

RIGHT TO SELF-DETERMINATION: EXTENDED ROLES OF THE UNITED NATIONS THROUGH THE DECOLONIZATION PROCESS

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ABSTRACT

Finding solutions to self-determination issues in connection to different non-self-governing people across the world are among the major challenges for the international community. Since the commencement of the decolonization process, the international community has been playing important roles through the United Nations (U.N.) to ensure the right to self-determination of many vulnerable people. Research shows most of the international legal instruments related to self-determination have been developed in conjunction with decolonization cases and their perceived solutions. However, international communities sometimes express resentment regarding the helplessness of the U.N. in taking prompt action to resolve any self-determination issue. In connection to this point, this article examines the latest decolonization cases and attempts to explore what other legal roles the U.N. could play in resolving self-determination issues. Precisely, this article examines the gradual development of

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international legal instruments and extension of the U.N.'s roles through the settlement of the right to self-determination of non-self-governing people. Findings reveal that the U.N.'s roles in administering non-self-governing territories and resolving self-determination issues have been extended largely throughout the decolonization process.

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INTRODUCTION

The right to self-determination is very topical and central to the legal and political discourses today as different groups of people such as Catalonians, Kurdish, West Papuans, Western Saharans and many more distinct cultural groups have been

seeking guarantees to exercise their rights to self-determination.¹ The international community is concerned with understanding their various roles through the United Nations (U.N.) organizations and within the international legal frameworks to justify the right to self-determination that is claimed by different groups of people across the world. A clear understanding on the current U.N. role and international legal instruments on the right to self-determination may help the international community peacefully resolve disputes.

Self-determination is commonly defined as peoples' free will to choose the course of their own political life.² Historically, this issue was part of the U.N. Charter, which was adopted in 1945 to ensure the right to self-determination of all people as a means of maintaining international peace and security among different groups of people.³ Since then, many international legal instruments have been developed to ensure the smooth implementation of the right to self-determination, and the U.N. has helped many non-self-governing people worldwide to ensure this right.⁴

In what might be termed recent history, that is, from the sixteenth to the beginning of the twentieth century, militarily powerful European nations colonized and ruled over many Asian

1. ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 1–2 (1995); Ben Doherty, *Protesters Set Fire to Parliament Building in West Papua as Tensions Mount*, THE GUARDIAN (Aug. 19, 2019), <https://www.theguardian.com/world/2019/aug/19/protesters-set-fire-to-parliament-building-in-west-papua-as-tensions-mount>; Valentina Pop, *Ousted Catalan Leader Accepts Spain Vote*, WALL ST. J., Nov. 1, 2017, at A6 (describing the effect of the declaration of independence by Catalanian parliament).

2. See International Covenant on Civil and Political Rights, art. 1(1), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 173 (entered into force Mar. 23, 1976); ALEKSANDAR PAVKOVIC & PETER RADAN, CREATING NEW STATES: THEORY AND PRACTICE OF SECESSION 233 (2007) (ebook); Susanna Mancini, *Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism, and the Right of Minorities to Self-determination*, 6 INT'L J. CONST. L. 553, 554 (2008).

3. Human Rights Comm., *General Comment No.12: The right to self-determination of peoples* (Art. 1), 1, 8, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 13, 1984).

4. Sara E. Allgood, *United Nations Human Rights "Entitlements": The Right to Development Analyzed Within the Application of the Right to Self-determination*, 31 GA. J. INT'L & COMP. L. 321, 328–330 (2003).

and African countries.⁵ The reason had both economic and strategic components, as the European sea powers strove to maintain an economic advantage over their competitors. In the middle of the twentieth century, the decolonization process, which started just after the adoption of the U.N. Charter and in conjunction with the settlements after World War II, significantly helped resolve crises linked to the right to self-determination of some colonized territories and people.⁶ During the U.N. era (from 1945 to present), a number of territories and people have achieved their right to self-determination within a short time because of decolonization.⁷ To date, through the decolonization processes, almost one hundred once-colonized territories have gained their independence; moreover, nearly 750 million people who were living under the control of colonial powers have exercised their right to self-determination.⁸

Research shows that decolonization has been the most effective legal process in establishing peoples' right to self-determination.⁹ Decolonization is also recognized as the best instrument for preventing inter-state or inter-group (race, caste,

5. Maxine Marcus, *Humanitarian Intervention Without Borders: Belligerent Occupation or Colonization?*, 25 Hous. J. Int'l L. 99, 120 (2002).

6. See JOSHUA CASTELLINO, *INTERNATIONAL LAW AND SELF-DETERMINATION: THE INTERPLAY OF THE POLITICS OF TERRITORIAL POSSESSION WITH FORMULATIONS OF POST-COLONIAL 'NATIONAL' IDENTITY* 22–23 (2000) (linking decolonization to the promotion of better standards of life and freedom); MICHELINE R. ISHAY, *THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE GLOBALIZATION ERA* 175 (2004) (describing the commencement of decolonization after World War II).

7. Thomas D. Grant, *Extending Decolonization: How the United Nations Might Have Addressed Kosovo*, 28 GA. J. INT'L & COMP. L. 10, 11 (1999). See also CASSESE, *supra* note 1, at 74–75; KAREN KNOP, *DIVERSITY AND SELF-DETERMINATION IN INTERNATIONAL LAW* 53 (2002).

8. See Knop, *supra* note 7, at 53; Grant, *supra* note 7, at 24; *Decolonization*, UNITED NATIONS, <https://www.un.org/en/sections/issues-depth/decolonization/index.html> (last visited Jan. 28, 2020).

9. See S. James Anaya, *The Native Hawaiian People and International Human Rights Law: Toward a Remedy for Past and Continuing Wrongs*, 28 GA. L. REV. 309, 322 (1994) ("In its most prominent modern manifestation within the international system, self-determination has precipitated the demise of colonial institutions of government and the emergence of a new political order for subject peoples."); Grant, *supra* note 7, at 11; Robert McCorquodale, *Self-Determination: A Human Rights Approach*, 43 INT'L & COMP. L. Q., 857, 859–60 (1994).

or tribe) violence related to self-determination.¹⁰ Moreover, the long decolonization process for resolving several self-determination issues has provided significant legal ground for the U.N. to intervene and helped many non-self-governing people ensure their right to self-determination within a well-defined U.N. institutional structure.¹¹

This article explores the contributions of the decolonization process to the extension of the U.N.'s legal roles in resolving cases related to peoples' right to self-determination. It examines various international cases related to the settlement of self-governance of colonized peoples and highlights the contribution of decolonization processes to the development of various international legal instruments.

This article is divided into three sections. The first section analyzes the legal status of the self-determination process. The second section discusses the origin of the decolonization process and the gradual development of international legal instruments that have evolved through different settlements of self-determination of non-self-governing people. This also includes the development of different U.N. Resolutions and Declarations regarding the decolonization process. The third section focuses on the extended roles of the U.N. in determining peoples' rights to self-determination. Different cases related to self-determination such as Namibia, Western Sahara, and East Timor are discussed in the light of decolonization laws to conform to its legal issues. The conclusion highlights that the decolonization process has expanded and developed gradually to ensure the right to self-determination for non-self-governing people with mixed success.

I. A BRIEF OVERVIEW OF SELF-DETERMINATION

The term "right to self-determination" consists of three closely related units: right, self, and determination.¹² "Right" means

10. See Grant, *supra* note 7, at 11.

11. See *id.* See also KNOP, *supra* note 7 at 52–53 (noting that the development of international law subsequent to the U.N. Charter permitted several territories the opportunity to exercise their right to self-determination).

12. Elizabeth M. Jamilah Koné, *The Right of Self-Determination in the Angolan Enclave of Cabinda*, at § 2 (Oct. 2, 1998), <http://www.africa.upenn.edu/Workshop/kone98.html>.

entitlement imposing legal obligations or duties.¹³ The "right" in question is the right not of the individual but the right of the collective people.¹⁴ This collective people, in the legal arena, is known as "self."¹⁵ The right is based upon the legitimate claim against state-sponsored terrorism or suppression of an identifiable group who will assert themselves as "self," and the determination must be in respect of the assertion by that group. Bassiouni asserted that whenever a given collectivity is prevented or seriously impeded from asserting their common values and are deprived of practicing such values and beliefs, then the claim for such right is born. Therefore, the suppressed beliefs can foster grievances to the claim of right to self-determination.¹⁶

The issue of self-determination began with the formation of nation-states and became more pronounced as states developed a more sophisticated recognition of the representative interests of the individuals who comprised the state.¹⁷ It has passed through different phases and is now established as a basic right of all groups of people. Just after World War I, the right to self-determination appeared as a "political principle" and served as a "guideline" for the dismemberment of the defeated Austro-Hungarian and Ottoman Empires.¹⁸ In 1960, several years after World War II, this principle of self-determination was institutionally recognized under international law through the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514) to help emerging

13. *Id.*

14. *Id.*

15. *Id.*

16. M.C. Bassiouni, *Self-Determination and the Palestinians*, 65 AM. J. INT'L L. Sept. 1971, at 31, 33.

17. See generally Christian Tomuschat, *Self-Determination in a Post-Colonial World*, in MODERN LAW OF SELF-DETERMINATION 1, 8-9 (Martinus Nijhoff Publishers 1993) (emphasizing that the issue of self-determination existed but was not recognized because States were virtually unchecked in the international arena before the development of international human rights law). See also CASSESE, *supra* note 1, at 11 (tracing the origins of self-determination to the French and American Revolutions).

