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Formless as Water, Flaming as a Fire –

Some observations on the Theory and Practice of Self-Determination

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Abstract

The concept of national self-determination is a highly contested concept from very outset. It is partly due to its dual parentage, namely nationalism and liberalism. Prior to 1945 it was only a political concept without legal binding. With the incorporation of the principle in the UN Charter it was universalized and legalized. However, there were two competing interpretations at the UN based on de-colonization and representative government. How to define self and what really determined remain highly controversial. How to reconcile the international norm of sovereignty of state and self determination of people became more complex problem with the tide of secessionist movements based on ethno-nationalism. The concept of internal self-determination came as a compromise; but it is also very vague and harbors a wide range of interpretations.

Keywords: Self-determination, Peoples, Sovereignty, Secession, Ethnicity

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Some observations on the Theory and Practice of Self-Determination

by

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The concept of self-determination touches a very sensitive nerve, i.e. the state-nation link, in the body politic of the 'modern state' system. The state-nation link is perhaps the most crucial and highly controversial facet in the makeup of the sovereign state--the basic constituent unit of the international political system identified as the Westphalian order. As the modern state theoretically takes 'nation' as its *raison d'être* of existence, the recognition and integration of a new sovereign unit into the international system is conditional to the recognition of 'peoples' in the new political space as a nation. The concept of nation is basically a socio-cultural category. Once it is linked to the state-formation process the nation becomes a political phenomenon. The construction of states and the formation of nations are two separate but often inter-linked processes; the dynamics and pace of each process may differ according to the time and space. In the formative phase of the modern state system the state-formation process over-determined the related process of nation-formation by creating politico-legal nations. However, the subsequent ethno-national mobilizations independent of state-denoted national identities have exposed the Achilles' heel in the modern state system. Every time when the international community is faced with the challenge of redrawing the political map consequent to the disintegration of old political formations and empires the issue of how to deal with state-nation link in the making of the new political order is surfaced. The evolution of the concept of national self-determination can be understood in this context. From very outset it has been a highly contested and evolving concept applied inconsistently and interpreted diversely to suit different conditions and interests. Though being used widely in world politics as a political slogan the principle of national self-determination is fraught with many contradictions and gray areas. With the surge of ethno-political mobilization in many

parts of the world, however, the different approaches and interpretations of the principle of self determination feature prominently once again in political discourses among policy-makers and political analysts.[1] Burgeoning political projects linked to the ethnic resurgence in the post-Cold War world rationalize their cause in terms of the principle of national self-determination. The LTTE's justification of its claim to statehood (the Tamil Eelam) on ethnic identity in terms of national self determination can be cited as a case in point. Against this backdrop this paper intends, firstly, to trace the evolution of the principle of self determination from essentially a political concept to a part of international law after the Second World War and, secondly, to examine its different definitions, inherent contradictions and reinterpretation of the parameters in the exercise of the legal right of the principle of self determination.

Genealogy of Self-Determination as a political Concept: Dual Parentage

The origins of the principle can be traced back to the formation of a new political setup in Western Europe after the disintegration of the medieval political order. The belief that each nation has a right to constitute an independent state and determine its own government remained an underlying principle of the modern nation state system as it evolved in Western Europe. The two components of the concept of nation-state (i.e., state and nation), according to Habermas "*refer to convergent but different historical processes - the formation of modern states and the building of modern nations*"[2]. Intellectually the concept of the right of self-determination of peoples is a historical product of the

[1] It is reflected in the increased number of articles appeared on different aspects of the subject in academic journals, in addition to a number of international and regional conferences. The meeting of 'Experts on Further Study of the Rights of Peoples' organized by UNESCO in February 1990, reflected the new interest to explore the complexities of the right of self-determination. The theme of the conference organized by the US Institute of Peace in February 1995 was 'Self-determination, Sovereignty, Territorial Integrity, and the Right to Secession.

[2]Jurgen Habermas, "The European Nation-state - Its Achievements and Limits. On the Past and Future of Sovereignty and Citizenship" in *Mapping the Nation*, Gopal Balakrishnan, ed. London:VERSO in association with *new left review,* 1996, p. 283.

Enlightenment[3]. The French Revolution constructed the concept of national self-determination practically on a different plane in an era of mass nationalism. Political foundations of the concept of self-determination could be linked to the two political ideologies established by the French Revolution: nationalism with the emphasis of a common national self (fraternity) and its political aspirations; and liberalism which emphasized popular sovereignty and representative government (democracy). This dual parentage (i.e., nationalism and liberalism) of the principle of self-determination contributed to shape the body of the concept. Some of the ambiguities and paradoxes contained in the discourse of self-determination can be analyzed in relation to this genealogy of the concept. When liberalism and nationalism as vibrant political forces came forward to shape the course of the historical development of Europe in the 19th century, the concept of self-determination also acquired importance and carved its locus in political debates. The twin forces of liberalism and nationalism were the guiding principles of the liberal bourgeoisie in their struggle against the political order of the Restoration in Europe and in these political projects the concept of self-determination was used with emotion and passion. As long as the forces associated with liberalism and nationalism marched hand in hand, as was the case in the first part of the nineteenth century Europe, the issue of how to address the duality of the concept of self-determination did not come to the forefront.

The difference between nationalist and liberal interpretations of self-determination became more apparent in the early twentieth century with the presentations of two proponents of the right of self-determination: V.I. Lenin and Woodrow Wilson. Lenin dwelt on the national element of the concept and conceptualized self-determination in the context of national oppression and a national democratic framework. A very interesting debate took place between Lenin and some other noted Marxists of the Second International--Karl Renner, Otto Bauer and, more importantly, Rosa Luxemburg. In her famous Polish Thesis ('*Polish heresy*') Luxemburg criticized the proposition that nationalities should have the right to establish their own states. The notion of national

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[3]Stefan Oeter, "The Right of Self-Determination in Transition: Deliberations on the Debate on Self-Determination, the Right of Secession and 'Premature' Recognition," *Law and Society*, 49/50, 1994. p.149.

independence was a bourgeois concern and the proletariat could have no interest as they were internationalists in outlook.[4] In contrast Lenin supported to the right of nations to Self determination. In his pre-1917 writings he strongly supported the right of secession. Lenin writes "*(T)he right of nations to self-determination means only the right to independence in a political sense, the right to free, political secession from the oppressing nation. Concretely, this political, democratic demand implies complete freedom to carry on agitation in favour of secession, and freedom to settle the question of secession by means of a referendum of the nation that desires to secede*".[5]

Woodrow Wilson's reading of self-determination was conditioned by the liberal element of the concept. As Alfred Cobban observes, "(S)elf-determination was to Wilson almost another word for popular sovereignty. In this he followed the French and the American, rather than the British, political tradition....The idealization of democracy was an essential part of Wilsonian ideology"[6]. He believed that the implementation of the principle of self-determination would lead to a better world and pushed it forward among in his 14 points at the Versailles Peace treaty. There were differences within the American delegation on the principle of self-determination. U.S. Secretary of State, Robert Lancing has serious reservations and suspected the term self-determination to be 'loaded with Dynamite'. He wrote that "(I)t will raise hopes which can never be realized. It will, I fear, cost thousands of lives. In the end it will bound to be discredited, to be called the dream of an idealist who failed to realize the dander until too late to check those who attempt put the principle in force"[7]. It was generally considered the principle of self-determination provided the guidelines in redrawing the political map in the Central and the Eastern

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[4]Rosa Luxemburg, *The National Question*, New York: Monthly Review Press, 1976. p. 85-86.

[5]V.I. Lenin, *On the National and Colonial Questions*, Peking: Foreign Language Press, 1970. p. 5.

[6]Alfred Cobban, The Nation State and National Self-determination, New York: Thomas Y. Crowell Company, 1970. p.63.

[7] Robert Lancing, *The peace negotiations, A Personal Narrative*, 1921, P. 97-8. Quoted in Alfred Cobban *The Nation State and National Self-Determination,* op. cit., p.69.

Europe following the collapse of the three ruling houses- the Ottoman, the Romanov and the Hapsburg. Even then there were many contradictions and inconsistencies in the application of the principle of self-determination in deciding the political map. Further, it was agreed that the principle would not be applicable to the colonial territories.

UN Charter and Self-Determination

Prior to 1945, the principle of self-determination remained only a political concept without any legal binding. With the incorporation of the principle of self-determination in the Charter of the United Nations in 1945 it gradually entered into the orbit of international law. During the first two decades after the Second World War, the parameters for the debate on the principle of self-determination were set out by the references in the United Nations Charter and in the International Human Rights covenants. Even though a number of other international instruments also came forward to endorse the right of self-determination after 1945, it continued to remain as a highly contested principle as the parameters of the exercise of the legal right of self-determination was unclear.

It is interesting to note that when a charter for a post-war international organization was first discussed by the Allies at the Dumbarton Oaks Conference in 1944 no reference was made to self-determination. At the San Francisco Conference in 1945 the emphasis was on human rights and the first draft of the Charter declared that the purpose of the United Nations was to promote '*respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language, or religion*'. Later, the Soviet Union proposed that '*self determination of peoples*' be included and the Soviet proposal was adopted as an amendment by the Four Sponsoring Governments and the words '*based on respect for the principle of equal rights and self-determination of peoples*' were added to article 1(2) and 55.

There is no reference to self-determination in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on the 10 of December 1948. The Soviet proposal to include self-determination in the Universal Declaration of Human Rights

was rejected. However, the situation changed at the proceedings on the drafting of two covenants on civil and political rights and economic, social and cultural rights. Despite the opposition from United Kingdom, France and Belgium, the General Assembly adopted the Resolution 421D (V) in 1950 proposed by the Soviet Union with the support of African, Asian and Latin American states. The Resolution 421D (V) requested the Commission on Human Rights '*to study ways and means which would ensure the right of peoples and nations to self-determination, and to prepare recommendations for consideration by the General Assembly at its sixth session*'. In 1952, by the Resolution 545(VI) the General Assembly recognized the 'right of peoples and nations to self determination as a fundamental human right'. In Article I of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the provisions on self -determination appeared. Both Covenants entered into force in 1976.

