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The principle of self-determination of Peoples has been one of the most relevant principles in International Law in the last two centuries. However, it was in the 20th century, throughout its legal codification, when the most remarkable and significant period of its evolution took place, gaining this principle a great relevance in our current world. The imprecise delimitation of self-determination in International Law and its ambiguous and confusing content is partly due to its evolutionary nature. As a consequence of the evolutive character of self-determination, it is particularly difficult to approach its features in order to clarify them properly. This is also the main reason why there has been such an intense doctrinal debate in the last couple of decades discussing about the specific content and the subjects of the right to self-determination of Peoples, as well as a persistent misunderstanding of the conditions of exercise by the International Community. Thus, this principle has suffered many restrictions and willing deformations by the sovereign States themselves who have not always duly respected the applicable regulation of this confused expression established in International Law along the last century, giving priority instead to their own political judgment whenever this principle should be implemented.

The codification of the principle of self-determination of Peoples in International Law is a recent event, since the creation of political entities and States was considered as a *de facto* issue that could only being resolved by the use of power. However, after Second World War, the concept «self-determination» regained influence in international relations, no longer being regarded as a political measure and acquiring legal status. Along the 20th century, the self-determination experimented a gradual process of evolution to become an undeniable important norm in the positive international law, which stemmed from the legal codification of the right to self-determination of Peoples by the United Nations and its later development, surrounded by ambiguity and some confusion within the International Community.

The United Nations distinguished between two separate situations, colonialism and secessionism. Applicable international regulations in both cases were utterly different,

especially the assumption of Peoples as subjects entitled or not to the right of self-determination in each case. In reality, this legal principle had in practice serious political consequences that led to United Nations to adopt two contrasting currents of legal doctrinal thinking on its confusing practice: on the one hand, supporting for the fully colonial independence in which the political aspect prevailed over the legal one; on the other hand, the new perspective adopted in the International Covenants, by means of which the trend was reversed and the legal aspect took priority.

No sooner had the World War II came to an end than the European Empires saw themselves forced to contemplate how the colonial territories under their control repeatedly claimed their self-government and their right to become independent. Any intention to deny or prevent these strong feelings of freedom from these Peoples triggered in turn new bloody conflicts. Nonetheless, on other occasions, the leading European Powers were especially interested in enabling the emancipation of their colonies. Some reasons can be given as an explanation to pinpoint why this new decolonization process occurred. The thrilled attempts at becoming independent were in some measure due to the spreading of nationalist movements across the indigenous minorities of the colonies and the weakness of their parent States at that point of time because of the wars, which inspired to these entities who suffered their oppression to change the situation in which they had lived for so long. In addition, the position of the two world superpowers, the United States and the Soviet Union, was clearly in favor of the currency of this trend, which constituted a crucial boost. Therefore, the necessity of finishing with the colonial imperialism was revealed. It is remarkable the significant role the United Nations played in the decolonization process by means of its codification in favor of Peoples on a legal document, its Foundational Charter, historically considered as the first allusion to the self-determination of Peoples in International Law, and its later development on its Resolutions, the legal source which have supplied it most practical duress.

The so-called *Right* to self-determination of Peoples, gained great relevance as well, being applied in the aftermath of the war in favor of the colonial territories to reach their independence. This fact is due not only to its codification on the UN Charter, but also in some of its Resolutions which were of great importance during the decolonization process.

The mentioned Resolutions of the United Nations reflected the need to end urgently with colonialism and any kind of alien subjugation to attain world peace as justification to implement the said principle. The persistent desire of the colonial territories was unstoppable and pointed towards the emergency of embracing these aspirations and drawing a period of constant and evident denials of fundamental human rights to a close. For this reason, the United Nations was fully conscious that any delay in the application of its Resolutions could continue to occasion new conflicts across the globe. For the purpose of promoting their correct implementation and the lasting maintenance of international peace among States, the General Assembly even founded in 1961 a Special Committee on Decolonization that examined their effective application. Thus, the positivation and application of the principle of self-determination and its subsequent right was a fundamental step in the development of friendly relations among States.