18. Hurst Hannum, *The Right of Self-Determination in the Twenty-First Century*, 55 WASH. & LEE L. REV. 773, 774 (1998).

nations, as well as to end colonization.¹⁹ However, Resolution 1514 was limited insofar as colonized people only had the right to self-determination if it did not disrupt territorial integrity.²⁰ In other words, territorial integrity was considered to be more important than human rights at that time. Nevertheless, during the 1960s, this limitation of Resolution 1514 became less stringent through the promulgation of two subsequent human rights Covenants: The International Covenant on Civil and Political Rights²¹ and the International Covenant on Economic, Social, and Cultural Rights.²² Article 1 of both Covenants states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."²³

The terms indicate that the right to self-determination has started to expand from a right exclusively belonging to colonized peoples to a right that includes all peoples. However, the application of self-determination has not always been the same in every case. Many scholars have expressed their concern that, "there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve" if we do not legitimately conceptualize the area of self-determination.²⁴ For example, while the self-determination movement of the East Timorese concluded with territorial secession, the self-determination movement by the Quebecer in

19. G.A. Res. 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, 1-7 (Dec. 14, 1960).

20. See Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, 47 INT'L & COMP. L.Q. 537, 550 (1998).

21. See International Covenant on Civil and Political Rights, *supra* note 2, pmbl. (recognizing that civil and political freedom can be achieved only if *everyone* may enjoy civil and political rights) (emphasis added).

22. See International Covenant on Economic, Social and Cultural Rights pmbl., *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) (omitting limitations based on territorial integration and instead incorporating broad terms such as *everyone*) (emphasis added).

23. *Id.* at art. 1(1); International Covenant on Civil and Political Rights, *supra* note 2, at art. 1(1).

24. McCorquodale, *supra* note 9, at 858. See also JORRI C. DUURSAMA, FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES: SELF-DETERMINATION AND STATEHOOD 1 (James Crawford & David Johnston eds., Cambridge Univ. Press 1996).

Canada ended with a judicial recognition of the right to political sovereignty.²⁵

Given this, it is understandable that self-determination has two dimensions: political sovereignty and territorial sovereignty. This two-dimensional principle of the right to self-determination is the basis of two types of self-determination: internal self-determination and external self-determination.²⁶ Internal self-determination refers to when "a people in a sovereign State can elect and keep the government of its choice or that an ethnic, racial, religious or other minority within a sovereign State has the right not to be oppressed by central government."²⁷ Therefore, internal self-determination "concern[s] the relationship between a people and 'its own' State or government."²⁸

On the other hand, external self-determination refers to the ability of a people to choose freely in the field of international relations, opting for independence or union with other states.²⁹ Eric Kolonder noted that, "[t]he right to external self-determination entitles a people to decide its international identity and 'to be free from foreign interference which affects the international status of that state.'"³⁰ According to Patrick

25. Reference Re Secession of Quebec, [1998] 2 S.C.R. 217, 150-51 (Can.) (recognizing that all provinces and the federal government would have no right to deny secession and would have to recognize the secession of Quebec if a clear majority of people vote in favor of secession); Jane Perlez, *Impoverished East Timor Exults Over Independence*, N.Y. TIMES, May 20, 2002, at A6 (explaining Timor's achievement of independence after a national referendum which resulted in a new nation independent from its former colonizers, Portugal and Indonesia). See also Roya M. Hanna, *Right to Self-Determination in In Re Secession of Quebec*, 23 MD. J. INT'L L. & TRADE 213, 214 (1999).

26. Eric Kolonder, *The Future of the Right to Self-Determination*, 10 CONN. J. INT'L L. 153, 159 (1994).

27. Antonio Cassese, *Political Self-Determination - Old Concepts and New Developments*, in UN LAW/FUNDAMENTAL RIGHTS: TWO TOPICS IN INTERNATIONAL LAW 137, 137 (Antonio Cassese ed., 1979).

28. Patrick Thornberry, *The Democracy of Internal Aspect of Self-determination with Some Remarks of Federalism*, in MODERN LAW OF SELF-DETERMINATION 101, 101 (Christian Tomuschat ed., 1993).

29. Antonio Cassese, *The Self-Determination of Peoples*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 96, 98 (Lou Henkin ed., 1981).

30. Kolonder, *supra* note 26, at 159 (quoting Cassese, *The Self-Determination of Peoples*, *supra* note 29, at 100).

Thornberry, “[t]he external dimension or aspect defines the status of a people in relation to another people, State or Empire.”³¹

The right to self-determination has been addressed in the U.N. Charter, Covenants, Resolutions and declarations, but none of these legal instruments has directly permitted the exercise of the external dimension of self-determination or geographical disintegration or secession.³² However, judicial decisions and opinions in several cases related to self-determination have cautiously approved the theory of external self-determination in special circumstances. In the *Aaland Islands* case in 1921, the second commission (the Commission of Rapporteurs) denied the secession by a segment of the population of a state to protect the territorial integrity, but the Commission gave an opinion in favor of a right of secession under exceptional situations.³³ The Commission spelled out:

The separation of a minority from the state of which it forms a part and its incorporation in

31. Thornberry, *supra* note 28, at 101.

32. See U.N. Charter art. 1, 2 (stating “the principle of equal rights and self-determination of peoples” as one of the purposes of the United Nations); *id.* at 2, 1 (enumerating as one of the principles, “[t]he Organization is based on the principle of the sovereign equality of all its Members.”); *id.* at art. 2, 4 (specifying “[a]ll 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 in any other manner inconsistent with the Purposes of the United Nations.”). But see G.A. Res. 1514 (XV), *supra* note 19, at 3–6 (providing that only colonial people have right to external self-determination, but a people within an existing State do not have that right).

33. *Report Presented to the Council of the League of Nations by the Comm’n of Rapporteurs*, League of Nations Doc. B7/21/68/106 (1921) [hereinafter *Report Presented to the Council of the League of Nations*] (holding that secession would be reluctantly advisable if Finland refused to grant the Aaland populations certain guarantees). See also DAVID RAIČ, STATEHOOD AND THE LAW OF SELF-DETERMINATION 328–29 (2002) (ebook). Just after World War I, Aaland islands became an object of dispute between Finland and Sweden. See *Report Presented to the Council of the League of Nations*. Though these islands are inhabited by Swedish speaking people (90%), it was administered by Finland. *Report Presented to the Council of the League of Nations*; Nordics.Info, Jason Lavery, *The Åland Islands*, AARHUS UNIV. (Apr. 25, 2019), <https://nordics.info/show/artikel/the-aaland-islands/>. Sweden supported the secession of islands but it was opposed by Finland. *Report Presented to the Council of the League of Nations*. Finally, the case was referred to the League of Nations, and the claim of secession was rejected mainly because there was no question of human rights violation. See *id.*

another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees [of religious, linguistic and social integrity].³⁴

The Supreme Court of Canada applied a similar standard in its decision on the issue of secession of the Quebec Province in 1998.³⁵ Referring to this Court, Bayefsky noted that a right to secession exists under international law in three contexts, which are: "in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development."³⁶ In the *Katangese Peoples' Congress v. Zaire* case of 1992, the African Commission on Human Rights and Peoples' Rights made a similar decision.³⁷

In the Kosovo case, Judge Trindade in his separate opinion stated that a sovereign state could abolish its territorial integrity by itself with its oppressive behavior. He noted:

34. Milena Sterio, *The Kosovar Declaration of Independence: "Botching the Balkans" or Respecting International Law?*, 37 GA. J. INT'L & COMP. L. 267, 278–79 n.60 (2009). See also Report Presented to the Council of the League of Nations by the Commission of Rapporteurs, *supra* note 33.

35. RAIČ, *supra* note 33, at 331 (citing Reference Re Succession of Quebec, *supra* note 25, at 131–33) (explaining that the right of external self-determination is available as a last resort when people are unable to exercise the right internally).

36. ANNE F. BAYEFSKY, SELF-DETERMINATION IN INTERNATIONAL LAW: QUEBEC AND LESSONS LEARNED 500 (2002).

37. See RAIČ, *supra* note 33, at 330 (citing *Katangese Peoples' Congress v. Zaire*, Communication 75/92, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], 27–28 (1995)). In *Katangese Peoples' Congress v. Zaire*, the Commission stated, "[t]he Commission is obligated to uphold the sovereignty and territorial integrity of Zaire, a member of the OAU [Organization of African Unity] and a party to the African Charter on Human and Peoples' Rights. In the absence of concrete evidence of violation of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in Government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire." *Id.* (quoting *Katangese Peoples' Congress v. Zaire*, Communication 75/92, at 27–28).

Grave breaches of fundamental human rights (such as mass killings, the practice of torture, forced disappearance of persons, ethnic cleansing, systematic discrimination) are in breach of the *corpus juris gentium*, as set forth in the U.N. Charter and the Universal Declaration (which stand above the resolutions of the United Nations political organs), and are condemned by the universal juridical conscience. Any State which systematically perpetrates those grave breaches acts criminally, loses its legitimacy, and ceases to be a State for the victimized population, as it thereby incurs into a gross and flagrant reversal of the humane ends of the State.³⁸

The above analysis illustrates if a situation appears to be unavoidable on the grounds of humanitarian concerns or grave violation of human rights, then external self-determination is justifiable.³⁹ For instance, Bangladesh, Bosnia-Herzegovina,⁴⁰ East Timor,⁴¹ Kosovo, and South Sudan were each recognized as an independent country when massive human rights violations in these territories would have been otherwise unavoidable.⁴²

38. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. Rep. 523, 205 (July 22) (separate opinion by Trindade, J.).

39. Peter Hilpold, *The Kosovo Case and International Law: Looking for Applicable Theories*, 8 CHINESE J. INT'L L. 47, 55–57 (2009) (explaining that although there is support among academics for the idea of remedial secession, no right has actually materialized as a matter of law).

40. RAIČ, *supra* note 33, at 435 (discussing the “widespread and serious violations of minority rights of the Albanian minority by Serbia.”); Christian Tomuschat, *Secession and Self-Determination*, in SECESSION: INTERNATIONAL LAW PERSPECTIVES 23, 29–30, 32 (Marcelo G. Kohen ed., 2006) (“The secessionist movement, spearheaded by the Awami League, had been unleashed in March 1971 by a brutal governmental policy of repression throughout the country, involving the arrest, torture, and killing of political leaders, as well as the indiscriminate killing of civilians.”).

41. See Bridgette Martin, *Secession and Statehood: The International Legal Status of Kosovo* 42–43 (Oct. 2008) (unpublished Bachelor of Laws dissertation, University of Otago, Dunedin), <https://www.otago.ac.nz/law/research/journals/otago036276.pdf> (explaining that in 2002 East Timor, which was forcefully annexed by Indonesia in 1975, obtained independence through a U.N. supervised referendum).

