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# **NORMATIVE CHARACTERIZATION OF SELF-DETERMINATION IN INTERNATIONAL LAW**

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## **Introduction**

The traditional international law has always been a system of norms and necessary rules. However, the informal nature of modern IL coupled with the lack of an international legislative body save the ILC, has indeed literally affected the normative concerns of the subject. Technically, due to the vastness and controversial nature of the theme in the post-colonial era (involving cases of alien domination, oppression of minorities, the occupation of native Peoples), the principle-based approach towards the subject remains unclear. The perplexities, among other things, include the issue of the RSD being a legal principle or legal right, its nature as to the human right, attainment of *jus cogens* and *erga omnes obligation*, conflict as to the principles of State Sovereignty and that of International Democratic Governance etcetera. Importantly, establishing the international legal structure based on principles *per se* is at the infant level. Second, the content of *jus cogens* and that of the *erga omnes obligation* is only justified without any methodological approach. It is, therefore, pertinent to analyse the normative values of the RSD.

## **International Legal instruments dealing with Right to Self-determination**

The Right to Self-determination (herein after RSD) under Article 1(2) read with Articles 55 and 56. Article 73 of the UN Charter incorporates the supervision of Independence to the Non-self-governing territories. Articles 75 to 77 deal with the Trusteeship system based on individual agreements.<sup>1</sup> Common Article 1 of the International Covenant on Civil and Political Rights (hereinafter referred to as the 'ICCPR') and that of the International Covenant on Economic, Social and Cultural Rights both the instruments adopted by the UNGA Resolution

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<sup>1</sup> The notion of the RSD included in the Charter was proposed at the San Francisco Conference with three aspects, namely i) Respect of the principal forms basis for the development of friendly relations; ii) measure to strengthen universal peace, iii) essential aspect is that of the free and genuine expression of the will of the people.

2200 A (XXI) of 16 December 1966 as a matter of principle have incorporated the RSD. The importance is that it affirms the following (i) the RSD constitutes a human right; (ii) it is a prerequisite condition for the existence and enjoyment of all other rights and freedoms of the individual; (iii) guaranteed to 'all' peoples under colonial and alien domination; (iv) the Peoples and not Nations or States have been attributed the right to dispose of their natural wealth and resources freely; (v) it is established that Peoples possess international legal personality and form subjects of IL; (vi) as the nature of human rights is inherent and inalienable, the RSD has to be respected positively by the State actors.

The World Conference on Human Rights: Vienna Declaration and Programme of Action adopted by UNGAR is the first of its kind to attest all peoples inherent and inalienable right to self-determination in particular against the oppression through colonial, all forms of alien domination to take any legitimate action by the Charter of the UN. There are many resolutions passed by the UN General Assembly.<sup>2</sup>

Moreover, the declaration on the Rights of Indigenous Peoples adopted by the UN General Assembly Resolution 61/295 of 13 September 2007 is another milestone event extending the understanding of the RSD in IL. The declaration explicitly provides for the right of Self-determination of the indigenous people to freely determine their political status and economic, social, and cultural development (Article 3). It establishes the principle of Free, Prior, and Informed Consent of the indigenous people in the context of land rights, any violation, and the remedies attached to it (Article 10). The declaration strongly advances the notion of Control and Consent of the indigenous people in exercising their Self -determination.

It has to be noted that by far, the best candidate for understanding the existence of the norms is that of the UN General Assembly's Friendly Declaration, 1970.<sup>3</sup> it reflects the legal system on the concept of RSD. International law, in its soulful base, is essentially made up of the elements of norms and principles. The norms have meaningful and inter-linking relationships amongst

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<sup>2</sup> UNGA resolution 41/128 titled as 'Declaration on the Right to Development', adopted on 4 December 1986; UNGA resolution 53/144 titled as 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally recognized Human Rights and Fundamental Freedoms' adopted on 9 December 1998; UNGA resolution 55/2 titled as 'United Nations Millennium Declaration', adopted on 8 September 2000.

<sup>3</sup> The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (hereinafter referred to as the 'Friendly Declaration') adopted by the UNGA Resolution 2625 (XXV) which accords the RSD as a separate and basic principle of international law (Principle V).

them.<sup>4</sup> The *Principle of Self-determination* partially explains the virtues of its definitional element in light of the Peoples' right to choose political, economic, social, and cultural forms of life. As a matter of inherent rigidity in modern international law, the consistent treaty regimes in their prerogatives vocalize reciprocal and non-hierarchical structural international legal considerations.

