

## **Self Determination versus Territorial Integrity: Challenges in Implementing the Right to Self Determination**

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Almost 80 years prior today, on 26 June 1945, the United Nations Charter (hereafter referred to as “Charter”) was adopted at a pivotal and historic moment that marked the beginning of a new international order. One of the purposes of the United Nations (UN) as enshrined in Article 1(2) of Chapter 1 of the Charter is to “develop friendly relations among nations based on **respect for the principle of equal rights and self-determination of peoples...**”. In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), two of the core human rights treaties, specifically recognized the right to self determination. Common Article 1 of the two Covenants states that “[a]ll Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’ In addition to these, the right to self determination has been reaffirmed by the United Nations in various Resolutions, some of which will be discussed in the subsequent sections.

Despite the importance placed on the right to self determination by the United Nations, the right to self-determination is arguably one of the most controversial norms of international law (Klabbers 2006: 186; Freeman 1999: 355). Firstly, there are various arguments on whether the concept of self-determination constitutes a “principle” or a “right”. It is beyond the scope of this essay to take a side in this discussion. Instead, I have built this essay on the premise that the right to self determination has been recognized by the UN and its members. Based on this premise, I identify some of the major challenges in implementing the right to self determination, particularly focusing on the tension between self determination and territorial integrity through the example of the recent developments in the Western Sahara case.

A challenge identified by Helen Quane is that there is no clear definition of what the right to self-determination entails and there are different interpretations of “peoples” who have the right to self-determination. (Quane 1998: 537). She notes that the term “peoples” has been used to refer to the population of a State or territory as well as groups of individuals linked by a common factor such as race, ethnicity or language. The lack of clarity on the scope of self determination and who comprises the “peoples” leaves much room for interpretation.

As a result, self determination manifests in two broad forms in contemporary society – external and internal. External self determination mostly manifests in political contexts and is understood to apply in cases of alien subjugation, specifically colonialism or territories under foreign military occupation. In such cases, the right to self determination leads to independence and is applied in a one-off context i.e. the right to self determination is applicable until a new state is created post independence. On the other hand, internal self-determination is a form of self determination that has now come to be understood as a right to run own affairs with a greater degree of autonomy within a state i.e. self rule within a state. It could include anything from the exercise of their right to culture, language rights or extensive self governance.

Therefore, in essence, when talking about self determination, we are referring to two different manifestations of the right, which can lead to confusion in the understanding of self-determination.

A second and major challenge in the implementation of self determination is the **concept of territorial integrity or state sovereignty**. On one hand, the State claims the right to maintain the territorial integrity and on the other hand, an ethnic, linguistic or religious group claims the right to secede and establish an independent State (Quane 1998: 537). An example is Kosovo's declaration of independence in 2008 from Serbia and the refusal of Serbia to recognize Kosovo's independence. (Al Jazeera 2023) Balancing the two principles is challenging because when pursuing self-determination, the territorial integrity of the State is threatened. The tension is evident in the UN Charter as well. Article 2(4) of the Charter states that, “[a]ll Members **shall refrain** in their international relations **from the threat or use of force against the territorial integrity or political independence of any state...**”. This poses as the biggest challenge for self determination. Even though the claims for the right to self determination are often discussed, when the question of territorial integrity arises, States are inclined to preserve territorial integrity.

Another major challenge in the implementation of self determination is geopolitical interest and power politics. A perfect example to demonstrate how geopolitical interests influence the exercise of the right to self determination is the case of Western Sahara. The right to self determination for the people of Western Sahara has become an unattainable dream despite multiple resolutions passed by the UN to allow the indigenous peoples in the territory to exercise their right to self-determination. Since the mid 1970s, Morocco has seized control of the territory of Western Sahara. In 1975, the International Court of Justice even passed an advisory opinion and ruled there were

no legal ties that supported Morocco's claim for territorial sovereignty in the regions. In 1991, the UN Security Council sent a peacekeeping mission, MINURSO to oversee referendum to determine Western Sahara's independence or union with Morocco (Allen and Trinidad 2024). While this generated hope that finally the people of the region could exercise their right to self-determination, no referendum was held. On the other hand, Morocco steadily increased its diplomatic support.

Today, more and more countries have either openly or tacitly accepted Morocco's sovereignty. The latest and arguably the most important recognition comes from France. President Emmanuel Macron of France has recognized Morocco's sovereignty over Western Sahara in July 2024 (Eljechtimi and Irish 2024). Before France, in December 2020, President Trump of the United States also recognized Moroccan sovereignty over Western Sahara as part of a deal in which Morocco would normalize relations with Israel (American Journal of International Law 2021). What this means for Western Sahara's quest for self determination is an important question to ponder. France is a permanent member of UN Security Council and so is the United States. It appears that France will now lobby for Moroccan sovereignty. France's decision appears to have reduced the last hope of independence for Western Sahara.

The case of Western Sahara outlined above is the perfect example of how factors such as international politics and political will prevent the exercise of the right to self determination despite numerous efforts by the United Nations. The right to self-determination therefore remains to be an elusive and controversial issue in international political order.

Moving forward, it is essential for the UN to adopt a multifaceted approach. First, it needs to strengthen the international norms to promote self-determination. The mere recognition of the right to self-determination is not enough. The UN needs to develop a proper criteria for the determination and application of self-determination. Secondly, it needs to promote economic development initiatives so that the regions seeking self-determination are able to establish and maintain independent governance. Finally, the UN needs to prioritize dialogue among states, and encourage its member states to prioritize the principle of self-determination in their foreign policies. As shown by the example of Western Sahara, it is very clear that without support from other member states, implementing self-determination will continue to be a challenging task. A collaborative approach is therefore crucial to promote the implementation of self-determination.

To conclude, while the principle of self-determination remains central to UN's mission, its implementation faces substantial challenges in implementation. On one hand, the principle of territorial integrity poses a fundamental threat to self-determination and on the other hand, external factors such as geopolitical influence and power politics affect the implementation of the right to self-determination. Therefore, it is essential for the UN as well as the international community to rethink how to deal with self-determination.

## References

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