

The Treaty of Yandaboo and the Question of Self-Determination in Assam from the perspective of International Legal Regimes

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The article interrogates the claim of 'sovereign right' by certain sections of the Assamese people on the basis of the historic Yandaboo Treaty, concluded between the British and the Burmese on 24 February 1926 where Assam was not a party to it. It intends to examine legality and relevance of the Treaty of Yandaboo from the perspective of international laws to address the present sub-national driven self-determination movement in Assam and argues that under any legal circumstances the question of Assam's territorial sovereignty as claimed by the insurgents and radical intelligentsia is not tenable. The article argues that at the time of India's independence, under the leadership of Provincial Congress, Assam had already exercised the right to self-determination by choosing to unite with the Indian Union without any mass resistance. The article concludes that rather than 'claiming territorial sovereignty', the people of Assam should stand for its 'political and economic rights', for achieving internal self-determination which may be a way forward to resolve the long-standing political problem in the region within the framework of Indian federalism.

Keywords: Treaty of Yandaboo, Assamese, Self-Determination, Sovereign Assam

Since the 1980s Assam has been witnessing an ethno-nationalist armed struggle for a sovereign territorial homeland on the basis of right to self-determination. This ethnic based armed assertion remains unresolved, resulting in sporadic political violence, political instability and human rights abuses in the state. The radical intelligentsia of the state believes that Assam was never a part of India before the British annexation into it. The Treaty of Yandaboo 1826 was signed between the Burmese and the British, where Assam was not a part of it, gave legitimacy to the British to bring Assam under its control. This event of history remains a turning point in Assam as it marked the end of 600 years of the Ahom Kingdom and ushered in British imperial rule in the state. The radical ideologues of the armed movement have interpreted this event of history as a foundation or theoretical basis¹ for

¹ An Appeal to the General Assembly of the United Nations through the Secretary General Mr Perez De Cueller by the ULFA, 1990

constructing the idea of Assamese nation and sovereign Assam. They have claimed that 'India is a multinational state and every nationality has the right to decide their own destiny by exercising the principle of self-determination' (Baruah, 1999, P.69). This sub-nationalism drove the Assamese self-determination movement for sovereign homeland although did not succeed till date but it was able to raise the question of right to self-determination for smaller nationalities in the post-colonial multinational state. In this backdrop, the article examines the legality of the claims of the Assamese self-determination for sovereign homeland based on the event of history- the Treaty of Yandaboo. It also analyses the changing contour of the application of the principle of self-determination in a post-colonial situation from the perspective of international laws and legal instruments with a view to comprehending the legality of the claim of Assamese self-determination for territorial homeland. The article also highlights India's position on the principle of self-determination. Towards the end, the article argues for granting internal self-determination to the Assamese people within the Indian federal framework on the basis of historical grievances and ethnic collectivity. This may pave the way for resolving the four-decade old ethnonationalist armed movement in Assam.

Background of Present Assam

Like every other part of India, Assam has had its own distinct history. In ancient times, Assam was known as '*Pragjyotisha*', meaning "eastern light", and was inhabited by the Boros or Boro-Kacharis, who were the early migrants of Mongoloid stock from Tibet and China. The famous Allahabad rock inscription put up during the reign of powerful emperor Samudragupta, notes that Kamrupa was a frontier kingdom in the east. The *Ramayana*² and the *Mahabharata*³ describe the mythical history of the entire *Bharatbarsha* and these two also give the accounts of the kings of 'Pragjyotisha' and 'Kamrup' (Acharya, 1992, p.4). From the seventh century to the ninth century A.D. The history of Pragjyotisha and Kamrupa was chronicled in Kalidasa's *Raghuvansam*, Banabhatta's *Harshacharita* and Kalhana's *Raja Tarangini*. The Greek writers of the fourth century B.C. speak of *Prassioi* or *Prassi* as the easternmost part of India. Whatever the name of the region in ancient times, the present Northeastern region of India possesses a unique variety of people of different races and tribes. The Kacharis who were also known as the Boros, the earliest settlers of this region were once very powerful people (Ghosh, 1992) and they are known to have ruled over the major parts of Assam.

