economic progress of the Christian community was prominently evident within a few decades after the independence of the Philippines, while the Muslims provinces in the Southern Philippines showed intellectual and economic underdevelopment due to the lack of proper educational system and infrastructure investments (pp. 60-61).

The Moro people, whose peaceful attempts to be a separate political unit had failed and whose territory was illegally incorporated into the Philippines, felt even more frustrated by this alienation policy of the government. Bangsamoro decided to fight for earning their legitimate rights in response to the assimilation and ethnic cleansing by the government against them. An alleged slaughter of 64 young Moros by the

government on Corregidor Island urged Bangsamoro to form an armed liberation movement in 1968, called the Mindanao Independence Movement (MIM), against the state-sponsored aggression. In their manifesto, they declared that the Movement aimed to establish an independent Islamic state particularly in Mindanao, Sulu and Palawan regions. Although the MIM initially failed to provoke sufficient reaction among the Moro people, it laid the foundations of its successor, the Moro National Liberation Front (MNLF) (Macasalong, 2014, p. 3).

The MNLF was founded in 1972 on the Islamic teaching that individuals should resist against injustice and oppression. Motivated by religious doctrines and fueled with government aggression against the Moro people, the MNLF manifested that its objective was to create an "Independent Bangsa Moro Republik" in line with the spirit of the Bangsamoro. The activities of the MNLF not only included armed struggle but also awareness raising at the international level aiming at gaining recognition of the Moro cause (Kamlian, 2003, p. 6). Owing to these efforts the MNLF earned an observer status in the Organization for Islamic Cooperation (OIC) and was recognized as the representative of the Bangsamoro (Macasalong, 2014, pp. 4-5).

With the mediation and facilitation of the OIC, Libya and Indonesia, peace negotiations between the government of the Republic of Philippines and the MNLF were initiated. Arguably due to the political influence of the OIC, during the peace talks, the MNLF abandoned its objective to establish a sovereign and independent state and agreed to sign peace accords called the Tripoli Agreement of 1976 on the condition that the Bangsamoro was granted political autonomy in Mindanao without violating sovereignty and territorial integrity of the Philippine administration (Lingga, 2004, p. 8).

The parties to the peace accord, however, could not agree on how the agreement was going to be implemented. While the Philippine government proposed that a nation-wide referendum needed to be held for legalization of the autonomy arrangements, the MNLF rejected the idea. Despite the opposition, the Philippine government held a

referendum, and quite differently from what the Tripoli Agreement stipulated, granted autonomy to two regions which included ten provinces, instead of one region including thirteen provinces. In response, the MNLF accused the government for breaching the Agreement on the grounds that the referendum was held without its consent, and hence resumed its armed struggle in rejection of the establishment of autonomous governments in these two regions (Fitrah, 2012, p. 15).

Non-implementation of the Tripoli Agreement not only posed a hindrance of the peace process, but also a created split of opinion in the Bangsamoro leadership. The MNLF was criticized for (i) reneging on their chief objective of establishing an independent and sovereign state, and (ii) deviating from Islamic-based policies and adopting a secular orientation. A group of dissenters resigned from the MNLF to form the Moro Islamic Liberation Front (MILF), whose aim was to realign the Moro liberation movement with the Islamic principles and to establish an independent Bangsamoro state in Mindanao (Kamlian, 2003, p. 7; Kapahi & Tañada, 2018, p. 3). This development caused a double-headed management of the Moro liberation movement and the Philippine government had to continue talks with two different entities separately.

The election of Corazon Aquino, who had pledged for further promotion of democratization during her electoral campaign, by the February 1986 elections brought a renewed interest in both parties to resolve the issue. The newly elected government of the Philippines invited the MNLF leadership to the capital city Manila, in order to reach a mutual understanding (Magdalena, 1997, s. 250). The MNLF requested the establishment of Bangsamoro Autonomous Region with mutually-agreed authority on matters relating to judicial and educational system, law enforcement, exploration and use of natural resources and to enter into relations with Islamic states and organizations, largely similar to what the Tripoli Agreement had stipulated. However, the negotiations over the boundaries of the Autonomous Region yielded no result, and the talks were terminated after the Aquino administration made the autonomy conditional upon a referendum (Majul, 1988, s. 919).

