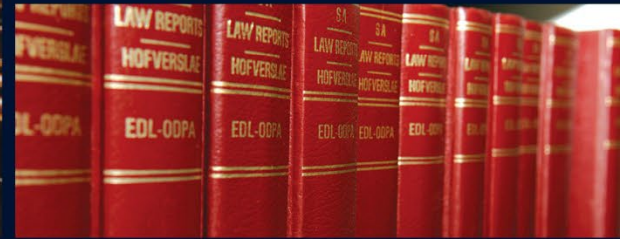


NELSON MANDELA UNIVERSITY



THREE DECADES OF RESPECT FOR AND PROMOTION OF *HUMAN RIGHTS*: INTERNATIONAL HUMAN RIGHTS LAW, AND THE RIGHT OF SELF-DETERMINATION OF THE PEOPLE OF PALESTINE AND WESTERN SAHARA

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INTRODUCTION

- The right to self-determination is fundamental in addressing global conflicts e.g. Palestine and the Western Sahara conflicts.
- Legal framework at international and regional levels.
- Palestine and the Western Sahara.
- ICJ and Supreme Court of Canada decisions.
- Critical thoughts.
- Conclusion.

LEGAL FRAMEWORK

- Article 1(2) of the UN Charter states that among the purposes of the United Nations, is “*to develop friendly relations among the Member States based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace*”.
- Reinforced in Articles 55 and 73 of the UN Charter.
- Also, Article 1 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) and International Covenant on Economic, Social and Cultural Rights, 1966 (ICCSCR) and
- Article 20(1) of the African Charter on Human and Peoples’ Rights, 1981. **However**, the Alexandria Protocol, 1944 and the Charter of the Organization of the Islamic Conference, adopted in Rabat, Morocco, on September 25, 1969, **do not explicitly** provide for the right to self-determination.
- S 39 (1) b and c of the RSA Constitution.

PALESTINE

- Situated in the Middle East, entangled in a protracted conflict between Israelis and Palestinians.
- Palestinians have sought self-determination and statehood within the West Bank, including East Jerusalem, and the Gaza Strip.
- The establishment of Israel in 1948 resulted in the displacement of hundreds of thousands of Palestinians, creating a refugee crisis.

PALESTINE CONT.....

- Attempts made to resolve the dispute and a peace agreement i.e. the Oslo Accords in 1994.
- Obstacles evident e.g. Israeli settlements, security concerns, and disputes over borders, i.e. hindering the realisation of Palestinians' right to self-determination.
- While the Palestinian Authority governs portions of the West Bank and Gaza Strip i.to. the Oslo Accords, these territories remain under Israeli military control, leaving many Palestinians feeling deprived of their right to self-determination.
- Contrary to the international community's affirmation of the Palestinian people's right to self-determination and endorsed efforts through negotiations.

WESTERN SAHARA

- A contested territory in North Africa, a subject of dispute between Morocco and the indigenous Sahrawi people, represented by the Polisario Front since Spain relinquished power in 1975.
- Morocco asserts sovereignty over Western Sahara, while the Polisario Front advocates for the territory's independence and autonomy. The UN's involvement in facilitating negotiations and maintaining a ceasefire, to conduct a referendum on self-determination.
- The UN Mission for the Referendum in Western Sahara was established in 1991 to oversee a referendum on self-determination, yet disagreements over voter eligibility and the territory's status delayed the vote. Result - human rights concerns, e.g. limitation of freedom of expression, assembly, arbitrary detentions, and torture.

CASE LAW

- *Namibia (South West Africa Cases 1950s -1960s) (ICJ)*- cases involved the decolonisation process of Namibia (South West Africa), which was under the South African administration. The ICJ in advisory opinions on the legal status of South West Africa and the obligations of South Africa as the administering authority **emphasized the importance of the principle of self-determination in the decolonisation process.**
- *Western Sahara (Western Sahara Advisory Opinion) 1975 (ICJ)*- advisory opinion was sought by the UN General Assembly regarding the legal status of Western Sahara. The ICJ concluded that **there were legal ties of allegiance between the indigenous people of Western Sahara and the Moroccan authorities but also recognised the existence of a right to self-determination** for the Sahrawi people of Western Sahara.

CASE LAW CONT..

- ***East Timor v Australia 1995 (ICJ)*** - concerned the right to self-determination of the people of East Timor, a former Portuguese colony that was invaded and occupied by Indonesia in 1975. Portugal, as the former colonial power, brought the case before the ICJ, arguing that Indonesia's presence in East Timor violated the right of the Timorese people to self-determination. The ICJ **ruled that Portugal still retained legal responsibility for East Timor's decolonisation and that the right to self-determination of the people of East Timor had not been extinguished.**
- ***Quebec Secession Reference 1998 (Supreme Court of Canada)*** -concerned with the legality of Quebec's unilateral secession (breaking away from an existing state to establish a new sovereign entity or to join another state). from Canada. The Supreme Court of Canada ruled that the **Quebec government has a right to pursue secession through a constitutional process that respects the rights of all Canadians, including the principle of federalism and the rights of minority groups within Quebec.**

- ***Kosovo Advisory Opinion 2010 (ICJ)***- advisory opinion was requested by the UN General Assembly to determine the legality of Kosovo's unilateral declaration of independence from Serbia. The **ICJ found that international law does not prohibit declarations of independence**, and the declaration of independence by Kosovo did not violate general international law. The **opinion did not explicitly address the right to self-determination but touched upon related principles.**

INCONSISTENCIES OF THE COURT DECISIONS

- The cases demonstrate various legal contexts in which the right to self-determination has been invoked and addressed by international and national courts.
- In the *Western Sahara* case, the ICJ accepted the legal nature of self-determination concerning the non-self-governing territories. Later in the *East Timor* case, the ICJ confirmed that self-determination is an important principle in the international law spectrum due to its nature of “*erga omnes*” character.
- However, in the *Kosovo* case, the **ICJ decided that international law does not prohibit declarations of independence but deliberately did not explicitly address the right to self-determination but touched on its related principles.**

LESSONS

- Self-determination is a legally enforceable right in terms of conventional and customary international law.
- Despite its legal status, the scholarly debate remains on whether its application is politically sound. Some scholars believe granting the right to self-determination can lead to more undesirable consequences like tribalism, the radicalisation of some groups who seek autonomous existence, and fragmentation of the state if a reference is made to the African case studies of **Biafra of Nigeria** and **Katanga in the 1960s** on attempts to secede from Nigeria and Congo, to mention a few.
- If the right is realised does it meet the Montevideo Convention criteria of statehood? i.e. **have a permanent population, defined territory with clear demarcated borders, effective government and capacity for international relations i.e. engage in diplomatic relations and treaty negotiations with other sovereign states.**

CONCLUSION

- The right to self-determination is crucial in addressing the conflicts in Palestine and Western Sahara.
- However, it has been proven that the application of this right has far-reaching implications in terms of maintaining peace, and stability, and promoting human rights.
- Despite its national, regional global recognition, achieving genuine self-determination remains complex and challenging in the Middle East and African regions which has raised more human rights concerns.
- Collaboration is necessary to address the protection of the right to self-determination while the debates on the role of Global North vs Global South are unavoidable.

- Can the right to self-determination be real for the people of Palestine and Western Sahara? Unfinished business!!!

~ THANK YOU ~

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