Article

The Legal and Social Complexities Relating to Self-Determination: Internal and External Self-Determination and Obligation *Erga Omnes*

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Abstract

It is generally agreed that peoples have a right to self-determination. The right to self-determination for all peoples was enshrined in the founding Charter of the United Nations. Self-determination has been the subject of extensive debate and controversy. The controversy is embedded in the content of the right as well as who can assert the right as it continues to evolve in the arena of customary and international law. Self-determination has two dimensions, namely internal and external. Internal self-determination is the right of the people of a state to govern themselves without any interference, whereas external self-determination is the right of peoples to control their own political well-being and to be free of any alien domination, including in the formation of their own independent state. According to current interpretation, the right of groups to govern themselves is increasingly inter-woven within the human rights ambit, in particular with the rights of minorities and indigenous peoples. The question is whether self-determination has the characteristics of reaching the status of a peremptory norm from which there is no derogation.

Keywords: self-determination; human rights; peoples; internal; external; *erga omnes*

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Introduction

Historically, the concept of self-determination can be traced back to the Declaration of Independence of the United States of America.[1] However, this concept truly found its footing in the international community in the wake of the First World War,[2] in two competing ideological forms reflecting the differing worldviews of the East and the West. It was during the 1919 Paris Peace Conference that the colonial powers debated and agreed that the principle of self-determination cannot be granted to all people, but only by states, which are regarded as being politically mature. This principle thus took on a specific tone in that it could only be exercised by a sovereign nation which has been defined along ethno-national terms.[3] This allowed for the abuse of the principle, and led to minority groups not being recognised by the international community, resulting in them deriving no benefit from the application of the principle. Some majority groups in certain states used this accepted application of the right to exclude minorities and, to a certain degree, to rationalise genocide.[4] It was only after the Second World War that the principle was reviewed and reformulated. Although the principle of self-determination was not expressly mentioned by the League of Nations (now the United Nations) as an international right afforded to all persons, it was partially recognised by Article 22 of the Covenant of the League of Nations, which was based on the doctrine of sovereignty.[5] This omission was not repeated in the Charter of the UN,

1 Daniel Thürer and Thomas Burri, 'Self-Determination' in *Max Planck Encyclopaedia of Public International Law* (OUP 2008) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873 > accessed 3 April 2019. The Declaration of Independence was approved and issued on 4 July 1776. It comprised three distinct parts, aimed at achieving separate concepts. The first of these was aimed at advancing a theoretical case for revolution, human rights and national sovereignty. Not much of the document was geared towards human rights, but it was the following famous words that gave it much of its historical significance: 'We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.'

2 'Timeline of World War I' (History Learning Site) <http://www.historylearningsite.co> accessed 22 April 2019. The First World War commenced on 28 July 1914 and ended on 11 November 1918. The League of Nations formally came into existence on 10 January 1920 (as a result of the ratification by forty-two nations of the Covenant of the League of Nations).

3 Maja Spanu, 'What is Self-Determination Today? Using History to Understand International Relations' (E-international relations, 17 April 2014) <http://www.e-ir.info/2014/04/17/what-is-self-determination-using-history-to-understand-international-relations> accessed 3 August 2019.

4 Examples are the Nazis and fascists.

5 The Covenant of the League of Nations, 28 June 1919. Article 22 states that '[in the case of] colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.'

in that the right to self-determination was expressly incorporated into both articles 1(2) and 55.[6]

Although the concept of self-determination was incorporated into international instruments, it did not amount to a legally binding principle in the international arena.[7] The primary reason for this was the difficulty in understanding what the principle entails and to whom it applies. It was described in a context that would amount to the promotion of equal rights for *peoples*, but the understanding of who constitutes peoples proved to be vague and complex.[8] The UN Charter was not clear on what the definition of peoples should be, nor did it give an explanation of what self-determination should be. It is exactly this dilemma that made the interpretation and application of self-determination as a legal norm difficult, and subject to a variety of interpretations. Could international organs be expected to fully understand, integrate, apply, or implement this legal norm if it is left to self-interpretation? The logical deduction would be that various states would interpret the right to self-determination in a manner which would suit their interests, and such an interpretation would not necessarily be applied in a manner that would promote the rights and interests of minority groups. It could be argued that this lack of understanding and lack of uniformity of the right to self-determination as a principle was in need of development.[9]

Nawaz states that the initial stages of the right to self-determination were regarded as peoples' right to exercise self-governance.[10] This movement towards the realisation and recognition of national peoples' right to determine their own affiliations and status gave rise to the development of a value system within the international community which accords a special status to the prohibition of aggression, the promotion of human rights, and the protection of the environment.[11] This article attempts to answer questions such as the following: Can self-determination be used as a tool to promote the right to statehood? And is it necessary to understand to whom it finds application? Who are the 'peoples' referred to by the UN Charter? Is it necessary to understand to whom an

6 The League of Nations was the forerunner of the UN. The League of Nations was established in 1919 under the Treaty of Versailles. Article 1(2) of the UN Charter states that the purpose of the UN is to 'develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace.' Article 55 states that the UN shall promote certain objectives '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 principal of equal rights and self-determination of peoples.'

7 Thürer and Burri (n 1).

8 Salvatore Senese, 'Human Rights and Peoples' Rights: Views from North and South' (1989) 16(1) Social Justice 19–25.

9 The step-by-step historical development of the principle of self-determination will not be discussed in this article.

10 MK Nawaz, 'The Meaning and Range of the Principle of Self-Determination' (1965) 82 Duke LJ 84.

11 John Dugard, *International Law: A South African Perspective* (4th edn, Juta 2013) 38.

international legal norm applies if one aims at applying it? And, lastly, there is the debate surrounding the issue of internal and external self-determination.