42. See RAIČ, *supra* note 33, at 416 (explaining that Bosnia was recognized as independent in order to prevent massacres); Lotje de Vries & Mareike Schomerus, *Fettered*

Self-determination thus combines elements of democracy and nationalism: people may seek effective participation in the governing system or secede from an existing state in order to protect their basic human rights.⁴³ For the sake of simplicity, this article accepts both internal and external forms as the normative result of exercising the right of self-determination.

II. DECOLONIZATION & SELF-DETERMINATION

In brief, decolonization is identified as a process by which a colony gains its independence from a colonial power. In other words, it can be defined as the process whereby a colony or dependent territory achieves the right to self-determination.⁴⁴ The right to self-determination allows people of the colonized territory to choose their political status and to determine their own form of economic, social and cultural development free from outside interference.⁴⁵ A half-century ago, large regions of the globe, especially in Africa and Asia, consisted of colonies and dependent territories ruled by a small number of colonial

Self-determination: South Sudan's Narrowed Path to Secession, 19 CIV. WARS 26, 26–27 (explaining that South Sudan gained independence following a 2011 referendum). See also Peter Martell, *After Independence, What Next for South Sudan?*, UNITED NATIONS (Aug. 2011), <https://www.un.org/africarenewal/magazine/august-2011/after-independence-what-next-south-sudan> (last visited February 12, 2020) (explaining the history of civil war in Sudan, which resulted in a 2005 peace agreement that guaranteed the 2011 referendum); *South Sudan Human Rights*, AMNESTY INT'L, <https://www.amnestyusa.org/countries/south-sudan/> (last visited February 12, 2020) (explaining the history of human rights abuses in South Sudan).

43. See RAIČ, *supra* note 33, at 395 (explaining that self-determination and territorial integrity can be seen as compatible when “the right of territorial integrity is used as a means of interpretation of the right of self-determination of peoples and *vice versa*.”). Further, the primary purposes of self-determination are to ensure “preservation of the collective identity of a people” and to protect human rights. *Id.* at 395. If the people of a country cannot enforce their right to self-determination internally, they are entitled to seek self-determination externally. *Id.* Thus, self-determination combines elements of both democracy and nationalism by allowing people to determine their own destiny. See *id.*

44. KNOP, *supra* note 7, at 18.

45. Unrepresented Nations and Peoples Organization International Conference, *Report of the UNPO Conference on Self-Determination in Relation to Individual Human Rights, Democracy and Protection of the Environment*, § 2(1), UNPO GA/1993/CR/1 (Jan. 22, 1993). See also G.A. Res. 1514 (XV), *supra* note 19, at 2.

powers.⁴⁶ Through the decolonizing process, almost all of these former colonies or dependent territories have determined their political status either by attaining independence as a separate state or by integrating with the administering power.⁴⁷ However, a number of colonized territories or colonized peoples are still struggling for their self-determination, and thus the decolonization process has not concluded.⁴⁸

The U.N. Charter adopted Chapter XI and Chapter XII in order to include self-determination in the decolonization process.⁴⁹ These two Chapters recognized two types of colonial territories: Trust Territories and Non-Self-Governing Territories, which were included in the U.N. Charter to establish the will of colonized people.⁵⁰ When the United Nations was established, there were seventy-two Non-Self-Governing Territories and eleven Trust Territories.⁵¹

Trust Territory:

Article 77 of Chapter XII of the U.N. Charter stated that the Trusteeship System applied to three categories of territories. These are: a) territories held under mandate—for territories which were mostly former colonies of the countries defeated in the First World War; b) territories which may be detached from enemy States as a result of the Second World War; and c) territories voluntarily placed under the system by States responsible for their administration.⁵²

46. U.N. DEP'T OF PUB. INFO., UNITED NATIONS AND DECOLONIZATION 1 (Feb. 2005), https://www.un.org/zh/events/decolonization50/pdf/Decolonization_brochure.pdf.

47. KNOP, *supra* note 7, at 52–53.

48. U.N. DEP'T OF PUB. INFO., UNITED NATIONS AND DECOLONIZATION, *supra* note 46, at 2–3 (explaining that 16 non-self-governing territories still exist and that the U.N. declared the third decade of eradication of colonialism within 2011–2020).

49. *The United Nations and Decolonization*, UNITED NATIONS AND DECOLONIZATION, <https://www.un.org/dppa/decolonization/en/about> (last visited Jan. 28, 2020).

50. *Id.*

51. U.N. DEP'T OF PUB. INFO., UNITED NATIONS AND DECOLONIZATION, *supra* note 46, at 1.

52. U.N. Charter art. 77, 1. *See also* KNOP, *supra* note 7, at 51 (explaining that the trusteeship system replaced the League of Nations mandate system for territories which were mostly former colonies of the countries defeated in the First World War); *Trusteeship Council*, UNITED NATIONS, <https://www.un.org/en/sections/about-un/trusteeship-council/>

One of the fundamental objectives of the trusteeship system is, "to promote the political, economic, social, and educational advancement of the inhabitants of the Trust Territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory."⁵³ Today, the Trusteeship system has completed its historic task as no territories are left on its agenda.⁵⁴ However, if any administering state voluntarily wants to place any of its territory under the United Nations, this system may revive again.⁵⁵

Non Self-Governing Territory (NSGT):

Apart from Trust Territories, all other colonized territories were considered as NSGTs under Chapter XI of the U.N. Charter.⁵⁶ Article 73 of the Charter declares the NSGTs as those "territories whose peoples have not yet attained a full measure of self-government" and advises the administering powers of such territories to maintain their "sacred trust."⁵⁷ All colonial powers were bound under Chapter XI of the Charter to uphold the provisions of the U.N. Charter with regard to the administration of these territories and asked for regular reporting to the U.N. Secretary-General relating to economic, social, and educational conditions in the territories for which they were respectively responsible.⁵⁸

(last visited Jan. 28, 2020) (explaining that the last Trust Territory Palau became independent in 1994, bringing an end to the Trusteeship System).

53. U.N. Charter art. 76, 1(b).

54. *Trusteeship Council*, *supra* note 52.

55. *See* U.N. Charter art. 77, 1(c)–2.

56. *International Week of Solidarity with the Peoples of Non-Self-Governing Territories 25-31 May*, UNITED NATIONS, <http://www.un.org/en/events/nonselfgoverning/background.shtml> (last visited Jan. 28, 2020). *See also* Grant, *supra* note 7, at 27.

57. U.N. Charter art. 73. *See also* Marcus, *supra* note 5, at 126.

58. U.N. Charter art. 73. *See also* Marcus, *supra* note 5, at 126–27. According to Article 73 of the U.N. Charter, the administering powers have accepted the obligation "b. . . to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions . . . e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible . . ." U.N. Charter art. 73(a)–(b), (e). Thus,

Between 1946 and 1960, thirty NSGTs and Trust Territories achieved independence.⁵⁹ In 1963, the General Assembly approved a list of sixty-four NSGTs.⁶⁰ The list was expanded in 1965 to include French Somaliland (now Djibouti) and Oman.⁶¹ The Comoro Islands were included in 1972 and New Caledonia in 1986.⁶² However, today, as a result of the decolonization process, most of the territories have been removed from the list. Currently, there are only sixteen NSGTs remaining where decolonization processes are still active.⁶³ In 1988, the United Nations General Assembly declared 1990–2000 as the International Decade for the Eradication of Colonialism and adopted a Plan of Action to settle all pending cases of self-determination.⁶⁴ In 2001, the Second International Decade for the Eradication of Colonialism was proclaimed for NSGTs.⁶⁵ In 2011, the General Assembly proclaimed 2011–2020 as the third International Decade for the Eradication of Colonialism.⁶⁶

A. *Decolonization in International Legal Framework*

The U.N. tried to accomplish the decolonization process shortly after the acceptance of its Charter, although this process did not progress as expected despite all measures being taken. Following the decolonization process from 1946 to 1960, when the

Article 73 of the Charter envisages that special attention is applicable for a territory if that territory is arbitrarily subordinated to the metropolitan State. *See id.*

59. RAIČ, *supra* note 33, at 217 (noting Cambodia, Cameroon, Congo, India, Indonesia, Malaysia, Mali, Morocco, Niger, Nigeria, Philippines, Somalia, and Sudan as examples of prior NSGTs and Trust Territories that achieved independence).

60. U.N. DEP'T OF PUB. INFO., UNITED NATIONS AND DECOLONIZATION, *supra* note 46, at 2.

61. *Id.*

62. *Id.*

63. *Id.* at 2–3 (detailing that the remaining NSGTs are: American Samoa, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, the Falkland Islands (Malvinas), Gibraltar, Guam, Montserrat, New Caledonia, Pitcairn, St. Helena, Turks and Caicos Islands, United States Virgin Islands, Tokelau, and Western Sahara).

64. G.A. Res. 43/47, International Decade for the Eradication of Colonialism, 1 (Nov. 22, 1988).

65. U.N. DEPT OF PUB. INFO., UNITED NATIONS AND DECOLONIZATION, *supra* note 46, at 9.

66. G.A. Res. 65/119, Third International Decade for the Eradication of Colonialism, 1 (Jan. 20, 2011).

General Assembly realized that the process of decolonization was not moving at an acceptable pace, it adopted several Resolutions and Covenants to hasten the end of colonization.⁶⁷ These Resolutions are Resolution 1514,⁶⁸ Resolution 1541,⁶⁹ Resolution 1654 and Resolution 2625.⁷⁰ In addition to these Resolutions, the U.N. accepted the Covenant on Economic, Social and Cultural Rights (ICESCR) and Covenant on Civil and Political Rights (ICCPR) in 1966 to address several issues related to decolonization.⁷¹

An analysis of all above Resolutions reveals that, initially, the decolonization process was based on voluntary consent of all

67. RAIĆ, *supra* note 33, at 202–206. See also Marcus, *supra* note 5, at 130.

68. See G.A. Res. 1514 (XV), *supra* note 19, at 1. Resolution 1514 (XV) sets up the following principles: "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 co-operation." *Id.* "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence." *Id.* at 3. "All armed action or repressive measures of all kinds directed against dependent peoples shall 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." *Id.* at 4. These principles demonstrate the dramatic shift in international thinking regarding colonialism in all its forms and affirm the ideals of independence and self-determination enshrined in the U.N. Charter. Compare *id.* at 1, 3–4, with U.N. Charter art. 1, 2, 4.