Despite lack of agreement between the parties, the Aquino administration conducted the said referendum and established the Autonomous Region in Muslim Mindanao (ARMM), encapsulating four provinces of the Southern Philippines. While the government considered that the establishment of ARMM meant the implementation of the Tripoli Agreement of 1976, the MNLF rejected the establishment of ARMM on account of the fact that the Muslim population in those provinces—whose autonomy was agreed in the Tripoli Agreement—became minorities over time, influencing the referendum results and therefore the demarcation of boundaries of the region (May, 2001, p. 264). The OIC also backed the MNLF's argument and called for proper implementation of the Tripoli Agreement (Kamlian, 2003, p. 8).

When Fidel Ramos came to power in 1992, the government took an optimistic stance towards resuming the peace talks with the MNLF. It is argued that both parties were eager to resolve the problem mainly due to two reasons. First, the MNLF was aware that unless an agreement was reached it was going to be overshadowed by the MILF as an alternative representative of the Moro people. Second, the Ramos administration wanted to reallocate the government's resources for combating other secessionist movements in Philippines. The negotiations finally produced results, and the 1996 Final Peace Agreement was signed between the Ramos administration and the MNLF in order to implement the Tripoli Agreement.

Putting an end to the MNLF's armed struggle, along with other provisions relating to security arrangements, natural resource management and development, the Final Peace Agreement stipulated that the Autonomous Region of Muslim Mindanao—which would include the thirteen provinces (also including Christian Filipinos) originally agreed under the 1976 Tripoli Agreement—was going to be administered by the MNLF leadership for three years. At the end of the three-year term, a referendum would take place to determine whether the peoples within these provinces would desire to continue under the MNLF autonomous government (Haque, 1996, pp. 52-54).

In parallel, the Moro Islamic Liberation Front (MILF) showed strong opposition to the signing of the Final Peace Agreement and declared that it was not planning to cease fighting against the Philippine Government for a fully independent Bangsamoro state, resulting in violent clashes between the two sides which continued into the millennium (Kapahi & Tañada, 2018, p. 4). However, the Ramos Administration did not ignore the reaction and invited the MILF leadership to put a stop to aggression in order to create an environment of peace with both representatives of the Moro people. The talks turned out to be fruitful and the "Agreement for the General Cessation of Hostilities" (which was to be breached multiple times later) was signed in 1997 between the MILF and the government (Buendia, 2004, s. 206).

Meanwhile, the peoples in the Autonomous Region of Muslim Mindanao did not experience a visible improvement in their lives. Coupled with the doubts over the reliability and accountability of the provisional autonomous government, the MNLF leadership was accused of poor management (Kamlian, 2003; Abuza, 2003). This had an adverse impact on the views of the Christian community, who already had misgivings about the success of the peace agreement. As a matter of fact, the MNLF leadership was disappointed by the results of the referendum that took place in 2001. Accordingly, out of the thirteen provinces, only five provinces voted for remaining in the Autonomous Region of Muslim Mindanao (OPAPP, 2013).

Following the unfavorable results of the referendum, the two military bases of the Philippine Government in Mindanao were attacked, as a result of which more than hundreds of lives were lost. The attacks were attributed to the MNLF, creating another setback in the process. In addition, the MNLF witnessed further fragmentation of leadership in the coming years (East, 2006), which eroded its reputation and representativeness of the Moro people.

The Moro Islamic Liberation Front (MILF) was for a long time not counted by the Philippine government as a counterparty, mostly because the Tripoli Agreement of 1976 was signed by the MNLF leadership and the MILF was regarded as a splinter group that broke away from the MNLF. However, the events of 2001 in Mindanao,

while tarnishing the image and weakening the leadership of the MNLF, appeared to be an opportunity for the MILF to have peace talks with the Philippine government on behalf of the Moro people, with the involvement of Malaysia as the mediator (McKenna, 2007, p. 6).

Malaysia hosted the parties for peace talks in 2001 that resulted in the Tripoli Peace Agreement. Accordingly, a Malaysia-led International Monitoring Team (IMT) was set up in order to monitor parties' compliance with the ceasefire, and the MILF was authorized to manage rehabilitation and development projects in Mindanao (Bacani, 2006, p. 47). Despite temporary interruptions of direct contact, the peace talks between the MILF and the government continued owing to the International Monitoring Team's efforts. The continued Malaysian mediation between the parties pushed the endeavors into a phased success.

Then in 2008, the Memorandum of Agreement on Ancestral Domain was drafted. Pursuant to the Memorandum, a sub-state was going to be instituted under the sovereignty of the Republic of the Philippines. The draft document also suggested expanding of the Autonomous Region of Muslim Mindanao with the incorporation of 737 villages, asking 1459 villages (where the Christian Filipino constituted the majority) whether they would like to be governed under the Autonomous Region of Muslim Mindanao for 25 years, setting up a religious judicial system and education system for the Muslim community, and authorizing the autonomous government to make agreements with other states on natural resources of Mindanao (Wilson, 2009, p. 34).