Thus, the value added to Declarations such as Friendly Declarations may not muster much integrity and solidarity towards self-determination's normative value. Therefore, the prime factor and criterion are to find such international legal actors who are acceptable and work with the realistic altruism to the so-called Statist international community. Furthermore, simultaneously enjoy participatory Independence and neutral status in the UN international legal system.

### **Normative Status of Self-determination**

The normative status of Self-determination ought to be explored from the decisional law of the International Court of Justice. The learned judge Kotaro Tanaka's dissenting opinion in the South-West Africa Case (Second Phase) 1966 was indeed a call-in light of foreseeing and preparing the methodology to identify norms in the discipline. Progressively, fundamental freedoms and human rights were determined to form part of the norms of peremptoriness. The existence of jus cogens norms under international law is doctrinally asserted through the legal position of jus cogens norms in case Concerning the paramilitary Activities in and against Nicaragua and Legality of Threat or Use of nuclear weapons advisory opinion. Article 53 of the VCLT is understood in the context of the international legal codification of jus cogens and Article 103 of the Charter Law in terms of non-derogable norms.

The report of Special Rapporteur Dire Tladi on the normative status of jus cogens discusses primarily to find evidence as to the qualifying nature of jus cogens.<sup>5</sup> The legal considerations set by the special rapporteur are as follows: (i) It is a norm from which no derogation is permitted; (ii) It should be a norm of general international law; (iii) It must be recognized by

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<sup>4</sup>Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, 2006 Adopted by the International Law Commission.

<sup>5</sup> The salient issues *inter alia* include: (i) Methodology setting for identifying normative regimes; (ii) Historical evolution of the peremptory norms; (iii) Relevance of the two schools of thought natural law and positive law; (iv) Elementary considerations of *jus cogens*; (v) Legal nature of *jus cogens*; (vi) Impact of the ICJ on peremptory norms; (vii) Derogation of *jus cogens* and its legal effect.

the international community of States as a whole. Better understanding proves that the regimentation of the *jus cogens* norms by the international community is only a matter of recent past.

In terms of generalizable views, the elements of *jus cogens* are: (i) It is universally applicable; (ii) It is superior to all other norms of international law; (iii) It serves to protect the fundamental values of the international community; (iv) It is an exception to the States authority to reciprocate on contractual terms (non-reciprocal or non-voluntarist, non-exclusionary and hierarchical); (v) It is pre-existing as to bind the international community as a whole; (vi) It invalidates such laws which are inconsistent with it; (vii) It is inter-connected with basic rules of the laws of nations. The normative force of *jus cogens* has been vibrant enough to prohibit the violation of the fundamental rights of human beings. The prominence of the norms of *jus cogens* is underscored by way of its integration of virtues of morals and ethics into the international legal system.

Progressively, clarifying the normative thesis on the interplay between the peremptory norms and universal obligations, it is stated that all *jus cogens* generate obligations *erga omnes*. Besides, the former is considered to be the material law and the later reference to the structure of the former's performance. It indicates that both conceptual norms are intertwined. Moreover, without exceptions, the norms ought to be complied with by legal as well natural personalities in the international plane. Conceptually, it is noted that all *erga omnes* obligations need not necessarily refer to norms of *jus cogens*. In principle, the Court has identified certain norms in disputes involving human rights. The Court has only illustratively recognized the existence of norms such as *erga omnes* obligations and *jus cogens*. As per the leading commentators on the Statute and that of the digest of the Court, the imperative characteristic feature of the *Principle of Judicial Conscience* is that Judges are expected to internalize the values of judicial morality and integrity. And without compromise serves to facilitate the process of the international justice delivery system.<sup>6</sup>

The experts considered the theme in light of the nature of the classification of human rights. It is opined that the clash between the Individual rights and that of the People's rights shall be

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<sup>6</sup> Though the ICJ is not the first court and it is the successor the Permanent Court of International Justice, by way of its juridical status as the principal judicial arm of the UN (Article 92 of the Charter of the UN), its literature is widely referred by the international legal actors. Andreas Zimmermann, Christian J. Tomuschat, Karin Oellers-Frahm (2006), *The Statute of the International Court of Justice: A Commentary*, Oxford University Press: Oxford.

avoided by all possible means wherein neither of them is discarded. It is also substantiated that the notion of Individual rights and Peoples right is distinct from the historical and legal evolution. Each is a pre-condition to the achievement of the other. Nonetheless, the centralized and crystallized conceptualization is promoting the value-based approach towards human beings. To state precisely, the enjoyment of human rights becomes a remote possibility if the Peoples who form the nucleus of Individuals are denied their right to exercise and enjoy Self-determination as to cultural identity, economic development, and other related ones. The findings also record that Peoples right are not State rights. In this regard, it is a sigh of relief as, at the least, the negation circumvents the power-oriented Statist conception of Self-determination.