Even though international instruments came forward to endorse the right of self-determination, its scope, the legal parameters of the right and the definition of the term peoples were far from clear. Further, the *travaux preparatoires* did not clarify these aspects of the principle. In the context of this ambiguity, there were two contending interpretation: the decolonization reading and the representative government reading The states in the Third World and the Soviet Union interpreted self-determination in the context of de-colonization. The right of self-determination was meant to them the right to form an independent, sovereign state. Therefore, it was applicable only to the colonial and trust territories. The term 'peoples' was identified on a territorial basis to qualify only those who live in colonial and trust territories. However, the stand taken by the Western powers in this regard was quite different. At first they were reluctant to accept it as a legally-binding one and maintained that reference to the right of self-determination in the Charter was made only within the parameters of the purpose of the United Nations. The United Kingdom and France maintained that self-determination would create more problems than it would solve.[8] They later interpreted self-determination in terms of representative government and popular sovereignty. The western powers wanted to widen the scope of self-determination

[8]Ruth B. Russell, *A History of the United Nations Charter*. Washington: Brooklings Institute, 1958, p. 831.

so as to cover not only the people in the colonial situation but also people in the sovereign and independent states. Hence, oppression and non-representation are the conditions necessary to identify *peoples* in the framework of self-determination.

Two Readings of the Principle at the UN

The Third World stance on self-determination, i.e. the de-colonization reading, prevailed in the first two decades after the establishment of the United Nations. It was in this context that the General assembly adopted Resolution 1514 (XV) in December 1960 - '*The Declaration on the Granting of Independence to Colonial Countries and Peoples*'. This Resolution formally established the link between self-determination and de-colonization. At the same time, it firmly endorsed the principle of territorial integrity. Paragraph 6 of the Resolution stated that '*(A)ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purpose and principle of the Charter of the United Nations*'. Another resolution (Resolution 1541 (XV)) adopted a day after Resolution 1514 (XV) identified a list of *principles* to guide the members in determining whether an obligation existed to transmit information under Article 73(e) of the Charter. As Thomas D. Musgrave Observes, "*(L)ike Resolution 1514 (XV), the language of Resolution 1541(XV) was resolutely anti-colonial in nature*"[9]. Principle 1 specified that it was to apply to territories known to be of the colonial type and Principle II observed that such territories were in a dynamic state of evolution and progress towards a full measure of self-government. Principle VI set out the ways in which a non-self-governing territory could achieve a full measure of self-government and listed three alternatives: (i) independence, (ii) free association with an independent state, (iii) integration with an independent state. Resolution 1514 (XV) declared independence to be the only method of achieving self-determination for non-self-governing territories, but Resolution 1541(XV) offered two other alternatives. It is important to note that all these

[9]Thomas d. Musgrave, Self-Determination and National Minorities, Oxford University Press, p.71.

resolutions failed to obtain consensus vote and they were adopted as thanks to numerical strength of the Third World states in the UN with the backing of the Soviet Union.

Even though self-determination has become an important element of international conventions after these resolutions there were no precise guidelines for the international instruments as how to operationalize the principle. Many countries in the Third world viewed it as only to expedite the process of de-colonization and wanted to mobilize the UN system to force the colonial powers to dismantle remaining parts of old empires. Many states in the Third World linked the principle now endorsed by the UN to de-colonization in their national declarations as well as in regional instruments. On the 10 of April 1979, for instance, India in its declaration on Article 1 of the International Human Rights Covenants equated self-determination with de-colonization. It stated that "the Government of the Republic of India declares that the words 'the self-determination' appearing in this article apply only to the peoples under foreign domination and that these words do not apply to sovereign independent states or to a section of a people or a nation–which is the essence of national integrity"[10].

The western states, however, viewed it differently. Self-determination for them was just a political concept not amenable to legal formulation. They maintained that the reference to self-determination in Article 1 of the Charter indicated only one of the purposes of the United Nations and one of desiderata of the Charter and not a legal right as such.[11] They viewed self-determination in the light of popular sovereignty and representative government. Many of them, except the United States, were reluctant to accept the link between self-determination and de-colonization. They argued that determination as to whether a territory was non-self-governing or not was a matter of domestic jurisdiction and not that of the General Assembly under Article 73(e). France and Portugal maintained that their colonial possessions were integral parts of the metropolitan

[10]Multilateral Treaties Deposited With the Secretary General: Status as at 31st Dec. 1994. New York: United Nations, 109.

[11] For a good discussion on this matter see Yehuda Z. Blum, "Reflections on the Changing Concept of Self-Determination" Israel Law Review, (1975) 10.

state and incorporated into the state by virtue of their constitutions. They argued that self-determination is applicable not only to the non-self-governing territories but also to sovereign and independent states. As Thomas D. Musgrave traced vividly, this approach was reflected in the drafts presented by the United States and the United Kingdom to the United Nations Special Committee on Friendly Relations. [12] The Indian position that Article 1 of the International Human Rights Covenants did not apply to *sovereign independent states* was vehemently opposed by France, the Netherlands and the Federal Republic of Germany. They observed that any attempt to attach conditions would undermine the concept of self-determination and seriously weaken its universally accepted character.[13]

By the`1960s Western states gradually realized that their position, i.e. self-determination was only a political concept and that it was not amenable to legal formulation, was no longer tenable. They also realized the need to come to grips with the realities of the de-colonization and the changing power contours at the United Nations with the proliferation of Third World membership there. When self-determination was recognized as a legal right in Article 1 of the International Human Rights Covenants in 1966 it was no longer possible for Western states to maintain that it was only a political concept. In this context Western states changed its position and admitted the legality of self-determination but insisted that the legal right of self determination must be defined in terms of popular sovereignty and representative government.

This changed position prevailed in Resolution 2625 (XXV) of 25 October 1970, adopted by the General Assembly by a consensus vote[14]. It is true that the Resolution still

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[12]Thomas D. Musgrave, Self-determination, p.97.

[13]Multilateral Treaties Deposited With the Secretary-General: Status as at 31 Dec. 1994. New York, United Nations (1995), 113.

[14]In 1962 The General Assembly proposed to undertake a study of the fundamental principles of the UN Charter. Consequently, in 1963 a Special Committee to study these Principles was established. The principle of equal rights and self-determination were to be examined. After seven years the special Committee completed its task and prepared the Resolution 2625(XXV).

referred to de-colonization (Paragraph 2) but went beyond it. Paragraph 1 placed self-determination in a wider terrain -- by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. More importantly, paragraph 7 linked self-determination to representative government and made territorial integrity subject to the maintenance of representative government and the paragraph provided that *"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, total 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 as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour"*.

The General Assembly Resolution 2625(XXV) adopted by consensus vote marked the next phase in the discourse on self-determination. The stance of the Western states in relation to the principle of self-determination was based on three premises: Self-Determination is a legal right enshrined in international law; it is applicable universally to colonial as well as non-colonial territories; it is defined in terms of representative government.

This understanding is reflected in all the international/regional instruments of Western states that came into existence after 1970. The Helsinki Declaration of the Conference on Security and Co-operation in Europe (CSCE) in 1975 endorsed this position in Principle VII. It declared "*By virtue of the principle of equal rights and self determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development*". The signatory states once again adopted the Copenhagen Document in June 1990 and the Charter of Paris for a new Europe. The Charter of Paris reaffirmed the ten

principles of the Helsinki Declaration as guidelines.[15]. The Third World states read paragraph 7 of the Resolution 2625(XXV) some what differently from that of the Western states. For them the phrase ‘a government representing the whole people belonging to the territory without distinction of race, creed or colour’ denoted only ‘non-racism’, i.e., no element of people can be excluded from the government. According, in line with this reading ‘*self-determination occurs within the established boundaries of the state, not through succession from the state*’.

The Self of the Self-Determination: People

Even though these resolutions universalized and legalized the principle of self-determination they did not clarify the ‘self’ of self-determination. In this context the term ‘peoples’ is very important because all the UN resolutions relating to self-determination refer to the *peoples* as being entitled to self-determination. But, how to define peoples is far from clear and it was a moot point from very outset. An early attempt to define the term peoples is found in Hans Kelson and he argued that ‘peoples’ in Article 1(2) of the UN Charter denotes states because the Article 1(2) of the UN Charter refers to the relations among states and only states could possess equal rights in international law. The Kelson’s interpretation has now successfully been challenged. Thomas Musgrave pointed out that *travaux preparatoires* clearly reveals that “those who drafted Article 1(2) did not intend the word ‘peoples’ to signify ‘states’”.[16] Resolution 2626(XXV) clearly makes a distinction between ‘people’ and ‘state’ when it declares that ‘all peoples have the right to self determination and that every state has the duty to respect that right’.

Lack of clear definition to the term peoples added more to the ambiguity of the concept of self determination. The application of self-determination is rested squarely on

[15]Musgrave as well as Van P.Dijk point out, however, that neither the Helsinki Declaration nor the Charter of Paris is legally binding instruments. See, Van P. Dijk, “the Final Act of Helsinki: Basis for a Pan-European System?” Netherlands Yearbook of International Law, 11 (1980) and Musgrave, op.cit., p.100.

[16] Musgrave, *op. cit.* p 149.

the identification of peoples. Illustrating this ambiguity Ivor Jennings noted that at first glance self-determination seemed simple and reasonable—let the people decide their own fate. The problem however was that people cannot decide until someone decides who the peoples are[17]. What constitutes the People is determined by how one defines self-determination. The different approaches to self-determination define the term people in their own way in order to make their respective constituencies qualify to the right of self-determination.

When the principle of self-determination was defined in terms of de-colonization in the first two decades of the post-War period, the term peoples in Article 1(2) was understood to refer to peoples in non-self-governing or trust territories. This de-colonization definition of people was enshrined in paragraph 6 of Resolution 1514 (XV) adopted in 1960. It is important to note that the above paragraph narrowly defined peoples so as to include only colonial population in the territory of pre-existing boundaries.

With the UN Resolution 2625(XXV) adopted in 1970 which endorsed the representative government interpretation of the principle of Self-determination the earlier definition of peoples was not tenable. If it is a universal and on-going right the term 'peoples' must include not only colonial territories but also independent states. Further more, Article 1 of both International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights adopted in 1976 reaffirmed this position and states that "*All the peoples have the right to self-determination*". Nevertheless, it also defines a 'people' in terms of prior existing territorial boundaries– entire population of the political entity defined by the territorial limits of the state. The Helsinki Declaration also maintains this position and Principle VII states self-determination must take place within the territorial limits of the state. As such, in defining the term peoples in terms of territorial boundaries, the representative government interpretation overlooks other divisions within the state.