The Modern-Day Development of the Principle of Self-Determination: Understanding It in Terms of Internal and External Self-Determination

The basic historical understanding of the right to self-determination, as provided for by international customary law, was that it should promote equal rights for all people, and that it should include them having the right to autonomy and the right to determine their own affiliations as a state. The promotion of state territorial integrity and the ability to conduct one's affairs in a manner deemed appropriate without any external political control is important. The vision of self-determination has been regarded as some sort of super rule in that it stood apart from other rights, and in that it was that part of international norms that gave effect to political power within states.[12] The understanding throughout the development of self-determination as a principle of international customary law was that it is a right only granted to a population as a whole, and only to those territories or states which were recognised by the international community.[13] This perceived grand and noble ideal has, however, been the subject of varying interpretations by different actors. Although a comprehensive definition and explanation is not available in international instruments, it is accepted as forming part of codified international standards.[14] From a historical perspective, this norm was strongly rooted in positive law in that it was regarded as a political and moral principle, but deviation from this stance has amounted to it being embedded as a legal right.[15]

The understanding and application of self-determination has developed significantly over the years, to the extent that it has been sub-divided into two different forms, namely internal and external self-determination. External self-determination refers to the full legal independence of oppressed people based upon their basic rights not being respected by the state in which they live, at times accompanied by gross human rights abuses.[16] These oppressed people ultimately have the right to external self-determination, which includes the right to secession[17] and independence.[18] In reality,

12 Henry J Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (2nd edn, Oxford University Press 2000) 1248.

13 Adina Preda, 'The Principle of Self-Determination and National Minorities' (2003) 27 Dialectical Anthropology 205.

14 ibid.

15 ibid.

16 Milena Sterio, 'On the Right to External Self-Determination: "Selfistans", Secession, and the Great Powers' Rule' (2010) 19 Minnesota JIL 137.

17 ibid.

18 *Oxford Student's Dictionary* (2nd edn, Oxford University Press 2007) 937. 'Secession' is defined as the action of seceding from membership of an organisation. 'Seceding' is defined as formally withdrawing from membership of an organisation. In the context of this article, secession is referred

external self-determination provides a platform for oppressed people to break away from what is termed the 'mother state', and to form an independent state. The discussion surrounding the development of self-determination from external to internal self-determination can, however, not take place without understanding the basis of external self-determination. It is also necessary to understand why external self-determination does not form the basis of the discussion surrounding the right to self-determination, for example in terms of Palestinian minorities residing within Israel.

The right to self-determination has, since the 1970s, been steadily reconceptualised to a right that no longer applies to minority groups wanting to be free from colonialism and to form an independent state.[19] There was no difficulty in understanding its application, especially since its use was mainly focused around decolonisation and peoples breaking free from colonialism.[20] This was, however, not the only context in which it was applied. Following devastating wars, certain sovereign states consented to secession by certain minority and indigenous groups.[21] The broader understanding of self-determination as that of external self-determination and its application to secession has led to the emergence and development of what is known today as internal self-determination. Although there might still be instances where conflict arises as a result of colonialism, this is not the focus of this article.

The application of internal self-determination seems less likely to invoke negativity and fear in a state, especially since discussions around secession are regarded as taboo in the international community. The chances of tension between various groups are still possible, but internal self-determination provides a platform for discussion based on the recognition of peoples and their rights. A particular problem has emerged, however, amongst states and others, namely that minority groups cannot be viewed as *peoples* for purposes of the various international human right instruments, and that the right to self-determination therefore does not find application to such groups.[22] This argument will be explored later in this article, as it is vital to determining, for example, whether self-determination can be applied to Palestinian minorities in Israel. The immediate focus is thus to understand what is meant by internal self-determination.

According to Sterio, internal self-determination is based upon the political and social rights of people, with an emphasis on respect for such people's cultural, linguistic,

to as the process whereby minority groups withdraw from a political state and seek political independence.

19 Jan Klabbers, 'The Right to Be Taken Seriously: Self-Determination in International Law' (2006) 28 Human Rights Quarterly 189.

20 Ernest Titanji, 'The Right of Indigenous Peoples to Self-Determination Versus Secession: One Coin, Two Faces?' (2009) 9 African Human Rights LJ 59.

21 ibid. The author cites the examples of Eritrea seceding from Ethiopia, and Bangladesh from Pakistan. The secessions followed protracted and bloody civil wars.

22 Ulrike Barten, *Minorities, Minority Rights and Internal Self-Determination* (Springer 2015) 4.

religious, social, and political rights.[23] This understanding has flowed from the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.[24] This declaration was inspired by the International Covenant on Civil and Political Rights (ICCPR) in that it seeks to promote and protect the rights of persons who belong to particular ethnic, religious, and linguistic minority groups.[25] In a General Recommendation, the Committee on the Elimination of Racial Discrimination stated that self-determination is distinguishable and comprises two aspects, namely internal and external self-determination.[26] What was paramount in this recommendation was that the committee stated that internal self-determination establishes the link whereby all peoples, as citizens, should be able to freely take part in the public affairs of the state, and at any level. Distinct reference was made to the International Convention on the Elimination of All Forms of Racial Discrimination, and that governments should ensure that all members of the population have an opportunity to engage in public affairs, regardless of their race, colour, descent, national origins, or ethnic origins.[27] This recognition should be incorporated into local and national government policy, and should reflect the international position as established by the various international instruments. A key aspect of this particular recommendation was that such minority groups, as citizens of the state, should be empowered to lead productive and dignified lives whereby they are able to equally share in the fruits of national growth.[28] The consequence of such integration and recognition should be extended to preserving the various cultural, religious, and linguistic identities of those citizens. It is exactly for this reason that Dugard, an *ad hoc* judge of the International Court of Justice (ICJ), stated that internal self-determination is the 'preferred species' of self-determination in that it is not in conflict with the territorial integrity of a state.[29]

This developed and extended form of self-determination is being interpreted as peoples' international right to be taken seriously as far as it relates to their internal affairs.[30] There is a focus on the right to participate in the democratic governance of the state according to constitutional principles and rights. There has been an important shift from self-determination in the context of decolonisation to that of application internally within a state without secession. The ICJ, in its Advisory Opinion titled *Legal Consequences of*

23 Sterio (n 16).

24 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 United Nations General Assembly Resolution 47/135 (1992) <http://www.ohchr.org> accessed 10 November 2020.