69. See generally G.A. Res. 1541 (XV), annex, Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73 e of the Charter (Dec. 15, 1960) (approving the principles set out in the U.N. Charter that help determine how information about NSGTs should be transmitted by the administering powers to the U.N. Secretary-General).

70. G.A. Res. 2625 (XXV), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, pmbl. (Oct. 24, 1970) (reaffirming that the principles of equal rights and self-determination that are enshrined in the U.N. Charter embrace the rights of all people to freely determine their political status and to pursue their economic, social and cultural development); G.A. Res. 1654 (XVI), The Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 2 (Nov. 27, 1961) (calling upon all States to take immediate action to implement the Declaration on the Granting of Independence to Colonial Countries and Peoples and establishing a Special Committee to examine the application of the Declaration).

71. See International Covenant on Civil and Political Rights, *supra* note 2, at art. 1(1), (3) (calling upon states parties to the covenants to promote the realization of the right of self-determination in conformity with the provisions of the U.N. Charter); International Covenant on Economic, Social and Cultural Rights, *supra* note 22, pmbl.

related states and peoples. Before 1960, the colonial administrative or metropolitan powers could willingly designate their colonial territories as NSGTs. However, after adoption of Resolution 1541, if the responsible administering power did not want to voluntarily designate its colonial territories as NSGTs, then that consent would not impede the decolonization process.⁷² The General Assembly itself could designate a colonial territory as a NSGT.⁷³ For example, according to the criteria set up in Resolution 1542, when Portugal did not agree to designate its overseas provinces as NSGTs, Portugal's overseas territories including Goa, Mozambique, Angola, and East Timor were listed as NSGTs by the U.N.⁷⁴ Subsequently, Spanish colonies were also declared as NSGTs in the absence of the administering power's consent.⁷⁵ The most recent, a French colony—New Caledonia—was included in this category in 1986 without the consent of the administering power.⁷⁶ This marked an important step in the decolonization process.⁷⁷

The Resolutions also provided for the formation of an international body to look after each and every case related to the self-determination of once-colonized peoples. According to Resolution 1654, the U.N. was required to form a special committee.⁷⁸ This special committee initially comprised of seventeen members, which has now expanded to twenty-four members; hence, it is known as the "Committee of 24."⁷⁹ The

72. James Crawford, *State Practice and International Law in Relation to Unilateral Secession*, in SELF-DETERMINATION IN INTERNATIONAL LAW: QUEBEC AND LESSONS LEARNED, *supra* note 36, at 31, 38. See also RAIČ, *supra* note 33, at 203–04; Grant, *supra* note 7, at 27–28.

73. Grant, *supra* note 7, at 29.

74. *Id.* at 29–30.

75. *Id.* at 30.

76. *Id.* See also *New Caledonia*, THE UNITED NATIONS AND DECOLONIZATION, <https://www.un.org/dppa/decolonization/en/nsgt/new-caledonia> (last visited Feb. 15, 2020).

77. Grant, *supra* note 7, at 28–29 ("The legal process of decolonization arguably underwent its most substantial extension to date when the General Assembly adopted Resolution 1541(XV) on December 15, 1960 . . .").

78. G.A. Res. 1654 (XVI), *supra* note 70, 3.

79. *Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, DAG HAMMARSKJÖLD LIBR., <http://research.un.org/en/docs/decolonization/bodies/c24> (last

Committee is tasked with “review[ing] the political, economic and social situation in each of the remaining [NSGTs] on the United Nations list.”⁸⁰ Annually, the Secretariat prepares a working article on the developments in these territories for the Committee.⁸¹ During the Committee’s annual sessions, advocates from the territories speak about the interests and aspirations of their people.⁸² The Special Committee takes all available information into account and puts recommendations to the General Assembly.⁸³ The General Assembly then adopts resolutions aimed at protecting the interests of the peoples of NSGTs.⁸⁴ In order to speed up decolonization, the General Assembly and the Committee call upon the administering powers to develop a program of activities for the decolonization of each remaining NSGT.⁸⁵ The adaptation of all these Resolutions and the development of more binding legal instruments show that the world community is committed to upholding the right of self-determination for all once-colonized peoples.

B. Decolonization as a Tool to Ensure Self-Determination

An analysis of international legal instruments related to decolonization reveals that the right to self-determination should be ensured for all peoples who have not attained the full measures

visited Jan. 27, 2020) (stating that the Special Committee originally had 17 members but expanded to 24 in 1962, after which it was called “Committee of 24” or “C-24,” and then in 2011 it grew to 29). See also U.N. Secretary-General, *Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, 11, U.N. Doc. A/AC.109/201/2011/L.1 (Dec. 28, 2010) (“As at 1 January 2011, the Special Committee was composed of the following 29 members: Antigua and Barbuda, Bolivia (Plurinational State of), Chile, China, the Congo, Côte d’Ivoire, Cuba, Dominica, Ecuador, Ethiopia, Fiji, Grenada, India, Indonesia, Iran (Islamic Republic of), Iraq, Mali, Nicaragua, Papua New Guinea, the Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, the Syrian Arab Republic, Timor-Leste, Tunisia, the United Republic of Tanzania and Venezuela (Bolivarian Republic of).”).

80. U.N. DEPT OF PUB. INFO., UNITED NATIONS AND DECOLONIZATION, *supra* note 46, at 6.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

of self-governance. Grant stated, “[s]elf-determination, indeed, has been the source of legal principles leading to independence for colonial countries. But it was certainly not the ‘tool.’ *Decolonization* was the tool that made self-determination work.”⁸⁶ The lengthy decolonization processes throughout the colonized and colonial worlds, as well as actions by the U.N. organizations, have helped to develop international norms. These international norms could be used to ensure the right of self-determination for non-self-governing people.

Although Chapter XI of the U.N. Charter does not explicitly mention the granting of self-determination to NSGTs, and Chapter XII does not specifically address the International Trusteeship System, these Chapters have laid the groundwork for the progression of self-determination.⁸⁷ During the 1960s, a number of NSGTs applied for the right to self-determination in accordance with the legal requirements framed under the U.N. Resolutions, and became independent.⁸⁸ According to a report, seventy territories achieved independence between 1946 and 1979.⁸⁹ Two NSGTs, East Timor and South Sudan, have recently achieved independence in 2002 and 2011, respectively.⁹⁰

The application of relevant Resolutions in practical cases affirms that once declared as a NSGT, the affected territory retained the same political status until self-determination was

86. Grant, *supra* note 7, at 26–27 (emphasis in original).

87. RAIČ, *supra* note 33, at 200. See also Laurence S. Hanauer, *The Irrelevance of Self-Determination Law to Ethno-National Conflict: A New Look at the Western Sahara Case*, 9 EMORY INT’L L. REV. 133, 134 (1995) (stating that, “[t]he UN General Assembly, the UN Security Council, and the International Court of Justice have explicitly recognized the legal right of the Western Sahara to self-determination,” which is a major step toward the achievement of self-determination for all NSGTs).

88. *List of Former Trust and Non-Self-Governing Territories*, THE UNITED NATIONS AND DECOLONIZATION, <https://www.un.org/dppa/decolonization/en/history/former-trust-and-nsmts> (last visited Feb. 15, 2020) (listing the dates of all the NSGTs that have achieved independence since 1947 and explaining the independence process for select NSGTs in the footnotes).

89. CASSESE, *supra* note 1, at 74–75.

90. Adam Taylor, *The 9 Newest Countries in the World*, WASH. POST (Sept. 16, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/09/16/the-9-newest-countries-in-the-world/>.

achieved by that territorial people.⁹¹ For example, when East Timor's position became uncertain under international law because of its ambiguous administrative powers position, its designation as a NSGT was not changed by the terms of Chapter XI of the United Nations Charter and Resolution 1541. In the East Timor case, the International Court of Justice (ICJ) upholds the view that after the long absence of its administering state, "East Timor remains a [NSGT] and its people [have] the right to self-determination."⁹² Judge Skubiszewski stated in his opinion that:

[T]he United Nations subsumed East Timor under Chapter XI of the Charter. It is a status defined by the law of the United Nations. Unilateral Acts—by Portugal during the dictatorship period, and now by Indonesia since 1975 and by the few States which granted recognition—have had and continue to have no primacy over that law.⁹³

Judge Werramantry in his opinion expressed a similar view.⁹⁴ The position of East Timor under the United Nations Transitional Administration in East Timor (UNTAET) was unique. While UNTAET was not an administering power within the meaning of Article 73 of the United Nations Charter, East Timor was, until then, technically listed as a NSGT.⁹⁵ The same happened with regard to Western Sahara. Morocco had been controlling this territory since Spain left it in 1976 and refused to comply with

91. RAIČ, *supra* note 33, at 207–208. See also Grant, *supra* note 7, at 32–33 (explaining that once a territory has been designated an NSGT, its removal from the territory of the parent state does not violate the territorial integrity of the parent state).

92. East Timor (Port. v. Austl.), Judgment, 1995 I.C.J. Rep. 90, 37 (June 30) [hereinafter East Timor (Port. v. Austl.)].

93. *Id.* at 224, 116 (dissenting opinion by Skubiszewski, J.).

94. *Id.* at 139, 193 (dissenting opinion by Weeramantry, J.) (reaffirming that the United Nations has specifically listed East Timor as an NSGT and that the right of its people to self-determination should not be in dispute).

95. U.N. Under-Secretary-General for Legal Affairs, the Legal Counsel, Letter dated Jan. 29, 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, 20, U.N. Doc. S/2002/161 (Feb. 12, 2002).

her duty as traditional administrative power.⁹⁶ In spite of the absence of Spain for more than forty years, Western Sahara still remained as a NSGT on the United Nation's list.⁹⁷ In the Western Sahara case, the ICJ expressed that Western Sahara remained a NSGT and allowed Spain to continue as a historical administrative power.⁹⁸ The question of Western Sahara has been dealt with by both the General Assembly, as a question of decolonization, and by the Security Council, as a question of peace and security.⁹⁹ The United Nations Mission for the Referendum in Western Sahara (MINURSO) has been working as an internal administering power to organize people for a plebiscite while Morocco's administering power has been opposed by the U.N.¹⁰⁰ In the Namibia case, South Africa continued to occupy Namibia (the then South West Africa) initially ignored the ICJ's verdict.¹⁰¹ Similarly, Indonesia continued asserting power over East Timor after the U.N. decided it was a NSGT.¹⁰² However, finally both

96. *Id.* at 7.