[17] Sir Ivor Jennings, *Approaches to Self-Government*, Cambridge: Cambridge University Press, 1956 P. 55-56.

The definition of the peoples only in terms of territorial boundaries of the state has been challenged with the resurgence of ethnicity–assertion of ethnicity in political and social space–in the last two decades. Burgeoning state-projects linked with ethno-political mobilization in many parts of the world tend to define the term people in line with ethnicity so as to claim self-determination on ethnic basis. Those who advocate ethnic definition to the term peoples highlight that the representative government definition fails to take into account the ethnic diversity of many states. Under what conditions can ethnicity be considered a 'national self' in the principle self-determination in view of the fact that there are over at least over 3000 ethnic groups in the world? This question takes one to more choppy areas where many more vexed questions are to be answered. How does one differentiate ethnic group from national group? Can all the ethnic groups in the world claim to the right of self-determination? If one ethnic group claims it has a 'distinct' self, who is going to determine what is distinct? For example, are not the Muslims in the East equally distinct from Tamils as in the case of Sinhalese from Tamils? Benyamin Neuberger writes that *"(T)he ethno cultural group is difficult to define. For many people ethnicity evokes strong emotions and dominates their collective identity and solidarity. To Rothschild, 'the ethnic group is somewhat analogous to Robert Frost's definition of home—the place where when you have to go there, they have to take you in'….The tension between statist national self-determination and ethnic self-determination follows the nineteenth century European pattern of conflict between states and nations"*[18]. It should be noted that the relationship between the state and nation remained an unresolved problem inherent to modern state. With the evolution of modern nation-state system, the state acquired the term nation. However, state-denoted nation in many part of the Third World is nothing but mere a legal-politico entity. Ethnic identities and loyalties continue to remain as dynamic political factors in deciding course of political development. State exists mainly on the socio-political rather than on the physical plain. In this context, the defining the ethnicity as a national self in the context of national self-determination demands either a complete overhaul of the modern state system or redefinition of the content and parameters of the principle of self-determination.

[18] Benyamin Neuberger, "National Self-Determination: A theoretical Discussion, Nationalities Papers, Vol.29, No.3, 2001, p.399-400.

Territorial Integrity and Self-determination

Another constraint faced by the principle of self-determination is that it directly impinges on the principle of territorial integrity—one of the well entrenched principle of international law that "is often referred as a fortress-like concept of state sovereignty"[19]. The compulsion of how to reconcile the principle of self determination with the norm of territorial integrity of established states creates a delicate legal impasse. Claims to a territory and the exercise of authority over that territory are a necessary and fundamental attribute of the state. Respecting territorial integrity is considered an accepted norm of behavior of the modern state system and an essential element for peace and stability in the international politics. The principle of territorial integrity was enshrined in the Article 2(4) of the UN Charter which prohibits member states from using or threatening force against the territorial integrity or political independence of any state. This applies only as between states. The said Article is silent over the issue of secession as it occurs within the confines of the state. Articles referring to self-determination (1(2) and 55) are also silent on whether self-determination permits secession.

From very outset the United Nations had to deal with the issue of how to reconcile the two principles. The first attempt to clarify the issue at U.N. was found in Resolution 1514(XV). Paragraph 6 categorically prohibited any action *aimed at the partial or total disruption of national unity and the territorial integrity of a country*. It applies both to activities of other states as will as to activities within the state. As such secession is prohibited irrespective of its source. Paragraph 8 of Resolution 2625(XXV) prohibits states from any action 'aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country' and, at the same time, Paragraph 7 linked self-determination and territorial integrity to maintenance of representative government. It declared that *Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or part, in 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 as*

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[19] Venkat Iyer, "Federalism and Self-Determination: Some Reflections", Legal Issues on Burma Journal, 11(April 2002), p. 43.

described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. This contradiction between Resolutions 1514(XV) and 2625(XXV) is reflected in the behaviour of the United Nations and its confusion as to self-determination and secession.

As far as non-self-governing territories were concerned, the UN position was fairly clear. The realization of self-determination must occur within established territorial boundaries and maintaining of territorial integrity was insisted on. In the case of dispute between the General Assembly and France over the island of Mayotte can be cited as a example in this regard. The United Nations forced France to reverse its decision to retain Mayotte even if 99.4 people in that island voted to remain part of France.[20] However, in the case of Gilbert and Ellice islands the General Assembly accepted the division. Both islands are part of a single non-self-governing territory and the inhabitants in Gilbert are Micronesian in origin whereas those in Ellice are Polynesians. The Ellice Islanders voted by over 90 percent to separate from Gilbert Island and received independence in 1978 as the State of Tuvali and the Gilbert Island in 1979 as the state of Kiribati.

When self-determination is defined in terms of popular sovereignty and representative government the reconciling the two principles becomes more difficult. The implication of paragraph 7 of Resolution 2625(XXV) is that territorial integrity based upon the existence of a government representing the whole people and secession is permitted for the peoples who are not represented in the government. The exact scope of the Paragraph 7 and those who are qualified to be included as people is the crucial issues in this regard. There is no general agreement over the scope of the Paragraph 7. According to one line of

[20]Mayotte is an island of French overseas territory of Comoros Archipelago. The people in Mayotte are predominantly Christians whereas the people in other islands (Grande-Comoro, Anjouan, Moheli) are Muslims. In 1972, when the Comoros Local Assembly pased resolution in favour of independence the representatives of Mayotte voted against it. The UDI by Comoros Assembly on 6th July 1975 prompted France to declare that islands of Grande-Comoro, Anjouan, Moheli were no longer part of the French Republic on 31st December 1975. A referendum was held in Mayotte on 8th February and 99.4 percent voted to remain part of France. General Assembly in its Resolution 31/4of October 1996 declared the referendum null and void and condemned the presence of France in Mayotte.

thinking as it is narrowly worded there is very little real basis for secession[21]. It is applicable only to very racist regimes; mere lack of representation on ethnic grounds would not qualify. In contrast, another line of thinking interprets Paragraph 7 more broadly and argues that oppression legitimizes secession[22]. *'According to the oppression theory, Paragraph 7 represents only one aspect of a wider rational for secession. Therefore, even if the criteria of Paragraph 7 are not strictly satisfied, secession will still be legitimate if there have been other serious violations of fundamental human rights'*[23] The secession of Bangladesh from Pakistan in 1971 has been cited in support of the validity of oppression theory. On the17 of September 1977 Bangladesh was admitted to the United Nations.

Though the Bangladesh case has been presented by those who advocate the theory that oppression is a valid reason for secession there are many gray areas. First of all what constitutes 'oppression' is far from clear. There are many attempts to define oppression. According to Onyeonoro Kamenu, "for this rationale to be plausible it must be demonstrated that all other political arrangements capable of ensuring the aggrieved group a measure of self-determination short of outright independence have been exhausted or repudiated by the dominant majority'[24]. Secondly, the agency and process of establishing hard empirical evidence of oppression and how to determine xact parameters of oppression are also not clear. The decision of the International Court of Justice in the case Nicaragua Vs. USA strongly emphasized the principle of non-intervention[25]. More importantly the oppression theory overlooks the internal ethno-political dimension.

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[21]For this line of interpretation see Hurst Hannum, *Autonomy, Sovereignty and Self-Determination*, Philadelphia: university of Pennsylvania Press, 1990. Michla Pomerance, *Self-Determination in Law and Practice*, The Hague: Martinus Nijhoff, 1982.

[22]C. Lee Buchheit, *Secession*, New Havan:Yale University Press.1978.

[23] See, Musgrave for a good discussion on this debate. *Op.cit*., p.118-9.

[24]Onyeonoro Kamenu, *Secession and the Right of Self-Determination: An OAU Dilemma*, Journal of Modern African Studies, 12 (1974). p.361

[25] Military and Paramilitary Activities in and against Nicaragua (Nicaragua *v*. United States of America), ICJ Reports 1986, p. 14.

The attempt of Biafra to secede from Nigeria and the consequent civil war provides a good test case to understand the many issues linked with self-determination, territorial integrity and secession and also the response of the international community[26]. During the first five years after independence, Nigerian politics was plagued with regionalism and ethnic tension. In January 1966, a group of military offices, who were all Ibos, led by Major General Aguiyi Ironsi stage a military coup and captured the government, ostensibly to check regionalism and forge national unity. However, most of those who were killed in the coup were Hausa-Fulanis. The military officers who brought down the government were all Ibos. In order to counter regionalism, Irani abolished federal regions and set up an unitary system of government by the Unification Degree of 24 May 1966. The Hausa-Fulanis in the North viewed this as a step in the direction of establishing Ibo dominance in the country. A group of officers from the North, led by Lieutenant Colonel Yabuku Gowon carried out a second coup and assumed power on 29 July 1966. At first Gowon represented only the concerns of the North but before long he became committed to the idea of a united Nigeria. In the subsequent constitutional reform process, Gowan pushed for a strong central government but the Governor of the Eastern province Lieutenant Colonel Odumegwu Ojukwu envisaged a loose federal system. As a result relations between the East and the central military government deteriorated rapidly. On 27 May 1967 the Central Government unilaterally redefined the regions, dividing the country into eleven new regions. At the same time, the Eastern Region's Consultative Assembly and the Advisory Committee of Chiefs and Elders jointly adopted a resolution directing Lieutenant Colonel Odumegwu Ojukwu to take steps '*to declare at the earliest practical date eastern Nigeria a free, sovereign and independent state by the name and tile of the Republic of Biafra*'. The UDI of the Republic of Biafra came on the 30 of May 1967 and on the 6 of July the Federal Government launched its direct military action to incorporate the Eastern Region to Nigeria.

[26]Nigeria attained independence on 1st October 1960 from the British. Its population is comprised of three ethnic groups with regional concentration: the Hausa-Fulani who are mainly Muslim in the North, the Ibo who are predominantly Christian in the East and the Yoruba who in the West. The Yoruba are equally divided. In addition, there are about 250 small ethnic groups in Nigeria. Nigeria inherited from the colonial rule a federal structure based on three regions.