25 International Covenant on Civil and Political Rights, 1966 United Nations General Assembly Resolution 2200A (XXI) (1966) <http://www.ohchr.org> accessed 10 November 2020.

26 General Recommendation 21, The Right to Self-Determination (Forty-eighth session, 1996) UN Doc A/51/18 Annex VIII at 125 (1996) <http://www.ohchr.org> accessed 10 November 2020.

27 International Convention on the Elimination of All Forms of Racial Discrimination, 1966 United Nations General Assembly Resolution 2106 (XX) 1965 <http://www.ohchr.org> accessed 10 November 2020.

28 General Recommendation 21 (n 26).

29 Dugard (n 11) 100–102.

30 Thürer and Burri (n 1).

the Construction of a Wall in the Occupied Palestinian Territory, stated that it has for the very first time, without any further legal analysis, adopted the second interpretation of self-determination as being the post-colonial perspective of self-determination.[31] It is this modern adaptation of self-determination, better known as internal self-determination, that has seen people seeking independence and recognition within the borders of a state. As was illustrated in the ruling of the Supreme Court of Canada in *Reference re Secession of Quebec*, the recognition of a people's right to self-determination is best fulfilled by considering internal self-determination as opposed to separating from a state.[32] The latter should only be considered in exceptional circumstances, and only where the people are exposed to grave human rights abuses. It is the fundamental basis of this secondary form of self-determination that allows for the equal representation of people within a state without any distinction being drawn as to their race, ethnicity, culture, or colour.

A key feature of self-determination is that it is an evolving right that does not have an absolute character. The modern global arena has necessitated the reinterpretation and extension of this universal right, allowing for it to be interpreted beyond the confines of the international instruments it is reflected in. It was the lack of a distinct definition in these instruments which has seen the right being applied in the realm of international security and stability, as reflected in Article 1 of the UN Charter, and of human rights as provided for in Articles 55 and 56 of the UN Charter.[33] The focus is ultimately on promoting peace and stability within a state and, in doing so, on protecting and promoting the various cultural and religious rights of the people within such a state. In maintaining an objective view, it has to be conceded that this right is still subject to abuse.

Internal Self-Determination in Relation to Minority Groups: Do They Qualify as Peoples?

Minority rights have been the subject of much international debate and have consequently been recognised and regulated.[34] This is especially true in the context of human rights norms. It is essential to understand who minority groups are and in which manner they are protected, especially since international law offers no distinct definition.[35] The lack of a concrete definition has led to much controversy. The meaning of what constitute minorities will be explored based on various academic papers. The

31 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 883.

32 Roya Hanna, 'Right to Self-Determination In Re Secession of Quebec' (1999) 23(1) Maryland JIL 231–246.

33 Thürer and Burri (n 1).

34 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (n 24).

35 Steiner (n 12) 1291.

focus of this article is that of internal self-determination, and as already established, this international right offers protection to *peoples* within a State. It is important to establish a link between those mentioned peoples and minority groups, because in doing so it can be successfully deduced that the various international instruments making provision for the right to self-determination will apply to minority groups. In the absence of a workable definition of what constitutes a minority, the best definition comes from Capotorti, Special Rapporteur to the UN. Capotorti defined a minority as a 'group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, religion or language.'[36]

This definition is in line with Steiner,[37] who states that the definition of what constitutes a minority appears to be based upon two broad conceptual understandings. Minorities can be explained by considering them according to both objective and subjective criteria. Objectively, the group must be a non-dominant minority (therefore a relatively small portion of the overall population) and the members of this group should all share various distinctive characteristics, such as their race, religion, or language. From a subjective point of view, minorities will be recognised as such if most members of that group view themselves as belonging to that group and wish to remain part of that group. What is paramount from these formulations is that such a group has to be in a non-dominant position; there have to be shared ethnic, religious, or linguistic identities; and the person him- or herself has to identify with and accept him- or herself as being part of such a group, which is separated from mainstream society.

The question remains: Are minority groups regarded as peoples for purposes of the various international covenants attributed to the right to self-determination? Peoples have been defined as a whole population of a state as opposed to a minority group which, by common understanding, constitutes only a portion of a population and cannot, as a result, be regarded as the holder of the right to self-determination.[38] It is such an interpretation that has called for the recognition of the right to self-determination for national minorities. An argument based on such groups also enjoying the benefit of these specific international rights is important, especially in the light of modern-day developments of self-determination as regards both external and internal self-determination.

The logical deduction would be that one cannot treat minority groups any differently to the majority national population, and that such differentiation cannot be tolerated in an

36 Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* UN Doc E/CN.4/Sub.2/384/Rev.1 (1977) <http://www.icj-cij.org> accessed 29 November 2020.

37 Steiner (n 12) 1200–1291.

38 Preda (n 13) 207.

international legal framework where much has been done to promote the rights and interests of all people. Brownlie stated that the distinction between 'people', 'nations', 'minorities' and 'indigenous populations' is rather meaningless, in the sense that all these words refer to the same thing, namely a community which has a distinct character and its character depends on a number of criteria which may appear in combination.[39] Brownlie argues further that the meaning of self-determination has been broadened to such an extent that coupling it with the distinct character of a particular community would be a logical deduction.[40] If logic prevails, minority groups should enjoy a similar status domestically to that of states, which derive benefit and protection from international affairs and covenants.[41]

The overarching fear has always been that of secession and the impact it would have on international peace and stability. Allowing minority groups to be recognised as peoples for purposes of deriving benefit under the right to self-determination would lead to an increase in the number of minority groups who wish to separate from the mother state. It may be argued that the development of self-determination beyond secession has allowed for the recognition of minority rights, in the sense that minority groups should also be afforded international recognition as peoples for purposes of protecting their cultural, linguistic, and religious rights.

External self-determination was an effective measure during the course of decolonisation, but the expansion of self-determination to that of internal self-determination has paved the way for minority groups to be recognised as the holders of the right to internal self-determination, as provided for by the various international human rights covenants. Minority groups within a state should be the holders of both political and social rights, especially since the focus has shifted beyond secession. Denying minorities the right to self-determination solely based on the fear of separation and the disruption of internal peace and stability is an outdated perspective, and efforts should be made to give equal recognition to minorities as peoples for purposes of giving expression to international human rights law.

