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ARAŞTIRMA MAKALESİ RESEARCH ARTICLE

DEVELOPMENT OF SELF-DETERMINATION RIGHT AND THE ROLE OF ICJ: STATEMENTS ON THE SOUTH WEST AFRICA (NAMIBIA) ADVISORY OPINION

Self-Determinasyon Hakkının Gelişimi ve UAD'nın Rolü: Güney Batı Afrika (Namibya) Danışma Görüşündeki Bildiriler

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ABSTRACT

Self-determination has been one of the main controversial issue on international relations and law; therefore, it is not surprising that although the nature of such disputes has changed over time from political to legal, the International Court of Justice continues to confront the relevant disputes. When a close look at the relevant cases, while many countries claim that self-determination is only a political passion, the important role of International Court of Justice (ICJ) in the development of self-determination and its obtainment a legal ground is recognized. The aim of this study is to analyze the development of self-determination right through 20. Century and the importance of the ICJ in this development. This will be achieved in the light of the Court's judgments, state declarations, which were not mentioned enough in similar articles, and the views of the judges to be examined in the South West Africa (Namibia) Advisory Opinion that were concluded by the Court.

Keywords: ICJ, Self-Determination, United Nations, South West Africa, Namibia.

ÖZ

Abstract Self-determinasyon, uluslararası ilişkilerde ve hukukta oldukça tartışmalı bir konudur; bu nedenle, bu tür uyuşmazlıkların doğasının zamanla değişmiş olmasına rağmen, Uluslararası Adalet Divanı'nın (UAD), self-determinasyon temelli, ilgili ihtilaflarla yüzleşmeye devam etmesi şaşırtıcı değildir. İlgili davalara yakından bakıldığında, birçok ülke self-determinasyonun siyasi bir tutku olduğunu iddia ederken; bu hakkın gelişiminde ve hukuki bir zemin kazanmasında UAD'nın önemli rolü fark edilmektedir. Bu çalışmada ulaşılmaya çalışılan amaç da, UAD'nın self-determinasyon hakkının gelişiminde ne denli önemli olduğunu tahlil etmektir. Mahkeme'nin sonuçlandırmış olduğu Güney Batı Afrika Tavsiye Görüşü incelenecek; Mahkeme kararları, devlet bildirimleri (bir çok ilgili çalışmada yeterince değinilmeyen) ve yargıç görüşleri ışığında bu amaca ulaşılmaya çalışılacaktır.

Anahtar Kelimeler: UAD, Self-Determinasyon, Birleşmiş Milletler, Güney Batı Afrika, Namibya.

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INTRODUCTION

Introduction There are two aspects in which individuals and peoples determine their own future. The right of self-determination in the internal aspect is to provide the people with the ability to freely choose their own economic, cultural and social development without any intervention from outside (Naldi, 1999: p.122). Moreover, this right is based on the principle that people are equal, and that the human rights phenomenon must be implemented by the states without distinction to the whole population (Higgins, 1994: p.114). The self-determination in the external aspect means that all peoples have the right to freely choose their own political status, and that this is best exemplified by being independent of colonialism or foreign domination (Cassese, 1995: p.3). Although self-determination right as one of the basic norms of international law has acquired content over time with the practice of states and international organizations, there are many difficulties in recognizing it as a true legal right. As clearly stated by the Court's former president, Dame Rosalyn Higgins, there were still those who insisted that the concept of self-determination was nothing more than a political passion, while the Court was dealing with the *South West Africa (Namibia) case* and *Western Sahara.* As Higgins points out, the Court has been the pioneer organization for self-determination to gain its trait as a legitimate right (Higgins, 1998: p.694).

METHOD

As to self-determination right, two equally important principles of international law, namely the right of the people to determine their own future, including the 'secession' and the territorial integrity principle, have kept the interest in the issue high. It is not an easy task to find a balance in the continuous conflict between the right of people to freely define their political status, as an expression of self-determination, and the protection of the borders of a state as an expression of territorial integrity. The main challenge for the Court would be to correctly interpret the interrelated concepts, in particular, depending on the importance of respecting human rights and legitimacy. The Court referred to the interpretation of the self-determination right and the related duties and obligations and contributed to its development, as well as guiding the other main bodies of the UN, with the findings of the *South West Africa (Namibia) case, Western Sahara case, East Timor case, Kosovo case* and *Wall Construction on Palestine case* and. An important finding in this context is the acceptance of the *erga omnes* character of self-determination as one of the basic principles of contemporary international law. Although the Court does not clearly disclose the obligations imposed on all states, the language used by the Court would require effective steps taken against the violating state and would not only terminate the violation of this right but also actively suggests that it should encourage to took the necessary steps (Zyberi, 2009: p.16).

Given the fact that self-determination is a fundamental right in which people can freely determine their political status and freely carry out their economic, social and cultural development, the legal contribution of the Court to the independence of the colonies becomes even more important. The fact that self-determination, a process in which the Court has been largely involved, from the legal point of view has contributed to this right to become a cornerstone of international law. The rise of the number of

member states of the UN from the 51 to the current 193 is largely the result of this process.[2] This article examines these developments of self-determination by ICJ and its specific case on South West Africa's situation and how it gained its legal ground on the contemporary international law.

SELF-DETERMINATION AND THE ROLE OF ICJ

When self-determination is the issue, it should be noted that it has some sub-topics, which would help us to be understand it more accurately. Kirgis categorized these self-determination variations in nine different ways[3], it would be necessary enough to use main two types: internal and external self-determination. Internal self-determinations implicates the rights, which has any form of people has, to choose freely their own political, economic and social system (Senese, 1989: p.19). When internal self-determination acts cannot solve the issues of the people who used it, external self-determination emerges as a solution. External usage of self-determination[4] suggests three different ways: to form a state, to integrate to another state or associate with another state (UN General Asembly, 1970). As it could be derived from the definition of self-determination, it is also possible to mention another type in this context: economic self-determination. Economic self-determination especially refers to who live under a colonial regime of an external power. Although the political bodies of the United Nations have held a neutral position against the issue of secession unless the norms of international law are violated, the Court must make a final decision on this matter. In this sense, the Court cannot remain impartial. In fact, the decisions of the Court are generally seen to have great repercussions for the development and interpretation of the relevant rules and principles (Zyberi, 2009: p.17).

Disputes related to self-determination right in the 21st century, in most cases, clearly state the willingness of a part of the population in a multi-ethnic state to express their willingness for the desired internal self-determination in order to have greater autonomy, or in some exceptional cases, external self-determination and willing to become a state. Regardless of the scope of these claims, practice shows that such undertakings are often challenged by the central government, and if it does not solve, they are met with violent measures (Zyberi, 2009: p.17). As Dugard and Raič pointed out, within the framework of the 'qualified secession doctrine', there is a general agreement on the founding parameters of self-determination through separation. First, the people in question are a numerical minority in relation to the rest of the population of the main state, which constitutes a majority within a part of the territory of that state. Secondly, it involves significant grievances (carence de souveraineté) about serious violations of the state that the people in question want to leave, including a serious breach or denial of self-determination of the people concerned (for example, through a pattern of discrimination) or serious and widespread violations of the fundamental human rights of their members. Finally, there should be no realistic and effective solutions to the peaceful settlement of the conflict (Dugard and Raič, 2006: p.109).