After two and half years of fierce fighting, devastation and famine, the Briafran authorities surrendered to the Nigerian armed forces on 12 January 1970.

The Biafra episode presented the principle of self-determination with the oppression theory to justify its actions for secession. In the Proclamation of the Republic of Biafra it detailed the political injustice suffered by the Eastern Region, and the slaughter or expulsion of thousands of Easterners from the Northern Region in the Previous Year[27]. The Nigerian Government was charged by Biafra with genocide and violating United Nations Charter provisions of human rights. Five states (Tanzania, Gabon, the Ivory Coast, Zambia and Haiti) recognized Biafra during the brief period of its existence. However, "*the United Nations did not accept Biafra's argument that it should be recognized on the basis of the oppression theory. In December 1967 the United Nations refused to consider Biafra's charges of genocide and human rights abuses against Nigeria*"[28] According to the UN Secretary General, Nigerian-Briafran conflict was purely an internal problem[29].

In analyzing international response to the Nigeria-Biafra conflict, certain observations of the international community which influenced their stand which have some relevance to the Sri Lankan conflict should be noted. Firstly, it was observed that in the light of on-going conflict over territory, Biafra could not fulfill the minimum requirements for statehood. While the struggle was going on, the recognition of Biafra by five states was considered premature. Secondly, whether Biafra was sufficiently qualified to be 'peoples' in line with the Article 1(2) of the UN Charter is doubtful. The case of Biafra can not be justified simply arguing that Nigeria is a colonial construct. In that sense, the Eastern Region (Biafra) was 'no less artificial creation' than Nigeria. Briafra's claim that Ibos represented the territory considered hold no much water. The Ibos represented only 64 percent of the total population of the Biafra and the Efiks, the Ijaws, the Ibibios, and the Arrangos comprised the remainder of the population, these groups had little in common

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[27]*International Law Material*, 6 (1967). p. 665.

[28]Musgrave, *op. cit.*, p.198.

[29]UN Press Release No. SG/SM/1062,

with the Ibos as with other Nigerian ethnic group. Furthermore, a large number of Ibos lived outside the territory of Biafra. The International responses to the Nigeria-Biafra conflict affirmed the primacy of the principle of territorial integrity.

Homeland, Historical Title and Self-determination

Another related issue in the discourse on the right of self-determination is the concept historical homeland which is presented to identify the territory. Realization of self-determination invariably relates to a territory with people. The territory defined in terms of historical homeland provides the physical basis for the concept of self-determination. The historical title is presented to claim territory in two situations: first, when a state claims a territory that belonged to it in the past should be returned to it to respect the territorial integrity of the state; and second, the territorial basis of ethnic claims to self-determination is presented in terms of historical title. As such, validity of the territorial claims based on historical titles became a contentious issue in international law and in international politics as it challenges the principle of territorial integrity. Emergence of new sovereign states in tandem with the progress of de-colonization after 1945 created situation where many states have laid claims to territories which were detached from them in the process of colonization or as a result of agreements between the colonial powers during the colonial rule. The paragraph 6 of the Resolution 1514(XV) was highlighted to justify such claims. However, as this paragraph was subjected to different interpretations it did not give clear guidelines. Britain, for example, argued that it will apply only to the future action and cannot be used to justify territorial redress for the past actions.

The issue of historical title was addressed by the International Court of Justice in the Western Sahara case of 1975. Spanish Sahara (Oro de Rio) was conquered by the Spanish in the context of the new imperial scramble of European powers in Africa after 1870 and it had been a Spanish colony since 1894. In 1966 the general assembly adopted Resolution 2229(XXI) reaffirming the 'inalienable right of the peoples of Ifni and Spanish Sahara to self-determination' and directed Spain to hold a referendum in the Western Sahara for the people of Western Sahara to exercise their right to self-determination. In the wake of the rapid dissolution of remaining colonial holdings in Africa, Spain ultimately agreed to hold

a referendum in Western Sahara in 1975. At this point both morocco and Mauritania claimed the territory on the basis of historical title and objected to the referendum. In this situation the General Assembly decided to refer the case to International Court of Justice to obtain an Advisory Opinion.[30] The Court observed that Western Sahara was not *terra nullius* because the territory had been inhabited by nomadic people who were socially and politically organized. Further, it found that there was no evidence which demonstrated political authority amounting to sovereignty on the part of both Morocco and Mauritania despite some Saharan tribes having ties of personal allegiance to Morocco. However, more important was the opinion expressed by the judges in relation to self-determination and historical title. Judge Dillard declared that;

> It is for the people to determine the destiny of the territory and not the territory the destiny of the people. Viewed in this perspective it becomes almost self-evident that the existence of ancient 'legal ties' of the kind described in the Opinion, while they may influence some of the projected procedures for decolonization, can have only a tangible effects in the ultimate choices available to the people[31].

The issue of territorial claims presented on the basis of historical titles in challenging the principle of territorial integrity came up again and again before the United Nations. It was on the basis of historical title that Indonesia presented its claim for East Timor. Once again the issue the relationship of self-determination to historical title was the matter of concern of the General Assembly in relation to Belize when Guatemala claimed that it was originally a part of the former Spanish province of Guatemala. At the General Assembly resolved the dispute giving precedence to self-determination rather than historical title and in September 1980 Belize became an independent state.

However, United Nations position in relation to territorial claims historical title was not consistent. In the cases of Gibraltar and Falkland (Malvinas) Islands the General Assembly adopted a position giving precedence to historical title than self-determination. When the United Kingdom held a referendum in Gibraltar on the 10 of September 1967 to offer them a choice to retain with the United Kingdom or accept Spanish sovereignty, Spain protested it as it violated earlier agreement. The General Assembly Resolution 2353(XXII)

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[30] GA Resolution 3239(XXIX),13 December 1974. Advisory Opinion was sought on two matters: firstly, whether Western Sahara was *terra nullius* prior to Spanish colonization and, secondly, if it is not the case, what legal ties existed at this time between the Western Sahara and Morocco, on one hand, and Mauritania on the other.

[31] ICJ Reports 1975, p.122.

adopted in December 1967 on Gibraltar repudiated the September referendum and noted that “any colonial situation which partially or completely destroy the national unity and territorial integrity of a country is incompatible with paragraph 6 of general Assembly Resolution 1514(XV)”. Argentinean claim to Malvinas was based on historical title. The General Assembly adopted a similar line in relation to the Falkland island dispute[32].

Some salient points of the above discussion on the relationship of historical title to self-determination are summarized as follows

1. In all the cases cited above, parties involved in the dispute are sovereign independent states in relation to the third party of territory to which other party claims authority on the basis of historical title.
2. Most of the territories involved in these claims are designated as non-self-governing territories. Therefore, political context should be understood in the context of decolonization.
3. All these cases, historical title is presented to contradict the application of self-determination to the particular territory. Hence, the main issue involved with the dispute was which would take precedence–historical title or self-determination.
4. The positions adopted by the United Nations were not consistent and merits of individual cases were taken into consideration.

Ethno-nationalist political projects also employ historical title to claim territory for home land. To any nationalist political project territory is pre-eminently important. In Anthony Smith’s words, “there is a close correspondence, even union, between the homeland and its resources and the people, one that is mediated through history as seen through the eyes of the participants and often of neighbours”[33]. Claiming the territory of homeland on the basis of historical title by ethno-nationalism often occur within the territorial limits of the state. Such a claim thus directly contradicts paragraph 6 of General Assembly Resolution 1514 (XV) which provides any attempt “*aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purpose and principle of the Charter*”. The differences between the presentation

[32]For a good discussion on the issues involved with the cases of Gibraltar and Falkland Island see Musgrave, *op.cit*., p. 245-50.

[33]Anthony D. Smith, *Nations and Nationalism in a Global Era*, Oxford: Polity Press, 1998. P.56.

of historical title to claim territory by the states discussed earlier and by the ethno-nationalist projects are very important. Main differences can be summarized as follows.

1. In the first situation parties involved with the dispute are sovereign states; in the second case it is between the state and ethnic group within the state.
2. Ethno-nationalist political projects present historical title to claim national self-determination for the people concerned whereas the earlier attempts are made to deny national self-determination on the basis of historical title.
3. Ethno-nationalism tend to challenge territorial integrity of the existing state on the basis of historical title but states present historical title to claim territorial integrity which was disrupted in one point of history.

The practice of presenting the historical title to claim a territory for homeland and then the concept of homeland to claim self-determination for the ethnically defined people living in the historical homeland raises many questions. Firstly, boundaries of pre-colonial political divisions and units were not constant and they were changed repeatedly in line with the sway of political power. Hence, determining the 'deciding point' in the time-frame to demarcate the past political boundary to suit contemporary political projects is a highly subjective and unhistorical exercise. Secondly, perceptions and appropriation of identity politics and the properties of ethnicity in the past is not exactly identical to the present situation. As Alfred Cobban once remarked "(O)ne of the difficulties of the history of ideas is that names are more permanent than things. Institutions change, but the terms used to describe them remain the same. This is true of words as familiar as democracy, sovereignty, monarchy or nation"[34]. Cobban's observation is particularly relevant to ethnic categories.

The use of historical title to justify the claim for self-determination within the state is fraught with many pitfalls. Positions adopted by the United Nations in relation to presentation of historical title for territorial claims covers only the disputes between states. However, some guidance can be sought from some judgments of the International Court of Justice in relation to the General principles. In this regard the observations of the ICJ on the Western Sahara case are very important. It is not the territory that defined by historical title but the will of people. If the will of the people are ascertain through a referendum it is only of the people who live in that territory. When it applies to the issue of merge or de-merge the Eastern Province in Sri Lanka, if it is decided through a referendum, only that of

[34]Alfred Cobban, The Nation State and National Self-Determination, New York; Thomas Y.Crowell Co, 1970, p.23.

the people of the Eastern Province alone, not the people of the entire Northeast, decides the fate of the Eastern Province.