The categorisation of minority groups within a particular state is usually based on their ethnic and indigenous roots, but this understanding gives no insight into the political, economic, or cultural situations which such minority groups face.[42] The diversity of such groups can easily lead to tension with the dominant majority, based on rejection, fear, or misunderstanding. It is, however, very plausible that majority and minority groups can integrate harmoniously, with mutual understanding and respect for cultural, religious, and linguistic differences. It is a lack of understanding and acceptance of such minorities which has resulted in various conflicts, something which has affected

39 Ian Brownlie, 'Rights of Peoples in International Law' (1985) 33 Bulletin of the Australian Society of Legal Philosophy.

40 ibid.

41 Preda (n 13) 214.

42 Steiner (n 12) 1290.

international politics and sparked international debates.[43] It has become evident that efforts to quell such tensions would greatly benefit the international community and promote international peace and stability.

Beyani states that minorities are without a doubt a specifically protected category of people in international law.[44] The importance attached to the protection of such minorities is paramount when wanting to achieve or maintain peace within a state. A further important component for recognising the rights of minority groups is that this allows them to maintain their cultural identity as inherited from their predecessors, and in doing so their beliefs, customs, traditions, and values are protected for future generations. It has become evident that in order to give effect to the protection of minority groups, international human rights instruments would have to be recognised by states which house such minority groups.[45]

Taking into account the fact that self-determination has developed beyond the scope of secession, and that minority rights have become an international priority and deserving of protection, it can be put forward that minority groups should be accepted as peoples for purposes of the various international human rights instruments making provision for the right to self-determination. The focus should be to give effect to minority groups' cultural, religious, linguistic, political, and social rights; denying them protection by way of various conventions would amount to segregation and human rights violations. For the purposes of protection and recognition of the right to internal self-determination, the various elements comprising the right will be compared to that of basic human rights as provided for by the UN and other international human rights organisations and instruments.

The Relationship between Internal Self-Determination and Human Rights

The understanding that self-determination has evolved in the modern-day international context to that of internal self-determination, recognising the political and social rights of people within a state, has prompted a discussion relating to human rights.[46] In

43 ibid.

44 Chaloka Beyani, *Human Rights Standards and the Free Movement of People within States* (Oxford University Press 2002) 61.

45 The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948, General Assembly resolution 217 A, as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

46 As illustrated earlier in this article, minorities are also regarded as peoples for purposes of self-determination and its use in various international instruments.

equating the two spheres contained within international law, this article aims to highlight the significant importance of the right to self-determination of minorities within a state, and that any derogation from its principles may amount to a violation of the provisions of international human rights instruments. The level of respect for people's cultural, linguistic, religious, social, and political rights as envisioned by internal self-determination is directly in line with the objectives of securing and maintaining regional and international peace and security as a result of the protection and promotion of human rights. Human rights are universal in nature; each and every person is born with and possesses certain basic human rights regardless of their status, gender, race, religious and cultural beliefs, ethnicity, or background. Political, social, economic, and cultural rights are of equal importance and indivisible, and all persons should enjoy these rights and make decisions as to how they wish their lives to be affected by the rights.[47] The accountability of states as to the violation of these human rights can only be discussed once its history has been placed into context.

Human rights were propelled to the forefront of the global community in the wake of the Second World War. The UN was established soon afterwards, in reaction to many sectors of the global community wanting human rights to be generally accepted in order to protect citizens from the various and far-reaching abuses of their governments, and in order to hold such governments accountable for the poor treatment of the people living within their borders.[48] This resulted in the drafting of the UN Charter in 1945, and in 1948 the UDHR was passed by a General Assembly Resolution.[49] The principal objective of international law remains the protection of the human rights of the individual against abuse by his or her own government.[50]

The UDHR is not directly binding on states, since it is not a treaty; however, it can be argued that that its provisions have been incorporated into customary international law,

47 United Nations Population Fund, 'Human Rights Principles' <http://www.unfpa.org> accessed 20 September 2019.

48 Centre for Research Libraries, 'A Short History of Human Rights' <https://www1.umn.edu> accessed 26 September 2019. The idea of human rights emerged more strongly after the Second World War. The extermination by Nazi Germany of over six million Jews, Sinti, and Romani (gypsies), homosexuals, and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo after the Second World War, and officials from the defeated countries were punished for committing war crimes, 'crimes against peace', and 'crimes against humanity'. Governments then committed themselves to establishing the UN, with the primary goal of bolstering international peace and preventing conflict. People wanted to ensure that never again would anyone be unjustly denied life, freedom, food, shelter, and nationality.

49 See United Nations, 'The Universal Declaration of Human Rights: History of the Document' <http://www.un.org> accessed 26 September 2019. The UN established an Economic and Social Council in 1946. The UDHR was aimed at complimenting the UN Charter and intended to serve as a road map to guarantee the rights of every individual in the world by way of an International Bill of Rights. The UDHR was taken up at the first session of the General Assembly and the Economic and Social Council, and ultimately passed as General Assembly Resolution 217 A (III) of 10 December 1948.

50 Dugard (n 11) 320.

which is binding on all member states. The UDHR also serves as one of the principal guiding documents for all UN political organs as far as it relates to the interpretation of human rights and the UN Charter.[51] This declaration advances subjective first- and second-generation rights and, as proclaimed in its preamble, serves as a benchmark for the realisation of human rights.[52] As a result of the UDHR, two legally binding human rights treaties were adopted. In 1966 the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the General Assembly, giving legal effect to the recognition of both first- and second-generation human rights.[53]

First-generation rights are designed to protect the individual against unwarranted state interference, and are thus referred to as civil and political rights. These rights are essentially designed to promote liberty and to secure active participation in political life.[54] These individualistic fundamental rights include the right to life, liberty, and security; freedom from torture and slavery; freedom of opinion, expression, thought, conscience, and religion; freedom of association and assembly; the right to a fair public trial; freedom of movement and residence; and freedom of the right to own property and to not be arbitrarily deprived of one's right to property.[55] Economic and social rights, better known as second-generation rights, are related to equality, and are designed to prohibit a state or government from interfering with an individual's various rights. It is also aimed at obliging states to improve the social circumstances of its people by securing their right to work; education; and a reasonable standard of living, food, shelter, and health care.[56] Of interest when dealing with second-generation rights is that they are aimed at securing comparable conditions and treatment for different members of society. It may be put forward that the state is not forced to immediately comply with these rights, but should rather employ measures to give effect to the rights progressively,

51 ibid.