On the eve of the coming of the Ahoms in the 13th century, the Kacharis and Chutias were ruling over the major parts of Assam. The Aryans had also entered Assam and settled in the Brahmaputra Valley.⁴ With so many tribes living together there was a good deal of cultural fusion and exchanges between the pre-Aryan tribes and races on the one hand and the Aryans settlers on the other. Since ancient times till the advent of the British, this part of the country witnessed different dynasties at different points of time, and the propagators of Assam's self-determination claim that the Pragjyotishpur/Kamrup, the Assam of yesteryears has transformed into a composite Assamese identity by the formation of the Ahom Kingdom in early 13th

² Sanskrit epic composed in 3rd century B.C.

³ Sanskrit epic based on Hindu ideals, probably composed between 200 B.C. and 200 A.D.

⁴ Introduction, in supra no.3, p.3.

century. Till the Burmese intervention, Assam remained as a sovereign state for almost 600 years without interruption under the reign of mighty Ahoms. Assam had its own currency, administration, legal system, army, the Assamese culture, language and commerce with neighbouring countries which were all in place in such a system that after the British take over, no major immediate changes were deemed needed and the British officers carried on the administration of Assam using more or less the same system as before for several years.

The Treaty of Yandaboo and annexation of Assam

Assam was ruled by the Ahom Dynasty for almost 600 years prior to the annexation of Assam by the British. However, later Ahom kings were considered by their critics to be inefficient rulers due to internal conflict among the nobles and the frequent unrest, caused by the *Moamarias* revolt. This led to political conflicts amongst top officials like Purnananda Burhagohain who was one of the powerful ministers of the king in the upper eastern part of Assam and Badan Borphukan, a general in lower western part Assam. Later, Purnananda Burhagohain ordered for the arrest of Badan Borphukan. Knowing this, he fled to Burma to seek the Burmese king's help in conquering Assam. The Burmese army conquered Assam after little resistance from the unprepared Ahom army and started unprecedented atrocities and massacres of the Assamese people. History still refers to this period as *Maanor din* signifying a time of much devastation. Badan Borphukan is still treated as a traitor of the people in Assam and his name is today synonymous with traitors of the country. Later, the Burmese army, locally called *Maan* in Assam became involved in a war with British India as a result of the British Army having driven into Assam and subsequently to Burma. The Burmese king finally signed the Yandaboo Treaty with the British East India Company on 24 February 1826. It marked the end of the First Burmese War. By the terms of the Treaty, the British took possession of the former independent kingdom of Arakan and the former Siamese (then Burmese) territories of Ye, Tavoy and Mergui typically known as Tennasserim. Financial penalties were imposed on the Burmese Kingdom by the treaty and the Burmese were compelled to accept the presence of the British in their capital. The Treaty also directed the Burmese to abstain from interference in certain border states such as Assam and Manipur. These border states were all eventually annexed to the British Empire. The Treaty states:

Article 2: His Majesty the King of Ava renounces all claims upon, and will abstain from all future interference with, the principality of Assam and its dependencies, and also with the contiguous petty States of Cachar and Jyntia. With regard to Munnipoor it is stipulated, that should Ghumbheer Sing desire to return to that country, he shall be recognized by the King of Ava as Rajah thereof. (Aitchison, 1931)

Picking up the phrase 'principality⁵ of Assam' from the above noted Article in the Treaty, it is quite clear that at the time of annexation of Assam by the British, Assam was not an independent kingdom; rather Assam was under Burma since the Kingdom was already annexed by the latter and was ruled by a prince. For this obvious reason, it is mentioned in the Treaty as 'principality of Assam'. It was the defeat at the hands of the British that Burma had to hand over Assam.

