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"LEGALITY OF USE OF FORCE IN SECESSIONIST ATTEMPTS."

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ABSTRACT

Human society has always been a diverse mix of various peoples, each having its own identity. The conflict between different peoples is not a new phenomenon. The development of the ideas of State and a central power governing it intensified this phenomenon as the power to regulate States cannot always be shared among the various peoples comprising its population. The neglect or even oppression of a people by the dominant group leads the neglected to want to have their State. More often than not, the parent state does not approve of such desires and tries to suppress such feelings. This suppression, most of the time, results in the oppressed taking to the use of force to achieve their goal.

This paper seeks to examine whether there are provisions in international law allowing for the use of force according to the right of self-determination of peoples by analyzing a few examples of the use of force in secessionist attempts in the recent past. Finally, the provisions allowing for power in two different contexts are examined.

Keywords: International law, secession, use of force.

INTRODUCTION.

One of the most striking features of 20th-century geopolitics was the formation of quite a few independent states; some gaining independence from their colonizers and others, breaking away from their mother state. While some of these sovereign states were products of bilateral agreements between themselves and the State they broke away from, others had to go through a more chaotic process, involving unilateral declaration of independence from the mother state. Secession is the process by which a particular group seeks to separate itself from the State to which it belongs and to create a new State. When a State confers independence on a specific territory and people consensually, through legislation or other means, it is known as devolution or grant of independence.[1] Thus, only those states that had broken away from the mother state unilaterally are said to have seceded.

International law regarding secession can be said to be a conflict between States' territorial integrity and peoples' right to self-determination. The United Nations 'Declaration on the granting of independence to colonial countries and peoples' recognizes the peoples' right to self-determination in the context of decolonization. However, international law does not explicitly identify the same reason in the context of non-colonised secessionist peoples. The theory of 'remedial secession', which considers secession to be the last resort for ending oppression, states that a state which does not possess "*a government representing the whole people belonging to the territory without any distinction*" is not entitled to invoke the principle of territorial integrity when limiting the right of self-determination.[2] The Supreme Court of Canada, in its Quebec case, remarked: "*The other clear case where a right to external self-determination accrues is where a people is subject to alien subjugation, domination or exploitation outside a colonial context*".[3] However, since the observation was not required for the judgement, it remained an obiter dictum.

When there is very little support in international law for secession, and not all countries recognize the peoples' right to self-determination, those were seeking it gets desperate and find other, non-legal ways to achieve their goal. The most common of these other methods is an armed conflict with the mother state.

INSTANCES OF ARMED ATTEMPTS AT SECESSION IN RECENT HISTORY

The post-world war era has seen numerous armed attempts at secession.

BANGLADESH-1971.

After the grant of independence by the British to erstwhile British India and its partition into India and Pakistan, present Bangladesh was a part of Pakistan and was known as East Pakistan. It was only in 1971 that Bangladesh became an independent country. Its secession from Pakistan was a result of a nine months-long war of independence. Bangladesh was not given immediate recognition as an independent state by several states. The first states that recognized it were India, which had a significant role in its secession, and Bhutan. As of February 7th, 1972, thirty countries had given recognition to it.[4] The US recognized its independence on April 4th 1972.[5] It joined the Commonwealth of Nations in 1972, the Organisation of Islamic Cooperation and the United Nations in 1974.[6],[7],[8] It was even elected twice to Security Council, 1979-80 and 2000-01.[9] Pakistan officially recognized Bangladesh only in February 1974, during the 2nd OIC summit held in Lahore.[10] China, in 1975, was the last country to extend recognition to it. [11]

A significant aspect of this armed conflict was the Indian intervention which was the decisive factor in the outcome of the war. Indian involvement in the battle was due to two factors, its hostility towards Pakistan and the massive influx of refugees escaping the conflict in Bangladesh. The Pakistani response to the secessionist attempts in its eastern wing was a brutal one. Thousands if not millions of Bangladeshis were killed and around ten million Bangladeshi fled to India.[12] Although the Indian government intended to intervene in the early stages of the conflict,[13] its official engagement with Pakistan began on December 3rd 1971, after pre-emptive airstrikes on Indian airfields by the Pakistan Air Force.[14] This was immediately followed by the direct Indian entry in the war. The war ended on December 16th, with the surrender of the Pakistani forces in Bangladesh. [15]