52 Globalization101, 'Three Generations of Human Rights' <http://www.globalization101> accessed 26 September 2019; L Stockton, 'Three Generations of Human Rights' <http://loki.stockton.edu> accessed 26 September 2018. First-generation rights, also known as civil-political rights, date back to the eighteenth century and were designed to protect the individual against state interference. Second-generation rights, also known as socio-economic rights, date back to the nineteenth century and came about as a response to widespread poverty in the wake of the Industrial Revolution.

53 United Nations, 'The Foundation of International Human Rights Law' <http://www.un.org> accessed 26 September 2019. The ICCPR and ICESCR entered into force in 1976 and developed most of the rights already enshrined in the UDHR. The body of international human rights law continues to grow and evolve, and in doing so it is expanding on the fundamental rights and freedoms as contained in the UDHR and International Bill of Rights. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) GA Res 2200A (XXI) Art 27 (ICESCR).

54 Stockton (n 52).

55 Adrian Cornescu, 'The Generations of Human Rights' *Days of Law: The Conference Proceedings* (Brno: Masaryk University 2009) 1–11.

56 ibid.

within the realm of the available resources.[57] What these covenants essentially portray is a basic objective which has to be achieved over a period of time.

First- and second-generation human rights are, however, subjective rights from which no derogation is permitted. International covenants in the form of the ICCPR and ICESCR ensure that states develop, promote, and protect basic social, economic, and political rights, but the subject matter of this article is the possible violation of minority rights in relation to the right to internal self-determination. It has already been suggested by the argument above that minority groups are entitled to the right to self-determination in that they qualify as peoples as referred to in the beforementioned covenants. This suggests that the rights afforded to these minorities are not individualistic in nature, but rather collective. The recognition of human rights is afforded to all of humanity, and therefore all persons within the borders of a state should be privy to these rights, but if first- and second-generation rights are subjective in nature, how is effect given to the rights of minority groups as a collective?

Third-generation rights have recently been recognised as a category of human rights with the intention of realising both first- and second-generation rights.[58] As a collective right, it lays the foundation for the previous two groups, but it has not yet been formulated into international law.[59] It has only been acknowledged in international agreements and treaties, and formulated in regional instruments.[60] Also known as solidarity rights, it includes the right to self-determination; the right to peace; the right to development; the right to humanitarian assistance; environmental law; and the rights of sexual, ethnic, religious, and linguistic minorities.[61] Focusing on self-determination, third-generation rights would make allowance for people to determine their own political status, as well as their own economic, social, and cultural development. It is essential to highlight that this form of self-determination has broadened the scope of self-determination, beyond external self-determination and secession from a state, to internal self-determination, where these rights can be exercised within the mother state. This would eliminate governments' fear that minority groups would seek their own sovereignty under the cover of the right to secession as provided for by external self-determination.

57 ibid.

58 Stockton (n 52). Third-generation rights (collective rights) were first articulated in the second half of the twentieth century.

59 Cornescu (n 55).

60 Globalization101 (n 52). Third-generation rights have been incorporated into documents advancing aspirational 'soft law', such as the 1992 Rio Declaration on Environment and Development, and the 1994 Draft Declaration of Indigenous People's Rights. It also features prominently in the African Charter on Human and People's Rights. Some countries also have constitutional mechanisms for safeguarding third-generation rights, such as the Hungarian Parliamentary Commissioner for Future Generations, the Parliament of Finland's Committee for the Future, and the erstwhile Commission for Future Generations in the Knesset in Israel.

61 Cornescu (n 55).

Taking into account the individualistic nature of first- and second-generation human rights, and the protection it affords an individual against state interference, it may be correctly argued that such protection can also be afforded to a collective in terms of third-generation rights, and in particular the right to internal self-determination. If a state is to recognise the civil-political (first-generation) and socio-economic (second-generation) rights of individual/s, it will overlap with the collective-developmental (third-generation) rights of a group in that the individual invariably forms part of that group. If an individual is the holder of the right to employment and an adequate income, as provided for in second-generation rights, then he or she would form the sum total of a group of persons who should be able to enjoy the right to benefit from economic growth and development, as provided for by third-generation rights. If the objective is to not recognise the collective human rights of groups of persons, and therefore minorities, then the individuals comprising this group would be denied their basic first- and second-generation rights. Doing so would breed socially disadvantaged groups within society, which could ultimately lead to a disruption of internal peace and stability. There is a unique and necessary interplay between all three generations of rights, and one can be overemphasised to the detriment of another. Social, economic, and political stability within a state can be achieved through the recognition and interplay of all three generations of rights.

In the context of the discussion of self-determination, there has to be a collective recognition of the rights of minority groups residing within a state. The pursuit of economic, social, and cultural recognition and development encompasses various subjective rights, in the form of first- and second-generation human rights, but also the recognition of third-generation collective rights. The Commission in the Arbitration Commission of the Conference on Yugoslavia (the Badinter Arbitration Committee) in its opinion stated that the communities would have the right to see their identity recognised, and to benefit from 'all the human rights and fundamental freedoms recognized in international law.'[62] More importantly though, and relevant to the opinion of this article, is that the Commission noted that Article 1 of the two 1966 international covenants on human rights stated that 'the principle of the right to self-determination serves to safeguard human rights.'[63] Every person of a community may choose the group they wish to belong to, and in doing so, each individual of that group should be privy to various human rights, regardless of whether such a right emanates from either one of the three generations of rights as discussed above. The right to internal self-determination should therefore be considered an essential basic human right which should be enjoyed by all peoples, including minority groups. The importance of this

62 Maurizio Ragazzi, 'Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia' (1992) 31(6) International Legal Materials 1488–1526. The Arbitration Commission of the Conference on Yugoslavia (Badinter Arbitration Committee) (27 August 1991).