⁵ Means 'a country that is ruled by a prince', Oxford Advanced Learner's Dictionary

The Freedom Struggle and Merger of Assam with the Indian Union

There is no denying the fact that the entire Assamese people wholeheartedly fought for independence with the Indian National Congress (INC) against the British. The people of the region actively participated in India's freedom struggle from joining the non-cooperation movement in 1920 to Quit India Movement of 1942. Further, the representatives from Assam headed by Lokapriya Gopinath Bordoloi strongly opposed the 'grouping' as suggested by the Cabinet Mission Plan, 1946 ((Barooah, 2010) since Assam was placed in groups 'C' with Bengal, which was a Muslim majority state. There were apprehensions that later on groups 'B' and 'C' would be merged and a separate Pakistan will be created. (Baruah, 1989) On 1 April 1946 the Cabinet Mission took the interview of Gopinath Bordoloi, the Premier of Assam. Bordoloi stressed on provincial autonomy and viewed that every state province ought to be constituted on linguistic and cultural basis. (Bhuyan, & De, 1999) To be consistent with his view, the Assamese pleaded to the British authority for separating Sylhet district from Assam. And on Jinnah's claim to include Assam in Pakistan as a Muslim dominated province, Bordoloi told the Mission that it was absolutely impossible and preposterous.⁶ Initially leaders of National Congress did not endorse the Bordoloi's view but later with the support from Gandhiji Bordoloi successfully resisted the Muslim League's design to include Assam into Pakistan (Misra, 2000). This paved the way for Assam to become a part of the Indian Union. However, provincial leaders always wanted to maintain a distinct regional identity with possible fullest autonomy (Phukon, 1984) from the Centre and provincial sovereignty which was well reflected throughout the Constitutional Assembly debates. They repeatedly demanded constitutional protection for the people of Assam because of the refugee burden in the state caused by the partition of British India and subsequent continuous influx of immigrants across the borders. The advocates of Assamese self-determination movement have rearticulated the claims for 'sovereign Assam' in the 1980s by recasting the past memory of ethnic grievances against the Indian Union.

The Question of the Assamese Self-determination

The 'right to self-determination' includes the right to freely determine political status as well as its economic, social and cultural structure. Keeping these criteria in mind, recent developments worldwide show us how indigenous people and their representatives claim the right to self-determination as a core right that befits their generally shared avowal of sovereignty and nationhood. The insurgent outfit the United Liberation Front of Assam (ULFA) has been fighting to assert their right to self-determination for a sovereign homeland since the 1980s. Occasionally, this armed movement in the past was supported by civil society bodies in the wake of ethnic Assamese insecurity due to the demographic pressure engineered by the continuous influx of immigrants from erstwhile East Pakistan and the present day Bangladesh. In this regard, in the initial days All Assam Students Union (AASU) had provided its ideological base to ULFA for protecting the Assamese identity from the foreigners. But AASU's relationship with ULFA throughout the initial period of anti-

⁶ Bordoloi's note to the APCC, APCC Papers, 1946, Gauhati, Minutes of Meeting between Cabinet Delegation, Wavell and Gopinath Bordoloi, in Nicholas Mansergh (ed.), 'The Transfer of Power', 1942-47, Vol. 6, London, 1976, p.77-80.

foreigners' movement was 'ambiguous'. However, the ASSU has little faith in *Swadhin Asom* (independent Assam), but it demands 'self-determination' and constitutional protection of indigenous people within the framework of *the Constitution of India*. It spoke highly of the integrity and honesty of ULFA as they 'wish the Assamese well' and intend to do good to the country as well as the people and the circumstances have forced them 'to chart out a separate line' (Das, 1994, p.11).