[2] For further information http://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html [Accessed: 25.09.2018].

[3] To read about those categories see Frederic L. Kirgis, The degrees of self-determination in the United Nations era, *American Journal of International Law*, 88(2), 1994, 304-310.

[4] For further information see David Raič, *Statehood and the law of self-determination (Vol. 43*). Martinus Nijhoff Publishers, 2002, pp. 289-307.

Clearly, it is not the Court's duty to establish a set of criteria that are generally valid for self-determination by secession, because the Court does not deal with general and abstract situations when dealing with particular and substantial cases.[5] Moreover, the benefits of such exercise are doubtful. Not surprisingly, even when the Court clarified the legal status of a case, the political views had a strong influence on the application of the Court's advisory views, trying to prevent the implementation of the opinion by political means. In other words, even if the Court only makes a substantial decision on a case, the decision may be drawn to abstract political issues. In the context of self-determination, some of the allegations seem to fulfill a number of corrective separation criteria[6], as noted above (Buchheit, 1978: p.222). The above-mentioned criteria may not include illegal matters, such as the extent to which such claims may be caused and economic viability. Since international law is a state-centered system, which attaches great importance to the territorial integrity of states, secession is no different from a carefully interpreted exception, in which the case may be treated differently (Zyberi, 2009: p.21).

Self-determination belongs to an area in which the interests of the states and their views on the issue are very much in conflict with other states, cannot accept strict and very limited standards of conduct in this regard, and are therefore not satisfied with the loosely constituted of very general rules or principles (Cassese, 1995: pp.2-4). Because, due to their own political interests and social structures, states can sometimes approach self-determination with skepticism and sometimes sympathy. Doubtful states may argue that the existence of unclear rules within wide limits in this regard is problematic in terms of the integrity and future of the states. As Ragazzi pointed out, the Court has generally adopted a value-oriented approach in this regard (Ragazzi, 1997: p.72). This is an approach that aims to provide strong legal support to basic human rights (Zyberi, 2009, p.22). Using concepts such as 'obligation erga omnes'; by accepting the *erga omnes* character of self-determination or 'sacred trust of civilization', the ICJ has contributed to increasing respect for human rights and human dignity and to the realization of self-determination of peoples to a wider perspective (Zyberi, 2009: p.22). Based on the case law of the Court, it is difficult to reach a holistic approach to the limits, conditions or implementation of self-determination. However, the Court has determined the development of international law and self-determination right within this framework. This finding of the Court is best expressed as follows:

"In the relevant area of the current proceedings, the last fifty years have brought significant improvements. These developments leave little room for doubt that the ultimate goal of 'sacred trust of civilization' is the self-determination and independence of the peoples in question. In this area, as in other places, the corpus iuris gentium has been significantly enriched and the Court cannot be ignored as it is loyal to fulfilling its duties" (ICJ, 1971a: pp.31-32).

[5] *Stare decisis* is based on the principle that in Anglo-American law, a question that was once evaluated and answered by a court should be given the same response every time in the courts, https://www.britannica.com/topic/stare-decisis [Accessed: 28.03.2019]. Again, the decisions of the ICJ are subject to advisory opinion status, so they are not binding; it is only guiding. The Court's decision has no binding power except in the special circumstances and cases between the parties (Statute of the International Court of Justice, 1946, art.59).

[6] These criteria should include the existence of a people, their rejection of self-determination right and their exposure to a permanent campaign of discrimination, and that people can reside in a part of the territory of the present state (which shows that they are separable).

SELF-DETERMINATION ON THE SOUTH WEST AFRICA (NAMIBIA) ADVISORY OPINION

South Africa did not accept the decision regarding the establishment of the Trusteeship System after the foundation of the UN, and the decision on the transfer of old mandate administrations to Trusteeship Council and that South West Africa (Namibia) will stay to be linked to South Africa. However, this was not accepted by the UN General Assembly. South Africa stated that it will continue its mandate administration under the 1920 agreement; accordingly, it would continue his annual reports. However, this country did not submit any reports except for 1947. Upon request from the General Assembly, the ICJ reported three advisory opinions on 11 July 1950, 7 June 1955 and 1 June 1956. In its advisory opinion dated 11 July 1950, the International Court of Justice stated that Namibia has an 'international status' (ICJ, 1950).

The Security Council adopted Resolution 276 (1970), which adopted the General Assembly's resolutions to end the rights of the mandate administration[7] and in the Resolution 284 (1970), has decided to forward the question 'What are the legal consequences for states of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (l970)?' to the ICJ (SC, 1970). From 1949 to 1971, the Court gave four advisory opinion and held two judgments[8], while dealing with cases of different matters relating to the process of decolonization of South West Africa (Namibia) (ICJ, 1966: p.6). At the beginning of *the Namibia Case* in 1971, the ICJ gave the following statements:

"As stated in the Charter of United Nations, developments in international law in the context of non-self-governing territories have made self-determination right applicable to all these countries hence this includes the countries under colonial countries" (ICJ, 1971a: p.31).

Given the controversial nature of self-determination and the skepticism expressed by a number of states and certain jurists regarding its normative effect, it was regrettable that the ICJ did not provide a detailed and solid justification for this bold claim. However, when referring to the sources of international law, the ICJ has not deemed it necessary to fully summarize all the situations that led to the emergence and development of the right. Although the ICJ has sought to use the UN Charter, the Resolution 1514 (XV) and the developments in the international community for a number of years in the court decisions and advisory opinions, the inability to adequately explain how this norm of international law emerged appeared to be the weakness of the decision and extended the debate on its status (Wooldridge, 1979: p.95). In contrast, Judge Ammoun passionately defended self-determination right of the people of Namibia. In his opinion, while the state practices in the independence of colonial lands have expanded, the area of application has increased; with the adoption of the UN Charter and many UN resolutions and declarations, self-determination has become an practice of international law (ICJ, 1971a: art.73).

[7] 'Reaffirming General Assembly resolution 2145 (XXI) of 27 October 1966, by which the United Nations decided that the Mandate for South West Africa was terminated and assumed direct responsibility for the Territory until its independence'(SC,1970).

[8] These are: Advisory Opinion of 11 July1950, Advisory Opinion of 7 June 1955, Advisory Opinion of 1 June 1956, Advisory Opinion of 21 June 1971, Judgement of 21 December 1962 and ve Judgement of 18 July 1966.