63 Alain Pellet, 'The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples' (1992) 3(1) European JIL 179.

cannot be overemphasised: 'If the right of self-determination of people as a group is not secured, then the basic right of each individual in the group will not be secured.'[64]

The Current and Modern Understanding of Internal Self-Determination: Can It Be Elevated to That of a Peremptory Norm, Namely *Jus Cogens*?

International law as a whole comprises a number of conventions, treaties, and declarations, but amongst the multitude of codified laws, customary international law and general principles still find application.[65] It has been suggested that there is no longer a need for customary international law, as treaties are a sufficient source for recourse in the international arena.[66] Steiner argues that this is an incorrect position to assume in that international human rights instruments, custom, and general principles are of equal importance, although in varying degrees.[67] Arguments surrounding international human rights should comprise a cocktail of both contemporary and customary international law. There has, however, been a development in relation to the normative and value system of these international rights which suggests the existence of a hierarchy. International law comprises law that is binding on all states, which is effectively known as *universal* international law, as well as *particular* international law, which only finds application to specific states.[68] A further category has been identified, namely that of general international law, which is binding upon a great number of states.[69]

64 Munakata Takayuki, 'Human Rights, the Right to Self-Determination, and the Right to Freedom' (1999) International Journal of Peace Studies.

65 Nieto-Navia, an international judge and legal scholar, has stated that international law lacks a formal structure as found in municipal laws of states. It is rather described as a 'set of possible laws for ordering the world,' as based on the will of all or many nations. The international community is therefore characterised by the lack of a defined sovereign or formal structure which can be compared to a national jurisdiction or system. This has, however, not had an effect on the regulation of states, in that states are now regulated by their own national rules as well as the developing laws of the international community. Rafael Nieto-Navia, 'International Peremptory Norms (*Jus Cogens*) and International Humanitarian Law' in Lal Chand Vohrah, Fausto Pocar, Yvonne Featherstone, and others (eds), *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* Vol 5 (Brill 2003).

66 Steiner (n 12) 224.

67 ibid.

68 Lassa Oppenheim, *Oppenheim's International Law Volume 1: Peace* (edited by Sir R Jennings and Sir A Watts) (9th edn, Oxford University Press 1992) 4. Universal international law is international law that is binding on most, if not all, states. It governs the international community in general and forms part of the greater part of customary law. It is distinguishable from particular and general international law in that the latter law is usually contained in treaties which are only binding upon a few or most states.

69 Irawato Handayani, 'Concept and Position of Peremptory Norms (*Jus Cogens*) in International Law: A Peremptory Study' (2019) 5(2) Hasanuddin LR 235–252.

Internal self-determination is a species of self-determination as envisioned by the UN Charter and other international human rights instruments and covenants. This squarely places it within the confines of international law as provided for by a convention, but an assessment has to be made of the role it plays in international customary law, and where on the hierarchy of rights it lies. The international norms of obligation *erga omnes* and *jus cogens* will be assessed and a determination made as to which norm best describes internal self-determination, and whether it is binding on states from a universal, general, or particular perspective.

Dugard has rightly pointed out that there have been developments within international law in that a value system has been established which sees certain international acts being frowned upon and prohibited.[70] This development has given rise to two new concepts within international law, feeding into the hierarchal status and leading to international law evolving into a system where some norms enjoy a higher status than others.[71] Taking account of what may and may not be done is essential in the application of customary international law, especially since customary international law is still of great importance in the international community today.

Jus cogens originates from the Vienna Convention on the Law of Treaties and has been articulated in Article 53 thereto. It provides that a 'treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law … a peremptory norm … is a norm accepted and recognized by the international community of States as a norm from which no derogation is permitted.'[72] The discussion relating to the Vienna Convention was that there are certain community laws which are binding, and any violation thereof would render the specific objective of the treaty void. It was based on this that peremptory norms were formulated into law, as reflected by Article 53. The difficulty was to identify which international rules should be afforded peremptory status, as was also pointed out by Dugard.[73] The lack of clear criteria to identify which international laws are deserving of having the character of *jus cogens* has had the effect of most general international rules not having a peremptory character, and states effectively entering into treaties which would circumvent any binding clauses from international law.[74]

The definition of *jus cogens* in the Vienna Convention has led to certain criteria being identified as essential when elevating a norm in international law to that of a norm of *jus cogens*. Nieto-Navia states that the following prerequisites should be applied:[75] the norm must be a norm of *general* (*universal*) international law. General (*universal*)

70 Dugard (n 11) 38.
71 ibid.
72 Vienna Convention on the Law of Treaties (with annex), 1969 UN Doc A/CONF 39/26 1969 Art 53, 18.
73 Dugard (n 11) 38.
74 Nieto-Navia (n 65).
75 ibid.

international law is binding on most, if not all States, and it governs the international community in general. For a norm to be accepted as *jus cogens* it should not be directed towards satisfying the needs of individuals, but rather that of the international community. It is aimed at satisfying humanitarian purposes as opposed to the resolution of individual interest, and as such the norm must be accepted and recognised by the international community of states as a whole. This acceptance could be either express or implied.[76] This does not mean that each and every state has to agree to the elevation of a norm to the status of *jus cogens*, but rather that some (or a minority of states) cannot unilaterally create *jus cogens* and impose a decision and interpretation on the majority. The decision regarding which norms ought to be elevated should emanate from general treaties, international custom, or general principles of law (as recognised by civilised nations).[77]

Based on the identifying criteria, there are currently some examples of what constitutes international laws which are peremptory in nature. According to Dugard,[78] the prohibition of aggression is accepted by most states as being peremptory, and widespread support for a peremptory nature is found in instances of acts involving slavery, genocide, discrimination, torture, and a denial of the right to self-determination. The International Law Commission (ILC) refrained from including a list of specific examples of *jus cogens* in the Vienna Convention. It only did so in its report, and only as a broad indication of what the most obvious rules of *jus cogens* should be. The examples listed in the report are similar to those illustrated by Dugard, and additional examples include the prohibition of the use of force, and states co-operating in the suppression of certain acts of piracy.