Nonetheless, the codification of the principle of self-determination did not entail its effective application and observance by the States, which would only fulfil their duties as to this respect when they were compelled to do it. Indeed, a large number of colonies that had gained their independence during this period did not attained a real sovereignty in their territories, since the great economic power of the former colonial empires was still exerted over them. This new kind of domination was named as *neo-colonialism*. In addition, the frontiers of the new States were established irrespective of the existence of Peoples, ethnic groups and tribes, causing arbitrary separations and unions between all of them, which has constituted the seed of countless conflicts in the last decades and that remain present nowadays.

The unlimited increase of independent processes meant a serious threat to the stability and strengthening of the newly independent States formed over the decolonization period. It was inevitable to cast doubt on the benefits of a world made up of microstates, which were probably incompetents to survive by themselves. Because of that, once the decolonization process around the world was concluded, the United Nations adopted, a more cautious position refusing the assumption of self-determination of Peoples as an absolute right of any claimer community. Considerations of UN Resolutions differ greatly whenever the right to self-determination is intended to be exercised within an extra colonial context.

Nonetheless, the duality of political and legal elements in this principle was still evident in the Resolutions´ wordings and especially in the subsequent practice of the United Nations in the aftermath of the armed-conflict, which added more ambiguity and confusion around this principle. The problem probably derives from the concise and vague regulation of the principle of self-determination in the Charter, enabling its abusive application based on opportunistic interpretations. Because of this the Nations United judged extremely necessary to diminish the scope of this right to prevent its exercise in cases of secessionisms and try to clarify the new limits imposed to the right, which were conceived to support the continuation of the states born of the decolonization process.

The United Nations underlines that the right to self-determination can never mean a kind of *a secession right* within an extra colonial context and, consequently, it must be just regarded as a concession in favor of oppressed colonial Peoples. The United Nations´ Resolutions recognized the self-determination as a Right and at the same time established some limits to its exercise. The UN endeavours towards the maintenance of international peace after the decolonization process was focused on controlling the continued secessionist ambitions in many countries, which could endanger their equilibrium. The exercise of the right to self-determination should be refused whenever the claiming group forms part of a constitutional and democratic State, whose domestic law represents properly the entire People of its territory without any kind of discrimination, as well as respects the distinguishing elements of every single community and permits the exercise of its self-government. In such cases, there is no reason pursuant to International Law to deem these Peoples as entitled to the right to self-determination.

The legal mean to restrain the secessionist ambitions was the codification of the principle of territorial integrity of the newly independent States, in such a manner that the right to self-determination of Peoples could not be exercised as long as it supposed a serious threat to the political unity of a State that met the requirements indicated in the paragraph above. Thus, the incompatibility between secessionist movements and the codification of this principle was clearly evinced, becoming a crucial principle in International Law and prevailing over the exercise of the right to self-determination.

However, the priority implementation of the principle of territorial integrity has an evident statutory exception. The self-determination of Peoples must not be construed as a permission to break the inviolability of the territory of an independent State, but only provided that the State complies fully with the requirements mentioned some paragraphs above. Therefore, if the State in question does not achieve those conditions satisfactorily, the principle of territorial integrity will not perform as a limit to the exercise of self-determination.

A State may secure its territorial integrity and prevent unilateral secessions, on condition that it carries out an effective development of the self-government of the Peoples that are part of it, that is, the entire population settled in its territory is represented equally regardless of the race or ethnicity and without any discrimination. However, a State compounded of several Peoples who endure continuous restrictions to their self-government and representation faculties, as well as massive and grave violations against their Human Rights, will not be able to allege the principle of territorial integrity against the groups that suffer these situations; consequently, these groups could be granted the exercise of their right to self-determination, even when it involves the partial or total disruption of the territorial unity of the State.

It is often argued that this episode must be assumed as the last stage in the evolution process of this right. This hypothesis, entitled by the scientific literature as the *theory of secession-remedy*, must warrant the creation of a new independent State by any group that suffers from any of the mentioned infringements. In other words, according to the trend adopted by most of the scientific literature at the end of 20th century, any act that brings about a group a deprivation of its self-governing faculties or even its human rights will justify the exercise of the right to self-determination to separate from the parent State, not only as a last resort to reach a solution to curb this tyranny, but also as a compensation for the damage this group has endured.