The main contentions of the insurgent groups in Assam for self-determination are that their culture is different from that of the other parts of India. When it comes to the economic front, insurgents in Assam have their strong set of arguments against the Union of India which they believe that the Centre is responsible for economic underdevelopment of the state and unemployment of the Assamese youth. The insurgent groups argue that Assam is the largest producer of "tea" in the world and it has its "oil resources". But when it comes to sharing the royalty out of these resources, it remains insignificant for the development of the state. This resentment was later stimulated at the hands of the ideologues of ULFA once the six years of anti-foreigner agitation failed to produce any substantial outcome for the protection of the Assamese identity. Being dejected by the outcome of Assam Agitation, the radicals affirmed that 'Centre had betrayed the Assamese people and it is their right to exercise self-determination for sovereign Assam through national liberation movement'. They appealed to the people of Assam that they should unite and join the struggle for independence irrespective of different nationalities, caste, race, and religion. The organisation themselves declared that they were freedom fighters, not a secessionist, as Assam was never a part of India, and it is their duty to overthrow the Indian colonial occupation of Assam (Mahanta, 2013). In this context, Parag Das, main ideology as well as a critic of the ULFA, through his writing *Swadhinotar Prastab*, 1993 (Proposal for Independence), advanced the idea of independent Assam by rejecting the Indian constitution. He believed it was the Indian government that treated Assam as a colonial hinterland and structurally placed it in a dependent position. He advocated the recognition of the principle of right to secede from the Indian union as he believed that 'Assam was never a part of India, and therefore, people of Assam have the right to exercise self-determination under international laws through referendum.'

International Laws and the Principle of Self-determination

The concept of self-determination is conveyed by the following words of a Judge of the International Court of Justice, which he used in a leading case involving self-determination: "It is for the people to determine the destiny of the territory and not the territory the destiny of the people." (Dillard, 1975, p. 12). The global reality of our times is that most of the armed conflicts at the moment are between groups in a state or between a group and the state, and most of these conflicts involve a fight for self-determination or to decide their own destiny. The importance of self-determination in the geo-political landscape is especially crucial in Assam, which hosts the threat of self-determination-based claims. In the context of the right to self-determination in the present international legal regime, there has been a notable evolution of political consciousness, and the post-United Nations (UN) era witnessed the full development of the doctrine of self-determination. Insurgent outfits-from ULFA to Bodos in Assam — often cites provisions in various provisions of international conventions and the UN Charter to establish their right to self-

determination. But the degree to which such a right to self-determination is currently part of international law remains uncertain and controversial. One of the four purposes of the UN, as laid down in Article 1(2) of the UN Charter is, “[t]o 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 1(2), UN Charter, n.d.).

The most controversial phrase has been ‘self-determination of peoples’. The daunting question has been if the word ‘peoples’ is only applicable to people in a colonial situation or if it includes the people living in a sovereign State. A literal interpretation would appear not to imply any restrictions to which the principle applied so that it includes minority groups living in a sovereign State. But this conclusion must be examined before it is accepted. It is, therefore, essential to focus on the process of development of the Charter provisions in the preparatory work to the present Charter.

In the San Francisco Conference, April 25–June 26, 1945 the four powers at the insistence of the U.S.S.R suggested amendments, among other aims of the organisation to include the present provision in Article 1(2) (Russel,1958).⁷ This has resulted in giving various interpretations to the present provision of the Charter. There was no universal support for the inclusion of self-determination in the Charter. Even the members who supported the inclusion of the principle did not want the principle to apply to all the situations. A number of possible qualifications were raised. First, when a national minority in a given country claim the right to self-determination, would the organisation be expected to step in and would other States feel duty-bound to interfere on the strength of the concept of ‘friendly relations’.⁸ One of the chief arguments was that it would be dangerous to put forth the peoples’ right of self-determination as a basis for the friendly relations between the nations, as it would open the door to inadmissible intervention if, as seems probable, one wishes to take inspiration from the peoples’ right of self-determination in the action of the organisation and not in the relations between the peoples.⁹ Secondly, if self-determination meant self-government, the right of a country to provide its own government should be included: but if it were to be included, the right of withdrawal or secession, this could give rise to international anarchy, and should not be included in the text of the Charter.¹⁰ A majority of countries forecast fears if the principle of self-determination is included in the Charter as proposed would lead to wide misapplication and abuse. Subsequently, the Committee responsible for the drafting of the relevant provisions agreed that the principle conformed to the purposes of the Charter only insofar as it implied the right of self-determination of peoples and not the right of secession. The concept of self-determination *did not mean* the right of a minority or an ethnic or national group to secede from a sovereign country.(Cassese, 1996). In the ultimate analysis, even though the member States,

⁷ UN Conference on International Organisations, 1945, p. 296.