97. See *Western Sahara*, THE UNITED NATIONS AND DECOLONIZATION, <http://un.org/dppa/decolonization/en/nsgt/western-sahara> (last updated May 15, 2019) (showing that Western Sahara has been on the U.N.'s list of NSGTs since 1963). See also *Non-Self-Governing Territories*, THE UNITED NATIONS AND DECOLONIZATION, <http://un.org/dppa/decolonization/en/nsgt> (last updated May 14, 2019) (displaying the U.N.'s current list of NSGTs and reflecting that Western Sahara has been on the list NSGT list since 1963).

98. *Western Sahara*, Advisory Opinion, 1975 I.C.J. Rep. 12, 42–43, 161 (Oct. 16).

99. *Id.* at 48. See U.N. DEP'T OF POL. AFFAIRS, REPERTOIRE OF THE PRAC. OF THE S.C. SUPPLEMENT 1989-1992, at 352–53, U.N. DOC. ST/PSCA/1/ADD.11, U.N. SALES NO. 05.VII.1 (2007) (summarizing the various attention and plans implemented in addressing the question of peace and security in Western Sahara).

100. Ralph Wilde, *From Danzig to East Timor and Beyond: The Role of International Territorial Administration*, 95 AM. J. INT'L L. 583, 597–98 (2001). See generally G.A. Res. 35/19, 3, 9 (Nov. 11, 1980) (urging Morocco to terminate its occupation of Western Sahara).

101. See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 279, Advisory Opinion, 1971 I.C.J. 12, 132, 133(1) (June 21) (finding that South Africa's continued presence in Namibia is illegal, and therefore South Africa is "under obligation to withdraw its administration from Namibia immediately"); S.C. Res. 385, 1, 9 (Jan. 30, 1976) (condemning South Africa's continued occupation of Namibia and demanding South Africa comply with the ICJ advisory opinion from June 21, 1971).

102. See generally *East Timor* (Port. v. Austl.), *supra* note 92, at 15, 17–18 (explaining that the U.N. Security Council passed a resolution in 1976 that called upon Indonesia to withdraw from East Timor; however, Indonesia continued to maintain control

Namibia and East Timor have achieved their self-determination by exercising their rights as articulated in international legal instruments.¹⁰³ The above cases demonstrate that the status of NSGT should exist until the people determine their own political status of their territories.

C. *Decolonization in Ensuring External Self-Determination*

The international legal instruments have categorically contained a restriction that a people within an existing state cannot violate the territorial integrity of that state.¹⁰⁴ In particular, this applies to the decolonized states where the principle of maintaining the colonial boundaries takes priority over ethnic lines. This norm of maintaining the territorial integrity of once-colonial states is known as *uti possidetis* (Latin: as you possess) under international law.¹⁰⁵ Some scholars argue that people of colonial territories should maintain the norms of *uti possidetis*, and they have no right to seek secession within existing states under international law.¹⁰⁶ International legal instruments reject the notion of secession in order to prevent the

over East Timor such that it negotiated a treaty with Australia to explore and exploit resources of an area that included East Timor).

103. See Susan M. Akram, *Self-Determination, Statehood, and the Refugee Question under International Law in Namibia, Palestine, Western Sahara, and Tibet*, in STILL WAITING FOR TOMORROW: THE LAW AND POLITICS OF UNRESOLVED REFUGEE CRISES 75, 84–85 (Susan M. Akram & Tom Syring eds., 2014) (explaining that with the U.N.'s support and legal framework, Namibia was able to function as an independent self-governing territory decades before South Africa formally withdrew its forces). See also Hilary Charlesworth, *The Constitution of East Timor, May 20, 2002*, 1 INT'L J. CONST. L. 325, 325–27 (2003) (establishing that East Timor became formally independent in May 20, 2002, with the assistance of the U.N. during the transition of government).

104. E.g., G.A. Res. 1514 (XV), *supra* note 19, 5, 7.

105. Malcolm N. Shaw, *Peoples, Territorialism and Boundaries*, 8 EUR. J. INT'L L. 478, 491, 494 (1997).

106. See HURST HANNUM, *AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS* 48–49 (Univ. of Pa. Press, rev. ed. 1996) (purporting that non-colonial people or minorities do not yet have any “right to secession” recognized under international law); T.M. Franck, *Postmodern Tribalism and the Right to Secession*, in PEOPLES AND MINORITIES IN INTERNATIONAL LAW 3, 13 (Catherine Brölmann, René Lefebvre & Marjoleine Zieck eds., 1993) (contending that international law does not recognize a right to secession for subgroups within a territory); Shaw, *supra* note 105, at 501 (purporting that even minority rights relating to autonomy do not extend a right to secession under the doctrine of *uti possidetis*).

fragmentation of world geography and the formation of more nations with limited resources.

However, several decolonization cases of self-determination have concluded with secession despite all these restrictions, and they have been accepted by the international community. The empirical application of this phenomenon was seen just after the promulgation of the U.N. Charter. In some decolonization cases, distinct peoples obtained priority to maintain their territory. For example, India was divided into two States based on the religious identity of peoples.¹⁰⁷ The Mali Federation also split up based on the distinct identities of two different peoples.¹⁰⁸ The Gilbert and Ellice Islands, Ruanda-Urundi, Southern and Northern Cameroon are also noteworthy examples.¹⁰⁹ These examples reveal that secessions may be considered legitimate if they prevent conflicts and possible loss of human life.

The U.N. Resolutions addressing self-determination indicate that a government should represent the whole people irrespective of race, creed, or color in order to avoid secession.¹¹⁰ That means a people have a right to secede if they are not meaningfully represented by the existing government. Thus, a claim of secession may legitimately overcome principles of territorial integrity in certain special circumstances. For instance, Raič stated that unilateral secession would obtain legitimacy, “when the parent State does not act in compliance with the right of

107. Jeffrey A. Redding, *Constitutionalizing Islam: Theory and Pakistan*, 44 VA. J. INT'L L. 759, 763 (2004) (explaining that when the British granted independence in 1947, it simultaneously partitioned the region into the Muslim-majority nation of Pakistan and the Hindu-led republic of India).

108. Donn M. Kurtz, *Political Integration in Africa: the Mali Federation*, 8 J. MOD. AFR. STUD. 405, 406 (1970) (explaining that disagreements between the Senegalese and Soudanese resulted in the dissolution of the Mali Federation and creation of the nations of Senegal and Soudan).

109. RAIČ, *supra* note 33, at 209–10; JAMES SUMMERS, PEOPLES AND INTERNATIONAL LAW: HOW NATIONALISM AND SELF-DETERMINATION SHAPE A CONTEMPORARY LAW OF NATIONS 323–24 (2007).

110. *E.g.* G.A. Res. 47/135, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, pmbl. (Dec. 18, 1992); G.A. Res. 2625 (XXV), annex, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, at 124 (Oct. 24, 1970); G.A. Res. 1514 (XV), *supra* note 19, 5.

internal self-determination,” or discriminates against the existing peoples.¹¹¹

Crawford argued, “there is no good reason why other defining characteristics, including historical boundaries or *de facto* boundaries established through the hostile action of the [parent] government in question, might not also be relevant” to declare secession.¹¹² However, Crawford also posited that ethnic distinctiveness alone “is not enough;” an element of discrimination is also required to declare secession.¹¹³ It is a sacred trust placed upon the people of a metropolitan state to maintain good relations with other minority peoples; a violation of this trust could lead to separation. Franck expressed a similar view:

[W]hen a minority within a sovereign State—especially if it occupies a discrete territory within that State—persistently and egregiously is denied political and social equality and the opportunity to regain its cultural identity. . . . it is conceivable that international law will define such repression, prohibited by the Political Covenant, as coming within a somewhat stretched definition of colonialism. Such repression, even by an independent state not normally thought to be “imperial” would then give rise to a right of “decolonization.”¹¹⁴

Simpson argued that because non-self-governing people are ignored, many minority or ethnically distinctive people regarded “the majority rule” as alien or oppressive.¹¹⁵ He also expressed that “[i]n the absence of any requirement of strict adherence to

111. RAIČ, *supra* note 33, at 321; cf. G.A. Res. 1514 (XV), *supra* note 19, 6..

112. James Crawford, *Self-Determination outside the Colonial Context*, in SELF-DETERMINATION IN THE COMMONWEALTH 1, 13 (W.J. Allan Macartney ed., 1988).

113. *Id.*

114. Franck, *supra* note 106, at 13–14.

115. Gerry J. Simpson, *The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age*, 32 STAN. J. INT'L L. 255, 272–73 (1996) (explaining, once decolonized, minorities within self-determining territories were ignored even if oppressed or unrepresented by the majority).

internal self-determination, it was enough that the elite, no matter how oppressive or unrepresentative, was at least not tainted with the colonial stigma.”¹¹⁶ Thus, the non-self-governing peoples who have been suffering a position or status of subordination to the administering power in their existing states can claim the right of secession. Grant stated that, “[w]here an administering power obstructed the exercise of self-determination,” this might even give any non-self-governing people the option to unilaterally declare their land as a NSGT.¹¹⁷

Grant wrote in favor of extending the secession process to contiguous territories with an ethnically distinct character such as Kosovo.¹¹⁸ He mentioned that the 1960s U.N. decision to eradicate colonialism was a significant transition.¹¹⁹ Now, another important transition is required to remove the “saltwater rule” for the ethnic minority people whose internal self-determination cannot be protected by international law.¹²⁰ It would be the next bold step in the decolonization practice of the U.N., which is needed in the current changing world situation. In the same way, Tomasa demanded that:

The blue water thesis [territories controlled by colonial states separated by ocean or sea or geographical remoteness] became obsolete in its own time, as U.N. practice and theory indicate. Several significant U.N. documents from the 1960s are directly contradictory to the blue water thesis. Furthermore, in the last two decades, the practices of individual States and of U.N. agencies have veered away from application of the blue water thesis.¹²¹

116. *Id.* at 273.