### **ICCPR and Right to Self-determination**

The drafting history of the International Covenant on Civil and Political Rights in light of the incorporation of Self-determination under Article 1 constitutes the most elementary exercise as well as that of failure.<sup>7</sup> Aureliu Cristescu, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The instrumental report is titled 'The Right to Self-determination: Historical and Current Development by United Nations Instruments', 1981.<sup>8</sup>

Report holdings on self-determination include: (i) It is characterized as a right. As it appears in one of the principal international bills of human rights, it is a human right. Coupled, with its positioning as the first provision of the ICCPR, its foundational status over other human rights is visible; (ii) Peoples are the possessors of the right; (iii) It has to be exercised by the free will of the People; (iv) It contains the components of political, economic, social and cultural developmental aspects; (v) The permanent sovereignty over the natural resources is an ancillary element of the enjoyment of it; (vi) It is conditioned with the aspect of mutual benefit. Moreover, regulated by international law; (vii) The international community has the

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<sup>7</sup> Refer, the UN General Assembly's Draft International Covenants of Human Rights prepared by the UN Secretary

General, adopted on the Tenth Session, 1 July 1955. Chapter IV of the draft deals about the rights of the Peoples and nations to Self-determination (pages 38 to 45). The draft contains the analytical summaries of the debates on all Articles of the human rights covenants. Precisely, it is a consolidation of the views of the governments with pointed issues. In particular, it projects the substantial questions of law on the relevant draft provisions raised by the representatives of the governments. Also, the relevant documents are enlisted.

<sup>8</sup> Aureliu Cristescu, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Report on the Right to Self-determination: Historical and Current Development on the Basis of United Nations Instruments, 1981, United Nations Publications: New York, Page Number 123, para. 714.

responsibility to promote the right *vis-à-vis* the well-being and development of the People of Non-Self Governing and Trust Territories in accordance with the Charter Law; (viii) Contextually, as human rights are found based on non-reciprocity and ideals of hierarchization, there is an inherent inconsistency as to the Statist human rights treaty regime and its implications on Self-determination indispensably as a human right.

The apparent ambiguities are (i) Absence of the definitional element of the terms 'People' and 'Self-determination'; (ii) Uncertainty over the use of the phrase 'All Peoples'; (iii) Non-identification of the inherent political, economic, social and cultural values; (iv) Positioning of the right regarding Individual and Collective based approaches; (v) Blatant omission as to the status of the Minorities; (vi) *Non-liquet* as to the modes of determination of the right; (vii) Lacunae as to the appropriate classification of the right; (viii) Indeterminate exposition on the relevance under international law; (ix) Inadequacy as to the relationship between Self-determination and Territorial Sovereignty; (x) Absence as to its exceptions; (xi) Vagueness as to the traits of universality; (xii) Lack of clarity as to the nature and scope of legal obligations; (xiii) Non-identification as to its comprehensive normative content.

#### 1. Political Principle or Legal right

The concept of Self-determination was essentially projected as a political principle. In this sense, the terminology used in the Charter Law under Article 55 was relied on. The said provision traces its spirit from Article 1 (2) of the Charter. Accordingly, it states '...respect for the principle of equal rights and Self-determination of peoples....' The term 'right' *per se* is not used in either of the provisions. It was both a principle as well as right.

Furthermore, it constitutes the most fundamental of all human rights. Without denying its fundamental values, a basic question arises: whether Self-determination is a principle of all principles of human rights? That is the principle of principles.

Likewise, replying to the question of indeterminacy of the terms of 'People' and 'Nation', it was admittedly responded that adducing definitional evidence to such loaded terms involves a high degree of complication. Perhaps, due to the social circumstances and theory of emergence, it may remain perpetually elusive. It was identified as a collective right extending to all Peoples and Nations. Concludingly, this school of thought maintained that as the UN General Assembly had already recognized the right status of

the subject matter, it is only pertinent to incorporate the right of Peoples and nations to Self-determination under the ICCPR.

