



SOCIO-PHILOSOPHICAL, ETHNO-CULTURAL AND TERRITORIAL-GEOGRAPHICAL CONTEXTS OF THE RIGHT TO SELF-DETERMINATION

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Received Date: 10.09.2023 Revised Date: 13.10.2023 Accepted Date: 03.11.2023

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ABSTRACT

The Right to Self-Determination is one of the most disputable and polysemantic principles in inter-ethnic and international relations. It is impossible to understand its² meaning, forms of implementation and probable consequences out of the social, philosophical, ethnocultural, territorial and geographic context. In the post-colonial era, its² value was not decreased; on the contrary, its impact was raised when exploring the relevant connections to be applied in interacting with the concept of “Indigenous Peoples” the way it was developed by the UN. The formation of new societies (and states) has been a permanent phenomenon since the existence of the world. Namibia, East Timor, Southern Sudan – all acts of self-determination recognized and supported by the international community. The case of Brexit can be considered similar to the aforementioned examples. Along with them, there are many other cases that are subject of dispute and frictions, which are not yet over or are still only processes in the making which will sooner or later appear in various parts of our planet. In view of the political and legal framework, the overall territory of the earth has more or less been completely distributed among sovereign independent states; nevertheless, the question of self-determination is a highly conflictual one. The range of opportunities that existed to solve such conflicts has already been tried and tested within the system of the UN. In a lengthy process the concepts of “Indigenous Peoples”, “Internal Self-Determination”, “Free, Prior and Informed Consent” and “constructive agreements” between Indigenous Peoples and states were developed

Keywords: Self-Determination, Equal Rights, the People, the Ethnos, Indigenous Peoples, Colonialism, Post-Colonialism

1. INTRODUCTION

The question of the right of peoples to self-determination has been discussed in one form or another in political and scholarly literature for several centuries. After the decolonization process ended, the urgency to implement the right to self-determination seemed to diminish for a while, and theoretical discussions of self-determination receded to the margins of scientific thought. However, the upheavals of the 1990s - the collapse of Yugoslavia and the USSR - brought the issue back into the spotlight.

Subsequently, it became clear that, like many other social processes, the formation of new societies (and states) is a permanent phenomenon that accompanies the world throughout its existence. Namibia, East Timor, South Sudan are acts of self-determination supported and recognized by the international community, and the case of Brexit is similar to them. Along with these, there are many other cases that are the subject of dispute and



controversy, processes that are incomplete or just beginning to emerge, and that take place in many different parts of the world.

Does such an analysis of an established process have any practical relevance? From our point of view, it certainly does, for it makes it possible to assess the likelihood and possible content of similar acts in the future, in the post-colonial era, and to determine the readiness of social institutions, including international ones, for such processes.

2. INTERNATIONAL LEGAL FRAMEWORK

The Declaration on Principles of International Law formulated the principle of equal rights and self-determination of peoples in the context of the second half of the 20th century, and its main thrust was to provide an international legal basis for the liberation of peoples in former European colonies and mandated territories. It can be stated that this historical task, in general, was fulfilled. However, its very implementation in practice showed how complicated and ambiguous this principle is in relation to its preconditions, content and consequences.¹

¹ The principle of equal rights and self-determination of peoples

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 possessed 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.

1. Declaration on principles of international law, friendly relations and co-operation among states in accordance with the Charter of the United Nations. URL:

<https://www.un.org/ruleoflaw/files/3dda1f104.pdf>



The implementation of the article of the declaration, which is (like any legal formula) a general, universal model of behavior of the subjects of this law, in reality turned out to be dependent on many specific historical factors, constituting the social, ethnic, cultural and, in no small measure, the geographic context of this or that act of self-determination. In this regard, in our view, it is impossible to consider this principle (in the generally accepted understanding - the guiding idea that permeates with its action other norms and principles) without its meta-analysis, that is, its inclusion in the broader content and semantic relations, including philosophical, primarily in the context of subject-object and subject-subject relations as well as value and behavioral guidelines of social actors.

Before we begin to examine the issue on the merits, it should be mentioned that this article will mainly use sources directly from the United Nations or affiliated with it (opinions of researchers and experts, members of UN collegial bodies, international agencies, non-governmental organizations - UN partners, etc.). In so doing, it is possible to follow from the beginning how the issue developed within the UN itself over many decades, analysing both relevant documents and practical decisions of the UN itself on this issue, and not just taking into account the opinions of an endless number of authors who are eager to express themselves on the topic.