Secession and Self-determination

The impasse involved with the issue of how to reconcile the principle of self-determination with the established norm of territorial integrity further intensified by the claim of separate statehood by ethnic groups through secession. The interpretation of western states of the Resolution 2625(XXV) ran into difficulties and they were compelled to clarify their position on session, territorial integrity and the limits of self-determination when demand for separate statehood based on ethnic homeland emerged in many parts of the world. Accordingly to the western reading of the principle '*self-determination occurs within the established boundaries of the state, not through succession from the state*'. In contrast to the western position, the Soviet Union and other Communist States maintained, at least in theory, that specific ethnic groups have a right to self determination which includes right to secede. The Soviet Constitution (Article 72) ensures the right for each union republic within the Soviet Union to secede from the USSR. But, in practice Soviet Union maintained that the rights of the working class and the preservation of their political power were more important than self-determination.

The responses of the United Nations to the cases of secessionist endeavors reflected the general reluctance of the international community to permit unilateral succession. In 1960 the United Nations authorized military assistance to Congo to prevent the province of Katanga from Congo. In the context of the Nigerian civil war, in 1968 the United Nations did not permit Biafran leaders to address the General Assembly. However, international law does not prohibit consensual dissolution. The separation of Iceland from Denmark in 1944, Senegal from the Mali Republic in 1960, Jamaica from the West Indian Federation in 1961 and that of Singapore from Malaysia in 1965 can be cited as examples.

In order to understand way in which the international community responded to the issues of secession, self determination and territorial integrity in the context of ethno-political mobilization the examination of the disintegration of Soviet Union and Socialist Republic of Yugoslavia is useful. The disintegration of the Soviet Union and Yugoslavia in the wake of the nationalist upsurge among different ethno-nationalist groups in the constituent republics of these multi-ethnic political entities brought the discourse on self-determination to a different historical plane.

The Soviet Union was a multi-ethnic political entity in the real sense of the word with ninety two distinct ethnic groups[35]. The unity maintained in this vast multi-ethnic entity by a single political party with centralized control reinforced by the ideological umbrella of the Communist party of the Soviet Union began to disappear with the introduction of *glasnost* and *perestroika*. When the Communist Party abrogated its constitutional guarantee to be the sole legal party in February 1990 many parties emerged in line with ethno-nationalist orientation. In the context of the tide of ethno-nationalist political mobilization of newly established political parties, the Soviet government decided to revise the 1922 Union Treaty that created the Soviet Union. The first Soviet republic to express its intention of having independence was Armenia which decided on the 23 of August 1990 to work to full independence in five years. It was followed by Lithuania and Georgia and declared independence on the 11 of March and the 9 of April 1991 respectively. These developments stressed the urgent need to have a new arrangement with union republics and discussions between the central government and republics in this regard commenced. On 19 August 1991, a day before a new union treaty was to be signed, a drama of failed coup by some diehard elements of the Communist party took place. As a result of this chaos the treaty was not implemented as scheduled and the thirteen of the fifteen Republics declared unilateral independence. Estonia on 20th , Latvia on 23rd , the Ukraine on 24th , Byelorussia on 25th , Azerbaijan on 30th , Uzbekistan on 31st August 1991 and Tajikistan on 9th September, Turkmenistan on 27th October 1991. All these republics declared their independence rationalizing it on the basis of self-determination.

The speed in which the Soviet Union disintegrated shocked the entire world and at first the international community, especially European powers, emphasized the continued territorial integrity of the Soviet Union and did not rush to acknowledge the statehood of independence of new entities. Once they realized the integration of the Soviet Union was a reality, the world powers had to take a position as regards to the new states of the former Soviet Union. As international law permits consensual dissolution, formal agreements were necessary to regularize the dissolution by the consent of all concerned with out territorial disputes. It was in this context that the United States and the European community insisted that the internal boundaries of the former Soviet Republics be recognized as international

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[35] Main ethnic groups of the Soviet Union included Russians (52%), Ukrainians (16%), Uzbeks (4.7%), Byelorussians (3.6%), Kazakhs (2.5%), Tatars (2.4%) Azarbaijanis (2.1%). Tajiks, Armenians, Moldavians and Luthuanians accounted for less than one percent each.

boundaries and the dissolution would occur only at the level of the pre-existing republics. In this respects James Baker, US Secretary of State identified five principles that govern the US policy vis-à-vis the changes in the former Soviet Union. These five principles included (i) Self-determination; (ii) respect for borders; (iii) support of democracy; (iv) safeguarding human rights; and (v) respects for international law.

The European Community also took a similar line. In the Alma Ata Declaration on the 16 of December 1991 the European Community presented a number of necessary preconditions for formal recognition including inviolability of internal frontiers and the guarantee of minority rights. The successor states emanating from the disintegration of the Soviet Union agreed to these tall conditions and declared they would recognize each others territorial integrity and would respect for human rights, freedoms and the rights of national minorities. Some salient features of the response of the European Community and the United States to the disintegration of the Soviet Union are significant to the self determination discourse:

1. New states emerged not as a result of secession but dissolution of earlier political entity.
2. Pre-existing republics constituted the territorial basis of dissolution
3. Ethnic self-determination within the republics would not be recognized
4. Rights of national minorities must be respected within the broader framework of democracy and human rights.

Process of disintegration of Yugoslavia was more complex and conflict ridden compared to that of Soviet Union. As in the case of the Soviet Union, the Yugoslavia was a multi-ethnic political entity in its real sense of the word. Serbs constituted 37 % being the major ethnic group while Croats 20% Bosnian Muslims 9% Slovenes and Albanians 8% each, Macedonians 6% Montenegrins 3% and Hungarians 2% in 1990. Yugoslavia came into existence as an independent state in 1918 with the unification of Serbia and Montenegro and the three territories of the dissolved Austro-Hungarian empire, namely Croatia, Dalmatia and Bosnia-Herzegovina were also incorporated. After the Second World War, a Communist government assumed power and the Federal Peoples' Republic of Yugoslavia was established with a federal structure in 1945 comprising six constituent republics: Serbia, Croatia, Slovenia, Macedonia, Bosnia-Herzegovina, and Montenegro.

The ethnic groups in the Yugoslavia had a historical legacy of bitter ethnic rivalries and conflicts. However, the Communist party of Yugoslavia under the charismatic

leadership of Marshal Tito was able to maintain the unity of the federal republic. As a result, the federal constitution had to be changed several times to accommodate the growing ethno-nationalist sentiments. In 1974 a Presidential Council was established at the federal level and the chairmanship of the council was to be rotated amongst the heads of the republics. In line with the political liberalization, the Communist Party of Yugoslavia lost its constitutionally guaranteed leading political role in January 1991. As a result, nationalist parties came to lead the politics in republics. In the election held in 1990 Communist party lost power in Croatia, Slovenia, Bosnia-Herzegovina and Macedonia. In Serbia, Communist party changed itself to a Serbian nationalist party. After the elections, the functioning of the presidential Council was confronted with serious problems resulting in a deadlock. On 25 June 1991 Croatia and Slovenia declared their independence. The federal forces comprising mainly Serbs mobilized to prevent the succession. The Croatian declaration of independence followed an insurrection by the Serbs in Croatia resulting in a civil conflict between Serbs and Croatians in addition to the Republic and Federal forces.

As was the case in relation to the disintegration of the Soviet Union, the responses of the European Community, the United States in the case of the crisis in Yugoslavia were guarded. First they refused to recognize the secession and unilateral declaration of independence (UDI) and attempted to preserve its territorial integrity. The United Kingdom, France, and the Netherlands were very vocal in this regard. For the Dutch Foreign Minister, "the right to self-determination is not an absolute, unqualified principle– its application needs to be squared with other principles"[36]. When the fighting in Yugoslavia further escalated it became abundantly clear that the disintegration of Yugoslavia was inevitable. In this context, the European community made it position clear: it will not accept succession but was ready to address the issues relating to consensual dissolution of Yugoslavia. Based on the statement issued by the European Community on the 27th of August 1991 the European Community Peace Conference on Yugoslavia and an Arbitration Commission were established. At the Peace conference it was decided that there would be no unilateral change of borders by force and insisted on the preservation of existing internal borders. It provided the basis for the Security Council Resolution 713 of the 25th of September 1991.

1 In September Macedonia and in October Bosnia-Herzegovina also declared independence. Having realized that the dissolution of Yugoslavia was imminent,

[36]Quoted in Musgrave, p. 116.

now the objective of the European Community was now to regulate the process. However in contrast to the Soviet Union, dissolution of Yugoslavia was neither peaceful nor consensual. Yugoslavian Federal and Serbian authorities refused to acknowledge the dissolution of Yugoslavia and refused to accept any terms of dissolution. Therefore, the European Community abandoned its earlier policy of seeking agreement of all parties to the dissolution and set out certain conditions and guidelines to successor states for recognition on the 16 of December 1991 and the Arbitration Commission was established. The applications of the republics seeking recognition as independent states were submitted to the Arbitration Commission for advice before the decision was made. The opinions of the Arbitration Commission were very important in many respects. Macedonia and Slovenia satisfied the conditions of the European Community and were, hence qualified for recognition.

2 As Croatia did not make adequate provisions for the special status of minorities, the commission recommended the amendment of its constitution to incorporate such provision before the grant of recognition.

3 In view of the fact that in Bosnia-Herzegovina local Serbs had not associated with the declaration of independence made by the Legislature. The Serbian people in Bosnia-Herzegovina wished in a declaration in November 1991 to remain within Yugoslavia, the will of the peoples of Bosnia-Herzegovina for an independent state had not been fully established.

4 The two remaining constituent republics of Serbia and Montenegro adopted a new constitution and the created Federal Republic of Yugoslavia on the 17th of April 1992 and declared that it was the sole successor of the former Socialist Federal Republic of Yugoslavia. The opinion of the Arbitration Commission was that the dissolution of the Socialist Federal Republic of Yugoslavia was complete and that state no longer existed (Opinion No.8) and no single successor state could claim to the Socialist Federal Republic of Yugoslavia (Opinion No.9).

