

THE RIGHT OF SELF-DETERMINATION

IN INTERNATIONAL LAW

Prepared by Cleaver Fulton & Rankin, Solicitors, Belfast

Introduction:

The Charter of the United Nations provides:-

'Article 1

The Purposes of the United Nations are:

1. ...
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strength universal peace;'

Article 55 of the Charter provides:-

'With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.'

These principles have been developed by the General Assembly in a series of resolutions, notably those in regard to the granting of independence to colonial countries and peoples¹. The view has been expressed that in particular the *Declaration*

¹ GA Res 1514 (XV) GA Res 1314 (XIII)

on the Granting of Independence to Colonial and Countries and Peoples 1960 regards the principle of self-determination as part of the obligations steaming from the Charter; it is not a 'recommendation' but is in the form of an authoritative interpretation of the Charter.² As Brownlie comments it is noteworthy that the British Government which formerly opposed the principle has recently adopted and applied it in relation to questions concerning the status of Gibraltar and the Falklands.³

Declaration on Principles of International Law Concerning Friendly Relations:

Of particular importance is the Declaration made by the General Assembly without a vote on the occasion of its 25th anniversary on 24 October 1970 when it adopted the '*Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*'.⁴ The preamble recalled previous resolutions of the General Assembly affirming the importance of the progressive development and codification of the relevant principles of international law and referred to the report of the special committee which considered those principles. It emphasized the paramount importance of the Charter of the United Nations for the maintenance of international peace and security and for the

² Brownlie, Principles of Public International Law 4th edition page 596

³ *ibid*, page 597

⁴ GA Res 2625 (XXV)

development of friendly relations and co-operation among States and was convinced that the adoption of the Declaration on the occasion of 25th anniversary of the United Nations would contribute to the strengthening of world peace. It would constitute a landmark in the development of international law and of the relations among States, in promoting the rule of law among nations and particularly the universal application of the principles embodied in the Charter. The General Assembly approved the Declaration, the text of which was annexed to the Resolution, and recommended that all efforts be made so that the Declaration becomes generally known.

In that the Declaration clearly of relevance to the relations between the United Kingdom and Ireland it is regrettable that the two Governments have failed in their obligation to make the terms of the Declaration known to their peoples.

The Declaration itself contains the following principles:-

1. *The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations.*
2. *The principle that States shall settle their international disputes by peaceful means in such a*

manner that international peace and security and justice are not endangered.

3. The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter.
4. The duty of States to co-operate with one another in accordance with the Charter.
5. The principle of equal rights and self-determination of peoples.
6. The principle of sovereign equality of States.
7. The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter.

The Declaration ends with a general declaration that in their interpretation and application these principles are inter-related and each principle should be construed in the context of the other principles. It also states that nothing in the Declaration shall be construed as prejudicing the provisions of the Charter or the rights and duties of member States under the Charter or the rights of peoples under the Charter taking into account the elaboration of the rights as contained in the Declaration.

The Declaration the General Assembly contains this final statement:-

'The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.'

Self-Determination as expressed in the Declaration:

Under this principle the Declaration states as follows:-

'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.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle in order:

- (a) To promote friendly relations and co-operation among States; and
- (b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status

freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus processed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country'.

Historical and Current Development of the Right to Self Determination:

These principles have been further considered by the United Nations in the *Report on the right to Self determination - Historical and Current Development on the basis of UN Instruments*⁵ The Report considered the inter-relationship

⁵ Report of Aurelieu Cristescu - Special Rapporteur of Sub Commission on Prevent of Discrimination and Protection of Minorities

between the principle of equal rights and self-determination of peoples and other principles of international law concerning friendly relations and co-operation among States, and it is pertinent to consider the following points from the Report:-

(1) Status of the Principle:

'The principle of equal rights and self-determination of peoples is of especial importance among the principles of international law concerning friendly relations and co-operation among States, because its application is essential to the existence of a community of nations in which respect for the other principles can be guaranteed. It may be rightly regarded, in accordance with the Charter of the United Nations, as the most important of the principles of international law concerning friendly relations and co-operation among States. It cannot be subordinated to any other principles, because it is an essential component of contemporary international law. This principle underlies all law and all justice; it is based on the right to collective free expression. It also underlies the fundamental rights of States, such as the right to sovereignty or to independence'.⁶

The Report also commented that there is a close inter-dependence between equal rights and self-determination of peoples, on the one hand, and sovereign equality on the other hand in that each of these principles affects the application of the other.⁷

⁶ ibid para 155

⁷ ibid para 163

(ii) **Sovereign equality:**

Sovereign equality implies the right of every State to establish its own political, social and economic structure, without interference or intimidation from outside, in the best interests of its inhabitants; that is to say, in accordance with the right of its people to self-determination.⁸ The Report specifically comments that:-

'The independence of the State implies an independent domestic policy; in other words, independent in political, economic, social and cultural organisation.'⁹

The Report comments that the principles of sovereign equality on the one hand, and the principle of equal rights and self-determination of peoples on the other hand, prohibit any encroachment upon the authority of the State in the matters of the jurisdiction of States within their frontiers being exercised equally and exclusively over all inhabitants, nationals and aliens alike, and over the whole territory. The Report comments that it is the duty of all States to refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another country.

⁸ ibid para 170

⁹ ibid

'Such behaviour is incompatible with the purposes and principles of the Charter, as is pointed out in the Declaration on the Granting of Independence to Colonial countries and Peoples'¹⁰

(iii) **Secession:**

'The principle of equal rights and self-determination, as laid down in the Charter of the United Nations, does not grant an unlimited right of secession to populations living in the territory of an independent sovereign State, and such a right cannot be regarded as a provision of *lex lata*. A right of secession supported or encouraged by foreign States would clearly be in glaring contradiction with the respect for territorial integrity on which the principle of sovereign equality of States is based. It would be dangerous to recognise in international law a general and unlimited right of secession, for the rights of a population living in a territory of a given State are governed by the national constitutional law of that State. The right of secession unquestionably exists, however, in a special, but very important case; that of peoples, territories and entities subjugated in violation of international law. In such cases, the peoples concerned have the right to regain their freedom and constitute themselves independent sovereign States. Moreover, the international community is mature enough now to be able to distinguish between genuine self-determination and self-determination used to disguise an act of secession.'¹¹

(iv) **Territorial Integrity:**

The Report emphasizes that a State should refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State paying special regard to paragraph 6 of the *Declaration on the Granting of*

¹⁰ *ibid* para 172

¹¹ *ibid* para 173

Independence to Colonial Countries and Peoples which makes it clear that the principle of equal rights and self-determination is not to be applied to parts of the territory of a sovereign state.

'Such a provision is needed in order to prevent the principle from being applied in favour of secessionist movements in independent states.

'The principle of sovereign equality imposes on States the duty of respecting the institutions of other States and not impeding their progress'¹²

(v) **Non-Intervention:**

'The principle of self-determination should not be used to disguise direct intervention in the form of support for ethnic groups living in neighbouring countries. The subversive intrigues and indirect intervention with the principle of self-determination has sometimes been used to camouflage or also to be condemned; such activities not only run counter to the principles of the Charter of the United Nations and to the principle of the solidarity of peoples, but also constitute a threat to international peace and security.'¹³

'The principle of non-intervention simply safeguards the freedom of choice without which a State and an independent people cannot exist as such - a freedom often symbolised by the expression 'domestic jurisdiction' of a State. This freedom has both internal and external aspects, and consists principally in the liberty of the State to choose its own political, social, economic and legal system (subject, of course, to respect for human rights and fundamental freedoms) and to decide whether or not to maintain diplomatic relations with another State, whether or not to conclude agreements, and whether or not to join regional or international organisations. If freedom of choice were confined to essentials, it could be said that in principle the State should be

¹² *ibid* paras 174 and 175

¹³ *ibid* para 181

protected against any action by another State designed to impose a particular choice on it.¹⁴