The Namibia decolonization cases have been influential not only in clarifying the important legal aspects of the process of self-determination by the people of Namibia, but also in terms of understanding the position of self-determination right in the non-autonomous regions and in the whole of the international law (Zyberi, 2009: p.21). With the advisory views forwarded to the UN General Assembly and the Security Council, the Court has announced the purpose and scope of the Namibian people's self-determination right, as well as other states' duty not to recognize illegitimate situation which was created by South Africa as the guardian state, including the effective occupation of these territories. In addition, the Court contributed to the international condemnation of South Africa's policy of apartheid in Namibia, contributing to respect for fundamental human rights by associating it with self-determination right (Zyberi, 2009: p.21).

The Court clarified the duty of the guardian state against the inhabitants of the territories under its administration as follows:

"According to the Charter of the United Nations, the former guardian state has promised to observe and respect human rights and fundamental freedoms for all, regardless of the race, in the region of international status. In contrast to this, it is a clear violation of the aims and principles of the UN Charter, to introduce and implement separations, exceptions, restrictions and limitations based on race, color, national or ethnic origin that constitute the denial of fundamental human rights" (ICJ, 1971a: p.57).

These goals and principles include promoting and supporting respect for human rights, as well as developing international friendly relations based on the principle of equal rights and respect for the self-determination right of peoples (UN Charter, 1945: art.1). The Court's findings were guiding the work of the UN's political bodies and the advancement of the relevant human rights agenda regarding the independence of the colonies Although the process of independence of the colonies and the independence of Namibia took place only after the end of the Cold War, it can be said that the case law of the Court played an important role in this process (Zyberi, 2009: p.9).

WRITTEN STATEMENT'S OF STATES

One of the sources effective in the decision-making process of the Court is the written statements made by the states on the question asked to them. These written statements are as useful as the Court's decision-making process; they contribute to the purpose of the study with the information and comments they contain. These statements in *the Namibia case* facilitate the understanding of the subject by contacting different points. These points consist of international responsibility, self-determination right of Namibian people and the apartheid issue. In fact, all these three points majorly focus the self-determination right and how it was denied in this substantial case.

International Responsibility

One of the issues mentioned in the written statements concerning the substantial case is the concept of 'international responsibility' referred to the relations between South Africa and other states. The fact that South Africa does not have any legal title to administer the territory exempts other states from any obligation (their obligations and

responsibilities based on international law) in order to exercise their powers in relation to these lands (WS of Poland, 1971: p.352). Nevertheless, the great importance of the international regime for the region should be taken into account. In particular, the fact that South Africa's nonrecognition *de facto* should not result in the deprivation of the Namibian people of international cooperation in any way, since the UN is not yet able to fulfill its responsibilities by taking an active part in the region (WS of Poland, 1971: p.352).

It should be kept in mind that today's general norms of international law states that it is a legal duty to respect and promote the use of self-determination right and impose this to the every authority as much as it could. Of course, the fact that South Africa's legal mandate is over and the South African government no longer has any legal title in the relevant territory does not mean that it is exempt from the legal duty to allow and promote the self-determination right of Namibian people. This is a universal duty, irrespective of the existence of an international regime in relation to a given territory or any obligation adopted by a treaty. This applies to all peoples irrespective of whether the territory concerned is legally *(de iure)* or factually (*de facto)* governed by a particular government (WS of Poland, 1971: p.352). Since the UN Charter is committed to all states (due to their commitment to joint and individual action in co-operation with the organization) and the UN has the direct responsibility for the independence of the region and the authority directly committed to self-determination right, in cooperation with the UN, it is a legally binding charter for joint and/or individual action to achieve self-determination and independence (WS of India, 1971: p.840).

The Government of India has stated above that, in reference to the speeches of other states' representatives in the UN Security Council, self-determination right and Namibia's use of this right is a necessity in the substantial case. As stated in the written statement in this context, the French representative said:

"That the international status does not end with the disappearance of the League of Nations; we believe that this situation cannot be changed unilaterally by the governing state power and this should be ended only if the people of the region use the self-determination right" (WS of India, 1971: p.840).[9]

The exercise of responsibility in the region by the General Assembly for the fulfillment of international responsibility due to the expiry of such duty and protection of the international status, the purpose of the UN is to promote namely 'equal rights and respect for self-determination right of peoples' and 'human rights and fundamental freedoms for all without discrimination of language or religion, race or gender (WS of UN Secretariat, 1971: p.82). In the case of Namibia, there are no differences in interpretation that may occur in some other similar cases. One of these questions is that the concept of 'people' (which is the subject of self-determination) has not been established. Another is the situation that constitutes the foreign oppression, sovereignty and exploitation. In Namibia, there is a people and region with a different status under international responsibility, not any state (WS of UN Secretariat, 1971: p.88; GA, 1970).

[9] Also see SC Res. 284, 29 July 1970.

Namibian People's Self-Determination Right

One of the main tasks that the UN General Assembly is trying to fulfill in the territory of Namibia, which has international status, is the duty of the states to respect the equal rights and peoples' right to determine their own future as it is stated on the UN Charter (UN Charter, 1945: art.1). In the implementation of this norm, both the Security Council and the General Assembly have made clear and repeated 'the inalienable rights of the Namibian people to self-determination and independence' (WS of UN Secretariat, 1971: p.87).[10] The people of Namibia were not allowed to use and have not been permitted to use self-determination right as it is stated in the reports, which have been submitted and approved by the General Assembly, on the situation in Namibia (WS of UN Secretariat, 1971: p.89).[11] More specifically, it can be said that, until the independence, the Namibian people were not allowed to use any method of self-determination.[12]

South Africa's creation of limited local councils and parliaments in Namibia, based on general authority and legislation, cannot be considered as the use of the Namibian people's self-determination right. In order for this to be considered and the legitimacy of local councils and parliaments, the Namibian people must first use the form of self-determination, which refers to the preference for integration with South Africa, with a referendum on equal voting rights (WS of UN Secretariat: 1971). No such election has been made and universal universal suffrage has been prohibited by law.[13] For this reason, all authority and powers of the South African State at the level of government in Namibia (territorial, provincial, local, national, tribal or regardless how it is defined) are the direct extensions of South Africa's presence in Namibia and they can not construct an example for the self-determination of the Namibian people and the use of the rights of independence (WS of UN Secretariat, 1971: p.90). In addition, another situation that not suits with self-determination right is the division of the territory and population of Namibia into separate regions such as 'indigenous nations' or 'homelands' which disrupt the national and territorial integrity of Namibia (WS of UN Secretariat, 1971: p.91).[14] Because such a division is prohibited as one of the basic principles of international law that underlies self-determination right:

"Each state shall refrain from any action aimed at the partial or complete destruction of the national integrity and territorial integrity of another state or country. Such action is incompatible with the aims and principles of the UN Charter" (GA, 1970: p.15).