However, the European Community did not observe the opinions of the Arbitration Commission to the letter and recognized both Slovenia and Croatia on the 15 of January 1992. By that time local Serbs had set up a Republic of Serbian Krajina which controlled about one third of the territory. Macedonia was not recognized due to the objections of Greece over name Macedonia. Following the referendum in Bosnia-Herzegovina and, despite virulent opposition from Bosnian Serbs to independence, the European Community recognized Bosnia-Herzegovina on the 7th of April 1992. The fighting continued unabated for the next three years and Bosnian Serbs were able to control 70 percent of the territory in

August 1995. In August Croatian forces joined Bosnian Muslims against Bosnian Serbs and reverted some of the advances of the Bosnian Serbs. In the Peace Agreement signed on 14 December 1995 by the leaders of Bosnia-Herzegovina, Croatia and Serbia it was decided that Bosnia-Herzegovina remain an independent sovereign state with its internationally recognized boundaries but to divide into two entities: the Muslim-Croat Federation of Bosnia-Herzegovina and the Serb Republic[37]. The two entities were given the jurisdiction over a wide area and, as Musgrave correctly observes, "*the Agreement preserved the de jure sovereignty and territorial integrity of Bosnia Herzegovina, but effectively created two separate de facto entities*"[38]. The whole episode of the disintegration of Yugoslavia reveals the way in which the European Community come to terms with the realities while maintaining the broader policy line.

Some Recent Developments

The disintegration of the Soviet Union and the Socialist Republic of Yugoslavia brought the issue of secession and its relationship to national self-determination to a different plain because successor states legitimized their claim to independent statehood in terms of self-determination. The establishment of new sovereign states within pre-existing boundaries by no means addressed all ethnic concerns; instead it really opened up an ethnic Pandora box. Hence, the collapse of the Soviet Union and former Yugoslavia really heralded a new era of ethnic conflicts in that area. The continuing conflicts based on ethnicity involving Armenians in the Nagorno-Karabakh area in Azerbaijan, Chechnyans in Russia, Dniester separatists and Cossacks in Moldova, South Ossetians in Georgia can be cited as examples. However, the tide of ethno-political mobilization in the last two decades in the twentieth century was not limited to former Soviet Union and Yugoslavia and it was indeed a world-wide tendency identified as ethnic resurgence. Ethno-political formation and assertions of the Basques and Catalans in Spain, the Bretons, the Corsicans and the Alsatians in France, the Walloons and the Flemish in Belgium and the Scots and the Welsh in Britain highlighted the fact that this ethnic resurgence enveloped the Western Europe too.

[37] In this arrangement areas of the federal government jurisdiction include foreign policy, foreign trade, customs policy, immigration, monetary policy, international and inter-entity transportation, air traffic control. Jurisdiction over all other maters was vested with the two entity governments. Further more, the three ethnic groups of Bosnia-Herzegovina were also permitted to maintain their own separate armies.

[38] Musgrave, p. 121.

In almost all the cases, political stakes are rationalized in one way or other either in terms of self determination or territorial integrity. In this context, the observations of the Canadian Supreme Court over the secessionist endeavor of Quebec is important because it clarified some aspects relating to the limits and possibilities in the exercise of the right of self-determination in an era of ethnic revival.

The Canadian Supreme Court Judgment over Secessionist bid of Quebec

Canada was born out of the Confederation of four provinces–New Brunswick, Nova Scotia, Ontario (formerly Upper Canada) and Quebec (formerly Lower Canada)–under the Constitution Act, 1867 (British North America Act, 1867). "Shortly after Confederation the population was composed it, by ethnic origins 61% British, 31% French and 8% other. A century of immigration (from 1871 to1971) lowered the French population marginally to 28% and the British drastically to 44%, with other reported origins rising to 24%."[39] Modern Canada is a federal state comprising of ten provinces and two territories.[40] Quebec is the second largest province and 85.8% of the people of Quebec are French speaking Canadians (Francophone).

Since 1960s expressions of Francophone ethno-political mobilization in Quebec in secessionist line gradually gained strength. Following a short spell of violence carried out by the tiny group, the Quebec Liberation Front, in the early 1970s, Prime Minister Pierre Trudeau initiated a number of constitutional changes to accommodate the interest of a bi-lingual and bi-cultural society in the federal system. The ethno-nationalist movement in Quebec found its political expression in the Parti Quebecois which won the provincial elections in 1976. In 1980 the provincial government under Parti Quebecois held a referendum in Quebec in which it sought to obtain a mandate to negotiate a new status for Canada–'sovereign association'. The referendum proposed was defeated by 60%. However, the demand of the Quebecois to recognize them as a 'distinct society' within the Canadian federal system continued. The Meech Lake Accord in 1987 which met this demand failed in the long process of approval. Once again in the Charlottetown Agreement in 1992 the

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[39]Stacy Churchill, *Official Languages in Canada: Changing the Language Landscape*, Canadian Studies Program and Official Languages Support Programs, 1998.

[40]Ten provinces include Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Two territories are Yukon and Northwest.

federal Prime Minister, the ten provincial premiers and leaders of various native Canadian groups forged a settlement which acknowledged Quebec as a distinct society and recognized the some demands of the native Canadian groups. It also collapsed as it was rejected at a referendum. It was in this context that the Parti Quebecois was returned to power in 1994 and its leader Lucien Bouchard became the premier of Quebec. The provincial government of Quebec once again held a second referendum in Quebec on the 30 of October 1995 in which it sought the approval of the Quebec electorate for the province to become a sovereign state. This time the referendum was defeated by a wafer thin margin of 50.46% against and 49.44% in favour. In this context, the federal government of Canada decided to seek an advisory opinion from the Supreme Court of Canada as to the following two questions:

1. *Under the constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?*
2. 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 of 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?
3. *In the events 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?* [41]

The ensued legal battle was very interesting and firstly the *amicus curiae* raised the primary objections to the Court's reference of jurisdiction but the Court held that submissions in this regard cannot be accepted. Even if the Court has jurisdiction over the questions referred, the questions themselves are not justiciable because they are too 'theoretical' or speculative; the questions are not justiciable because they are political in nature; and the questions are not yet ripe for judicial consideration.[42] However, the Supreme Court of Canada held that "*the Reference questions raise issues of fundamental public importance. It cannot be said that questions are too imprecise or ambiguous to*

[41]DLR (161), 1998 and lexum.umontrial.ca/csc-scc./en/pub/1998/vol2/html1998scr2_0217.html

[42]Ibid.

permit a proper legal answer. Nor can it be said that the Court has been provided with insufficient information regarding the present context in which the questions arise. Thus, the Court is duty bound in the circumstances to provide its answers".

The reference to self determination in the question compelled the Court to define the term peoples. The Court pointed out that international law grants the right to self-determination to 'peoples'. Accordingly, access to this requires the threshold step of characterizing as a people the group seeking self-determination. However, the right to self-determination has developed by virtu of a combination of international agreements and conventions, coupled with state practice, with little formal elaboration of the definition of peoples, there has been that the precise meaning of the term '*people*' remains some what uncertain. It is very important that the Court declared that a people may include only a portion of the population of an existing state. The juxtaposition of the terms '*nation*' and '*state*' is indicated that the reference to '*people*' does not necessarily mean the entirety of a stats population. The Court inclined to go with the ethnic definition of the term '*people*'.

It is also very important that the Court used the term 'internal self determination' for the first time. The term has not been used in the UN Charter, in UN Resolutions and Covenants or in any other international instruments. The Court observed that the right to self-determination of a people is normally fulfilled through internal self-determination–*a people's pursuit of its political, economic, social and cultural development within the framework of an existing state*.

The Court observed that international law does not grant component parts of sovereign states the legal right to secede unilaterally from their parent state. At the same time, in Para 138 in their Judgement, the Court discussed the two exceptions to the general rule--one where people are oppressed and other where definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. Such exceptional circumstances are manifestly inappropriate to Quebec under existing conditions. The court noted that

1. During the last 50 years, Quebecers have held from time to time all the most important positions in the federal Cabinet.
2. Quebecers occupy prominent positions within the government of Canada. Residents of the province of Quebec make political choices and pursue economic, social and cultural development within Quebec, in Canada and throughout the world.

3 The continuing failure to reach agreement on amendment to the Constitution, while a matter of concern, does not amount to a denial of self-determination.

4. Canada is a sovereign and independent state conducting itself in compliance with the principle of equal rights and self-determination of peoples and possessed of a government representing the whole people belonging to the territory without distinction.

Accordingly, the Court concluded "neither the population of the province of Quebec, even if characterized in terms of 'people' or 'peoples', nor its representative institutions, National Assembly, the legislature or government of Quebec, possess a right, under international law to secede from Canada"[43].

The Kosovo Crisis

Further, the crisis in Kosovo is also important as it highlights the parameters of the practice of self-determination in international politics. After the disintegration of the former Socialist Federal Republic of Yugoslavia, only Serbia and Montenegro remained to form the Federal Republic of Yugoslavia. Kosovo is a Serb province where about 90% of its population is ethnic Albanians. In order to understand the some aspects of the politico-emotional matrix of the conflict, a historical background is necessary. Kosovo is very dear to the Serb psyche and considered it as their spiritual and cultural heartland though it is presently a predominantly Muslim ethnic Albanian province. It was at the battleground of Kosovo Polje that the Serbs made their last attempt against the invading Ottoman Turks in 1389. The conflict between Serbs and Albanians over the control of Kosovo has a long history[44].

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[43]Ibid.

[44] In 1912 the Serbs annexed Kosovo and it marked with the massacre of thousands of Albanians it continued up to the Second World War. During the War Axis powers occupied Kosovo and attached it with Albania. Under the rule of Albania many Serbs in Kosovo were massacred. After the War, Kosovo was reincorporated as an autonomous region within the republic of Serb of the new state of Yugoslavia. Irrespective of constitutions provisions of self-government, under the Serb authority Albanians in Kosovo were subjected to severe repression in the 50s and 60s and in the 1980s ethnic Albanians in Kosovo gradually launched their offensive too.