117. Grant, *supra* note 7, at 36.

118. *Id.* at 53.

119. *Id.* at 34–35.

120. *Id.* at 32, 34.

121. Taryn Ranae Tomasa, *Ho'olāhui: The Rebirth of A Nation*, 5 ASIAN L. J. 247, 261 (1998). See also S. JAMES ANAYA, *INDIGINEOUS PEOPLES IN INTERNATIONAL LAW* 60 n.29 (Oxford Univ. Press 1996) (ebook).

This discussion thus reveals that *uti possidetis* or blue water theories can be disregarded. The changing nature of international laws and outline of human rights demand the change of right to external self-determination.

III. DECOLONIZATION UNDERPINS THE U.N.'S ROLE

Several research findings, judges' opinions and Resolutions made the decolonization process better equipped to solve self-determination crises under the decolonization principles. The instruments of decolonization are now much more mature than they were initially during the 1950s. The gap between the initial process and the latest position thus should be considered as an extension of the decolonization process, and these extended legal instruments are supposed to be used by the United Nations in its role of ensuring peoples' rights to self-determination. These extensions will now be discussed.

A. General Assembly's Authority in Deciding NSGTs

From the beginning of the decolonization process, the U.N. General Assembly (GA) has been playing a vital role in determining NSGTs. Whenever the world community encountered any problem regarding the self-determination of people, it tried to resolve it through the GA's decisions. In the East Timor case, Judge Skubiszewski, in his dissenting opinion, unequivocally claimed: Portugal's status as an administering power "could be changed only by an explicit decision," and "any change in the status of East Timor [could] only take place by virtue of a United Nations decision."¹²² This means that in any uncertain situation, the United Nations is the supreme authority to legally change the status of a territory and its administrative authority. Judge Skubiszewski further suggested expanding the U.N.'s role to encompass the decolonization process in respect of the changing situation.¹²³ He affirmed that the General Assembly has authority to make such decisions:

122. East Timor (Port. v. Austl.), *supra* note 92, at 273, 276, 155, 167(3) (dissenting opinion by Skubiszewski, J.).

123. *Id.* at 273, 156.

Under the law and in the practice of the Organization the implementation of Chapter XI of the Charter is part and parcel of the functions of the General Assembly. . . . [T]he Assembly is competent to make binding determinations, including determinations on the continued classification of an area as a non-self-governing territory or on the administering Power.¹²⁴

For example, the GA decided Indonesia's status as a non-traditional administering power under the U.N. Charter when, for about twenty-four years, Indonesia had been the controlling authority over East Timor.¹²⁵ The U.N. recognized the situation of then East Timor, and arranged an agreement between the Secretary General of the United Nations with Portugal and Indonesia for deciding East Timor's self-determination.¹²⁶

Judge Weeramantry (in his dissenting opinion) noted that the General Assembly Resolution has been a legal consequence in respect of NSGTs.¹²⁷ He explained this as:

United Nations practice has not questioned the General Assembly's competence so to act as the appropriate United Nations organ for determining whether a non-self-governing territory has or has not achieved self-determination. . . . [T]he General Assembly is the appropriate body for recognition of the Power holding authority over a non-self-governing territory. . . . The various resolutions of the General Assembly relating to this right in general terms, which have helped shape public international law . . . are an important material

124. *Id.* at 246, 71.

125. Julie M. Sforza, *The Timor Gap Dispute: The Validity of the Timor Gap Treat, Self-Determination, and Decolonization*, 22 SUFFOLK TRANSNAT'L L. REV. 481, 525 (1999) (reasoning that, under international law, Indonesia served as the substituting administering power of East Timor).

126. Mark Rothert, *UN Intervention in East Timor*, 39 COLUM. J. TRANSNAT'L L. 257, 259-60 (2000) (discussing the agreement between Indonesia and Portugal on the question of East Timor).

127. *Id.* at 188.

source of customary international law in this regard.¹²⁸

The advisory opinion for the Western Sahara case recognized that the General Assembly had "a measure of discretions" to form a NSGT and design the procedure by which the right of self-determination is to be realized.¹²⁹ Recently, while Serbia was likely to oppose the full self-determination of the Kosovo people, the U.N. General Assembly did not hesitate to grant the right to self-determination to the Kosovo people despite resistance or lack of consent by the administering power.¹³⁰ Thus, Serbia's stance on the issue became irrelevant, and the GA's decision was established. However, the support of big powers or veto powers is required to produce any such positive outcome.

B. The U.N.'s Role in Changing the Administering Powers for NSGTs

Resolution 1541 applies to territories that are geographically separated and ethnically or culturally distinct from the administering power.¹³¹ However, a problem emerges during the decolonization process when a NSGT is occupied or unlawfully annexed by a geographically attached state, and the colonial state (colonial power) does not want to administer that territory, and thus maintains a lengthy physical and official absence from that territory. The position of such occupied or annexed colonial

128. East Timor (Port. v. Austl.), *supra* note 92, at 187–88 (dissenting opinion by Weeramantry, J.).

129. Western Sahara, *supra* note 98, at 36, 71. *See also* East Timor (Port. v. Austl.), *supra* note 92, at 246, 71 (dissenting opinion by Skubiszewski, J.) (stating "the Assembly is competent to make binding determinations, including determinations on the continued classification of an area as a non-self-governing territory or on the administering Power."); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, 50, 105 (discussing how "it would not be correct to assume that, because the General Assembly is in principle vested with recommendatory powers, it is debarred from adopting, in specific cases within the framework of its competence, resolutions which make determinations or have operative design.").

130. Korab R. Sejdiu, *The Revival of a Forgotten Dispute: Deciding Kosovo's Future*, 3 RUTGERS J. L. & URB. POL'Y 106, 114 (2005).

131. *See* G.A. Res. 1541 (XV), *supra* note 69, at princ. IV.

territories was very uncertain under international law, because an occupied, geographically attached NSGT could not be legally represented in the international forum.¹³² For example, when East Timor and Western Sahara were occupied by other contiguous states, both their status and their colonial administrative powers were uncertain in reference to Chapter XI of the U.N. Charter and Resolution 1541.¹³³ Neither the Charter nor Resolution 1541 addressed the position of a NSGT when it is illegally occupied by a third state that has a shared border with that territory.¹³⁴ The legal process of decolonization was extended to solve this complex problem, and finally, the East Timor problem was resolved within the decolonization process.¹³⁵ However, in Western Sahara this process is still ongoing.¹³⁶

In December 1975, the military of the contiguous state, Indonesia, occupied East Timor and claimed it as an integral part of Indonesia.¹³⁷ In 1999, Portugal filed a case in the ICJ to determine its administering power over East Timor.¹³⁸ However, the Court failed to address the issue because of the jurisdictional problem, as East Timor's status remained ambiguous under

132. Grant, *supra* note 7, at 36–37 (discussing the logic of extending the NSGT concept to contiguous territories).

133. See Sforza, *supra* note 125, at 505, 511–12 (outlining the initial incongruities between the East Timor and Western Sahara disputes and the law regarding self-determination by NSGTs).

134. See G.A. Res. 1541 (XV), *supra* note 69, at princ. IV (“[T]here is an obligation to transmit information in respect of a territory which is *geographically separate* and is distinct ethnically and/or culturally from the country administering it.” (emphasis added)); U.N. Charter art. 73 (discussing the role of Member States in overseeing NSGTs).

135. S.C. Res. 1246, 1 (June 11, 1999).

136. See Dominic Dudley, *Morocco Suffers Legal Setback As EU Official Declares Western Sahara ‘Not Part Of Morocco’*, FORBES (Sept. 14, 2016, 2:01 PM), <https://www.forbes.com/sites/dominicdudley/2016/09/14/morocco-setback-western-sahara/#cefbe235d7cb> (“Western Sahara has been included on the UN’s list of non-self-governing territories since 1963 and the EU has never recognised the territory as being part of Morocco.”); *First foreign diplomatic post opens in Western Sahara*, ARAB NEWS (Dec. 18, 2019, 5:18 PM), <https://www.arabnews.com/node/1600946/world> (“The United Nations refers to the vast desert territory as a non-self-governing territory and the international community has long advocated a referendum to decide its status.”).

137. See Sforza, *supra* note 125, at 488–89. See also Press Release, General Assembly, East Timor Petitioners Plead for Self-Determination, Others Advocate Integration with Indonesia, U.N. Press Release GA/COL/2983 (July 1, 1998).

138. Sforza, *supra* note 125, at 491.

international law.¹³⁹ The ICJ did not recognize Portugal's status, but did uphold the status of the NSGT of East Timor; further, Sforza stated that the Timorese have the right to self-determination within the meaning of Chapter XI of the U.N. Charter.¹⁴⁰ However, finding no legal administrative power, Sforza argues that the ICJ implicitly allowed an alternative situation: that East Timor be declared as a "non-self-governing territory controlled by a non-traditional administering power with an existing right of self-determination."¹⁴¹ Moreover, despite the ICJ's declination to rule on the merits, Sforza argues that in the absence of a direct ruling, the ICJ suggested Indonesia as its new administering authority while Portugal would remain a limited administering authority over East Timor.¹⁴²

The ICJ's view in the case of East Timor has been considered as a breakthrough as it changed the traditional view of appointing an administering power only from colonial states. Thus, in the East Timor case, the decolonization process had further evolved, as Indonesia—a contiguous controlling authority—acquired the status of a substitute administering authority. Moreover, there was a new dimension to administering a NSGT because the ICJ did not entirely reject Portugal's status as a colonial administrative power.

Judge Skubiszewski in his opinion in the East Timor case suggested a different approach:

It would be erroneous to contend that Portugal lost its status of administering Power because some resolutions passed over that status in silence or the United Nations political organs ceased adopting any resolutions on East Timor. The status could be changed only by an explicit decision, including

139. East Timor (Port. v. Austl.), *supra* note 92, 34–35.

140. *Id.* at 31–32; Sforza, *supra* note 125, at 504, 509.