[10] Also see SC Res. 246 (1968); SC Res 264(1969); SC Res 276(1970); SC res. 283(1970); GA Res. 1899(XVIII); GA Res. 2074(XX); GA Res. 2145(XXI); GA Res. 2248(S-V); GA Res. 2325(XXII); GA Res. 2372(XXII); GA Res. 2403(XXII); GA Res. 2498(XXIV); GA Res. 2517(XXIV).

[11] Ibid, art. 58, at 89.

[12] The use of self-determination right can take three forms. (a) the establishment of a sovereign and independent state; (b) integration or unification with an independent state; and (c) the establishment of any political status freely determined by the people. See UN General Assembly, Resolution 2625 (XXV), annex, Principle 5, par. 4; A non-self-governing region can achieve its rule in the following ways: (a) building an independent state; (b) integration with an independent state; or (c) merging with an independent state. GA Res. 2625(XXV), annex, principle 5, par. 4; 'A non-self-governing territory can achieve its rule in the following ways: (a) the establishment an independent state; (b) integration with an independent state; or (c) merging with an independent state'(GA, 1960, annex, principle 6).

[13] See South West Africa Constitution Act, No. 39, 1968, sec. II and sec. 12 (1); Union Proclamation No. 103, 1939, by Sheila Patterson, *Colour and Culture in South Africa,* Routledge (1998), p.41; Electoral Consolidation Act, No. 46, 1946, sec. 3; South West Africa Affairs Amendment Act, No. 23, 1949, sec. 34.

[14] For further information International Commission of Jurists, Apartheid in South Africa and South West Africa.

With regard to self-determination, South Africa stated in its written statement that its policies were often stigmatized as 'colonialism oriented' (WS of South Africa, 1971: p.728). The South African government, in responding to the statements in this respect, stated that it was not against the fundamental principle of self-determination and did not question the robustness of the spirit of the mandate and the practice of trusteeship, which aims for peoples to form a maturity by the help of guardians that would naturally allow them to decide their own future, were intended to be terminated after if they could stand on their own feet. If such a stage is reached, the guardian wishes autonomous governance and independence; no the question of any moral right to achieve such an idea, nor the question of the robustness of the policy of allowing such a thing to be done, cannot be claimed. However, it was also emphasized that a balance should be established between the competing or contradictory claims in the arrangements to be made (WS of South Africa, 1971: art. 8). The Government of South Africa said that the purpose of its administration was self-determination for all peoples of South West Africa. Correspondingly, the Minister of Foreign Affairs of the Republic of South Africa stated at the General Assembly meeting on 12 October 1966 that the South West African people's progress in self-determination was determined by the South African Government (WS of South Africa, 1971: art. 8).[15] Similarly, on December 14, 1967, the South African representative repeated this goal at the General Assembly with the following words:

"Self-determination right, which the South African Government is determined to achieve, leads to unlimited possibilities in accordance with the choice that each population group may ultimately want to do. The South African Government's approach to self-determination has been summarized by various members of my government. For example, the former Prime Minister said in 1964 in the South African Parliament '…The principles of basic justice require us not to follow the development of a single colonial group. On the contrary, each group should be able to benefit from all rights: Whites, Ovambos, Hereros, Okavangos, Namas, Damaras and Basters'" (WS of South Africa, 1971: p.729).

Following the written statement, the accusations that South Africa was exposed by colonialist policies and its denial of residents of South West Africa's progress in the direction of self-determination were to be formed of false assumption that self-determination should be formed in a certain mold of universal adult suffrage of the population as a whole within a single regional unit. According to South Africa, there is no justification for such an assumption that ignores the fact that conditions can vary from one region to another, and such a predetermined model may not be appropriate in the circumstances of a particular region (WS of South Africa, 1971: p.729). Such an assumption is not contained in the objectives of the mandate system, nor in the principles set out in the UN Charter. On the contrary, the provisions of Article 73 of the Charter reject such an offer (Charter of UN, 1945: art.73). This article mainly states that the interests of the inhabitants of the non-self-governing territories are very important and that their progress requires 'the respect for the culture of the peoples concerned'. It also refers to 'the ideal of self-government to take account of the political

[15] Also see GA, 21. Session. 1439, Plenary Session, 12 October 1966, p.21.

desires of peoples and to assist them in the progressive development of their free political institutions according to the changing conditions of each country and its people' (WS of South Africa, 1971: p.729). For existing purposes, the question whether South West Africa is a non-self-governing territory within the meaning of Article 73 has no effect on the outcome. While encouraging progress in the way of self-determination; it is important to take into account the interests of the people, their political desires, and the principle that can be applied universally by considering each region, its people and their current conditions of development (WS of South Africa, 1971: p.729). By South Africa, the UN General Assembly Resolution 2145 (XXI), which resulted in the adoption of the decision and targeting the independence of South West Africa, and ignored all other aspects of the campaign except independence and various decisions that require the secondarization of the indicators will be considered as political as the manner on the case Ethiopia and Liberia against South Africa (WS of South Africa, 1971: art.10). In 1959, a conference was held in Liberia Sanniquelie between the Presidents of Liberia and Guinea and the Prime Minister of Ghana. In the joint communiqué, the leaders of these three states mentioned about South West Africa:

"We argue that this region is in fact a UN Trusteeship Territory and that the UN cannot give up its legal and moral responsibilities to the local residents who are entitled to the same treatment as the other trusteeship territories. As a result, we will ask the UN to give more importance to this problem, to declare that the territory is not part of South Africa, and to set a date for the independence of South West Africa" (WS of South Africa, 1971: p.730).[16]

According to South Africa, the common goal of the Trusteeship Council in the UN Charter is to advance the development of the inhabitants in many different ways, but in the minds of the writers of the communiqué, regardless of other points, it is reduced to a single goal such that the independence is achieved quickly (WS of South Africa, 1971: p.730). The same attitude against dependent territories and especially South West Africa, as demonstrated by counter-defenses in South West African cases, was the subject of the Independent African States' Foreign Ministers' Monrovia Conference of the same year and the Second Conference of the Independent African States in 1960. At this conference, a resolution calling for the UN to 'set a date on the independence of South West African territory' was adopted. On 22-25 May 1963, at the meeting in Addis Ababa, on the Summit of Independent States of Africa, this attitude is also seen in the decision which stated that South African-African cases are the part of the joint efforts for the progression of decolonization towards the unconditional gain of national independence of all African territories (WS of South Africa, 1971: art.12).

In the United Nations, actions within South West Africa have been considered as an aspect of the decolonization progress. In 1961, the General Assembly, by adopting Resolution 1702 (XVI), decided to revise Declaration on the Granting of Independence to Colonial Countries and Peoples, and to establish a UN Special Committee for South West Africa, which will serve to consult with South Africa, and to achieve the following objective:

[16] For further information "Joint Communiqué", *The First West African Summit Conference* SanniqueIlie, 15-19 July 1959, p.30.