The main reason for the use of force by Bangladesh in its secessionist attempt was legitimate, was the sheer amount of persecution of Bengalis by the Pakistani administration.[16] The legitimacy of Indian intervention lies in the fact that India faced a refugee crisis because of the

conflict in the neighbouring region.[17] The pre-emptive airstrikes by Pakistan on Indian soil was a challenge on Indian territorial sovereignty. The withdrawal of Indian troops from Bangladesh after the war ended also influenced the legitimacy of its intervention.[18]

ANGOLA-1975, GUINEA BISSAU-1974 AND MOZAMBIQUE-1975.

The post-World War II period saw rapid decolonization with the support of the United Nations Organisation. Portugal however, refused to give up its colonies, most notably in Africa. Angola, Guinea Bissau and Mozambique were three of such Portuguese colonies. Their struggle for independence was considered to be a single conflict spread across the three provinces rather than three separate battles because they co-occurred and the three territories aided one another. The Portuguese refusal of decolonization drew condemnation from the international community, primarily through the UN.

Angola, before its independence, was one of the numerous Portuguese colonies in Africa. It became an independent state in 1975 after the Angolan war of independence which spanned across over thirteen years. The case of Angolan secession from the Portuguese empire was one of decolonization and thus warranted by international law. The struggle in Angola was fought by three different groups: the MPLA (Popular Movement for Liberation of Angola), the FNLA (National Liberation Front of Angola), and the UNITA (National Movement for the Total Independence of Angola). The three movements received substantial support from outside powers like the USA, Soviet Union, Zaire. The MPLA was backed by communist states, most notably the Soviet Union and Cuba while the FNLA and the UNITA received bulky aid from the USA.[19]

Guinea Bissau or Portuguese Guinea had been a Portuguese colony since the late fifteenth century. The struggle for independence in Guinea Bissau started in 1963 at lasted over eleven years till 1974. The main secessionist movement was led by the African Party for the independence of Guinea and Cape Verde (PAIGC). It received support in its struggle from communist powers, most notably Cuba. Cuba sent doctors, military instructors and mechanics to aid the rebels.[20] The Soviet Union and other communist powers supported the rebels indirectly supplying them with arms and funds.[21]

The struggle for independence in Mozambique was led by the Mozambique Liberation Front (FRELIMO) formed by exiled Mozambicans in the neighbouring country of Tanzania. Their

battle lasted nearly fourteen years. FRELIMO received military assistance (military training, military advisers, weapons) from communist states like the Soviet Union, China, Cuba, East-Germany, other African nations like Algeria, Egypt, and neighbouring Zambia and Tanzania.[22] The Portuguese were supported by the US, Rhodesia and South Africa.[23]

While the secessionists in the Portuguese Colonial War were supported by communist powers, the Portuguese had an alliance with the white minority ruled Rhodesia and South Africa.[24] Rhodesia and South Africa sought to maintain the status quo in southern Africa, i.e. to maintain southern Africa under white control.[25] The UN kept its support for decolonization and supported the secessionists. Several resolutions were passed by the UN General Assembly, condemning the Portuguese resistance to the independence movement such as Resolution 2270 of the UNGA titled ' Question of Territories under Portuguese Administration'[26] and Resolution 2288 titled 'Activities of foreign economic and other interests which are impeding the implementation of Declaration on the Granting of Independence to Colonial Countries and Peoples in Southern Rhodesia, South West Africa and Territories under Portuguese domination and in all other Territories under Colonial domination and efforts to eliminate colonialism, apartheid and racial discrimination in southern Africa.'[27]

The public sentiment domestically in Portugal was against the war. The Portuguese Communist Party was the main opposition to ammunition the military campaign in Africa. Apart from it, university students were the most vocal group against the war.