In response to the growing dissent in Kosovo, Serbia revoked the autonomous status of Kosovo in 1989 and place it under the direct rule of Belgrade. As a counter move, the Kosovo Legislative assembly declared independence in October 1990 and held an unofficial referendum in May 1992. The secession of Kosovo from Serbia was overwhelmingly approved and Albania immediately recognized it as an independent state. The Serbian authorities used military power to crush the independence move and the Kosovo Albanians resorted to guerilla campaign under the Kosovo Liberation Army (KLA). The Yugoslav military offensive against the KLA was indiscriminate and it caused tremendous destruction and suffering. The United Nations began to intervene at this point and on the 31 of March 1998 the Security Council Resolution 1160 imposed an armed embargo on Yugoslavia. Once again the Security Council in its Resolution 1199 on the 23 of September 1998 took a sterner stand and noted serious implications of the excessive and indiscriminate use of force by the Serb authorities. It called upon the two sides to negotiate a political solution with international involvement. At that point Russia made it clear that it would vet any UN move to use of force against Yugoslavia. Realizing that any further military action on the part of the UN against Yugoslavia to force it to a peace settlement was not possible, NATO decided to play a more interventionist role. In October 1998 NATO threatened military action against Yugoslavia if it did not comply with the terms of the Security Council Resolution. As a result, Yugoslavia declared a ceasefire and negotiated two verification agreements with NATO and the Organization of Security and Cooperation in Europe (OSCE). The discussions were held Rambouillet in France between the Yugoslav Contact Group and leaders of the two sides but the subsequent draft peace proposal[45] (known as the Rambouillet Accord) was not acceptable to the both parties. In spite of the threat of military action by NATO forces, Yugoslavia refused to sign the accord on the basis that it would not permit foreign troops in its territory. On the 24 of March 1999 NATO commenced its air strikes and systematic bombing of military as well as civilian installations throughout Yugoslavia causing havoc in the entire country. It continued for over two and half months. Ultimately Yugoslavia accepted the peace

[45] Main elements of the Rambouillet proposal include (i) a three year interim period during which Kosovo would be granted self-government, (ii) Kosovo would retain institutional ties with Yugoslavia but it will lose virtually all jurisdiction over the province, (iii) the KLA would disarm, (iv)Yugoslav army unit and Serb police within the Kosovo would be strictly limited, (v) a new police force of some reflecting the ethnic composition of Kosovo would be established, (vi) a NATO peace keeping force of 35,00 troops would be stationed in Kosovo , (vii) the peacekeeping troops would have unrestricted access throughout all Yugoslav territory and were not to be accountable to Yugoslav authorities.

agreement drafted by the G-8 powers on the 3 of June 1999. The peace agreement sponsored by the G-8 powers was almost similar to the Rambouillet proposal but it did not include two very important clauses to which Yugoslavia adamantly opposed. First, there was no mention of a referendum to determine the future of Kosovo. Second, it did not permit international security forces access to other parts of Yugoslavia other than Kosovo. Yugoslavia and NATO signed the Military Technical Agreement on the 9 of June 1999 which marked the end of the Kosovo crisis and the following day the Security Council adopted resolution 1244 to approve the peace agreement. While ensuring substantial autonomy for Kosovo and the development of democratic self-governing institutions in the province the Security Council Resolution 1244 affirmed the territorial integrity of Yugoslavia. Accordingly, the ethnic Albanians in Kosovo did not permit to secede from Yugoslavia even though they and been denied the participation in government since1989. In deciding the outcome, the role of the Russian republic was very important as it stand firmly behind the territorial integrity of Yugoslavia. Ultimately the Kosovo crisis highlighted the primacy of the norm of territorial interiority vis-à-vis when these principles clash head on.

Independence of East Timor

In addition to the two cases discussed above, the independence of East Timor also features prominently in the present political discourse on self-determination. In this case the international community endorsed the right of the people in East Timor to self determination including an independent statehood. Accordingly, the East Timorian people exercised their right to self-determination through a referendum in held on 30 August 1999 and the resultant acceptance of independence East Timor by the international community. Is it an endorsement of secession on the basis of self-determination at the expense of territorial integrity of an established state? The historical background and political context of the crisis of East Timor provides the answer to this question[46].

[46] The Portuguese came to Timor first by 1520 on their way to China. While Malacca was the main Portuguese stronghold in the East Indies Timor also came under Portuguese rule at the same period. Even after the Dutch replaced the Portuguese as the main colonial-trading power in the East Indies in the first half of the seventeenth century the Portuguese continued to retain eastern portion of the island under their control.

As it had been a Portuguese colony in the Southeast Asian archipelagos, East Timor was designated as a non-self-governing territory by the UN General Assembly in 1960 and since then it remained so according to the UN parlance. When the Portuguese finally decided to withdraw from East Timor in 1975 after confronting years of struggle led by the Revolutionary Front of Independence of East Timor, a civil war broke out among various factions of the freedom movement. On the 28 of November 1975 the Fretilin faction declared independence and two days later pro-Indonesian faction also proclaimed the integration of East Timor into Indonesia. On the 7 of December 1975 Indonesian troops invaded East Timor and it was formally made the twenty seventh province of Indonesia in July 1976. The United Nations flatly refused to recognize the incorporation of East Timor with Indonesia and passed resolution reaffirming the right to self-determination of the people of East Timor. The position of the Third World countries in this regard was reflected in the political declaration of the Fifth Summit of the NAM countries held in Colombo in 1976 which reaffirmed the right of the people of East Timor to self-determination. The continued occupation of East Timor by the Indonesian forces and the armed resistance devastated the country. In the last quarter of Indonesian rule, according to some reports, "East Timor's population has been ravaged by hunger, disease and officially-sanctioned violence. Some estimates say the population of 800,000 fell by a quarter after the 1975 invasion, half of it directly attributable to killings by Indonesian troops. Resistance to Portuguese rule became resistance to Indonesian rule but the fighting never stopped".[47]

The issue of East Timor brought to the limelight by another development in the late1980s. The Timor Sea came under the focus of Australia's off-shore oil search initiative with the contracting of a third offshore drilling rid by a BHP Petroleum-led group[48]. In 1989 Australia signed a maritime boundary Agreement with Indonesia delimiting the sea-bed boundary between northern Australia and East Timor. At this point Portugal contested the right of Australia to conclude an agreement with Indonesia over East Timor before the International Court of Justice. The right of self-determination of the people of East Timor

[47]Gary Katz, Different Master, Same Chains, *CBC News Online*, December, 1999. (Http://cbc,ca/news/indepth/easttomor/different.html)

[48]Graham Lloyd, "Latest rig puts Timor in spotlight," *The Indian Ocean Review*, 1:2.July 1988, p.21. *The West Australian* (12 April 1988) reported that "when it comes to oil, the Timor Sea is no Bass Strait. But the forecast production of 45,000 barrels of oil a day for the Jabiru field alone, coupled with the cost -effective means that are being used to recover it, makes the Timor a handy earner and an area to watch".

figured large in the court proceedings. Portugal argued that Indonesia did not possess sovereignty over East Timor and 'occupation' of East Timor by Indonesia was illegal because it deprived the people of East Timor of their right of self-determination. In 1994, though the International Court of Justice held that it was unable to adjudicate on the case, it made several pronouncements on self-determination. Most importantly, the court maintained that East Timor still remained as a non-self-governing territory and its people continued to possess the right of self-determination.

At the same time, activities of the independence movement of East Timor, Fretilin, gained momentum. The response of the Indonesian government to the resistance movement of Fretilin was ruthless. The massacre of 200 demonstrators in the East Timorese capital of Dili in Nov.1991by Indonesian forces generated a world-wide repercussion. The awarding of Noble Peace Prize to Bishop Carlos Filipe Ximenes Belo and Jose Ramos-Horta for their effort to regain freedom for East Timor sensitized the world of the situation in East Timor. It was after the fall of Suharto in 1988 that the issue of a referendum on independence gained momentum. In response to international pressure the Indonesian government agreed in January 1999 to allow a referendum for the people of East Timor to offer them a choice whether they wish to remain within Indonesia with autonomous status or to become total independent. Accordingly, on 5th May 1999 Indonesia and Portugal signed an Agreement permitting the United Nations to conduct a referendum in East Timor. At the referendum held on 30 August 1999 the people of East Timor voted in favour of independence by a margin of 78.5 percent. What followed after the announcement of the results of the referendum was the pogrom by militia loyal to Indonesia against pro-independent quarters and, after months of violence, the Indonesian government agreed to the presence of UN, Canadian and Australian peace keeping troops in East Timor. Under the United Nations transitional administration (UNITAET), the arrangements for the transition were prepared. The elections were held in August 2001 for the first democratic Constituent Assembly to become the first parliament after independence and the voter turn up was 91.3 percent. In April 2002, Xanana Gusmao was elected as the President of East Timor. On May 20, 2002, UNITAET handed over the control of East Timor to the newly elected government and East Timor became the first new sovereign state of the new millennium.

The recognition of East Timor as an independent sovereign state cannot be interpreted as acquiescent in an act of secession from Indonesia at international law. First, the incorporation of East Timor into Indonesia after the invasion in 1975 was never

recognized by the General Assembly. Secondly, the right of the East Timorean people to self-determination was recognized in the framework of decolonization as the territory was designated as non-self-governing by the UN in 1960. Hence, the East Timoreans were qualified for the term people according to the provisions of the General Assembly Resolution 1514(XV).

Ethnic Revival and Internal Self-determination

These three developments, namely the judgment of the Canadian Supreme Court, the Kosovo Crisis and the Independence of East Timor, have contributed a great deal to set the contours of the present discourse on the exercise of legal right of self determination. Its significance must be viewed against the background that the earlier moorings of political discourses on self-determination have been profoundly shaken by the swirling ethno-political currents of separatism in the past two decades.[49]

A key world-wide trend conspicuous in the last quarter of the last century was the resurgence of ethnicity, i.e., the assertion of ethnicity in social and political space. The ethnic resurgence has been manifested in different forms in political and cultural spheres. In the political sphere it was reflected in the growth of ethno-nationalist political projects which challenge the hegemony and the structures of the state on ethnic grounds. In the Post-Cold War context, ethnic conflicts gradually replaced interstate wars as the dominant form of political disorder and violent conflict. Stephen Ryan identifies three main types of situation where these conflicts occur:

> *(I)n the democratic West, an 'ethnic revival' has taken place; a development characterized by a new found assertiveness among various minority groups.....In the third world, states that inherited artificial frontiers that did not reflect pre-existing cultural divisions, have frequently experienced serious ethnic violence as they struggled to adjust to a post-colonial political process.....Finally, with the*

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[49] According to *Encyclopedia of Modern Separatist Movements*, there are 95 separatist movements operating in the world- 32 in Africa and Middle-East, 7 in Australia and Oceania, 30 in Europe, 28 in South, Esoutheast and East Asia, 21 Russia and Eastern Eurole and 14 in North America and the Caribbean. See Christopher Hewitt and Tom Cheetham, *Encyclopedia of Modern Separatist Movements*, Santa Barbara, California: ABC-CLIO, 2000.

liberalization of central and eastern Europe and the break-up of the Soviet Union, the second world has entered a period of renewed ethnic conflicts[50]

The ethnic resurgence and upsurge of separatist political projects brought the ambivalence and paradoxes inherent in the prevailing readings of the concept of self-determination into sharper focus. It is interesting to note that all the references in UN resolutions and other international instruments self-determination was presented as a right of the peoples. The prefix 'national' did not appear any where. In the context of ethnic resurgence, prefix 'national' is added once again to the term self-determination in political discourse.