"Preparations for the general elections of the Legislative Assembly, which are based on universal adult suffrage under the supervision and control of the United Nations, as soon as possible" (WS of South Africa, 1971: art.13).

At its next session in 1962, the General Assembly adopted Resolution 1805 (XVII), recalling and reaffirming its Resolution 1702 (XVI). With this decision, it was requested to take the necessary steps (GA, 1962: p.39) to establish the effective presence of the United Nations in South West Africa from the Secretary-General of the United Nations. According to Mr. Purevjal from Mongolia, the relevant draft resolution was supported by the Afro-Asian group (WS of South Africa, 1971: art.13). As South Africa states, in October 1970, a significant step was taken in the process of moving the peoples of South West Africa to a further political stage since the people of Kavango gained a more autonomous rule. With this development, Whites, Ovambos and Kavangos, which make up 65% of the population, have their own administration with constitutional regulations approved by the South African Parliament. In addition, the Basters, who accounted for 2.1% of the population, maintained a certain degree of autonomy from their arrival and settlement in South West Africa in 1870 (WS of South Africa, 1971: p.761).

Apartheid

The US Government, on the other hand, expressed its opinion on the question, emphasizing that the South African Government's actions and practices in Namibia violated self-determination right. The most important of these practices is undoubtedly the application of apartheid (racial discrimination) that the South African Government has carried out in the territory of Namibia as well as its own territory. The main basis of apartheid is to strengthen the control of the white minority in all South Africa and to prevent the majority's self-determination right. This situation, however, situation contrary to their obligations to utmost care, the moral well-being and social development of the local people that South Africa undertakes in the context of mandate management.[17] In the application of apartheid, the people of Namibia have been systematically deprived of fundamental rights and freedoms and faced legal discrimination on a judicial basis, which violate South Africa's obligations. Under the rule of South Africa, some fundamental rights and freedoms of the Namibians have been restricted by legal restrictions on racial basis. The following six chapters form the general framework of these limitations: freedom of travel, freedom of residence and property, freedom of employment, the right to take part in the government, the right to family life, and the right to education (International Commission of Jurists, 1967: p.14).

The measures taken to prepare the peoples under the mandate to stand in the grueling conditions of the modern world according to their own conditions constitute a dynamic standard. In contrast to the United Nations' determination to promote 'friendly relations between nations based on respect for equal rights and self-determination right' and to promote respect for human rights and fundamental freedoms without discrimination on race to reach 'international co-operation', South Africa (although being a member of the UN), has entered a process that denies self-determination right

[17] The level of moral well-being, in the basic sense, refers to how good the sociological and psychological conditions are in the environment of the individuals who make up the people (WS of USA, 1971: p.865).

and the human rights of the people under its guardianship. South Africa has established the following system in its own words: 'All criteria for the allocation of status, rights, obligations and privileges shall be on the basis of membership of a group rather than individual quality, potential or merit' (International Commission of Jurists, 1967: p.14; WS of USA, 1971: p.871). In this context, on 20 March 1969, Karoly Csatorday, the representative of the People's Republic of Hungary (who would later become the President of the Security Council), said:

"…The saddest thing is the state of the people of Namibia. . . They must fight not only against the oppressors, but also against the power of powerful monopolies, which are allies with their masters..." (WS of Hungary, 1971: p.350).

COURT DECISIONS

According to the Ethiopian and Libyan Governments, which were the first to apply to the Court in 1962, the South African Union failed to maximize the material and spiritual well-being and social development of the inhabitants. Failure to do so indicates that there has been a violation of Article 2 of the Mandate Convention and Article 22 of the League of Nations Convention, and South Africa has the obligation to perform its duties under these articles (ICJ, 1962: p.323). A claim submitted to the Court is that South Africa implements an apartheid policy on the management of the region. In other words, when determining the rights and duties of the inhabitants, attention has been paid to race, color, national or tribal origins. It was stated that such practices violated the above-mentioned articles and that South Africa should fulfill its duty to stop the implementation of apartheid in the region (ICJ, 1962: p.323). According to one of the theses presented in the application to the Court, South Africa, which adopted and implemented of legal and administrative regulations that violated the rights and freedoms of the inhabitants, which is vital for the regular development towards self-governing as one of the norms accepted internationally, covered in the League of Nations Convention and accepted on the Universal Declaration of Human Rights and UN Charter, and also violated Article 2 of the Mandate Convention and Article 22 of the League of Nations Convention, have the duty of giving up the actions that prevent the regular development of self-governing in the region (ICJ, 1962: p.323). Similarly, it has been claimed that South Africa allegedly treated in a manner contrary to territory's international status, based on word and action, and thus hindered the public's opportunities for self-determination. Such treatment has violated the provisions of the aforementioned articles; it was stressed that South Africa was responsible for ending these actions and avoiding similar actions in the future and to respect the obligation to respect the international status of the region (ICJ, 1962: p.325).

The Mandate System, established by Article 22 of the League of Nations Convention, is based on two main principles: the principle of non-annexation and the principle that the prosperity and development of the peoples in question constitute a 'sacred trust of civilization' (Covenant of the League of Nations, 1919: p.22). As it is aforementioned, there is little room for doubt that self-determination and independence are the ultimate goal of this sacred trust, taking into account the developments of the past half-century. The Mandate administration had to observe certain mandatory obligations and the Council was obliged to see that they were fulfilled (ICJ, 1971b:

p.79). In examining the matter, the Court deemed it appropriate to investigate in particular the nature and extent of Article 22 of the League of Nations Convention and of the 'C mandate'. Article 22 of the Convention, as it emphasizes in the Court's decision, states:

"As a consequence of the war that took place, for the lands, which have been under the sovereignty of the states that had ruled them before and could not yet survive under the tiring conditions of the modern world, the principle should be applied of that the welfare and development of such peoples constitutes a 'sacred trust of civilization' and necessity to fulfill this trust by the concretization of guarantees in this Convention" (Covenant of the League of Nations, 1919: art.22).

As noted above by the Court and noted in the *Advisory Opinion on the International Status of South West Africa* in 1950, two principles were considered to be of great importance in the establishment of the mandate system. The welfare and development of such people constitutes a 'sacred trust of civilization' (ICJ, 1950: p.131). It is clear that trust should be used for the benefit of those peoples, whose own interests have the potential to have an independent existence in the attainment of a particular stage of development. The Mandate system is designed to provide the necessary assistance and guidance to ensure that people who are not in a position 'yet' to handle their deeds until they can stand on their own feet. The means necessary to achieve this objective are discussed in paragraph 2 of Article 22 (Covenant of the League of Nations, 1919: art.22). The Court noted that in terms of mandate management:

"The Mandate system was created as an international institution with a 'sacred trust of civilization' in the interests of the inhabitants of the land and in general in the interests of mankind. The Court therefore concludes that the League merely undertakes 'the function of international supervision and control'" (ICJ, 1971a: p.17; ICJ, 1950: p.132).

