

Conclusion

The Meaning of the Right to Sovereignty

LEGAL DIMENSIONS

Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination delineates several key aspects of internal self-determination. These include the right to equal treatment before the law, the right to the security of person, and, significantly,

Political rights, in particular the rights to participate in elections to vote and to stand for election on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.¹

Clearly, the establishment of a democratic state structure and equality is a prerequisite for achieving internal self-determination. However, China is an undemocratic colonial power. Under that state, the people of East Turkistan have suspended their struggle for “must have” lawful rights—that is, independence—in order to fulfill their “urgent needs,” which include equal rights, as well as basic human rights, despite the fact that they have no such prerequisite circumstances for their demand. Not unexpectedly, China has aggressively opposed their demands and retaliated with genocide.

The failure to secure basic human rights internally seems to leave the people of East Turkistan with no options. In today’s world, international law has only recognized the need for external self-determination in extreme cases of the denial of internal self-determination, such as that of Kosovo. When we turn to the democratic states of the West, we find that the Canadian Supreme Court is one of few that have considered the question of external self-determination—which is to say,

independence—on a domestic basis. In the case of Quebec, the Canadian Supreme Court stated:

A number of commentators have further asserted that the right to self-determination may ground a right to unilateral secession in a third circumstance. Although this third circumstance has been described in several ways, the underlying proposition is that, when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession. The *Vienna Declaration* requirement that governments represent “the whole people belonging to the territory without distinction of any kind” adds credence to the assertion that such a complete blockage may potentially give rise to a right of secession.²

That is to say that when internal self-determination is denied, and people are deprived of the possibility of pursuing access to political, economic, social, and cultural rights, this may indeed form a legal basis for the “last resort” of secession. For now, Quebec’s guaranteed internal self-determination leads the Canadian Supreme Court to rule against Quebec’s external self-determination or independence. However, the Supreme Court’s ruling leaves open the possibility of independence in the case that the people of Quebec lose their internal rights.

It follows that, in the case of East Turkistan, where internal self-determination was never granted under the authority of the Chinese state, the false autonomy of the so-called “Xinjiang Uyghur Autonomous Region” forms a basis for internal self-determination. As we argued in the preceding pages, China’s invasion of East Turkistan in 1949 violated the state integrity law stated in UN Charter Article 2(4). This same law has also become the main impediment to East Turkistan’s peaceful independence today, as China claims that East Turkistan is an inseparable part of China and that its independence would consequently mean a violation of China’s state integrity. Nonetheless, China’s assertion of state integrity contradicts the UN General Assembly’s Friendly Relations Declaration of 1970, which addresses the subject of conflicts between state integrity and self-determination on the basis of the principle of self-determination and equal rights of people. It emphasizes that a state will be recognized or considered a legitimate representative of its people only so long as it does not impede the political participation of people within the territory on the basis of their “race, creed, or color”:

[n]othing in the forgoing 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.³

As we have detailed throughout this book, China neither represents the people of East Turkistan nor intends to do so, without such distinction. On the contrary, China has remanded the people of East Turkistan to second-class citizenship and now intends to eliminate them as a racial, religious, and ethnic group. It is

strange that China has received so little censure, and the independence movements of oppressed peoples within its territory so little support, when the international community is nominally united in its support for decolonization and self-determination.

Consequently, the question of whether the right to be independent of East Turkistan beyond the context of decolonization here should be answered basis on “remedial secession” theory. This theory was introduced by Lee Buchheit,⁴ and it received broad support in academia, including by Ryngaert and Griffioen, who elaborated the conditions granting the right to unilateral secession as follows:

1. [If] the “people” has a distinct identity, and represents a clear majority within a given territory;
2. massive violations of basic human rights and systematic discrimination at the hands of a repressive regime have taken place;
3. violations cannot be prevented and remedied because the “people” is excluded from political participation, and is not given internal self-determination;
4. negotiation between the “repressive” regime and “people” lead nowhere.⁵

As we have discussed, the people of East Turkistan should be regarded as a people belonging to a state of East Turkistan, whose right to internal self-determination has been denied since China colonized the region. Currently, the people of East Turkistan are suffering ongoing genocide, and, as we have shown, the government at every level, from Xi Jinping downward, has declared that this policy is correct.⁶ That means that there is no adequate remedy to prevent this genocide, and that, at this point, there is no hope for attaining genuine autonomy. Nor, for that matter, is autonomy appropriate to the situation of East Turkistan, as it cannot bring lasting peace. First, the people of East Turkistan have learned through experience that the autonomy guaranteed them has never been implemented, and surely never will be, as demands for autonomy were brutally rejected. As long as China exists as an autocratic state, there will be no democratic mechanism to guarantee their rights. Furthermore, it is impossible to establish mutual trust and guarantee the absence of violent conflict between the people of East Turkistan and the Chinese government, including ethnic Han Chinese settlers.