Major Problems in Understanding

The most controversial points in the recognition and implementation of this principle are the following two questions:

1. How does the principle of self-determination of peoples relate to the principle of the territorial integrity of states?
2. Who has the right of self-determination?

In respect of the first question, there is not and cannot be any theoretical difficulty as the relevant article is quite clear: "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 possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. ". The debate on this issue, including in academic circles, is in reality of a propaganda-political nature, serving the position of States that deny and de facto impede the realization of the right of self-determination. Or, at best, violating the principle of the priority of international law over their domestic law.

If there is a theoretical problem here, it would lie in the interpretation of the wording "governments representing, without distinction as to race, creed or color, the entire people living in the territory".

What does it mean to "represent all the people living in the territory"? This raises two sub-questions:

- What does it mean "to represent"? How is this very "representation of the people" accomplished? In what ways or by what procedures?
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- What or who are the "people" living in the territory? How does this relate to the fact that "the people" should be represented without distinction of race, creed, or color?

This is essentially the question, "who has the right of self-determination"? Any totality of people living in a given territory at a given moment or period of time, or something else?

The question of representation has been differently dealt with in political science and jurisprudence. In the history of mankind, after the emergence of the state as a social institution (and this has been repeated countless times during the emergence of each particular state), the people as an aggregate of subjects have quite rarely conferred the power of representation on "their" state by freely expressing the people's will. Usually the exercise of power, established de facto from above, was subsequently legitimized and consolidated by some procedures invented by the state itself. Among the powers appropriated by the state was also the representation of the people both before other states and peoples and before various parts of its own people. Sometimes, at some transitional stages (after a conquest, a change of dynasty, a successful rebellion, or a palace coup, etc.) the people or their pre-censored representatives took part in such procedures. But for the most part, in the known history of human societies, they did not.

The main problems in implementation are:

Hence the way in which the problem could be solved: a government that represents all the people living in a given territory without distinction of race, creed or color. Since governments in most modern states are created or at least controlled by parliaments, this means the full participation of the subordinate people, regardless of their ethnic differences (race, creed, color) in parliamentary elections on the same terms as the formerly dominant people.

From this point on, the question for the formerly dominant people was whether to create a new government, which, as a result of elections, would also include representatives of the former subordinate people; and whether it was thus possible to preserve the unity of the state territory, the state itself, and, in fact, become one people together with the former "subordinate" subjects. Should a new identity be created, a new people? Or should one preserve itself as the only people of the state, allowing the other people to determine their own destiny, that is, to create their own government, with a state, and to accept the separation of the territory in which this people resides? Retain the former metropolis as its own nation-state, giving up dominion over the peoples who would otherwise have to participate in the creation of a government along with the former masters, or merge with them along with their territories?

The appropriate answers vary. What were the factors that influenced and influence the merging of different peoples into one, or the free separation of a formerly subordinated people from their former "masters" in the case of self-determination?

A socio-philosophical analysis of the conditions of self-determination

I would immediately like to exclude from the analysis such factors as direct police or military suppression, economic insolvency, dependence or backwardness, collaborationism of the elite of the self-determining people, the international conjuncture and other similar circumstances, which are a form of overt or disguised denial of the right



of self-determination and a continuation of former relations between these peoples in a somewhat tampered form.

It is a question of genuine voluntariness and freedom of choice of conduct, both of the people of the metropolis and of the people of the colony or "colonial outskirts".

What is it that drives a formerly subaltern people to choose "to establish a sovereign and independent state, to freely join or unite with an independent state, or to establish any other political status freely determined by the people"?

At the same time, what prompts the people and government of the metropolis to agree or disagree of such behavior on the part of the self-determining people?

In answering these questions, one would have to abstract from the real diversity of situations, especially since there may in reality be more than two or more peoples, both on the part of the metropolis and on the part of the subjects of self-determination. In order to see the situation more clearly, we will have to confine ourselves to the relationship between the two peoples. The results could also be extrapolated to a greater or lesser extent to more complex situations.

It seems that the main factors determining the choice can include the following:

1. What is the size of each of these nations?
2. Do the two peoples live mixed together in the same territory, in neighboring territories adjacent to one another, or in territories geographically more or less distant from one another?
3. To what extent does each of them realize, or rather feel, that they are a separate people with the right of their own free choice among the existing options?