So what should be asked: *quis custodiet ipsos custodes?* In response to the question, the organs of the mandate administration were given accountability against international bodies. According to the Court, the subsequent development of international law on non-self-governing territories, as provided in the UN Charter, has made self-determination right applicable to all. The concept of sacred trust, has been affirmed and expanded to all regions that have not yet reached a full level of self-governing (Charter of UN, 1945: art.73). Thus, it clearly embraced the territories under a colonial regime. Sacred trust continued to be applied to the territories of the League of Nations, where an international status had already been given. A more important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution No. 1514 (XV) of 14 December 1960), embracing all peoples and territories that had not yet reached its independence. All those who did not achieve independence were taken under the trusteeship, excluding Namibia. Today, only two of the fifteen countries (except Namibia) have remained under the trusteeship of the United Nations. This is nothing but a manifestation of the general development that led to the birth of many new states (ICJ, 1971a: p.19).

All these considerations are aimed at the Court's assessment of the present case. Since the interpretation of the intentions of the parties at the time of the decision is also a priority, the Court must take into account that the concept of Article 22 of the Convention, 'the tiring conditions' of the modern world and 'the welfare and the prosperity' of the peoples, are not stagnant but evolutionary, thus, they are included in the concept of sacred trust. The parties to the Convention are deemed to have accepted them as a result. Therefore, the Court, which examined the institutions in 1919, should take into account the changes in the audit over half a century and recognize that the interpretation could not be affected by the subsequent development of the law through the UN Charter and conventions.

Moreover, an international structure or tool should be interpreted and implemented within the framework of the legal system valid at the time of interpretation. In the area where the current proceedings are relevant, the last fifty years have brought significant improvements as mentioned above. These developments leave little room for doubt that the ultimate goal of 'sacred trust of civilization, as stated earlier, is the self-determination and independence of the peoples concerned. In this area, as in other areas, *corpus iuris gentium* has been significantly enriched, and the Court cannot ignore it because it is loyal to its duties (ICJ, 1971a: pp.19-20). As a result, the Court has taken into account the development of international law from the post-World War I period of the League to the dates of the trial and concluded that self-determination right was an undeniable right and that South Africa was an obstacle to Namibia's access to this right. Developing international law norms also revealed that South Africa has no qualifications or rights over the territory.

JUDGE OPINIONS

Muhammad Zafrulla Khan

The President of the Court, Khan, stated in his assessment of the court decision that he wanted to mention on a few issues, first of all briefly referred to the apartheid regime in South Africa, but since this is not the current issue of the court, he focused on the fact that the South African Government has not fulfilled its responsibilities arising from the mandate management in Namibia. The South African representative acknowledged that the people of South West Africa had self-determination right, while the use of the right in question could face limitations due to the tribal and cultural divisions in the region. He came to the conclusion that in the case of South West Africa's self-determination, 'the form of a kind of autonomy or local self-government in the form of a wider co-operation' might find itself limited in practice (ICJ, 1971a). However, according to Khan, this implies a rejection of self-determination right, as envisaged in the UN Charter (Khan, 1971: p.51).

Later in his statement, Khan recalled the Court's decision that the presence of South Africa in the region was illegal and recommended the withdrawal of military and administrative units as soon as possible. After this withdrawal is completed, a favorable environment will be created for the plebiscite, which was previously intended to be done by South Africa, and the vote would be impartial and safe under the auspices of the United Nations (Khan, 1971: p.53). According to Khan, the reason of the South African Government's emphasis on plebisite is the thought of that the majority of the

people will want to join South Africa. The UN, which is fully committed to the self-determination, will support it in the event of such a decision. However, similarly, South Africa is expected to fully respect the decision when an opposite situation occurs and to provide every kind of convenience for the implementation of the decision in question (Khan, 1971: p.53).

Fouad Ammoun

According to the Vice-President of the Court, Judge Ammoun, in spite of the UN General Assembly Resolution 2372 (XXII) of June 12, 1968, which recognized the Namibians as a people, the Government of South Africa tried to destroy this status by its actions, mainly known as apartheid. However, the people of Namibia, whose existence and integrity recognized by the Court on the current advisory opinion, have taken up the international personality by addressing the struggle for freedom. Since South Africa has not fulfilled its duties and responsibilities stemming from the mandate regime and has prevented Namibia from enjoying its independence and full sovereignty, the people of Namibia decided to fight it. The legitimacy of the Namibia's national struggle was adopted in the four resolutions of the General Assembly and in the Security Council Resolution 269 (1969) (Ammoun, 1971: p.57). Judge Ammoun also touched upon the fact that the struggle of the people of Namibia took their place within the framework of international law, because, in general, it was a struggle of the people, as well as being one of the main factors in the formation of the customary law of the peoples' self-determination right. In addition, Judge Ammoun, had asked the Court to talk about the legitimate struggle of the Namibian people, as it was done by the General Assembly and the Security Council (Ammoun, 1971: p.58). As Judge Ammoun points out, the recognition of self-determination right is expressed by the Court in paragraph 52 of the advisory opinion (Ammoun, 1971: p.61).

According to the judge, under subclause 1(b) of Article 38 of the Statute of the Court, for the creation of the law, apart from the substantial case, if there was a general practice, it would be the fact that the conscious actions of the peoples constitute a determined struggle. This struggle continues to defend self-determination right in southern Africa and especially in Namibia. Indeed, it must be acknowledged that a people's self-determination right, before they are written to the regulations and conditions, is only acquired in the bitter struggle in the blood of the peoples and finally written painfully to the evoked conscience of humanity (Ammoun, 1971, p.62).

As regards to self-determination right, it should be noted that in many agreements, declarations and resolutions, states have agreed on the peremptory of self-determination. Any state has signed at least one declaration or resolution containing self-determination right. If there were any doubts in the minds of the UN member states, it would be difficult for them to to find solutions to the legitimacy of struggles of peoples (especially the people of Namibia) to realize self-determination right. Correspondingly, as stated by the Pakistani representative in his oral statement on 15 February, the use of force to prevent the realization of self-determination right, which is a *jus cogens* norm, is not a behavior that can be discussed and ignored. Such conduct and the annexation of the territory of Namibia is nothing but the denial of self-determination right (Ammoun, 1971: p.79).