Focusing on the denial of the right to self-determination as a peremptory norm, as illustrated in the text by Dugard,[79] it becomes relevant to assess whether this norm is inclusive of the modern-day development of self-determination as both external and internal self-determination. As was previously illustrated, international law is constantly evolving, and it becomes relevant to consider whether such development is inclusive of peremptory norms, especially since there are already accepted examples of what constitute norms of *jus cogens*. The Vienna Convention, in Article 64, has made provision for the 'emergence of new peremptory norm[s] of general international law.'[80] Nieto-Navia, an international judge and legal scholar, argues that a new norm of *jus cogens* will only be recognised, and subsequently accepted and recognised by the entire international community, if it is in fact a totally new concept.[81] The new customary

76 The inclusion of the word 'whole' signifies that no state can veto a decision to have a norm classified as peremptory.

77 The norm must be one from which no derogation is permitted, and which can only be modified by another general international law which shares the same character.

78 Dugard (n 11).

79 ibid 41.

80 Vienna Convention (n 72) 22.

81 Nieto-Navia (n 65).

international rule would have to be accepted as a whole. In light of this and of Nieto-Navia's assertion, the question arises as to whether the modern-day developments of self-determination would be accepted as *jus cogens*. The submission is that external self-determination, as a right of peoples to secede from a state based on the desire to be decolonised and free of gross human rights abuses, would definitely be justified as peremptory, but it would seem to be a stretch of the imagination to accord internal self-determination the same status. Internal self-determination, as illustrated above, is concerned with the political, social, economic, and cultural rights of peoples and, in the context of this article, minority groups, and although it has been equated to basic human rights it does not seem plausible that the international community as a collective would agree to the recognition of such rights being deserving of peremptory status. It may be argued that the protection of such rights can be effectively achieved by international treaties and that this should rather be explored in the context of obligation *erga omnes* as opposed to *jus cogens*.[82] The submission is therefore that the right to internal self-determination of minorities residing within a state cannot be regarded as a peremptory norm; however, that does not equate to it being undeserving of protection.

This submission prompts the exploration of *erga omnes* obligations and whether this, as opposed to *jus cogens*, can find application to internal self-determination. The creation of obligations for states under international law has been formulated in various treaties, and is the driving force behind the implementation of the UN Charter, but such conventions could be subject to certain states choosing not to ratify said treaty or to across-the-board reservations.[83] This is problematic, especially from an application point of view, in that the purpose of the treaty is lost and there is, subsequently, no uniform standard of application. This brings into play *erga omnes* obligations, because the obligations identified under this international legal norm mean that all states have a vested interest in the fulfilment thereof, because the subject matter in question is of great importance to the international community as a whole.[84] Any breach of such an international obligation would be of concern not only to the specific state being the subject of victimisation, but to all members of the international community.[85] The obligations formulated by various treaties have to be implemented into domestic law, or at least by way of administrative measures, and this is done to further the best interests of the international community as a whole as opposed to only those party countries contracting by way of a multilateral treaty. Zemanek, a legal scholar, categorically stated that any infringement of any of the obligations created by the treaty does not in fact hurt a specific contracting party, but rather the common purpose of the treaty and all other states.[86]

82 Handayani (n 69).

83 Karl Zemanek, 'New Trends in the Enforcement of Erga Omnes Obligations' 4 Max Planck UNYB (2000) z5.

84 *Oxford Dictionary of Law* (9th edn, Oxford University Press 2009) 205.

85 Handayani (n 69).

86 Zemanek (n 83) 6.

The ICJ, in *Barcelona Traction Light and Power Company, Ltd*, held that a distinction should be drawn between the obligations to a state and to the international community as a whole and obligations towards another state insofar as diplomatic protection is afforded.[87] It was held that these international obligations are the concern of all states, and because the rights involved are of such importance, they are regarded as obligations *erga omnes*. The court, in the *East Timor* case, held that the right to self-determination is an *erga omnes* obligation.[88] This was further elaborated upon in the Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.[89] The ICJ, in the latter case, held that Israel had an obligation *erga omnes* to respect the right of the Palestinian people to self-determination as well as obligations contained under international humanitarian law.

Conclusion

The recognition of self-determination as an international obligation imposed on states as a whole is important in light of this article. As previously submitted, the likelihood of internal self-determination being elevated to a peremptory norm is very unlikely, but this developed form of self-determination is surely deserving of protection by all states. There is a significant need to address the various wrongs associated with the lack of recognition of the human rights contained in this form of self-determination, and recognising it as an obligation *erga omnes* would prompt non-injured states to initiate legal action against a violating state for failure to recognise the rights of minorities. Any state which prides itself on the promotion of human rights will not tolerate the violation of any international obligation, especially if such a violation has a negative impact on the basic human rights of minority groups. It is submitted that the right to internal self-determination is a recognised legal norm under the auspices of *erga omnes* obligations, and that it is deserving of protection by all states.

87 *Barcelona Traction Light and Power Company, Ltd (Belgium v Spain)* [1970] ICJ Rep 3 <http://www.icj-cij.org> accessed 19 December 2020.

88 *East Timor (Portugal v Australia)* (Advisory Opinion) [1995] ICJ Rep 90. In this case, the court dealt with the application of Portugal against Australia, according to which Australia had, by its conduct, failed to observe the obligation to respect the duties and powers of Portugal as the administering power, and the right to self-determination and related rights. The court held that the right to self-determination is irreproachable, since it evolved from the UN Charter, and has an *erga omnes* character.