Thus, external self-determination—*independence*—is the true last resort for the restoration of the human rights of the people of East Turkistan. Furthermore, the historical colonization of the territory substantially supports East Turkistan’s claim to external self-determination according to the principles of international law. Many conventional laws and resolutions related to self-determination are linked to the Convention on the Prevention and Punishment of the Crime of Genocide in terms of peace and security of humanity because the crime of genocide is a significant violation of human security and peace. For example, Article 1, Paragraph 2 of the UN Charter proclaims the principle of equal rights and self-determination: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures

to strengthen universal peace.”⁷ Article 55 also specifically proclaims the principle of equal rights and self-determination of peoples.⁸ Moreover, Articles 2 and 56; Article 73, Chapter XI, regarding the Declaration Regarding Non-Self Governing Territories; and Article 76, Chapter XII, regarding the International Trusteeship System all indirectly created obligations for UN Member States with regard to the implementation of the provisions of Articles 1 and 55.⁹ Many recent international instruments have also confirmed the principle of self-determination as articulated in Articles 1, 55, 73, and 76, which was also confirmed by Security Council Resolution 246 (1968) of March 1968.¹⁰

The principle of self-determination is not only a conventional law as stated in the Charter, but also in many General Assembly declarations and resolutions, including Resolution 1547 (XV) in December 1960, Resolution 2621 (XXV) of October 12, 1970, and the Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations (General Assembly Resolution 2627 (XXV)). Resolution 2621 (XXV) reaffirmed that “colonial peoples have the inherent right to struggle by all necessary means at their disposal against colonial Powers which suppress their aspiration for freedom and independence.”¹¹ Program of action 7 in the same resolution also stated:

All states shall undertake measures aimed at enhancing public awareness of the need for assistance in the achievement of complete decolonization and, in particular, creating satisfactory conditions for activities by national and international non-government organizations in support of the people under colonial domination.¹²

In the Declaration on the Deepening and Consolidation of International Détente, the Member States of the United Nations declared their reaffirmation of the Declaration on the Granting of Independence to Colonial Countries and People on December 14, 1960.¹³ The Security Council, in Resolutions 183 (1963) and 218 (1965), has also reaffirmed the validity of the principle of the right to self-determination as stated in General Assembly Resolution 1514 (XV).¹⁴

Many other soft laws incorporate the principle of self-determination. These include the International Covenant on Civil and Political Rights¹⁵ and the International Covenant on Economic, Social, and Cultural Rights, both of which entered into force in 1976;¹⁶ the African Charter of Human and Peoples’ Rights of April 1981;¹⁷ and the Vienna Declaration and Programme of Action of June 1993. The Vienna Declaration, adopted by the World Conference on Human Rights in Vienna on June 25, 1993, recognizes the right of people to take any legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self-determination.¹⁸ The declaration considers the denial of the right of self-determination to be a violation of human rights and underlines the importance of the effective realization of this right.

The justification for China’s unlawful occupation of East Turkistan outlined in part I of this book should be enough to establish East Turkistan’s intrinsic right to independence. However, China violates these fundamental rights, and other great powers and UN Member States have permitted that infringement. The former Soviet Union was instrumental in this breach and aided China’s geopolitical maneuvering,

Today, in an era of international peace, East Turkistan's geopolitical significance may be different. The dissolution of the Soviet Union, China's hegemonic ambitions via the New Silk Road, and Russia's aggressive military invasion of its neighbors, in addition to China's never-implemented autonomy in the region and now genocide, have at least made the world aware of the dangers of ignoring imperialistic regimes. East Turkistan's genocide is not a human rights issue that China can address alone. As is customary, it is a geopolitical issue that is inextricably linked to global peace. In order to ensure the efficacy of General Assembly Resolution 738 (VIII) of November 28, 1953, which describes "the importance of the observance of and respect for the right of self-determination in the promotion of world peace and of friendly relations between peoples and nations,"¹⁹ it is important for the people of East Turkistan to attain an independent and free state through the principle of the right to self-determination.

In 1960, the Declaration on the Granting of Independence for Colonial Countries and Peoples declared the unconditional necessity of guaranteeing independence from colonialism. Paragraph 4 of the declaration states that "all repression measures of all kind directed against dependent peoples should cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected."²⁰ On the basis of this declaration and many others, and of conventional laws and resolutions in international law related to the principles of equal rights and self-determination, the external self-determination of the people of East Turkistan should be seen as legitimate, given both the history of colonization in the region as well as the present concern of genocide.

However, whether international law provides "remedial secession" to the people under oppression in contexts beyond decolonization has given rise to significant debate. As the International Court of Justice's (ICJ) Advisory Opinion on Kosovo states:

Whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances.²¹

The ICJ's report answers the above question in Paragraph 83: "To answer that question, the Court need only determine whether the declaration of independence violated either general international law or the *lex specialis* created by Security Council resolution 1244 (1999)."²² In Paragraph 95, the ICJ report also mentions how Security Council Resolution 1244 (1999), Paragraph 8 envisions a long-term solution:

[a] political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the

Federal Republic of Yugoslavia (FRY) and the other countries of the region, and the demilitarization of the KLA.²³

So, it is unquestionable that international law supported Kosovo's self-determination only under the condition that the Federal Republic of Yugoslavia (FRY) was already dismantled. As a result, Security Council Resolution 1244 (1999) did not challenge the territorial integrity of the FRY. However, whether international law provides for a right of "remedial secession" to East Turkistan should also be decided according to its unique situation. There is no conflict between the integrity of the Chinese state and the right to self-determination of East Turkistan which aims to preserve collective identity and secure survival and freedom for its more than 12 million people. Even if China raises an objection to East Turkistan's "remedial secession" on the basis of Chinese state integrity, its claim should be rejected based on the context of illegal occupation and the degree of oppression.