With the prefix national to the term self-determination, the evolving discourse on self-determination hits a new ground filled with vibrant and emotional contentions. In line with ethno-political mobilization it has become a widely held political slogan in international politics though it is not possible for anybody to right away reject or define it because of its nebulous nature and wide range. However, as Donald L. Horowitz observed, "*self-determination is a legitimizing ideology for ethnic separatism, perhaps a necessary condition for its emergence*".[51] Consequently, the demand of ethno-political movements to redraw the existing political map which they repudiate in terms of national self-determination has brought the right of national self-determination into a direct conflict with other international norms relating to sovereignty and territorial integrity. The earlier readings of self determination somewhat managed to subside this contradiction so far by recognizing only states, not nations, as holders of rights of self-determination. It is a fact that the norms in the international law and conventions, as evolved in the Cold War context in the paradigm of the Realism, have a definite 'statist' bias. The international laws and conventions are also political constructs in a particular constellation of power in world politics; hence, they are also evolving. It is not realistic to expect to adhere to the norms of international law to the letter in coming to terms with political exigencies and expediencies in the post-Cold War world politics. The Canadian Supreme Court Judgment on the issue of Quebec separatism and the UN responses to the Kosovo crisis highlighted that the protection given to the state under the principle of sovereignty and territorial integrity is not

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[50]Stephen Ryan, *Ethnic Conflict and International Relations*, Aldershot: Dartmouth, 1995. p. 2.

[51]Donald L. Horowitz, "Patterns of Ethnic Separatism," *Comparative Studies in Society and History*, Vol.22, 1981. p. 166.

unconditional. They also underscore the fact that the recognition of an ethnic group as a distinct nationality (the peoples in the UN parlance) does not necessarily carry the right to form a separate state of their own as an inherent entitlement in the name of national self-determination.

The hold of the principle of national self-determination firmly by burgeoning ethno-political separatist movements as their rationalizing ideology and related projections on new vistas in post-cold war international politics demanded a revisit the contents and parameters of the concept of self-determination. In the context of the world-wide tendency of ethnic revival it is feared that the concept of self-determination would open-up an ethnic Pandora box in world politics and would raise hopes which never be realized, as remarked by Robert Lancing who considered national self-determination a doctrinal Dynamite.[52] If self-determination grants the legal right to form a separate sovereign state, it becomes necessary to define the categories that are entitled to exercise the right of self determination very strictly to limit excessive proliferation of new states and statelets. Conversely, if those who are entitled to the right of self-determination (i.e. peoples) are defined broadly to incorporate all the ethnic-identities asserting with ethnic resurgence, the parameters of self-determination are to be defined strictly, obviously not to grant the right to have separate statehood as an inherent entitlement.

The concept of national self-determination assumes the existence of a national self. Can a politically mobilized ethnic group be considered a national self for national self-determination is a moot point in this context. How does one differentiate ethnic groups from national groups and who decides it? If national self-determination entails the right to secede and if all the ethno-national groups are entitled to that right, in the context of present ethnic revival a possible outcome would be the Balkanization in many parts of the world. Since implications of such scenarios on peace and security of the world would be very serious, the international community seemed very stringent in accepting secession as a means of exercising national self determination. The validity and the rationale of a political concept depend on its ability to guide political developments and help solving political problems, in addition to the rationalization of particular political projects and interests. When a political concept fails to fulfill these functions it should be either replaced with a viable alternative or reformulated. It is in this context that the term internal self determination has come into currency and acquired importance in the political discourse.

[52] See fn. 6.

The use of the term internal self-determinations first makes a distinction between external and internal variant of the principle. In this context, the meaning of external self-determination is clear and precise – the right to secede and form a separate state or integrate with another state. Who can exercise that right is a different matter. But what is rally meant by internal self determination is not that precise. The term internal indicates that the secession is ruled out and the accommodation of political aspirations of ethnic groups within the territorial parameters of a single state. Brendan O'Duffy observes that out that "*Precisely because of the limits of positive international law within the statist paradigm to manage deep-seated ethno-national conflict, modification have evolved which attempt to preserve the stability of inter-state system while encouraging internal or 'non-secessionist' forms of national self-determination, including forms of federalism and devolution, power-sharing, individual and collective minority rights protections.*" [53] Then, is it another term for regional autonomy? The term regional autonomy is relatively precise. The different methods adopted to put regional autonomy into practice in contemporary political are clear. According to Yash Ghai "*(A)utonomy is a devise to allow ethnic groups or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them, while allowing the larger entity those powers which cover common interests. Autonomy can be granted under different legal forms. There is no uniform use of terms for the different kinds of arrangements for autonomy"*.[54] A two-tier system of government in the form of a federal arrangement is a widely practiced method in establishing regional autonomy. A problem with the term internal self-determination is that it is impregnated with a wide range of political arrangements.

What would be the ontological significance this language shift? The change of terminology on the part of political movement that hitherto advocated separatism may reflect two possibilities. Firstly, in the face of the present constraints in international law to unilateral secession it can be a tactical detour to the same goal. In this respect the following comments on internal self-determination by V.T. Tamilmaran is revealing:

> *Internal self-determination is a mechanism by which a sovereign is obliged to ensure access to government for all the people within territory of that state. Failure to do so would result in resorting to*

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[53] Brendan O'Duffy, "self determination and conflict regulation in Sri Lanka" Paper presented at ICES Auditorium, 8 May 2003 reproduced in Daily News, 17.05.2003.

[54] Yash Ghai, ed. Autonomy and Ethnicity – Negotiating Competing claims in Multi-ethnic states, Cambridge: Cambridge University Press. P.8.

> *violence to make possible non-dominant groups to participate in the political decision-making process of the government of the state concerned. However, if the State were unable to provide any meaningful mechanism to guarantee such participation, it would lose its protection designed to safeguard its sovereignty and territorial integrity stipulated by the above clauses of the Declaration of 1970.*[55]

It is not only the constraints imposed by the well-entrenched principles of sovereignty and territorial integrity but also other practical difficulties found in international political environment especially after international coalition against international terrorism following the air attack on the World Trade Center in New York. Secondly, the term internal self-determination can be a reflection of a genuine attempt on the part of a secessionist movement to settle in regional autonomy, a political arrangement short of a separate state. Such a pragmatic shift may need a face saving space. The people and movement may change. History is replete with examples of changing positions and behavior by most dogmatic leaders and parties. The Nationalist Party in South Africa and IRA in Northern Ireland can be cited as examples. Those who used one set of vocabulary and slogans can not change their language over night. In this context, the political significance of internal self-determination could be understood only by studying concrete political arrangements proposed to execute the principle of internal self-determination, not by simply analyzing language semantics.

What is important at this juncture of historical development is how to come to grips with practical realities in multi-ethnicities rather than arguing on terminology. Ethnicity is a factor to be reckoned with in any viable political projections and constitutional architecture, especially in the context of ethnic revival. To paraphrase Anthony Smith, "it is still nationalist high noon, and the owl of Minerva has not stirred."[56] One of the formidable predicaments that many multi-ethnic states confront presently is how to accommodate political aspirations fueled by ethno-political mobilization. The ethno-political mobilization and assertion of 'other' ethnic groups can be a reaction to the ethno-political mobilization of the majority ethnic group. It may not necessarily be the case. The ethnicity has its own dynamism and its political mobilization may have its own logic. The real test for the statesmanship today is the accommodation of political aspirations of ethnic groups

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[55] V.T. Thamilmaran, "Internal self-determination: sward or shield?", *Northeastern Herald* reproduced in www.TamilCanadian.com .

[56] Anthony D. Smith, *The Nation in History- Historiographical Debates about Ethnicity and Nationalism,* Cambridge: Polity Press, 2000, p.76.

who demand a share in power and governance, giving credentials to a new political order based on equality and partnership.

Conclusion

The trajectory of discourse of self-determination reveals the evolving character of the modern state and also the inherent contradictions in its perceived symbiotic relationship with the concept of nation. Although the principle of self determination has been presented as a conceptual foundation of the modern sovereign state it remained highly contested and amorphous from its inception. Its vagueness and versatility enabled various stake-holders to use diverse readings of the concept to rationalize a variety of political interests and projects perceived in different historical situations and political formations. Prior to 1945, self-determination was mere a political concept without any legal binding, but it gradually entered into the orbit of international law after the UN initiatives. With the incorporation of self determination into the two UN Human Rights Conventions in the 1960s the principle of self-determination was universalized and legalized. However, its legal parameters still remain elusive in view of lack of agreement on the key issues relating to the exercise of self-determination, namely what precisely the right entails, when it is available and whom it is available.

With the wide use of the principle of self-determination as a legitimizing ideology for ethnic separatism, the discourse of self-determination has been moved to a new politico-historical plain. The re-reading of self-determination and the deconstruction of the notion of sovereignty, demanded by the tide of ethno-political mobilizations, have resulted in the reformulation of the concept adding a prefix 'internal' to the term. The new formulation intends to strike a balance between the demands of ethno-nationalism on the one hand and the established norms relating to the rights of sovereign states on the other. However, the concept of internal self determination is yet to be defined though a number of international instruments refer to internal self–determination as a framework capable of accommodating aspirations and demands of ethnic nationalism. Once again, a wide range of interpretations as to the political anatomy of internal self-determination is a source of much confusion. The fact that the concept harbors a variety of political arrangements creates many practical

problems when it comes to a concrete post-conflict political settlement. In order to deal with political expediencies associated with ethno-nationalist conflicts what may require are concrete and definable principles, not vague phrases, epithets or slogans.