The Numbers Factor

If the formerly dominant people are roughly equal or superior in number to a people who were not previously or adequately represented in the government of the metropolitan state, it is quite possible that the metropolitan people will find a way to introduce or otherwise ensure representation in their government of the formerly subordinate people, regardless of their differences in race, creed, or color. This would require the people of the metropolis to change their own identity by first "fusing" politically with the formerly subjugated people, and then by the inevitable gradual racial, cultural, linguistic, religious, and economic convergence, perhaps even mixing with the formerly subjugated people. In fact, this means stepping on the path of "creating" a new people in the territory or territories previously inhabited by the two peoples. It is one that will have a government representing, without distinction as to race, creed or color, the entire population inhabiting the territory.

Such a choice, however, also depends on the formerly subjugated people. Whether it needs "free accession to an independent state" or union with it. Perhaps, for various reasons, it will want the latter, and then it is already a question of determining the legal form of relations within such a joint state.

But perhaps not. Consequently, the former metropolitan people will have to determine whether they are ready to recognize the free self-determination of a previously subordinated people (then there are no problems other than technical ones), or whether they will imitate the representation of a previously subordinated people in their government,



recognizing *de jure* the right to self-determination, but *de facto* maintaining their domination over a previously subordinated people in some disguised form.

If the people of the former metropolis are noticeably smaller than the formerly subjugated people, such inclusion of the formerly subjugated people in their government (and other state structures) carries even greater risks for them. It is quite possible that power of the state will objectively, as a result of elections, if not immediately, come under the control of the previously subjugated people. The process of merging in different spheres will also take place. However, the result may be a change in the identity of the newly created people of these territories to such an extent that the former people of the metropolis will actually lose its own. Especially if it is not two peoples, but numerous formerly subordinated peoples, many times greater in number than the people of the metropolis. In such circumstances, it is likely that the former people of the metropolis would rather agree to the political separation from the formerly subjugated peoples than to a merger with them. This does not rule out a "special" relationship between the former metropolis and the new independent states that were formerly part of the empire.

Thus, the relationship between the former metropolitan people and the formerly subjugated people is set by their willingness and ability to maintain or strengthen their subjectivity or to lose it.

Territorial factor

It seems to be of secondary importance compared to the numerical factor. However, as practice shows, the situation of "starting" self-determination is easiest in the case of geographical remoteness of territories between the people of the former metropolis and the people of the former colony. This was demonstrated in the process of decolonization.

In the case of contiguous or partially overlapping territories, everything is much more complicated, up to the phenomenon of secondary or so-called "internal" colonization, when one of the formerly subordinated peoples, having realized its right to secession and the creation of an independent state, immediately replaces the metropolis in relations with other formerly subordinated peoples, declaring them part of itself and their territories part of its state.

In the relations between the people of this "new" metropolis and the newly subjugated peoples, the same numerical factor analyzed above plays an essential role.

Finally, the most complicated situation is when a previously dominant people and a previously subjugated people coexist wholly or partially on the same territory. Here one can hardly speak of the classical "metropolis-colony" relationship, although it could begin with this. Usually it occurs in the case of active settlement of the territory of a previously subjugated people by representatives of the people from the metropolis. Historically, it is sufficient to compare the formation of European colonies in the Americas and in Africa or Asia, or the centuries-long spread of the Russian state to the South and East. However, there also exist phenomena beyond the general trends (South Africa).

Here, too, different variants of self-determination are possible. In cases where a previously subjugated people or peoples retain, for various reasons, a majority in comparison with the natives of the metropolis and the metropolitan people themselves, their self-determination is most often realized in the form of the creation of their own states (with a possible continuation in the form of secondary or internal colonialism). However, the people who originally inhabited and owned the territory may be transformed by



genocide [Convention, http://www.un.org/ru/documents/decl_conv/conventions/genocide.shtml] or ethnocide [Ethnocide, <http://www.oxforddictionaries.com/definition/english/ethnocide>] into a numerical minority. In such cases, the self-determination of the people of a colony is not understood as the self-determination of the original people of that territory, but as the separation of the population of the colony, consisting mainly of the descendants of the natives of the metropolis from the "old homeland" – the metropolis. At the same time, the situation of the originally subjugated people often not only does not improve, but drastically worsens, as the struggle for resources, possession and management of the territory of the former colony intensifies. In fact, two peoples are formed in the territory: a people of the descendants of the colonists and an indigenous people. The descendants of the colonists distinguish themselves politically, morally, and later culturally from the people of the former metropolis, and simultaneously claim legitimate and, if possible, full possession of the territory on which their own state and government are now established. Their desire not to "share" either power or territory with the former metropolis is logically continued and supplemented by their unwillingness to share with the indigenous people, who represent from their point of view an even greater threat than the former metropolis, which has already renounced its claims to the former colony.