## 2. The interface between Charter Law and Self-determination

As a creation of the States, the United Nations Charter suffers from serious misinterpretations and subjective applications. So, Self-determination and its characterization

under this system are devoid of normative yields. The preliminary discussions were centered on the distinctions between applying the subject *vis-à-vis* the Charter provisions, Articles 1 and 55 and Articles 73 (b) and 76 (b), respectively. The former uses the content as to Self-determination of Peoples, whereas the latter refers to self-government and Independence. Furthermore, Articles 1 and 55 were argued to reflect the mutual respect of the concept by Sovereign states in their legal discourse with each other. Whereas Articles 73 (b) and 76 (b) reminded of the responsibilities of the Member States regarding the trust territories. Therefore, the terminologies of self-government and Independence shall not be equated with that of the human rights obligations found under Articles 1 and 55.

Even worse, it is reported that the delegates submitted that though the above-said provision remained contextually different, from the perspective of the UN, it could promote both the concepts interchangeably. The Member States of the UN, being motored by the greed for national interest and the lust for global power, reflect such views. This is what the debates teach. It should perhaps be noted that there is something that is so erroneous in approaching the concept of the RSD from the UN. From the perspective of international politics, it is the application and impact that have affected the positive contribution of the Charter Law in this area.

As per the heart of the democracy introduced by the Americans, Self-determination is purely

governed by State sovereign alone. It cannot be equated with the recognitions made by the People. It will not flow from the will of the People. In theory and practice, it is not for the lives of the People. Exceedingly, Self-determination will suffer in its philosophical virtues under the law of the United Nations. Thus, the portrayal of the subject matter as a universal right is nothing short of normative dismay. A fact which is evident from the *travaux* of the ICCPR.

### 3. The Meaning of Self-determination

The phrase 'freely to determine their political, economic, social, and cultural status' (appears under the latter part of Article 1) is considered the definition of Self-determination. For a fundamental human right like Self-determination, it serves the very purpose of the concept.

Independence also means the natural availability, accessibility, enjoyability, and accountability of fundamental freedoms and human rights.

As seen today, both the Covenants (the ICCPR and that of the ICESCR) contain common Articles (Article 1) on the subject matter. This perhaps does not mitigate the problems aligned with the dichotomous approach envisaged under the ICCPR and ICESCR. Logically, the intertwined and generational rights regime thesis adopted in the Covenants hints at the complexities involved in the enforcement of Self-determination. The concern for meaningful subjects such as the availability of the Peoples or Nations right to Independence and right to secede was discussed. However, due to its lethal repercussions on the States and favorable pursuits for the individual, the concept of Self-determination was uprooted from its spirit and left to linger abstractedly. This being the positivist-led world of human rights, how and how the individuals' concerns will get noticed or attended to. The denial of access to international human rights legislations manifestly denies access to presuppositions and resolute international justice.

### 4. Respect for Self-determination and International Obligations

The drafters of the ICCPR envisaged two kinds of international legal obligations for all states vis-à-vis self-determination. First, to promote the realization of the right in their territory. Second, to respect the maintenance of the right in other territories, taking into consideration the universality of the concept, the notion of respect and to ensure respect for self-determination within and beyond their jurisdiction has been recommended. The delegates failed to appreciate the universal dimension of the right in light of the principle of international community interest. The failure to inquire into the normative status of respect and to ensure respect for self-determination concerns state jurisdiction perspectives.

### 5. Ancillary norm of Permanent Sovereignty over Natural Resources

The principle was considered an attack on sovereignty with particular reference to the

expropriation or confiscation of foreign property and wealth. Given the value of the economic incentives attached to the natural resources and reconstruction of the nation-building process of the newly independent States and their Peoples, by no means, the right to permanent sovereignty over natural resources can be diminished or belittled. The description of the *Doctrine of Clean Slate* as a corollary to the norm of Self-determination was highlighted in the *Case Concerning Application of the Convention on Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, 1996*.<sup>9</sup> Crudely, as the drafting history portrays, the State representatives concluded that the right to the PSNR was simple and elementary and to be incorporated to warn the foreign investors and rule. Amounts to the contradiction to the UNGA resolution 1803 of 1962 adopted a necessary declaration regarding the PSNR and the new international economic order movement.<sup>10</sup> The NIEO's human rights-based therapeutic philosophy on International Economic Law and International Trade Law indeed resulted in the PSNR gaining the *jus cogens* status under the law of the nations. Also, as already noted, the PSNR represents the economic component of the RSD.

