UNIT 6  RIGHT TO SELF-DETERMINATION

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6.0  OBJECTIVES

After studying this Unit you will be able to:
• understand the important role that the right to self-determination of peoples has played since the inception of the United Nations;
• know its place in the UN Charter, historic/significant UN resolutions, major human rights treaties — both international and regional;
• explain the meaning, nature and scope of the right to self-determination;
• describe the interpretation of this right by the Human Rights Committee and Committee on the Elimination of Racial Discrimination; and
• examine its relevance in post-colonial and post-cold war era.

6.1  INTRODUCTION

Historically, self-determination evolved as a political principle before becoming one of the central rights of the contemporary human rights system. It was at the heart of both the American and the French Revolutions of the 18th century. The claim of self-determination was for government of the people by the people; in this regard it is often associated with the notion of democracy. Self-determination
was also one of the corner-stones of Lenin’s political ideology. At the end of the First World War, one of the most resounding consequences of President Woodrow Wilson’s 14-point speech remains his reference to the principle of “national self-determination” for the ethnic groups that were carved out by the fall of the Ottoman, Austro-Hungarian, Russian and German empires.

The right to self-determination has played an important and historic role in post-World War II international relations. No principle of the law of the United Nations has played so significant a role as did the principle (now the right) of self-determination of peoples. It gave inspiration to millions of African and Asian peoples/nations, who were living under colonial rule, to make the claim of right to self-determination and independence. It worked as “dynamite” in exploding the colonial empires, which changed the entire course (in fact the map) of the contemporary world history. The fact that the membership of the United Nations has more than tripled during the last 62 years (from 51 in 1945 to 192 in February 2008) confirms this truth.

The two UN Covenants on human rights – the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) – by placing the right to self-determination of peoples in the very first Article has not only given primacy to this right over all other rights but has also transformed it from its status of being a “principle” in the UN Charter into a fundamental right of the people — though a collective right. This right has been included in the Helsinki Final Act of 1975 and the African Charter of Human and Peoples’ Rights, 1981. It must be noted that this right has found its relevance in both the post-colonial context (as Bangladesh became the first country to exercise it) and in post-Cold War context. It is also relevant and applicable to various groups / minorities / indigenous peoples within the independent States, as most of them have ratified the ICESCR and ICCPR.

6.2 SELF-DETERMINATION OF PEOPLES IN THE UNITED NATIONS CHARTER

The principle of self-determination is mentioned at two places in the UN Charter. Article 1(2) mentions as one of the purposes of the United Nations: “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”. Article 55 mentions: “the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations based on respect for the principle of equal rights and self-determination of peoples”. It must be noted that both these references in the Charter were due to the initiative of the Soviet Union. The Soviet delegate stated that the principle was borrowed from the Russian Constitution of 1936. It is important to note that the Charter speaks of the “principle” of self-determination and not a right to self-determination. The Charter simply records a political principle. It keeps this principle distinct from human rights. Its passages relating to human rights do not even refer to “self-determination of peoples”. These Charter references are made in the context of developing friendly relations among States. It is interesting to note that self-determination is not included or referred in Article 1 (3) and Article 55 (c) of the Charter, which talk about promoting human rights.
6.3 SELF-DETERMINATION IN UN RESOLUTIONS AND HUMAN RIGHTS INSTRUMENTS

The Universal Declaration of Human Rights (UDHR), 1948, did not include the right to self-determination, although an attempt was made to include it in this historic document. A Soviet amendment requiring its inclusion was rejected.

Since 1950 the UN General Assembly began recognizing that the right of peoples and nations to self-determination was a fundamental human right. The Assembly adopted scores of resolutions on self-determination. Though these resolutions are not binding, they have made self-determination as a perennial and peremptory norm of international law and have established it as a legal right. Moreover, it was included in many human rights treaties as a basic human right. With these developments, the principle of self-determination was gradually emerging as a human right. Let us elaborate these developments.