The drafting of the document was regarded as a step towards reaching a peaceful settlement of the years-long issue. However, the Christian politicians lodged an appeal to the Supreme Court, which ruled that the document was unconstitutional (Bacani, 2006, p. 47). Again, and not surprisingly, violence followed the junking of the Memorandum of Agreement. Fortunately, the continued existence of the International Monitoring Team and creation of the International Contact Group, consisting of the United Kingdom, Japan, Turkey and several non-governmental

organizations, encouraged the parties to resume talks (Fitrah, 2012, p. 26). The extended negotiation process with the government heartened the MILF side to lower its initial demand for full independence. In a relatively short time, the peace talks yielded the Framework Agreement on the Bangsamoro (2012) and the Comprehensive Agreement on the Bangsamoro (2014).

The Framework Agreement on the Bangsamoro, signed on 12 October 2012, outlined the reconciliation of parties in political terms and did not serve as a final peace agreement. Thanks to the collective efforts of the International Contact Group and Malaysia, the Framework Agreement and its annexes were detailed to include provisions relating to sharing of wealth and power, normalization and transitional arrangements.

This was followed by the Comprehensive Agreement on the Bangsamoro that was signed two years later, which was a milestone in the ages-old peace process. The Agreement not only incorporated all peace agreements that had been signed between the Philippine Government and the Bangsamoro, including the latest Framework Agreement, but also laid out transitional judicial arrangements along with socio-economic programs that would transform conflict zones into areas of peace and development. Most importantly, the Agreement provided that a Bangsamoro Basic Law would be drafted, which would lay the legal foundation of the autonomous Bangsamoro government in Mindanao following a ratification by a plebiscite in the territory of the autonomous region (Kapahi & Tañada, 2018, p. 5).

Although the draft Bangsamoro Basic Law failed to pass through the Congress on the grounds that it was unconstitutional in 2016 (Palatino, 2016), the Duterte administration made a last-ditch effort to revise the document to render it acceptable for all parties involved. The Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao (OLBARMM) was signed by Duterte on 26 July 2018 (CNN 2018).

Finally, a referendum within the core territory was held in line with the Comprehensive Agreement on the Bangsamoro. The OLBARMM was officially ratified on 25 January 2019 upon a referendum vote (CNN 2019), establishing the Bangsamoro government with a slightly more comprehensive autonomy compared to other regions of the country (Philippine Information Agency, 2019).

As illustrated by the case, the Moro people's initial attempts to exercise their right to internal self-determination failed, which encouraged them to resort to violence in order to gain independence from the Republic of Philippines. Accordingly, it can be observed that the denial of a right to internal self-determination encouraged violence and armed struggle for external self-determination, which is against the core values embraced by liberal thinking. However, as evidenced in the Final Peace Agreement of 1996 between the Philippine government and the MNLF, and the Tripoli Agreement of 2011 between the Philippine government and the MILF, granting the right to internal self-determination to the Moro people not only eliminated their claims for external self-determination but also reduced their resort to violence.

Provided that this enhanced theorizing is adopted and institutionalized, it is argued that states, theoretically, will be compelled to respect the internal dimension of the right to self-determination in order to invalidate any claims for external self-determination and for continued preservation of their sovereignty and territorial integrity. On the other hand, the sub-groups who pursue the right to external self-determination will need to prove that their right to internal self-determination was denied by the state in the first place, the lack of which should delegitimize their attempt to break away from their parent states. Such streamlining of the remedial right paradigm, as proposed by this thesis, may not only realign the Remedial Right Theory with the core liberal values but also obviate sub-groups' need for resorting to violent means for seeking their rights, as demonstrated by the Moro case.

CONCLUSION

Unless there is a fundamental change in states' sovereignty and territorial integrity understandings, the Primary Right Theories will continue to be regarded as radical and remain unlikely to be applied in view of customary international law and practices. In this vein, this thesis proposes an enhanced version of Remedial Right Theory. Accordingly, the three "just conditions" suggested by the Remedial Right Theory should be expanded to cover "denial of the right to internal self-determination" as a supplementing fourth condition, in order to abolish the need for human suffering before the right to external self-determination can be operationalized by peoples. This would help to reduce the violence proneness of the right to self-determination and pave the way for a peaceful reconciliation of disputes, while readjusting the remedial right paradigm in line with the core values of liberal thinking.