### Evaluation by ICJ

The ICJ's opportunistic cum bare reference to the concept of Self-determination as obligations *erga omnes* and partly that of *jus cogens* in a series of cases does not contribute to the original findings as to the normative conceptualization. The Court as to its passive and non-responsive nature in the decolonization cases. Also, rejecting the jurisprudential concerns of the subject matter is unimportant. Indeed, the high degree of selectivity or the otherwise called the pick and choose tendency has diminished the methodological significance. Such an infructuous judicial attitude has led to the complete absence of the normative characterization of Self-determination.

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<sup>9</sup> Refer, Separate Opinion of Judge Christopher Gregory Weeramantry, *Case Concerning Application of the Convention on Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections*, Judgement of the International Court of Justice, 11 July 1996, I.C.J. Reports 1996, p.595.

<sup>10</sup> UN General Assembly resolution 1803 (XVII) of 14 December 1962, titled as 'Permanent Sovereignty Over Natural Resources'. It is also to be noted that the significance of the right to the PSNR was also chiefly attested by series of international instruments on the conceptual theme of NIEO. That is with the objective to achieve and promote the economic and trade related growth of the developing and that of the least developing countries. In particular, by way of fostering the principles of economic integration and economic independence. A classic example is the Charter of Economic Rights and Duties of States, UN General Assembly resolution 3281 (XXIX) of 12 December 1974.

In the *Case Concerning Ethiopia v. South Africa and Liberia v. South Africa (Second Phase-Merits)*, the composition of the Court changed and ushered a humanistic approach towards the issue of decolonization and the RSD. In all the occasions, the Court, as a matter of observation, has underlined international obligations of the subject of Self-determination under the category of obligations *erga omnes*.<sup>11</sup>

The *Barcelona Traction Light and Company Decision 1970*<sup>12</sup> has become the sole folklore in the normative evolution of the subject matter. The dictum only reflected the need to recognize the concept of international community interest against a strict individual Statist purview. It ought to be conceded that the Barcelona syndrome's half-measures endemic has hampered the objective thinking on the concept of self-determination. Hapless in the case concerning East Timor, the ICJ held that *erga omnes* norms and consent rule as two different things. Such a view had affected the notion of access to justice and the value-based approach inherent in the right to self-determination.<sup>13</sup> The ICJ's opportunistic cum bare reference to the concept of Self-determination as obligations *erga omnes* and partly that of *jus cogens* in a series of cases does not contribute to the original findings as to the normative conceptualization. For instance, exceedingly, the ICJ has adopted a justificatory kind of approach. An approach which is hurriedly resorted.

In the *Wall opinion*,<sup>14</sup> the Court also opined that Israel's violations against the Palestinians constitute obligations *erga omnes* in a sense. Equally important is the observation that the obligations *erga omnes* violated by Israel are the obligation to respect the right to Self-determination of the People of Palestine as available under international human rights law and international humanitarian law. Perhaps, the *Wall Opinion* is the first instance, though, based on the abstract premise, to identify the inter-linkage between the branches of human rights and humanitarian in the context of the subject matter. Progressively, the Court also established the international community of actors' responsibility as to the non-recognition of Israel's illegal activities in the Occupied Palestinian Territory about the nature of the obligations of *erga omnes* character. The illegal construction of the wall, in essence, destroyed the essential

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<sup>11</sup> Legal Consequences for states of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, Advisory opinion, 21 June 1971, I.C.J. Reports 1971, at 44.

<sup>12</sup> Case Concerning the Barcelona Traction, Light and power company, Limited (New Application 1962) (Belgium v. Spain), 5 February 1970, ICJ Rep 3, 32.

<sup>13</sup> Case Concerning East timor (Portugal v. Australia), Judgement, I.C.J. Reports 1995, at 90.

<sup>14</sup> Legal Consequences of the Construction of a wall in the occupied Palestinian Territory, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, p. 136.

components of the peaceful enjoyment of Self-determination by the Palestinians, the right of the Palestinians to choose their own political, economic, social, cultural, and religious forms of life.

As a step forward, the Court in the *Unilateral Declaration of Kosovo Opinion*<sup>15</sup> discussed the subject matter in light of the legitimacy of Independence and the right to remedial secession under the law of the nations. It was emphatically opined that the development of the international law of Self-determination in the twentieth century indeed created a right to Independence for the Peoples of non-self-governing territories and peoples subject to alien subjugation, domination, and exploitation. Moreover, as such international law does not mandate prohibitions of declarations of Independence whatsoever in nature and phenomenon. Fundamentally, Independence was an essential component of the exercise of the right to Self-determination under the discipline.