6.3.1 The 1960 Declaration on Granting of Independence to Colonial Peoples

The UN General Assembly has adopted two most important documents, which establish the right of self-determination as a human right. First, on 14 December,
1960, the Assembly adopted the famous Declaration on the Granting of Independence to Colonial Peoples [G.A. Resolution 1514]. This Declaration represented an important milestone in the struggle against colonialism. It reaffirmed, for the first time, the right of all peoples to self-determination. It stated that “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. The Declaration “solemnly proclaimed the necessity of bringing to speedy and unconditional end colonialism in all its forms and manifestations” and it urged immediate steps to transfer all powers to the peoples of non-self-governing territories (colonies) which were not yet independent. It stated that inadequacy of preparedness of the people for self-governance should not be a pretext for delaying the exercise of the right of self-determination in these territories. Although, the Declaration is non-binding, some scholars consider that it regards the principle of self-determination as a part of the obligations stemming from the UN Charter, and is not a “recommendation”, but is in the form of an authoritative interpretation of the Charter.

6.3.2 The 1970 Declaration on Friendly Relations

Ten years later (in 1970), the General Assembly adopted another historic resolution: the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations (G.A. Resolution 2625). This Declaration is another landmark in the development of the right to self-determination. It constitutes the most authoritative explication to date of the right to self-determination. It proclaims seven principles of international law relating to the friendly relations and cooperation among States. One of these principles pertains to the right of self-determination: “By virtue of the principle of equal rights and self-determination of peoples all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development”. The Declaration spelled out that the right of self-determination was applicable not only to peoples under colonial rule, but also to peoples subject to foreign or alien subjugation, domination and exploitation. Those supporting this clause of the Declaration clearly had two very different circumstances in mind. The first concerned South Africa – an independent State, but one perceived by many as subject to “alien domination”, and foreign support for that minority white domination in apartheid regime (before 1994). The second was a very different matter – the status of occupied territories upon termination or suspension of military hostilities. It was felt that the position of peoples in such territories was to be protected not just by humanitarian law, but by insistence upon their right to self-determination. To uphold the right of the people of Palestine, the United Nations resolutions talked about the inalienable right of Palestinians to exercise their right to self-determination.

6.3.3 Human Rights Instruments and Right to Self-determination

Many human rights instruments have referred to self-determination in their texts. They are:

1966 Covenants on Human Rights

The inalienable right of all peoples to self-determination was first proclaimed in legally binding treaties – the ICCPR and the ICESCR – adopted in 1966. Both
these Covenants contain an identical Article 1 on the subject, which reads as follows:

**Article 1**

1) 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.

2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

It must be noted that both the Covenants provide human rights to “individuals”, and not to “groups” or “collectives”. Even the rights of persons belonging to “minorities” (Article 27 of ICCPR) are formulated in the terminology of rights of individuals. Common Article 1 in the Covenants is the only exception to this general rule of all human rights instruments. This Article talks about the rights of peoples. It is a group or collective right.

**The African Charter on Human and Peoples’ Rights, 1981**, in Article 20 stipulates that “all peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen”. The African Charter further states in Article 21 that all peoples shall freely dispose of their wealth and natural resources. States Parties to the Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources. Article 22 of the Charter provides that all peoples shall have the right to their economic, social and cultural development.

**The Final Declaration of the World Conference on Human Rights in Vienna, adopted on 25 June 1993**, also contains a clear passage in support of the right of self-determination. Like Article 1 of the Covenants, it 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”. The Vienna Declaration, by using a tough language, further states that the right of self-determination is inalienable, and that the denial of its effective realization is a violation of human rights.