141. See Sforza, *supra* note 125, at 524–25. See also East Timor (Port. v. Austl.), *supra* note 92, at 179–80, (dissenting opinion by Weeramantry, J.). Further, Judge Weeramantry acknowledges Portugal's past negative colonial record, but maintains that a bad colonial record neither disentitles Portugal as to administering power nor determines the ongoing qualification as to an established status as administering authority. *Id.* at 191–92.

142. See Sforza, *supra* note 125, at 525–26.

acknowledgement that another State (i.e., Indonesia) had now assumed the responsibility for the Territory.¹⁴³

In the same case, Judge Weeramantry noted that a bad or poor colonial record does not create exclusion of entitlement to Portugal as the administering power granted by the General Assembly.¹⁴⁴ He hypothesized that:

[In] a non-self-governing territory . . . overrun by a third Power . . . [T]his invading Power completely displaces the legal authority of the duly recognized administering Power. If the administering Power cannot then speak for the territory that has been overrun and the people of the territory themselves have no right of audience before an international forum, that people would be denied access to the international community, whether directly, in their own right, or indirectly, through their administering Power. The deep concern for their welfare, which is a primary object of Chapter XI of the Charter, and the "sacred trust" notion which is its highest conceptual expression, would then be reduced to futility; and the protective structure, so carefully built upon these concepts, would disintegrate, in the presence of the most untenable of reasons—the use of force.... As so often in the law, the hypothetical example assists in the understanding of the practical rule.¹⁴⁵

Thus, if the U.N. wants to designate a colonial territory as a NSGT, then the U.N. can assume and request a former colonial power to act as an administrative power. Judge Weeramantry also confirms this:

143. East Timor (Port. v. Austl.), *supra* note 92, at 273, 155 (dissenting opinion by Skubiszewski, J.).

144. *Id.* at 183–84, 192 (dissenting opinion by Weeramantry, J.).

145. *Id.* at 179–80.

[T]here is more to the status of administering Power than mere physical control. An administering Power is charged with many duties relating to the welfare of the people of the territory. It may lose physical control but, with that loss of physical control, its duties do not fade away. The administering Power is still obliged to extend such protections as are still available to it for the welfare of the people and the preservation of their assets and rights. . . . [L]egal responsibilities remain the solemn duty of the administering Power, even though physical control may have been lost.¹⁴⁶

Hence, the evidence provided shows and establishes that in NSGTs, peoples' right to self-determination can even be extended to the unlawful or forceful occupier. Loss of physical control by the lawful administering power cannot impede the determination of self-governance of once-colonized peoples. The United Nations can change the position of colonial powers in administering non-self-governing territories.

C. The U.N.'s Role as a Substitute Administrative Authority

As previously discussed, the General Assembly has supreme power to decide administering power; in complex cases, the U.N. can appoint itself as an administering power.¹⁴⁷ In such cases, both the U.N. Security Council and the General Assembly pave the way for such decisions. In the case of East Timor, for example, the U.N. Security Council adopted Resolution 1272 under Chapter VII of the U.N. Charter.¹⁴⁸ The U.N. Security Council also formed a United Nations Transitional Administration in East Timor (UNTAET), which was then "empowered to exercise all legislative and executive authority, including the administration of justice."¹⁴⁹ The UNTAET was created to

146. *Id.* at 180–81.

147. U.N. Charter art. 73. *See, e.g.*, S.C. Res. 1272, 1 (Oct. 25, 1999) (showing that the U.N. has effectively appointed itself as an administering power).

148. S.C. Res. 1272, *supra* note 147, 1; Rothert, *supra* note 126, at 278.

149. Rothert, *supra* note 126, at 278 (quoting S.C. Res. 1272, *supra* note 147, 1).

administer the territory until it became independent.¹⁵⁰ According to Article 25 of the U.N. Charter, all U.N. member countries are bound to recognize the decision of the Security Council;¹⁵¹ therefore, Indonesia could not rule out the authority of the UNTAET (commonly known as peacekeeping mission in East Timor).

Previously, the Security Council had taken this kind of decision for Trust Territories, but never for NSGTs.¹⁵² Therefore, Parker saw this as the evolution of a new additional role of the Security Council akin to “second generation peacekeeping.”¹⁵³ However, this kind of new act was also justified by researchers within the frame of decolonization process. Musgrave argued that although the U.N. has no supervisory power over a NSGT, it has responsibility to monitor economic, social, and educational conditions of the NSGT as per Article 73 (e).¹⁵⁴ If there is no legal administering power to transmit information about the NSGT, the U.N. cannot overlook its responsibility to obtain that information, and thus the U.N. itself can penetrate the NSGT to gather that information.¹⁵⁵ In the East Timor case, Judge Weeramantry also considered the idea that the United Nations

150. Wilde, *supra* note 100, at 585.

151. U.N. Charter art. 25 (“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”).

152. TOM PARKER, *THE ULTIMATE INTERVENTION: REVITALISING THE UN TRUSTEESHIP COUNCIL FOR THE 21ST CENTURY* 37 (2003), bi.edu/globalassets/forsknig/centre-for-european-and-asian-studies/pdf/03-03the_ultimate_intervention.pdf (explaining that before UNTAET, the U.N. had never exercised “‘full and exclusive sovereignty’ over a territory” under Chapter XI of the U.N. Charter as it did in East Timor, but arguably had exercised a similar authority over Libya under Chapter XII).

153. *Id.*

154. THOMAS D. MUSGRAVE, *SELF-DETERMINATION AND NATIONAL MINORITIES* 65 (Ian Brownlie ed., Oxford Univ. Press 1997).

155. U.N. Charter art. 73, 1(e) (indicating the administering powers’ obligations to transmit regularly statistical and other information for which they are respectively responsible). See S.C. Res. 1272, *supra* note 147, 1, 18 (requesting that the Secretary General keep the Security Council informed of the implementation of the resolution, especially the deployment of UNTAET and demonstrating their empowerment to “exercise all legislative and executive authority”). See also G.A. Res. 1542 (XV), Transmission of Information under Article 73 e of the Charter, 2–3 (Dec. 15, 1960) (declaring Portugal has an obligation to provide the U.N. with information under Chapter XI of the U.N. Charter and requesting Portugal transmit this information concerning conditions in their territories to the U.N. Secretary General).

can work as a substitute administering power for the well-being of a NSGT.¹⁵⁶ Judge Weeramantry stated in his dissenting opinion in the East Timor case that:

[T]he General Assembly and Security Council can, in such an event, take over the responsibilities of the administering Power.

It is true indeed that the General Assembly and the Security Council, in all their plenitude of power, preside over the great task of decolonization and protection of dependent peoples. Yet, with all respect, they are no substitutes for the particular attention to the needs of each territory which the Charter clearly intended to achieve. Protection from internal exploitation and external harm, day-to-day administration, development of human rights, promotion of economic interests and well-being, recovery of wrongful loss, fostering of self-government, representation in world forums, including this Court—all these require particular attention from a Power specifically charged with responsibility in that regard. Moreover, the supervision of the United Nations depends on transmission of information under Article 73 (e) and, in the absence of an administering Power, there would be a total neglect of that function and hence an impairment of United Nations supervision. The Charter scarcely envisaged that a dependent people should be left to fend for themselves, denied all this assistance. Least of all can it be envisaged that the use of force could deprive them of these rights. The basic protective scheme of the charter cannot thus be negated.¹⁵⁷

However, the Security Council's Resolution 1272 of October 25, 1999 in respect of East Timor was not accepted without

156. East Timor (Port. v. Austl.), *supra* note 92, at 181 (dissenting opinion by Weeramantry, J.) (considering the notion that the U.N. may be required to step in when the administering power in place fails in its responsibilities to preserve the welfare of the people).

157. *Id.*

precedent. In 1962 and 1963, the United Nations stepped into the role of a transitional administration for Dutch West New Guinea.¹⁵⁸ Rothert noted, “[t]he operation was responsible for administering the territory, maintaining law and order, protecting the rights of the inhabitants, and ensuring ‘uninterrupted, normal services’ in the transition period between Dutch and Indonesian rule.”¹⁵⁹ The United Nations has also engaged in similar operations in Congo,¹⁶⁰ Namibia,¹⁶¹ Western Sahara, Cambodia¹⁶² and Kosovo.¹⁶³

A question may arise about whether the state sovereignty of the occupying country, who annexed the NSGT, is violated through this practice by the U.N. To answer this question, Brownlie reasons that when international life is at stake, the U.N. could take on any legal responsibility.¹⁶⁴ Regarding the state’s sovereignty in the Namibia case, the ICJ stated that

158. Rothert, *supra* note 126, at 278–79.

159. *Id.* at 279.

160. Wilde, *supra* note 100, at 586 (“The United Nations first exercised territorial administration in the 1960s, asserting various administrative prerogatives in the Congo between 1960 and 1964. . .”).

161. G.A. Res. 2145 (XXI), pmb., 3–5 (Oct. 27, 1966) (deciding to terminate South Africa’s mandate over South West Africa, later Namibia, and place the territory under the U.N.’s direct responsibility); Rothert, *supra* note 126, at 279 (explaining that the U.N. undertook similar operations in Namibia in 1989).

162. Wilde, *supra* note 100, at 586, 597–98 (“Over twenty years later, in 1991 the United Nations was authorized to perform administrative functions in Western Sahara [MINURSO] and Cambodia [United Nations Transitional Authority in Cambodia (UNTAC)].”).

163. S.C. Res. 1244, annex 2, 4–5 (June 10, 1999) (authorizing UNMIK to assume all legislative and executive control in the crisis region); Morag Goodwin, From Province to Protectorate to State: Sovereignty Lost, Sovereignty Gained?, in *KOSOVO: A PRECEDENT? THE DECLARATION OF INDEPENDENCE, THE ADVISORY OPINION AND IMPLICATIONS FOR STATEHOOD, SELF-DETERMINATION AND MINORITY RIGHTS* 95 (James Summers ed., 2011) (stating that for the prior decade, “effective control over the territory of Kosovo [had] been exercised not by Serbia but by an international administration guaranteed by the NATO-led KFOR force.”); Wilde, *supra* note 100, at 585 (“In June 1999, the United Nations Mission in Kosovo (UNMIK) was created to provide an ‘interim administration’ in that territory.”).