⁸ UN Conference on International Organisations, 1954, p. 300 (Remarks by Belgium delegate)

⁹ Ibid.

¹⁰ Minutes of the debates of the first committee of the first commission of the San Francisco Conference, 15 June 1945, Library of the Palais des Nations, Geneva p.20 Remarks of the Colombian delegate.

including the colonial powers, have undertaken an international obligation to promote the realisation of self-determination of all peoples, no matter whether they are colonial or metropolitan territories, only the overseas colonial peoples and territories have thus been regarded as the beneficiaries of the right to self-determination. (Islam, 1987).

In 1952, the UN General Assembly (UNGA) passed a resolution in which it impressed upon member states of the UN to “uphold the principle of self-determination of all peoples and nations”.¹¹ Some colonial powers raised the bogey of Article 2 (7), “Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII”.¹² But the arguments of the colonial powers were rejected since it would have helped them in asserting their might on the smaller countries and in their colonies. The UN Charter further states:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples the United Nations shall promote:

a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c) universal respect for, and observance of, human rights and fundamental freedoms for all *without* distinction as to race, sex, language, or religion.”¹⁴

The UN Charter also asserts, “All Members pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement of the purposes set forth in Article 55”.¹⁵ These two Articles are important since it calls for cooperation jointly or separately by all the member countries for those who already have achieved the right to self-determination as independent states. The gist of Article 55 and Article 56 is that if the member states – rich and poor – of the United Nations do not work together for the developmental works then the respect for the principle of equal rights and self-determination would be meaningless. The Charter is an attempt to bind all member countries in this respect.

In 1960, there came another memorable Declaration that “all peoples have the right to self-determination”.¹⁶ This Resolution is also called the “Declaration of Decolonisation” and has similar wordings. This right has also been considered as fundamental right which has been reproduced in Article 1 of both the covenants – International Covenant of Civil and Political Rights, 1966 (ICCPR) and International

¹¹ UNGA Resolution 637 A (XII) of 16th December 1952.

¹² Chapter VII of the United Nations Charter deals with the 'Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression'.

¹³ Article 2 (7) of the UN Charter.

¹⁴ Article 55 of the UN Charter.

¹⁵ Article 56 of the UN Charter.

¹⁶ UNGA Resolution 1514 (XV) of 14th December 1960.

Covenant on Economic, Social and Cultural Rights, 1966¹⁷ (ICESCR): “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 original intention of the two covenants was to lay down the fundamental rights and freedoms of individuals. The Soviet Union emphasised the need for both covenants to enshrine the rights of people to self-determination, which was a precondition for the respect of human rights. (Henkin, 1981) The effort of the western countries to exclude any mention of the right of self-determination failed as the Soviet Union had strong support from the developing countries. Having lost the campaign by the western countries, they insisted that if the principle is included in the Covenant, it must not be limited to colonial situations. However, the overwhelming majority of countries had already explicitly stated that the provision was not intended to cover minorities living in sovereign States. It is against this background that the final provision was drafted.

The right to self-determination has also been declared in other international treaties and instruments and has now for a long time been generally accepted as a norm of current international law. The 1970 Declaration on Principles of International Law (adopted by the UN General Assembly), which stated the internationally agreed basic principles of international law, clarified the contents of this right when it stated, “[t]hat subjection of people to alien subjugation, domination and exploitation constitutes a violation of the principles [of equal rights and self-determination of peoples], as well as a denial of fundamental human rights, and is contrary to the Charter of the United Nations.”¹⁸