**The UN Declaration on the Rights of Indigenous People, 2007**

On 13 September 2007, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples following more than two decades of negotiations between governments and representatives from Indigenous Peoples (IPs). This instrument too recognizes the right of IPs to self-determination, but it is concerned
with only "internal dimension". The preamble of the Declaration categorically states that nothing in this Declaration may be interpreted as authorizing or encouraging any action which would dismember totally or in part, the territorial integrity or political unity of sovereign and independent states. It is thus confirmed that the Declaration does not provide IPs with special treatment regarding "External self-determination" and thus the right of self-determination that the IPs may exercise has, essentially, an internal dimension. In this respect, it should also be noted that the preambular paragraph "recognizing that IPs have the right freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect", has been removed from the Preamble of the Declaration. Yet, Article 5 of the Declaration has remained unchanged, notably as to participate in the political, economic, social and cultural life of the State, which suggest that the extent of IPs' right to internal self-determination has not been altered.

Additionally, it is worth highlighting that the provisions concerning IPs' rights over traditional lands and resources has remained unchanged, except for the deletion of the adjective "their" before resources at Article 32 (2), reflecting the controversial status of the issue of ownership of natural resources.

6.4 MEANING OF THE RIGHT TO SELF-DETERMINATION

It is true that the right of self-determination has emerged as one of the most important and fundamental human rights. It plays an important part in the realization of the other human rights and freedoms, by creating the general framework and foundation for the implementation and promotion of human rights. At the same time, respect for each individual human right contributes to the exercise of the right to self-determination. Despite these facts, there is little consensus among scholars and the community of States over the precise definition of self-determination and over other complex questions such as who constitutes “people”; is it a principle or a right; is it an individual right or a group right; is it only a political or moral right or is it a legal right; is it enforceable; or should it be enforced; or is it none of these, or all of these at the same time, and more. Is the right to secession a part of the right to self-determination? It is neither possible nor desirable to answer all these questions. However, an attempt is made here to understand the meaning of the right to self-determination while discussing its various phases or aspects.

There is a controversy among scholars and States regarding the meaning and content to be given to the right of self-determination. Defining self-determination as a theoretical concept and with a view to give broad meaning, the scholars of 1970s and 1980s have adopted a flexible approach. For instance, Alfred Cobban defined self-determination as "the right of a nation to constitute an independent state and determine its own government for itself". Elaborating further he said, "any territorial community, the members of which are conscious of themselves as members of a community, and wish to maintain the identity of their community is a nation". Robert Friedlander stated that "self-determination implies the freedom of a dissident people to establish on its own initiative a viable independent national entity and whatever political and social structure it chooses for the preservation of that entity" [italics added]. Rupert Emerson, one of the authorities on self-determination, defined the concept as "the right of peoples to determine the
internal structure and functioning of their society without interference”. Ian Brownlie viewed it as “the right of cohesive national groups (people’s) to choose a form of political organization and their relation to other groups”. Elaborating further, he said, “the choice may be independence as a state, association with other groups, in a federal state, or autonomy or assimilation in a unitary state”. Thus, the above definitions identify self-determination with a broad meaning such as self-government, autonomy, and to some extent secession. The emergence of Bangladesh in 1971 can be justified in the light of the meanings given by Friedlander and Brownlie. On the other hand, scholars like Hans Kelsen give a narrow interpretation of the concept of self-determination. In his view it means the sovereignty of states and nothing more than that. His view cannot be accepted as his conclusion was based on five years practice of the UN Charter. One wonders whether he would have arrived at such conclusion at the beginning of the 21st century.

States too had divergent views on the meaning and content of “self-determination”. Question of definition was discussed while drafting an Article on the right of self-determination for inclusion in the UN Covenants. Pointing to the undefined content of the concept, some States demanded that the concept be first defined before it is applied. It is interesting to note that France had once proposed that the International Law Commission study the nature of self-determination, its political, economic, social and cultural content and its relationship with other concepts of international law — specially the concept of the state and nation. A similar proposal came from the United States, which sought to establish an ad hoc Commission to study the concept of peoples and nations, the application of the principle of equal rights and self-determination, the relationship between self-determination and other principles of the UN Charter.