The colonies became independent with a regime change in Portugal following the Carnation Revolution. The new government ceased military operations in Africa and agreed to a handover of power to African nationalists.

SUPPORT FOR THE USE OF FORCE IN INTERNATIONAL LAW

International law regarding armed conflicts is for the large part based on international treaties and agreements. The foundational treaty of the United Nations, the UN Charter, is full of provisions denouncing the use of force by its members and against them. Article 1(1) of the Charter states that the purpose of the UN is to "*To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and the suppression of acts of aggression or other breaches of the peace…*".[28] In furtherance of the principle of Article 1(1), Article 2(4) states "*All Members shall refrain in*

their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations."[29] This article has been declared to be a founding principle of the UN Charter by the ICJ in 'Armed Activities on the Territory of the Congo (the Democratic Republic of the Congo v. Uganda)'.***[30]*** Article 51 of the Charter recognizes the right of the member states of self-defence, either individually or collectively, if an armed attack occurs against a UN member.[31]

Now, the question is, do the rights and duties promulgated by the Charter apply to non-state groups? This question is answered clearly by several scholars of the subject. John Dugard believes that the provisions in the Charter apply only to States and not mere peoples.[32] Similar views, as stated by Glen Anderson,[33] are shared by other scholars such as Yoram Dinstein[34], Antonio Cassese[35], Rosalyn Higgins.[36] The ICJ, in its Kosovo Advisory Opinion, indicated that the legal provisions aimed at States did not affect unilateral declarations of independence by non-state entities.[37] Thus, the exception to the prohibition of the use of force for secessionist purposes lies in customary law. It would be easier to examine the various provisions in customary international law for the use of force in such situations by looking at 'Unilateral Colonial' secession and 'Unilateral Non-Colonial' secession separately.

SUPPORT FOR THE USE OF FORCE IN THE SECESSION OF THE COLONIZED COUNTRY.

International law is overwhelmingly in favour of decolonization. The years following the Second World War saw the granting of independence by the colonial powers to a lot of their colonies. The majority of the colonies at this point were concentrated in the continents of Asia and Africa. Countries like India, Pakistan, Burma (Myanmar) and Ceylon (Sri Lanka), British colonies, Vietnam, a French colony, and Indonesia, a Dutch colony, were granted independence shortly after the end of the war. Colonies in Africa however, had to wait a bit longer for their freedom; the first countries to gain independence were Sudan, from the United Kingdom, and Morocco and Tunisia, from France, in 1956.

The UN has been taking a pro-decolonization stance ever since its inception. Several UN resolutions and treaties are a testament to this. Resolution 1514 of the UNGA titled, 'Declaration on the granting of independence to colonial countries and peoples' states " the

continued existence of colonialism prevents the development of international economic cooperation and impedes the social, cultural and economic development of dependent peoples and militias against the United Nations ideal of universal peace" and " The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation." in 1960.[38]

The right to use of force to attain freedom from colonial powers is also recognized in various resolutions of the UN General Assembly. Resolution 2270, for instance, in point 12, urges all States to grant the people of the territories under Portuguese domination, moral and material assistance necessary for their independence.[39] This resolution was passed in November 1967, when the Portuguese colonial war in Africa was well underway. Thus, the material assistance required for the independence of the colonies were arms ammunition and other forms of military support. Therefore, it would be fair to say that the resolution legitimized the use of force against the Portuguese in their colonies for secession. Decision 3070 in its point number 2, directly supports the use of energy for the purpose by stating "*reaffirms the legitimacy of the peoples' struggle for from colonial and foreign domination and alien subjugation by all available means including armed struggle"*.[40] Considering the various UN resolutions, it would be fair to conclude that there is no shortage of support for the use of force for decolonization.

SUPPORT FOR THE USE OF FORCE IN A NON-COLONIAL CONTEXT.