All these existing legal framework showcases that right of self-determination has been accepted as an established rule of international law, yet as a rule of *Jus cogens*¹⁹ and its exact scope has remained unidentified. “It is said that only colonies have the right of self-determination. An integral part of the state has no such right because it may result in secession. Katanga’s effort to secede from the erstwhile State of Congo, now Zaire, was raised by the UN on this account. The Bangladesh struggle was not encouraged in 1971 because then it was part of the State of Pakistan. But the Bangladesh problem had its own peculiarities. There the majority was not allowed to rule. Besides both the wings were separated by 1200 miles which has no parallel in history. But once Bangladesh succeeded in its independent establishment, it was accepted.” (Hingorani, 1982, pp. 262-264). That the right of self-determination applies to all peoples in colonial situations, this position was upheld by the International Court of Justice in the *Namibia Case* [Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)] and there is nearly uniform State practice consistent with its application to colonial territory. The UN is against any right to be given to a

¹⁷ UN General Assembly resolution 2200A (XXI) of 16 December 1966.

¹⁸ UN GA Resolution No. 2625 (XXV), Declaration On Principles of International Law Concerning Friendly Relations And Cooperation Among States In Accordance With The Charter Of The United Nations, 24 October 1970.

¹⁹ Means a ‘peremptory norm’ is a fundamental principle of international law which is accepted by the international community of states as a norm from which no derogation is ever permitted.

revolting party to secede from the parent state. Further, the 1970 Declaration of Principles of International Law²⁰ provides that the right of self-determination shall not “be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”

It appears clear that none of these documents discussed above in the Articles that mention the word ‘self-determination’ encourage secession in the guise of right to self-determination. When the activists of right to self-determination in Assam claim the sovereignty of Assam on the basis of existing legal documents, let us see if any of the articles in any of the existing international legal documents support their cause. The Article 1(2) of the UN Charter talks of respect for self-determination by developing friendly relations among nations. Articles 55 and 56 puts importance on respect for self-determination by engaging in development and cooperation and re-asserts building friendly relations among nations. Article 1 of the ICCPR and ICESCR in late 1960s reaffirms what is enshrined in the UN Charter by stating that all peoples have the right to self-determination as regards “political status” and economic, social and cultural development. Self-determination of ‘political status’ in these two documents has been a subject of controversy since the documents are not clear whether the Article would apply to non-colonial situations. If this Article is applicable in non-colonial situations the whole world would have disintegrated very easily. One should keep in mind that when there is a fight for self-determination inside a State that is basically a claim to the right to secede from the parent State. This culture is no way supported by the United Nations as stated under Article 2(7)²¹ of the UN Charter. This Article does not support the intervention in the domestic jurisdiction of a State. Further, the territorial integrity or political unities of sovereign and independent States are to be protected. The activists for Assamese self-determination are of the view that “new States in Eastern Europe and the Soviet Union, creation of East Timor are glaring examples where self-determination rights of the people have come before anything else and rightly so.”²² But in practical and logical sense, these are not examples of self-determination rights of the people and these states achieved independence not under any international legal document. In fact, the prevailing situations in all these countries were all different from that of Assam. For example, the disintegration of the Soviet Union was mainly responsible

²⁰ UN GA Resolution No. 2625 (XXV), Declaration On Principles of International Law Concerning Friendly Relations And Cooperation Among States In Accordance With The Charter Of The United Nations, 24 October 1970.

²¹ Article 2(7) of the UN Charter: Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

²² Dr. Mukul Hazarika, Coordinator of UK based NGO Assam Watch, Speech delivered by him at the launch of Parliamentarians for National Self-Determination, Thursday 11 May 2006, Committee Room 4, Houses of Parliament, Westminster, England.

because of the liberal policies (*Glasnost*²³ and *Perestroika*²⁴) of the then President Mikhail Gorbachev. Twelve nations came out of the Soviet Union when the disintegration took place. In India, this kind of liberal policy combined with a self-determination for 'political status' in a non-colonial situation would create multiple independent state from North to South and East to West, because in India there would be claims for self-determination on the basis of ancient kingdoms, language, religion, cultural heritage etc. In *Western Sahara Case* and *Namibia Case*, as discussed above, the International Court of Justice upheld the right to self-determination, but not a single paragraph of the judgement encourages the peoples' right to secede.