In contrast to these views, States opposing colonialism felt that the definition of the concept of self-determination was not essential for its recognition and application. Under their pressure, the UN concentrated its efforts to the application (rather than definition) of the concept of self-determination. Without bothering much about defining it, the General Assembly approved at its tenth session the text of Article 1 for inclusion in both the Covenants.

The Human Rights Committee, established to supervise the implementation of the ICCPR, has issued very little jurisprudence on the meaning of self-determination. This is partly due to its refusal to admit Article 1 complaints under the First Optional Protocol to ICCPR. Furthermore, its General Comment on Article 1 fails to give any clear definition beyond reiteration of the express words of Article 1. The term “peoples” has not been defined; hence it continues to remain controversial.

Much contemporary scholarship on self-determination divides the right into a right of external self-determination (ESD) and a right of internal self-determination (ISD). The definition of “peoples” in terms of the ICCPR becomes less contentious if one recognizes that all peoples are entitled to some form of self-determination, though not all peoples are entitled to the most radical manifestation of the right, ESD. In this respect, a “people” may be broadly defined, in the opinion of McCorquodale, as a group with a common racial or an ethnic identity, or a cultural identity (which could incorporate political, religious, or
linguistic elements) built up over a long period of time. Let us now turn to the discussion of ESD and ISD.

### 6.4.1 External Self-determination (ESD)

Although there is no explicit Article on self-determination in the first major human rights treaty — International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965, the monitoring Committee of the Convention, i.e., Committee on the Elimination of Racial Discrimination (CERD) has adopted General Recommendation 21 on the topic. In fact, Article 5 (c) of the ICERD deals with the right of every citizen to take part in the conduct of public affairs at any level. Similarly, the HRC has also issued General Comment 12 on Article 1. Both these comments elaborate the meaning of ESD and ISD. However, it must be noted that the CERD General Recommendation is far more detailed and useful than the HRC Comment.

The CERD Recommendation states that the external self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination, and exploitation.

From this Recommendation it is clear that a claim of ESD equates with a claim by a people to certain territory. ESD is exercised by maintaining existing State boundaries, or changing the boundaries of the existing States. The first form of ESD arises where the relevant “self-determination unit” is the population of an existing State. The latter arises where the relevant “self-determination unit” wishes to break away from an existing State. The most controversial mode of exercising ESD is by way of secession. During the 1950s and 1960s, the right of secession, and indeed the notion of self-determination, was intertwined with the notion of decolonization. However, in the post-Cold War era, a number of non-colonial peoples have successfully seceded, including the peoples of the former USSR, the former Czechoslovakia, the former Yugoslavia, Eritrea, and East Timor. Furthermore, the text of Article 1 of the ICCPR does not expressly confine the right to colonial peoples. Indeed, the HRC has now confirmed (through its Concluding comments on Azerbaijan report in 1994) that the principle of self-determination, and possibly the right of secession in some instances, “applies to all peoples, and not merely to colonised peoples”.

It must be noted that the right of ESD is politically controversial, as it clearly threatens the territorial integrity of States.

### 6.4.2 Internal Self-determination

ISD refers to the right of peoples to choose their political status within a State, or of exercising a right of meaningful political participation. For example, the institution of democratic rule in South Africa constituted an exercise of ISD by the black majority in South Africa. The notion of ISD overlaps considerably with the rights guaranteed in Articles 25 (right of political participation) and 27 (minority rights) of the ICCPR. Indeed, Antonio Cassese describes ISD as a “manifestation of the totality of rights embodied in the Covenant”.

According to CERD General Recommendation, the right to self-determination has an internal aspect, i.e. the rights of all peoples to pursue freely their economic,
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Social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level (Article 5 (c) of the ICERD). In consequence, governments are to represent the whole population without distinction as to race, colour, descent, national, or ethnic origin. Further, the Recommendation stated that in accordance with Article 2 of ICERD, governments should be sensitive towards the rights of persons of ethnic groups, particularly their right to lead lives of dignity, to preserve their culture, to share equitably in the fruits of national growth, and to take part in the government of the country of which its members are citizens.