89 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (n 31) 136. The court, in this manner, directly referred to an *erga omnes* obligation as opposed to an *erga omnes* character, as in the *East Timor* opinion. Based on the timeline of the respective cases discussed here and in note 92, there has been a development as to the recognition and use of *erga omnes* as an international obligation, resulting in broader acceptance and an important legal norm derived from the initial stages of interpretation in the *Barcelona Traction* case.

References

The Arbitration Commission of the Conference on Yugoslavia (Badinter Arbitration Committee) (27 August 1991).

Barten U, *Minorities, Minority Rights and Internal Self-Determination* (Springer 2015) <https://doi.org/10.1007/978-3-319-08876-1>

Beyani C, *Human Rights Standards and the Free Movement of People within States* (Oxford University Press 2002).

Brownlie I, 'Rights of Peoples in International Law' (1985) 33 Bulletin of the Australian Society of Legal Philosophy.

Capotorti F, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* UN Doc E/CN4/Sub 2/384/Rev 1 (1977).

Centre for Research Libraries, 'A Short History of Human Rights' <https://www1.umn.edu> accessed 26 September 2019.

Cornescu A, 'The Generations of Human Rights' *Days of Law: The Conference Proceedings* (Brno: Masaryk University 2009).

Dugard J, *International Law: A South African Perspective* (4th edn, Juta 2013).

Globalization101, 'Three Generations of Human Rights' <http://www.globalization101> accessed 26 September 2019.

Handayani I, 'Concept and Position of Peremptory Norms (*Jus Cogens*) in International Law: A Peremptory Study' (2019) 5(2) Hasanuddin Law Review <https://doi.org/10.20956/halrev.v5i2.1709>

Hanna R, 'Right to Self-Determination In Re Secession of Quebec' (1999) 23(1) Maryland Journal of International Law.

Klabbers J, 'The Right to be Taken Seriously: Self-Determination in International Law' (2006) 28 Human Rights Quarterly <https://doi.org/10.1353/hrq.2006.0007>

Nawaz MK, 'The Meaning and Range of the Principle of Self-determination' (1965) 82 Duke Law Journal <https://doi.org/10.2307/1371019>

Nieto-Navia R, 'International Peremptory Norms (*Jus Cogens*) and International Humanitarian Law' in Lal Chand Vohrah, Fausto Pocar, Yvonne Featherstone, and others (eds), *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* Vol 5 (Brill 2003)

Oppenheim L, *Oppenheim's International Law Volume 1: Peace* (edited by Sir R Jennings and Sir A Watts) (9th edn, Oxford University Press 1992).

Oxford Dictionary of Law (9th edn, Oxford University Press 2009).

Oxford Student's Dictionary (2nd edn, Oxford University Press 2007).

Preda A, 'The Principle of Self-Determination and National Minorities' (2003) 27 Dialectical Anthropology <https://doi.org/10.1023/B:DIAL.0000006104.35016.80>

Ragazzi M, 'Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia' (1992) 31(6) International Legal Materials <https://doi.org/10.1017/S0020782900015850>

Senese S, 'Human Rights and Peoples' Rights: Views from North and South' (1989) 16(1) Social Justice.

Spanu M, 'What Is Self-determination Today? Using History to Understand International Relations' (E-international relations, 17 April 2014) <http://www.e-ir.info/2014/04/17/what-is-self-determination-using-history-to-understand-international-relations> accessed 3 August 2019.

Steiner HJ and Alston P, *International Human Rights in Context: Law, Politics, Morals* (2nd edn, Oxford University Press 2000).

Sterio M, 'On the Right to External Self-Determination: "Selfistans," Secession, and the Great Powers Rule' (2010) 19 Minnesota Journal of International Law.

Stockton L, 'Three Generations of Human Rights' <http://loki.stockton.edu> accessed 26 September 2019.

Takayuki M, 'Human Rights, the Right to Self-Determination, and the Right to Freedom' (1999) International Journal of Peace Studies.

Thürer D and urri T, 'Self-Determination' in *Max Planck Encyclopaedia of Public International Law* (OUP 2008) <https://doi.org/10.1093/law:epil/9780199231690/e873>

'Timeline of World War I' (History Learning Site) <http://www.historylearningsite.co> accessed 22 April 2018.

Titanji ED, 'The Right of Indigenous Peoples to Self-Determination versus Secession: One Coin, Two Faces?' (2009) 9 African Human Rights Law Journal.

United Nations, 'The Foundation of International Human Rights Law' <http://www.un.org> accessed 26 September 2019.

United Nations, 'The Universal Declaration of Human Rights: History of the Document' http://www.un.org> accessed 26 September 2019.

United Nations Population Fund, 'Human Rights Principles' <http://www.unfpa.org> accessed 20 September 2018.

Zemanek K, 'New Trends in the Enforcement of Erga Omnes Obligations' (2000) 4 Max Planck Yearbook of United Nations Law <https://doi.org/10.1163/187574100X00016>

Case Law

Barcelona Traction Light and Power Company, Ltd (Belgium v Spain) [1970] ICJ Rep 3.

East Timor (Portugal v Australia) (Advisory Opinion) [1995] ICJ Rep 90.

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 883.

Treaties and Conventions

Charter of the United Nations and Statute of the International Court of Justice (San Francisco 1945).

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 United Nations General Assembly Resolution 47/135 (1992) <http://www.un.org> accessed 26 September 2019.

General Recommendation 21, The Right to Self-Determination (Forty-eighth session, 1996) UN Doc A/51/18 Annex VIII at 125 (1996) <http://www.un.org> (accessed 26 September 2019.

International Convention on the Elimination of All Forms of Racial Discrimination, 1966 United Nations General Assembly Resolution 2106 (XX) 1965 <http://www.un.org> accessed 26 September 2019.

International Covenant on Civil and Political Rights, 1966 United Nations General Assembly Resolution 2200A (XXI) (1966) <http://www.ohchr.org> accessed 10 November 2020.

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) GA Res 2200A (XXI) Art 27.

Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

The Covenant of the League of Nations, 28 June 1919.

Vienna Convention on the Law of Treaties (with annex), 1969 UN Doc A/CONF 39/26 1969.