(vi) **Minority Rights:**

There is of course the question of to what extent a minority within any State has itself the right of self-determination, but the Report is quite explicit on this issue:-

'The principle of equal rights and self-determination of peoples should serve to unite peoples on a voluntary and democratic basis, not to break up existing national entities. It is necessary to avoid any formulation of the principle which might be interpreted as widening its scope and making it applicable to peoples who already form part of an independent sovereign State. To do otherwise would be to encourage the secessionist movements in sovereign States, and might serve as a pretext for endangering the national unity and territorial integrity of sovereign States. In the case of national minorities, their right to self-determination finds expression in the people's general rights to self determination, in the rights established by Article 27 of the International Convention on Civil and Political Rights and in other rights and fundamental freedoms. These rights are examined in an important study undertaken by the Sub Commission on Prevention of Discrimination and Protection of Minorities entitled '*Study of the rights of Persons belonging to Ethnic, Religious and Linguistic Minorities*' prepared by Mr Francesco Capotorti, Special Rapporteur of the Sub Commission. The principle of self-determination should not be misused. It should not be invoked to call in question the frontiers established between States. It should not be applied in conjunction with the principle of sovereign independence in such a way as to cause a disruption of national unity and territorial integrity. Every State has a

¹⁴ ibid para 190

duty to refrain from any action which could have such a result.'¹⁵

(vii) **Collective Rights:**

The Report further comments that the right of peoples to self-determination is not an individual right; it is a collective right which, in the International Covenants on Human Rights, has been distinguished from other individual rights placed before them and proclaimed as a universal and perpetual right.¹⁶

The Report refers to the main instruments of the United Nations, the Charter the International Covenants on Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the Declaration on the Principles of International Law concerning Friendly Relations as identifying the right of self determination as 'a right of peoples'¹⁷

'The principles of equal rights and self-determination of peoples is part of the group of human rights and fundamental freedoms. Its recognition is the ineluctable logical consequence of the recognition of human rights. They cannot be separated. Without political freedom, civil rights cannot be fully respected, and the equality of all human beings before the law cannot be ensured unless the

¹⁵ ibid para 209

¹⁶ ibid para 214

¹⁷ ibid para 215

nations to which those human beings belong are also recognised as equal. Consequently the right of peoples to self-determination has the same universal validity as other human rights.¹⁸

(viii) **Enforcement:**

Although the principle of self-determination has been embodied in the Charter and reaffirmed and developed in the several fundamental instruments of the United Nations and in other international treaties and agreements it is continually being violated in various parts of the world.

'The international scene affords many examples of denial of the right of peoples to self-determination. This situation represents a threat to international peace, security and co-operation. Whatever the way in which the principle of equal rights and self determination of peoples is violated, it is the duty of all States and of the international community as a whole to ensure strict respect for this principle.'¹⁹

Conclusions:

The present position in international law regarding the right of self determination has been summed up by Professor Brownlie on the basis that it is a legal principle albeit that its precise ramifications in all contexts are not yet worked out, and it is difficult to do justice to the problems in a small compass. Nevertheless he suggests that the subject has three aspects. First, the principle informs and complements general

¹⁸ ibid para 220

¹⁹ ibid para 235

principles of international law such as State sovereignty, the equality of States and the equality of peoples within a State. Thus self-determination is employed in conjunction with the principle of non-intervention in relation to the use of force and otherwise. Secondly, the concept of self-determination has been applied in the different context of economic self determination. (He has in mind the *United Nations Declaration on Permanent Sovereignty over Natural Resources* adopted by the General Assembly of the United Nations on 14 December 1962). Thirdly, he suggests that the principle has certain corollaries which may tend to legitimate acts in pursuance of the principle which otherwise in international law would be illegitimate, unlawful or ineffective.²⁰

Dated this 4th day of June 1992

Cleaver Fulton & Rankin
Solicitors
50 Bedford Street
BELFAST
BT2 7FW

Tel 0232 - 243141

Fax 0232 - 249096

A1/NCF/UUC03 - 04.06.1992

²⁰ op cit pages 597 to 598