Self-determination is therefore a complex right, entailing an “internal” and an “external” form. According to some scholars the right can be conceptualized at a sliding scale of different levels of entitlement to political emancipation, constituting various forms of ISD up to the apex of the right, the right of ESD, which vests only in exceptional circumstances. Different “peoples” are entitled to different “levels” of self-determination.

It is contended that a people are entitled to ESD by way of secession, when it lives under colonial or neo-colonial domination, or when it is so severely persecuted, and its human rights so systematically violated, that ESD is necessary to remedy such violations, and preserve its long-term viability as a people. Alternatively, peoples may reach free agreements to secede from each other, as occurred when Czechoslovakia peacefully split into the Czech and Slovak Republics in 1993. Finally, peoples which are not entitled to ESD are nevertheless entitled to ISD.

The HRC considers that self-determination is of continuing applicability. The Committee, when examining the report of a State party to the ICCPR, asks not only about any dependent territories that such a State party may be responsible for (ESD) but about the opportunities that its own population has to determine its own political and economic system (ISD). Virtually, no States refuse to respond to probing comments and questions on ISD and the Committee is not told that no such right exists. Rather, it is accepted that the right exists and the debate most frequently is about the forms that it can take.

6.4.3 The Right to Secession: Is it Part of Right to Self-determination?

There is no agreement among States to regard “secession” as part of self-determination. Most of the Declarations or human rights documents categorically state that there is no such right of secession. The Declaration on Decolonization sets forth a fundamental limiting principle, without which one almost never finds a reference to self-determination: “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”. Similarly, the Declaration on Friendly Relations places the goal of territorial integrity or political unity as a principle superior to that of self-determination. The Vienna Declaration of the World Conference on Human Rights, 1993, also states that the notion of self-determination should not be construed as authorizing or encouraging any action “which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign
and independent States...." In other words, the right of secession was explicitly not recognized, which has greatly limited the right of peoples to self-determination.

Check Your Progress 2

1) What is the contribution of the 1960 Declaration on Decolonization concerning right to self-determination?

2) Discuss the nature of the right of self-determination in the 2007 UN Declaration on the Rights of Indigenous People.

3) Distinguish between internal and external self-determination.

4) Does international human rights law recognize the right to secession?

6.5 HUMAN RIGHTS COMMITTEE AND RIGHT TO SELF-DETERMINATION

On 12 April 1984 the HRC adopted a General Comment on Article 1 of the ICCPR (right to self-determination), which takes a broader view of its
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Specific applicability. The Committee noted that “it imposes specific obligations on States Parties not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of their right to self-determination”. This Comment makes it clear that the right is universal. The promotion of self-determination must be consistent with other provisions of international law: “in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right...” Self-determination in the two Covenants includes internal self-determination. The Comment alludes to this: “With regard to paragraph 1 of Article 1, States Parties should describe the constitutional and political processes which in practice allow the exercise of [self-determination].” The HRC complains that many States in their periodic reports “completely ignore Article 1, provide inadequate information in relation to it or confine themselves to a reference to election laws”. According to Patrick Thornberry, the General Comment makes no contribution to the elucidation of any people and minority distinction. The assumption appears to be that Article 27 of ICCPR (concerning rights of persons belonging to minorities) covers minorities.

Self-determination may still be relevant to the minorities, even when they are not regarded as “people” in the Covenants, especially with regard to its internal dimension. Antonio Cassese, while discussing the relationship between democratic entitlements and self-determination has stated that internal self-determination means self-government and autonomy and external self-determination means secession and statehood. In the ‘internal’ context, self-determination is understood as the right to participate in the democratic process of governance and to exercise some form of autonomous development within the State boundaries.