Luis Padilla Nervo and Sture Petren

According to Judge Padilla Nervo, the main purpose of mandate administration is to ensure the development and prosperity of the people in the region, which constitute the 'sacred trust of civilization', even if they are of different kinds and have different characteristics. The 'sacred trust of civilization'is not just a moral situation; it is also a legal principle. The League's convention was thus processed in this way (Nervo, 1971: p.96). Another issue addressed by the judge is that neither the United Nations nor South Africa has the right to sovereignty over Namibia. In terms of the mandate system, mandate administration should not have any ownership or permanent rights in the land concerned. The only aim of the administration on the region is to ensure the realization of the objectives related to the people of the region and to terminate its management when the objectives are realized (Nervo, 1971: pp.102-103). In the introduction of the General Assembly Resolution 2145 (XXI), South West Africa's undeniable rights for self-determination, freedom and independence have been reaffirmed (GA, 1966: par.1). This issue is also mentioned in the Declaration of Friendly Relations and the sole purpose of the Trusteeship System, which is the international system at that time, is that people have equal rights and self-determination right (GA, 1970). Judge Petren stated that he had taken part in the Court's decision and emphasized the General Assembly Resolution 2145 (XXI) in his separate opinion. According to the judge, the international jurisdiction of the region was preserved and the South African Government was required to take the necessary attempts to undertake the self-determination right of the people of Namibia, which was the ultimate aim of the UN in the substantial case (Petren, 1971: p.121).

André Gros ve Sir Gerald Fitzmaurice

Judge Gros, one of the two judges who challenged the court's decision and put his annotations, stated that the Court was not fully healthy in its decision to dismiss South Africa's request to appoint a judge *ad hoc* in the decision-making process. The other commentary was on the Security Council Resolution 276, which was the source of the problem presented before the Court, and the validity of the General Assembly Resolution 2145 (Gros, 1971). Judge Fitzmaurice, the other judge who had annulled the judgment, stated that he had concluded the decision but that the decision-making process was based on misdemeanors. Correspondingly with Judge Gros, Judge Fitzmaurice also stated that there was no conclusive evidence that the UN was a continuation of the League of Nations, that it would not have the authority to terminate mandate administration unilaterally even in deviations, that the powers of the UN bodies were limited but they treated as a court, and also the Court did not appointed a *ad hoc* judge on behalf of South Africa. Thus, he had objected to the reasons of the decision and explained them in detail in his separate opinion (Fritzmaurice, 1971).

EVALUATION

If the judges' statements regarding the content and outcome of the decision are evaluated, it can be seen that there is a majority of opinions that self-determination is a mandatory principle and norm of international law. The judges see self-determination as one of the important objectives that the international community and mandate or trusteeship administrations have to accomplish in the region. However, in view of the

majority of the statements expressed, it is understood that South Africa has imposed an obstacle to the realization of this right by its racial and cultural discriminatory policies. Similarly, it has been stated that self-determination takes place in modern international law as part of the customary law, and it is unacceptable to prevent this right through the use of any force. It has also been emphasized that states have signed many declarations which accepted self-determination as a *jus cogens* international law norm, and it is also underlined that any government, which has the task of assisting its development, should make every attempt to facilitate the access of the people of Namibia to self-determination right. It would be possible and appropriate to conclude some arguments from the Court's process on the seld-determination issue and its relevance with some concepts such creation of laws and 'sacred trust of civilization' and the development of this right.

According to the conception of the idea of law as a process, sometimes the violation of certain rules of law can lead to the formation of new rules of law (Bedi, 2007: p.109). The result which could be concluded for the article is that various violations of legal norms (serious human rights violations, discrimination, ethnic cleansing, apartheid, etc.) that occur and the new international principles of law could come to exist to protect the rights that are damaged by these violations and to prevent the occurrence of violations again. In South West Africa (Namibia), the apartheid policy, which was carried out during the trial in 1971, led to an increase in the emphasis on self-determination by the Court and the international community and a ground has been formed to make it an important principle of international law.

In the context of the decolonization process, the Court puts self-determination into an important position in the *South West Africa (Namibia) case*. It is understood that the majority of the written statements made to the Court were emphasized on self-determination right. The Dutch government called on South Africa to terminate the mandate administration, claiming that the mandate administration in the Namibia region has prevented the exercise of self-determination right. Similarly, the governments of Hungary, India and the United States have repeated this call and expressed their respect for self-determination right to the people of Namibia. The Secretary-General of the UN also noted in its statement on the issue that the people of Namibia, as elsewhere, without having to make a distinction had self-determination right; it is also an international responsibility to help their development. Considering that the people of Namibia had self-determination right and that this right was prevented by the mandate administration, the Court stated that the purpose of the League of Nations while creating the mandate system was the realization of 'sacred trust of civilization'. The Court claimed that the ultimate aim of this trust was the self-determination and independence of the people. The 'sacred trust of civilization', which had an important place in the decolonization process, took the place of strict respect for human rights after this era.

In the *Namibia case*, despite the attempted annihilation of the 'people status' of the Namibian people, the Court and the international community mentioned and emphasized the struggle for liberation of the people, and this struggle has been recognized and legitimized by all organs of the UN. The point that should be considered here is that the armed or unarmed struggle of the people can be legitimate in the name

of the independence that is desired to be reached by self-determination as long as the conditions are appropriate. The Court, in addition to other UN bodies, has attained such a view in favor of this right to become a peremptory norm when it comes to human rights. The way of expressing the situation in *Namibia case* means nothing other than what it sees self-determination as a norm of international law.

At the beginning, the concept of self-determination appears to be a political passion in the context of international relations in the 20th century. This idea is clearly evident from Wilson and Lenin's discourses on peoples' self-determination right.[18] However, during the Second World War and especially during the decolonization period, the concept of self-determination was saved in a sense and a legal phenomenon, a principle of international law/norm, and even as a *jus cogens*. Of course, it is impossible to deny the contribution of the UN and its organ, the ICJ, to this transformation. As stated earlier in the study, the ICJ has frequently emphasized the concept of self-determination in the decision-making process, and has preferred to place this concept at the center of the issue, both in court decisions and in the views of the judges. As stated earlier, the Court does not leave any doubt that the ultimate aim of 'sacred trust of civilization' is self-determination and independence of the people. Each state is obliged to allow for the realization of this trust, and in this context, Judge Ammoun claims that each state has signed at least one declaration containing self-determination right. Therefore, it is understood that UN member states have no suspicions about this issue. Judge De Castro drew attention to another aspect of the issue in the *Namibia case* and stated that the main purpose of the mandate administration was to guide the state and the people under the auspices of the mandate until they had the ability and the possibility to use their self-determination right and in this context the people's use of their own resources (mines, water beds etc.), one of the elements of self-determination, cannot be eliminated. Violation of this will be the prevention of exercise of self-determination right. In this respect, while referring to the Declaration of Friendly Relations, Judge Nervo stated that the only aim of the mandate system was to realize the objectives of the people of the region and stressed that the administration of the states in mandate or trusteeship administration is valid until the use of self-determination right by the concerned people. Judge Petren stated that the General Assembly Resolution 2145 (XXI) brought to the South African Government the obligation for the people of Namibia to make the necessary attempts to realize self-determination right, which is the ultimate aim of UN in the substantial case and suggested that this right was the basis of the problem.