164. See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 60, 107–08, 163–67, 293, 369, 554–55 (Oxford Univ. Press, 6th ed. 2003) (arguing that the U.N. has relied on Chapter VII of the Charter to justify their administration and actions to promote self-determination in the NSGTs, and also to avoid a potential conflict with the Article 2, paragraph 7 prohibition of state interference).

"[w]hen a decision was to be taken with regard to the future of these . . . territories . . . two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of such peoples from [sic] 'a sacred trust of civilization.'"¹⁶⁵ In the case of East Timor, as a NSGT within the meaning of Chapter XI, its administering power was Portugal, so its right to self-determination "remain[ed] a 'sacred trust of civilization' in the hands of Portuguese Government and all States members of the United Nations."¹⁶⁶ To maintain this 'sacred trust', the U.N. can invade within the jurisdiction of any NSGT.

Thus, it is seen that the decolonization process has extended the role of the U.N. This is seen in particular in the East Timor case where legal responsibility has been extended for the betterment of international life. Rothert provides three important considerations that justify the U.N.'s self-appointed role in East Timor:

First, the United Nations had established a precedent for such an approach through previous operations. Second, the United Nations had expressed a special interest in [NSGTs] in general, and East Timor in particular, through previous General Assembly and Security Council Resolutions. Finally, it is unlikely that either Indonesia or Portugal would have agreed to allow the other to be responsible for the transitional administration of East Timor. The only other option was the United Nations.¹⁶⁷

IV. DECOLONIZATION: AN ONGOING LEGAL PRACTICE

Since 1945, the U.N. Charter's guiding principles have emerged as the laws of decolonization, but this process is not yet completed. From the beginning of the 1990s, the U.N. has

165. SHIV R. S. BEDI, *THE DEVELOPMENT OF HUMAN RIGHTS LAW BY THE JUDGES OF THE INTERNATIONAL COURT OF JUSTICE* 187 (2007) (quoting *International Status of South West Africa*, Advisory Opinion, 1950 I.C.J. Rep. 128, at 131 (July 11)).

166. *Id.* at 188.

167. Rothert, *supra* note 126, at 279–80.

declared every decade as the International Decade for the Eradication of Colonialism.¹⁶⁸ However, throughout the decolonization process, the U.N. and the colonial states held the view that NSGT meant colonial territory and administrative power meant colonial power. In reality, neither Chapter XI, nor Articles 73 or 76 of the U.N. Charter, stated that only colonial territory would be considered as a NSGT or that administrative power would be only colonial power. In the Namibia case, the court's statement that "the principle is applicable to all non-self-governing territories" until they achieve self-determination influenced the world community and provided a new dimension later reflected in the Kosovo case.¹⁶⁹

Following the decolonization processes, the U.N. adopted Resolutions to include many non-colonial territories as NSGTs and has been working to grant self-determination to peoples in these territories.¹⁷⁰ Considering this evolution of international legal instruments from colonial territories to non-colonial territories, Judge Skubiszewski, in his dissenting opinion in the East Timor case, expressed his view that:

At the present time the United Nations list of these territories [NSGTs] is short as the decolonization process reaches its end. But non-self-government (or governance) need not be a closed chapter: ideologies, political systems and many individual countries are in transition and undergoing transformation. Legal strategy requires that old institutions (like that of Chapter XI of the Charter) adapt to new challenges. It would be better if the Court assumed jurisdiction: better for the

168. See G.A. Res. 65/119 (Jan. 20, 2011); G.A. Res. 55/146 (Mar. 6, 2001); G.A. Res. 43/47, at 48–49 (Nov. 22, 1988); *International Decades for the Eradication of Colonialism*, UNITED NATIONS AND DECOLONIZATION, <https://www.un.org/dppa/decolonization/en/history/international-decades> (last visited Jan. 26, 2020).

169. Summers, *supra* note 109, at 329 (providing that the principle of self-determination, headlining the Namibia case, applies to all NSGTs, and not just those under colonial rule).

170. *Id.* at 325. *E.g.*, G.A. Res. 41/41, subdiv. A, pmbl., 1, 3 12, subdiv. B, pmbl., 12 (Dec. 2, 1986) (listing several General Assembly resolutions to add colonies to the list of non-self-governing territories and requesting a special committee to continue to seek out non-self-governing territories).

prospective developments, better for the rule of law.¹⁷¹

From time to time, the U.N. has changed its decolonization procedure according to specific cases. If the international community through the U.N. wants to change its procedure regarding the warranty of self-determination of vulnerable peoples, then it has the legal provision to do so. The decolonization process has outlined this legal provision. In this regard, Bedi asserted:

The principle of sacred trust of civilization is by no means a static and limited concept meant only to be applied to the colonial or non-self-governing peoples. It is a dynamic concept making a constant and direct appeal to the divinity of mankind, be it a politician, a judge or a jurist of a sovereign State, that every human being, governed and protected by law, in the sacred trust of human civilization, which is divine and compassionate in its origin, and in the hands of the governing and judging human beings in power. Hence, the resulting perception: the principle of sacred trust of civilization seen in its universality is superior to the concept of State sovereignty.¹⁷²

Judge Skubiszewski made a similar forceful comment on the East Timor case, where he stated, "non-self-government (or governance) need not be a closed chapter" and further argued, "if the Court assumed jurisdiction" over it, it would benefit people internationally.¹⁷³

The above discussion reveals that the decolonization process has enriched the international legal instruments and helped the

171. East Timor (Port. v. Austl.), *supra* note 92, at 273, 156 (dissenting opinion by Skubiszewski, J.).

172. BEDI, *supra* note 165, at 190.

173. East Timor (Port. v. Austl.), *supra* note 92, at 273, 156 (dissenting opinion by Skubiszewski, J.) (claiming it would be better if the International Court of Justice assumed jurisdiction, for the benefit of "prospective developments" on decolonization and better for the "rule of law").

international community to apply greater roles through the U.N. organizations in granting the right to self-determination of peoples concerned. Although the U.N. has not been successful yet in all cases such as Tibetans, Western Saharans, and Kurds,¹⁷⁴ the U.N. is, without a doubt, the final refuge for the international community and for the people seeking the guaranty to exercise the right to self-determination. Nevertheless, we also need to remember that it took 24 years for the U.N. to warrant the right to self-determination for the East Timorese, and over 50 years for the South Sudanese.¹⁷⁵ We can only hope that the rest of the incomplete decolonization processes would help the international community to enrich the international legal instruments further and embolden the U.N. to resolve all self-determination issues in future.

To summarize the above discussion, it can be said that the decolonization process began around 70 years ago, and since then the situation has constantly changed. To maintain a stable situation, the U.N. has the competence and authority to declare a territory as a NSGT for the well-being of the people of that territory. The administrative authority of the U.N. General Assembly has been delineated under international laws. All these are indeed remarkable developments within the decolonization process.

V. CONCLUSION

The process of decolonization began in order to finalize the issues of self-determination for colonial people. But it assumed

174. See Ove Bring, *Kurdistan and the Principle of Self-Determination*, 35 GERMAN Y.B. INT'L L. 157, 165 (1992) (discussing the Kurdish struggle for self-determination when the U.N. seems to interpret it as a principle to be applied only to colonial territories). See also Rob Dickinson, *Twenty-First Century Self-Determination: Implications of the Kosovo Status Settlement for Tibet*, 26 ARIZ. J. INT'L COMP. L. 547, 548, 556, n.54 (stating that the U.N. has not responded to the proposed self-determination of Tibet); Hanauer, *supra* note 87, at 150 (arguing that the International Court of Justice found that Western Sahara was not entitled to self-determination despite historical and ethnic differences).

175. Alison Rourke, *East Timor: Indonesia's invasion and the long road to independence*, THE GUARDIAN (Aug. 29, 2019), <https://www.theguardian.com/world/2019/aug/30/east-timor-indonesias-invasion-and-the-long-road-to-independence>; *South Sudan Fast Facts*, CNN, <https://www.cnn.com/2013/07/10/world/africa/south-sudan-fast-facts/index.html>, (last updated July 29, 2019).

greater importance as a means of maintaining peace and security among the colonized and non-colonized people, particularly for international communities. The decolonization process upholds the United Nations' objectivity of ensuring "peace and harmony in the world" by acknowledging the right to self-determination of people around the world. Decolonization not only produced friendly relations among different groups of people, but also provided legal grounds for the recognition of self-determination as a human right.

The classical use of "decolonization," which was synonymous with the separation of colonial territories, has changed. Now its use has been extended to ensure self-determination of all suppressed peoples. The decolonization processes have been expanding and enriching international legal instruments, equipping them with the power to grant self-determination to all groups of people. Factors such as the General Assembly's power, geographical separateness and ethnical distinctiveness, and the administration of NSGTs have brought hope to non-self-governing people around the world. Furthermore, these factors have provided guidelines for the international community on ways to maintain peace among peoples by appropriately handling self-determination issues. Though decolonization is not the only solution to self-determination, it is undoubtedly central to ensuring this right for all people.

Through the rigorous examination of international legal documents, scholarly articles and international cases related to the settlement of self-governance of colonized people, this article exposes that the United Nations has gained greater roles through decolonization processes in determining peoples' rights to self-determination. Findings reveal that the U.N.'s authority in administering NSGTs and resolving self-determination issues has largely been extended through the decolonization processes to date. This research has revealed that the U.N. General Assembly has power to grant the right to self-determination to any oppressed people without the consent of the existing administering power. The U.N. can bestow power to once-colonial power for administering non-self-governing people in their previously colonial territories. The U.N., with the consent of both the General Assembly and the Security Council, can also appoint

itself as an administering power over a non-self-governing territory.

It is expected that these findings would assist the international community and the U.N. to focus on the extended roles of the United Nations in resolving current self-determination issues of non-self-governing people. This research, however, focuses on only the positive aspects of the decolonization process in determining self-governance. Further empirical research into decolonized territories and people may help to expose other aspects including negative implications of decolonization.