Certainly the most challenging claim to self-determination comes from indigenous peoples. Their claim relies on the fact that they have traditional form of government and have specific rights over their traditional territories and thus are ‘people’ entitled to self-determination. Since in most countries they are living on the margins of society facing discrimination, exploitation and dispossession, indigenous peoples seem particularly entitled to claim their right to self-determination. The Committee has recognized that based on their right to self-determination, indigenous people have the right to access their natural resources as a right to subsistence. In the Committee’s view this Article 1 of the Covenants entails their right to participate in decisions affecting their natural resources.

### 6.6 THE RIGHT TO SELF-DETERMINATION AND MINORITIES

Self-determination, included in the Covenants, is usually described as a right of peoples and is a collective right. It is not considered as a right of minorities. The UN has no examples where genuine minorities have claimed self-determination before it. Self-determination is now an accepted principle of international law, but a restricted principle for minorities. Any serious work on minority rights could plausibly omit reference to it. Ermacora says that unless the UN has not developed clear-cut ideas about the holder of the right to self-determination, his opinion is that minorities also can be considered holders of this right. Minorities must be considered as people. Jeremie Gilbert on the other hand holds a radical
position and opines that self-determination has been qualified as a "remedial right", i.e., a people would have a right to secede from a State that is discriminating or committing gross human rights violations. It has been interpreted as meaning a right to break away from a government that excludes people of any race, creed or colour from political representation. However, Gros Espiell and Cristescu categorically declare that minorities have no right to self-determination. According to Thomberry, this however would not be justified entirely. He writes that there is slipperiness in the concept of a "people", which makes for uncertain attribution of rights. Some brief account of the interpretation of this concept in human rights documents and its relation to minorities is instructive. Moreover, whether States like it or not, minorities and indigenous groups have often appropriated the term self-determination to express the essence of their political claims.

6.7 RELEVANCE OF RIGHT TO SELF-DETERMINATION IN POST-COLONIAL ERA

One important question arises: whether the right of self-determination has an application beyond the colonial context? Can States tolerate secession of minority groups in the name of self-determination? The answer is no. It must be noted that the right of self-determination in the Covenants is universal. The text and drafting history of the Article 1 support the view that the Covenants reach beyond the colonial situation. The International Law Commission in 1988 expressed its view that the right of self-determination is of universal application. However, there are indications of narrower views. The Declaration made by India to Article 1 of both the Covenants is intended to give restricted meaning to the concept. It read: “the Government of the Republic of India declares that the words ‘right of self-determination’...apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of the people or nation—which is the essence of national integrity”. Other States have objected to the declaration, which clearly curtails the scope of the Article. The Netherlands objection reads, in part: “Any attempt to limit the scope of [the]...right or to attach conditions... would undermine the concept of self-determination itself and would... seriously weaken its universally acceptable character”. France indicated that the Indian reservation attached conditions to the self-determination that were not provided in the UN Charter and Germany considered the reservation incompatible with the object and purpose of the Covenant. It is worth noting that Patrick Thornberry, Frank Thomas and Nigel Rodley express the opinion that the position of India is marked by inconsistency as it had supported the creation of Bangladesh. It must also be recalled that India’s delegate had earlier stated in the General Assembly’s Third Committee that: “although there were good reasons to make special reference to the peoples of non-self-governing territories, it must be recognized that the field of application of the principle of self-determination was wider than that”. Thus there is little reason to doubt that Article 1 of both the Covenants applies to all peoples and is not confined to colonial territories.

In spite of the clarity of the legal position, until the symbolic fall of the Berlin wall in 1989 self-determination was mainly invoked and relied upon by colonial peoples eager to gain full control of their own destiny. With the fall of communism in Eastern Europe, however, a new era seems to have begun. Ethnic groups within many States invoke the right to self-determination, claiming political rights which
range from internal autonomy to a right of secession pure and simple. Increasingly, self-determination, instead of uniting peoples (unification of East and West Germany being an exception), is becoming divisive force. Hence, Indian reservation to Article 1 seems to be relevant in context.