The subject of the right of self-determination in the post-colonial era

Leaving aside the factors of violence and oppression, the question of the subject of self-determination in such situations arises. Can it be considered a realized people living in a given territory or not? If so, how does this relate to the norm of representation in government of a people regardless of race, creed, or color? If not, can this right be exercised and how exactly?

In the absence of the practice and intent of violence against the indigenous people, there are still two fundamental paths for the newly formed people of the former colony: government of all, regardless of race, creed, or color. This approach is effectively the same as in the case of a metropolitan people, but not within a "former metropolis + former colony" state, but within a "former colony - newly independent state" state. From the outside, this looks more like the implementation of the principle of equal rights of citizens of the state than the implementation of the principle of equal rights and self-determination of peoples.

But this raises the question of whether the indigenous people want the same thing, for whom this means "free accession to or association with an independent state," after which their own subjectivity dissolves into a "new historical community"? Would it not prefer the creation of a sovereign and independent state, or the establishment of any other political status freely determined by the people?

In reality, much here depends (with the good will of both parties concerned) on the territorial distribution of these peoples. Is there a compact territory in which the indigenous people constitute a majority, or at least a substantial segment of the population? Is this territory sufficient to ensure the resource and logistical existence of this indigenous people, etc.? If not, can such a territory be organized or recreated?

In law, and in natural sciences, there is the concept of physical impossibility. In this case, it is decisive. Is it physically possible? If not, at first glance, there remains only the historically well-known variant of "Reconquista" (or vice versa, the expulsion of the Crusaders from the Middle East), with all the ensuing consequences.



Is a different path possible, both for the "new" people of the former colony and for the indigenous people? Implicitly, this is contained in the formulation "the establishment of any other political status. This seemingly unintelligible formulation in fact opens up a whole field of possibilities, still insufficiently explored and exploited.

3. CONCLUSION

The debate on the right to self-determination has been going on for decades, not so much in academic circles, but in political forums of all kinds. Indigenous representatives have contributed greatly to the understanding of possible forms of self-determination, especially since the establishment of the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights in 1983. It met annually for a five-day session in early August, lasted until 2006, and gave rise to a number of new UN bodies dealing with some aspect of indigenous peoples' lives. It had an offshoot, the Working Group on the Draft Declaration on the Rights of Indigenous Peoples, which from 1995 to 2005 elaborated the draft Declaration, and in 2007 the UN General Assembly adopted the Declaration. The UN Permanent Forum on Indigenous Issues was established in 2003, taking over from the Working Groups. The research work is now primarily concentrated in the UN Expert Mechanism on the Rights of Indigenous Peoples. It is the many years of discussion in the meetings of these UN bodies, involving both indigenous representatives and those of governments, international organizations, research institutions, and experts, that have produced a wealth of material on the topic of indigenous self-determination, which is yet to be fully explored and understood [Strengthening Partnership, <http://www.ohchr.org/Documents/Issues/IPeoples/Seminars/Treaties/BP5.pdf>. Final Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/154/86/PDF/G1115486.pdf?OpenElement>].

As the practice of the last decade shows, not only has the principle of equal rights of peoples and self-determination not been relegated to the archives of social and political history, but it is constantly in demand and implemented in forms that no one thought of a few decades ago. This shows the lag between scientific socio-philosophical analysis and the needs of life.

Under the existing political-legal conditions of an almost complete division of the Earth's territory among sovereign independent states, the question of self-determination is heightened by conflict. However, the unwillingness or inability to conduct an advanced scientific and methodological analysis of this problem does nothing to improve the situation. Rather, on the contrary, it does not allow for a timely release of tension and finding ways to resolve the growing conflicts peacefully and justly.

The range of existing possibilities has already been developed in the experience of the United Nations system in the process of working on the concepts of "indigenous peoples," "internal self-determination" [Declaration, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf], "Free, Prior and Informed Consent" [Free, Prior and Informed Consent, <http://www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedconsent.pdf>, Parshuram Tamang, 2005] and "constructive arrangements" [Expert Seminar, <http://www.ohchr.org/EN/Issues/IPeoples/Pages/SeminarTreaties.aspx>] between



indigenous peoples and states. Some elements of this experience are already beginning to be applied in practice, both within the UN system and in some states, allowing them to address their accumulated contradictions and problems [Implementation, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/154/84/PDF/G1115484.pdf?OpenElement>].

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