While there are explicit provisions in various UN Declarations legitimizing the use of force in the context of decolonization, the same cannot be said for power in a non-colonial context. However, an argument for legitimizing the use of energy in the non-colonial context presented by its advocates is that systematic denial of a peoples' right to self-determine could be said to equate to the rejection of the power of colonized people to independence.[41] Thus, all provisions legitimizing the use of force for decolonization should be applicable for non-colonial secessionist attempts too. Specific UN Declaratory resolutions do recognize the right of peoples to form their independent State. Article 5(4) of the Friendly Relations Declaration mentions that the establishment of a sovereign independent state constitutes one of the modes

of implementing the right of self-determination of peoples.[42] Article 5(5) of the same declaration recognizes the right of peoples to seek support from third-states in pursuit of the exercise of their right to self-determination if the parent State resorts to the use of force against the peoples' right.[43] Even here, it would be logical to reason that faced with oppression from the parent state, and the oppressed peoples would have to indulge in an armed struggle for independence. The support and assistance that they would need in such a situation would be military assistance. The UN Charter itself, under Article 42, authorizes the UNSC to take armed action for the maintenance of international peace.[44] Moreover, the use of force is legitimate if approved by the UNSC.

The Vienna Declaration and Programme of Action, in its Article 2 states, *"the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, following the Charter of the United Nations, to realize their inalienable right of self-determination*." Since it has already been established that the UN Charter does not prohibit the use of force absolutely, 'the right of peoples to take any legitimate action' that is mentioned here can be said to include the use of force.

Article 20 of the African Charter of Human and Peoples' Rights states,

(1) All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

(2) Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

*(3) All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.**[45]***

The second point clearly legitimizes the use of force by colonized or oppressed peoples. It extends the right to non-colonial contexts by making a mention of 'oppressed peoples' along with colonized peoples.

The Convention of the Organisation of Islamic Co-operation on Combating International Terrorism of 1999, in its Article 2(a) states,

*"Peoples' struggle, including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination following the principles of international law shall not be considered a terrorist crime."**[46]***

The 1999 Organisation of African Unity Convention on the Prevention and Combating of Terrorism to has a similar provision in its Article 3. Article 3(1) states,

*"Notwithstanding the provisions of Article 1, the struggle waged by peoples following the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts."**[47]***

1998, Arab Convention on the Suppression of Terror in its Article 2 states,

*"All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, following the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State."**[48]***

All three of the conventions mentioned above make it clear that armed action in pursuance of the right of self-determination is not included in the definition of terrorist acts. However, it is essential to note that in case of the Arab Convention on the Suppression of Terror, Arab States are protected from this exclusion and armed action in pursuance of the same right, which can be said to be 'prejudicing the territorial integrity of any Arab State' would not be included in this exception.

The exclusion of armed action in pursuance of the right of self-determination of peoples from being considered terrorist acts can be said to legitimize the use of force for self-determination. However, these conventions are regional, and thus their reach is limited to such regions.

CONCLUSION.

The research conducted for this paper leads one to draw the following conclusions. First, the attitude of international law is towards secessionist activities is predominantly supportive concerning colonized countries and supportive in the context of non-colonised peoples only if they are severely oppressed. Second, there are very few provisions in international law directly legitimizing the use of force by secessionist movements. The arguments for the legality of their use of force stem from interpretations of provisions in various instruments providing for their right to seek support from other states for the realization of their objective. However, certain international treaties and resolutions do directly legitimize the use of force by secessionist movements, especially for decolonization. There do exist exceptions in international law, to the prevention of the use of force, allowing for its use in secessionist movements when the peoples are oppressed, and a humanitarian crisis arises. However, secession not according to the right of self-determination, i.e. against the will of the people being affected by it, is illegal under international law. Most armed struggles for secession involve third state intervention, due to the political consequences of withdrawal, and the law regarding the use of force by secessionist insurgents is intertwined with the law governing the use of force between states. Third-state intervention in a secessionist attempt is not always in violation of the prohibition of the use of force, and such action can be sanctioned by the international community itself through the United Nations.

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