### **Conclusion**

The ICJ's approach to the norm-setting task in the context of human rights and the right to Self-determination is marred with controversies of Euro-centrism, colonist attitude, and positivist subjugations. It has to be admitted that the International Court of justice, having justice as its central mission, is yet to clarify the basic need to explore normativism in modern international law. That is why to undergo a study on normativism. Quite possibly, the answer is the development of tools of substance to counter the rigors of the positivist frame of State cum power centric international law. Moreover, in all ways, to restore the morality quotient in this field of knowledge. The Courts' existing literature on the normative law of Self-determination does not reveal any positive impact regarding jurisprudence or human rights concerns. It only represents a compromised standpoint.

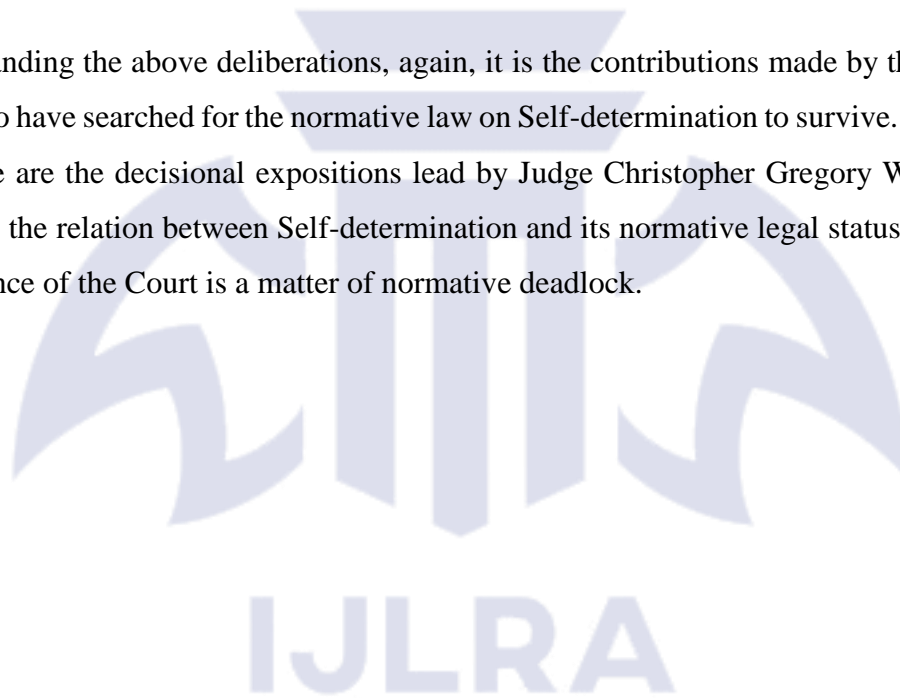
In general, understanding the structure of the norms and their connection with the law of Self-determination is justified as a principle cum right bearing universal obligations. Moreover, oddly, the non-compliance of the international legal norms has been restrictively dealt with. Briefly, the jurisprudence of the Court does not deal with its legal implications and the manner of its remedial enforcement measures.

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<sup>15</sup> Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 22 July 2010, I.C.J. Reports 2010, p.403.

Analyzing the question of the hierarchy of norms, the standard view visible in the ICJ work is the concept of *erga omnes* obligations has been projected rather than *jus cogens*. In most instances, the threshold of international community interest is propounded. This perhaps conjoins the reason for the presence of the rank element in the norms hierarchy. The repeated reference to the Self-determination's Self-determination *erga omnes* clarifies the law's jurisprudential state in general international law. It is a profound value as part of the universal rule of human rights. The *Wall Opinion* has sown the seed for the growth of the *erga omnes* character of the subject matter in the domain of special international law.

Notwithstanding the above deliberations, again, it is the contributions made by the individual Judges who have searched for the normative law on Self-determination to survive.<sup>16</sup> Of seminal importance are the decisional expositions lead by Judge Christopher Gregory Weeramantry. Otherwise, the relation between Self-determination and its normative legal status *vis-à-vis* the jurisprudence of the Court is a matter of normative deadlock.



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<sup>16</sup> Great attention is paid to *Advisory opinion concerning the Chagos island* because it recognized the *erga omnes* character of the obligation to respect self-determination and find an obligation, binding on all states cooperating with the UN complete the decolonization of Mauritius. However, it was interpreted that member states cooperating to finalize the decolonization are not generally accepted functions of *erga omnes* obligation. This is a consequence of a breach of obligation *erga omnes* with serious violations of a peremptory norm. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 25 February 2019, I.C.J. Reports 2019 at 95.