In building this argument, this thesis first examined the origin of the self-determination concept to clarify how modern legal texts on self-determination evolved into its contemporary status. Scrutinizing the history of the concept showed that the right is characterized by popular opposition to the divine right of rulers, a bottom-up attempt to reverse top-down political rule and popular rejection of autocracy, despotism and elitism. This indicates that the development trajectory of the concept is open to further progress and is unlikely to be erased from the political and legal spheres in the future.

Chapter 2 elaborated relevant international legal instruments during the UN era and how they have collectively influenced the implementation of the right. Examination of legal texts demonstrated that the current legal status of self-determination is limited as an *ultimum remedium* right for peoples who are subjected to intentional, continued and systematic human rights abuses by states.

Chapter 3 provided an evaluation of liberal theories of self-determination with supporting case studies, suggesting that the Remedial Right Theory sits close to the

international implementation of the right because other liberal approaches to the right of external self-determination and customary international law are substantially divergent from one another. However, an analysis and critique of the Remedial Right Theory revealed that the philosophical foundations of the remedial right approach require human suffering in order to justify the exercise of the right to external self-determination. It is therefore argued that this does not rest upon morally acceptable philosophical foundations because the stability of the global political system is preferred over well-being of peoples. Therefore, a revision of the remedial right approach is proposed in this thesis as a practical solution to eliminate the condition of human suffering before the right can be exercised. The literature hosts a myriad of works studying theories of self-determination. However, the contribution of this thesis is that it focuses on the practical implications of a revised theoretical approach on the possibility of non-violent settlements of conflicts.

The conclusion reached by this thesis may necessitate the creation of an institutional setup to monitor whether or not states are observing the people's internal right to self-determination, which can also ensure orchestrated international responses to claims of self-determination. As pointed out by Alfredsson (1996), due to the collective rather than individual nature of the right to self-determination, there is a lack of a petitioning mechanism through which "peoples", who are not counted as subjects of international law, can file complaints (p. 64). The lack of an "institutional home" for the right to self-determination is also emphasized by Brietzke (1995) who asserts that an international body is needed "in order to develop an adequate civil law-style doctrinal jurisprudence, to resolve disputes more effectively and to strengthen sanctions on misbehavior" (pp. 129-130). Supportively, Patten (2002) maintains that the instability of self-determination disputes stems from the absence of an international adjudicative body, arguing that such uncertainties could be mitigated by the establishment of an international third party to give rulings in accordance with publicly promulgated rules and principles which therefore would remove the authority of the parties to the disputes who are likely to be biased towards protecting their own interests (p. 27). Considering that the available studies on the institutionalization of the right to self-determination (see, for instance Luke, 2012; Mueller, 2012) investigated whether or

not the remedial right paradigm in its current form could be regulated internationally, this thesis may also stimulate further studies on institutionalization of the right to self-determination predicated on the enhanced version of the paradigm.

Furthermore, this thesis may also bring about quantitative and comparative studies in order to reinforce the argument that the proposed enhancement of remedial right approach facilitates mitigating violent characteristics of the right to self-determination and open the way for non-violent settlement of such disputes. As aptly put by Koskenniemi (1994), international law cannot adjudicate whether or not a nation should be endowed the political form of statehood, because “nationhood is a consequence of political and ideological struggle. The law either mediates that struggle or simply participates in it as ideology” (p. 269). As part of an attempt to contribute to international law’s role as mediator between contending parties and to influence how theories guide actions, this thesis investigated how the remedial right paradigm could be enhanced for peaceful settlement of self-determination conflicts. Incorporation of “state’s denial of the right to internal self-determination” into the parameters of the justifications for the right to external self-determination might improve the existing remedial right paradigm by eliminating the requirement for a moral threshold that the group has to endure before being able to exercise its right to external self-determination. The conclusion reached by this thesis may feed the debates regarding the institutionalization process of the right to self-determination which could eventually give birth to an international mechanism for non-violent settlement of self-determination conflicts.

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Tarih: 04/07/2019

Tez Başlığı: LIBERAL THEORIES OF SELF-DETERMINATION: TOWARDS PEACEFUL SETTLEMENT OF SELF-DETERMINATION DISPUTES

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1. İnsan ve hayvan üzerinde deney niteliği taşımamaktadır,
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Programı: Uluslararası İlişkiler
Statüsü: ☒ Yüksek Lisans ☐ Doktora ☐ Bütünleşik Doktora

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