The court mentions *the Namibian case* and opinions, which were shaped around self-determination right, many times in its advisory opinions. With all the legal grounds which the Court gave self-determination in this particular advisory opinion, self-determination right made itself considerable in the proceedings after this case. For instance, in *the Western Sahara advisory opinion,* the Court recalled its decision by using the direct reference to its former opinion:

[18] Lenin's real goal was to achieve the freedom of the people through self-determination and thus to realize his own ideological revolution (Cassese, 1995, p.14-15). This discourse also shows us that Lenin's view of self-determination right is based on a political basis rather than legal. Lenin predicted and hoped that peoples would gain their independence through self-determination and be part of the revolution.

". . . the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to al1 of them" (I.C.J., 1971a: p. 31; I.C.J., 1975: p.13).

Similar to this, self-determination right and *the Namibian case* also can be seen in the advisory proceedings and opinion on the issue of Kosovo. In this advisory opinion, the Court again appealed its former decision and the mentioned self-determination right's development on international law by referencing *the Namibia case* (I.C.J., 2010: p.37).

CONCLUSION

Self-determination started as a political passion at 20th cc. and even twenty years into 21st cc. it is still one of the most arguable (mostly by political interests, not in terms of international law) human right in international law. On the other hand, this right came a long way through time and develop itself. This article's goal was to prove that self-determination became an indispensable part of international law within this time and one of the most supporting institute to help it maintain this position was and still is International Court of Justice. Self-determination's journey from being just a political idea to become one of the most crucial human right included many obstacles but the Court gave it its true importance and reflected this mentioned importance on the advisory opinions and judgements.

Namibia case became a milestone on the arguments and conflicts in terms of self-determination and many different people's right to use it to get rid of colonialism or anti-human acts of states. It set an example for many people who lived under colonial rule and above that, the Court's opinion on *the Namibia case* made way for self-determination right's usage by all people, not just by who live under colonial rule and that is the ultimate development of self-determinations right since most of the arguments about self-determinations itself starts with the ideas that it is only matter of colonial period and no more.

States' written statements and judges' separate opnions also desired to be shown since the Court decision was not the only document which self-determination has been mentioned and *opinion juris* is also vital on the application of self-determination right. In this article, it was chose to mention all of these documents since they all have different type of effects on the matter and many of them were not mentioned on related articles and books.

REFERENCES

Bedi, S. R.S. (2007). *The Development of Human Rights Law by the Judges of the International Court of Justice*, Oxford: Hart Publishing.

Buchheit, L. C. (1978). *Secession: The Legitimacy of Self-Determination*. New Haven: Yale University Press.

Cassese, A. (1995). *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge: Cambridge University Press.

Charter of the UN. (1945).

Covenant of the League of Nations. (1919).

Dugard, J. and Raič, D. (2006). The Role of Recognition in the Law and Practice, M.G. Kohen (Ed.), in *Secession: International Law Perspectives*, (Cambridge University Press).

Electoral Consolidation Act. (1946).

GA Res. 1541(XV). (1960); GA Res. 1805 (XVII). (1962); GA Res. 2145(XXI). (1966); GA Res. 2625(XXV). (1970); GA, (1966). *21. Session. 1439, Plenary Session*.

Higgins, R. (1994). *Problems and Process: International Law and How We Use It*, Oxford: Clarendon Press.

Higgins, R. (1998). The International Court of Justice and Human Rights, Karel Wellens (Ed.), in *International law: Theory and Practice: Essays In Honour of Eric Suy*, Hague/Boston/London: Martinus Nijhoff Publishers.

http://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html [Accessed: 25.09.2018].

https://www.britannica.com/topic/stare-decisis [Accessed: 28.03.2019].

I.C.J. (1971a). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970). *Advisory Opinion, I.C.J. Reports.*

I.C.J. (1971b). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970). *Advisory Opinion (abstract), I.C.J. Reports.*

I.C.J. (1975). Western Sahara, *Advisory Opinion, 1.C.J. Reports*.

I.C.J. (2010). Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, *Advisory Opinion, I.C.J. Reports*.

International Commission of Jurists. (1967). *Apartheid in South Africa and South West Africa.*

International Status of South-West Africa. (1950). *Advisory Opinion: I.C. J. Reports.*

Joint Communiqué. (1959). *The First West African Summit Conference* (SanniqueIlie).

Kirgis, F. L. (1994). The degrees of self-determination in the United Nations era. *American Journal of International Law*, 88(2), 304-310.

Naldi, G. (1999). The East Timor Case and the Role of the International Court of Justice in the Evolution of the Right of Peoples to Self-determination, *Australian Journal of Human Rights*, V. 5, I. 1.

Ragazzi, M. (1997). *The Concept of International Obligations Erga Omnes*, Oxford: Oxford University Press.

Raič, D. (2002). *Statehood and the law of self-determination* (Vol. 43). Martinus Nijhoff Publishers.

SC Res. 276, 284. (1970).

Senese, S. (1989). External and Internal Self-Determination. *Social Justice*, 16(1 (35)), 19-25.

Separate Opinion of Judge André Gros. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Separate Opinion of Judge Fouad Ammoun. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Separate Opinion of Judge Luis Padilla Nervo. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Separate Opinion of Judge Sir Gerald Fritzmaurice. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Separate Opinion of Judge Sture Petren. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Separate Opinion of President Muhammad Zafrulla Khan. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion (abstract), I.C.J. Reports.*

South West Africa Affairs Amendment Act. (1949). No. 23.

South West Africa Cases (Ethiopia v. Soztth Africa; Liberia v. South Africa). (1962). *Preliminary Objections, Judgment of 21 December 1962: I.C. J. Report*.

South West Africa Constitution Act. (1968). No. 39.

South West Africa, Second Phase. (1966). *Judgment, I.C.J. Reports.*

Statute of the International Court of Justice. (1946).

UN General Assembly. (1970) Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV).

Union Proclamation. (1939). No. 103, by Sheila Patterson (1998), *Colour and Culture in South Africa*,(Routledge).

Wooldridge, F. (1979). The Advisory Opinion of the International Court of Justice in the Western Sahara Case, *Anglo-American Law Review* V.8, I. 2.

Written Statement of Hungary. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Written Statement of India. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports*.

Written Statement of Poland. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports*.

Written Statement of South Africa. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Written Statement of UN Secretariat General. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports*.

Written Statement of USA. (1971). Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion, I.C.J. Reports.*

Zyberi, G. (2009). Self Determination Through the Lens of the International Court of Justice, *Netherlands International Law Review,* V.56, I.3.