The former communist States like the USSR and Yugoslavia are affected by this new development. However, there are few examples to suggest that application of self-determination finds relevance outside colonial context. Only Bangladesh (East Pakistan) and Eritrea (seceded from Ethiopia) have successfully claimed self-determination.

Check Your Progress 3

1) Examine the interpretation of the right to self-determination attempted by the Human Rights Committee.

2) Is self-determination applicable to minorities?

3) What is the relevance of the right to self-determination in the post-colonial era?

6.8 LET US SUM UP

We sum up with three conclusions. (1) The right of self-determination has played a dynamic role in world politics since 1945. It has liquidated all colonial empires. It has liberated many peoples and nations. With the adoption of many important Declarations and human rights instruments, the “principle” of self-determination has now emerged as one of the most important human rights. (2) There is no agreement on its precise meaning. It is many things to many people. It has many
phases, levels or manifestations. Two of its important forms are ESD and ISD. The General comment of HRC on this right has not shed enough light to clarify its meaning, content, scope and applicability for all times. Many scholars and States think that it can be exercised by Indigenous people, minorities, peoples and the people (within the State). However, majority of States are reluctant to consider secession as part of self-determination. (3) Thus, self-determination has emerged as a super human right and has found its relevance beyond colonialism, although it has not been precisely defined by the United Nations. We can conclude our discussion by agreeing with Werner Levi, who said that the "vagueness" of concept had made it serviceable for a multitude of political purposes, including anti-racism and decolonization.

6.9 KEY WORDS

Apartheid : Officially pursued policy of racial discrimination. It was followed by South Africa, where black majority was ruled by white minority government till 1994.

Declaration : A State may choose or required to make a declaration concerning a treaty to which it has become a party. There are several types of declarations, such as interpretative declarations, optional and mandatory declarations, and derogation.

Final Act : An agreement or treaty

General Comment : A treaty body's interpretation of the content of human rights provisions, either related to a specific article or to a broader thematic issue. General Comments often seek to clarify the reporting duties of States Parties with respect to certain provisions and suggest approaches to implementing treaty obligations.

General Recommendations : They are General Comments of a treaty body

Instruments : Treaties, conventions, covenants, protocols and declarations.

6.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Self-determination was at the heart of 18th century revolutions. It led to the governments of the people and by the people. It was one of the corner stones of Lenin's political philosophy and Woodrow Wilson's 14-point speech. It worked as dynamite in exploding colonial empires. As a result, the UN membership increased from 51 to 192. (see section 6.1)

2) Self-determination is included in UN Covenants on human rights, the Helsinki Final Act, 1975, The African Charter on Human Rights, 1981 and the UN Declaration on the Rights of Indigenous People, 2007 see section 6.1
Check Your Progress 2

1) It solemnly proclaimed the necessity of bringing to speedy and unconditional end colonialism in all its forms and manifestations. The Declaration was more than a resolution. It was an authoritative interpretation of the UN Charter. See sub-section 6.3.1

2) 2007 Declaration on the Rights of IPs does not permit ESD. Their ISD refers to participation in the political, economic, social and cultural life of the State. IPs has traditional land rights but do not explicitly hold ownership of natural resources. See sub-section 6.3.3

3) ESD involves independence from colonial status or secession from independent States, whereas, ISD refers to internal autonomy, participation in political, economic, social and cultural development of the people. See sub-section 6.4.1 and 6.4.2

4) In theory right to secession has not been explicitly recognized, but in practice a combination of many factors enable a people to exercise it, e.g. Bangladesh, Eritrea. See sub-section 6.4.3

Check Your Progress 3

1) Scholars differ on the application of self-determination to minorities. Some say yes. Some say no to the question. See section 6.6

2) In many instances, self-determination finds relevance in post colonial situations. See section 6.7

3) Mostly deals with forms of ISD. See section 6.5

6.11 SOME USEFUL READING MATERIAL