Therefore, three arguments can be given as an explanation of the exercise of this right in the present assumption: first of all, a flagrant, grave and persistent violation against the

fundamental or human rights of a community; a deficient representation of this community in the State institutions, as well as whenever this representation takes place with serious and systematic discriminations against a collective based on race, creed or belonging to an ethnic group; and lastly, continuous restrictions or even exclusions to their self-government faculties. Whenever a collective has not received an equal treatment compared to the other groups within the same political organization will be permitted to create a new State for the purpose of fully exercise its right to self-determination.

Then the real problem will be to determinate how grave this treatment must be to account for the exercise of this right and the consequent creation of a new State, as the unique and more convenient solution for the situation. It is peacefully admitted that independence of an unjustly treated People that has suffered this experience will be justified always provided that this process is a necessary, proportional and useful tool to bring to an end to violation of rights. In the rest of cases in which less drastic measures could equally resolve these infringements the right to self-determination will not be granting to make possible the creation of a new State.

This new stage of the right to self-determination has been recently claimed in many secessionist processes around the world, in which some political parties have defended occasionally its application on the grounds that this region may have experienced oppression and, consequently, constitutes a secession-remedy case. These secessionist attempts have invoked the exercise of the right to self-determination quoting the impact of the three arguments mentioned above as a justification of the exercise of this right; namely, a grave and persistent violation of human rights, a deficient representation or discriminations against a collective in the State institutions and restrictions to the self-government faculties. In addition, claiming the right to self-determination as a remedy will mean putting the constitutional character of the parent State in doubt, as long as this kind of widespread violations cannot ensue in an organization equipped with mechanisms of prevention and reaction against serious violations of fundamental rights.

This theory requires for the exercise of self-determination that a collective has suffered grave crimes, genocides or persecutions, in short, cases of an evident discrimination against

a group. Nonetheless, doctrinal opinions dissent from this way of reasoning because of the differing interpretation of the extent of the term «discrimination». Any claim built simply on the basis of an insufficient identity or political recognition of a group or a fairer tax treatment in favor of a region should not be compared to the secession-remedy cases and will be considered an excessive invocation of this theory. Deeming the secession-remedy as the unique and a proportional alternative to these situations turns out a very questionable assertion. For this reason, the *Just secession principle* will not be the suitable argument to claim the exercise of the right to self-determination in this last assumption because of its deficient justification, so the concrete group must find another legal alternative to create an independent State.

As far as the unilateral declarations of independence are concerned, its exercise is not comprehended in favor of a fraction of State neither under International Law, nor under the domestic law of any constitutional State. Constitutive theory. Nevertheless, the viability of a unilateral secession in the secession-remedy cases should be admitted under UN law in the exercise of the right to self-determination by a People, as well as in the colonial contexts and in any kind of oppressed communities for any reason, prevailing over the territorial integrity of the parent State. The recent international practice has clearly demonstrated this current whereby a People that has suffered a secession-remedy episode is legitimized to exercise the right to self-determination through a unilateral secession declaration. This possibility, however, must be rejected in the rest of the circumstances, and cannot be accepted when is solely found on the majority will of the citizens in favor of the independence of their territory.

CONCLUSIONS

During and after the two World Wars, the creation of new independent States was accepted on account of the codification of the principle of self-determination of Peoples in International Law. The implementation of this principle was crucial after the fall of the European Empires and during the decolonization process to reshape the new frontiers in the International Community. In comparison to these episodes in which this principle was applied, the claims of self-determination of entities established in constitutional and democratic States, in which the legal system enables their self-government and foster their progress and their cultural singularities, are not justified under International Law. Thus, if

the concrete entity does not represent an oppressed collective, the self-determination regulation enshrined in International Law cannot be applied. In these cases, any attempt at creating a new independent State must be analysed under the domestic law of the concrete State and the fundamental principles of its legal order.

A situation of oppression takes place as long as a group of citizens of a political community are marginalized by the parent State representing a deprivation of human rights of these entities and retarding their cultural, social and economic progress. The United Nations assumed that any sort of alien domination, subjugation or submission a People could suffer from other country endangered the international peace, security and justice.

Unilateral declarations of independence are not acknowledged by the International Law, nor by any domestic law of a constitutional State. The recent international practice legitimizes these declarations exclusively in those cases in which a State violates human rights or the right to self-determination in its aspect internal, that is, the assumptions of secession-remedy.