India's position on the right to self-determination

On ratifying the International Covenant of Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 India made a Reservation²⁵ to the effect that the right of self-determination pertains only to "peoples under foreign domination" and it does not apply to "sovereign independent States or to a section of a people or nation which is the essence of national integrity". The exact wording of the Article in the Declaration by the Government of India states:

"With reference to Article 1 of the International Covenant of Civil and Political Rights and Article 1 of the International Covenant on Economic, Social and Cultural Rights the Government of the Republic of India declares that the words 'the right of self-determination' appearing in those words do not apply only to the peoples under foreign dominion and that these words do not apply to sovereign independent States or to a Section of a people or nation which is the essence of national integrity."²⁶

This reservation provides evidence of the fact that the consensus among the members was that the provision includes people living in a sovereign State. Subsequently, the Human Rights Committee (the UN monitoring body in respect of the 1966 Covenants) stated in its 1997 review of India's compliance [CCPR/C/79/Add.8I. 04/08/97] with Article 1 which deals with self-determination that it "invites the State party to review these reservations and declarations with a view to withdrawing them, so as to ensure progress in the implementation of the rights..." India has not made any such withdrawal yet.

²³ The policy of maximal publicity, openness, and transparency in the activities of all government institutions in the Soviet Union, together with freedom of information, introduced by Mikhail Gorbachev. It was used to specify the policies he believed might help reduce the corruption at the top of the Communist Party and the Soviet government, and moderate the abuse of administrative power in the Central committee.

²⁴ Russian term for the economic reforms introduced in June 1985 by the Soviet leader Mikhail Gorbachev. Its literal meaning is "restructuring", referring to the restructuring of the Soviet economy.

²⁵ UN, Human Rights, Status of International Instruments, UN Doc. ST/HR/5 1987, 9.

²⁶ Declaration by The Government of India, deposited with the U.N. on 10 April 1979, signed by Neelam Sanjiva Reddy, then President of India.

Right to Development as Self- Determination

The right to development as an exercise of self-determination is gaining legitimacy worldwide which also implies the right of peoples to exercise sovereignty over natural resources. (Crawford, 1988) The 1986 Declaration on the progressive development of principles of public international law relating to a New International Economic Order (Seoul Declaration) of the International Law Association (ILA) and the Declaration on the Right to Development²⁷ relate development to the right of peoples to self-determination. Self-determination includes the right of a people to choose its own route to development, albeit with due regard for the relevant provisions of both International Covenants on Human Rights.²⁸ In doing so, people should exercise their right to self-determination in such a way that it will not cause substantial harm to the right to development of other people.²⁹ As a principle of international law in general and human rights law in particular³⁰ The right to development affects the right of self-determination. The latter right involves not only the establishment of States by peoples but also the operation of States once they have been established, "The mere formation of a state does not in itself fully realise the right to self-determination, unless its citizens and constituent peoples continue to enjoy the right to their own cultural identity and to determine their own economic, social and political system through democratic institutions and actions, and the State genuinely enjoys continuing freedom of choice, within the bounds of international law."³¹

The Declaration on the Right to Development, States: "...should encourage popular participation in all spheres as an important factor in development and in the full realisation of all human rights."³²

The right to self-determination as a State right reminds the government of a pluralist State of its constant duty to conduct itself in compliance with the principle of equal rights and self-determination and thus to represent the whole people belonging to the territory, without distinction as to race, creed or colour.³³ In other words, in any society, pluralist or otherwise, a government should represent all peoples belonging to its territory. As long as this is the case no people in such a territory may claim by virtue of the right to development or the right to self-determination and proceed to the use of armed force to dismember or impair, totally

²⁷ DUNGA Resolution 41/128 of 4th December 1986.

²⁸ *Supra* no. 11, at pp.84-87.

²⁹ P.J.I.M. de Waart, Long-term Development Aspects of Humanitarian Assistance in Times of Armed Conflict, in F. Kalshoven, *Assisting the Victims of Armed Conflict and Other Disasters*, 1989, pp. 70-71.

³⁰ The Seoul Declaration brought the right to development to the fore as a principle of both international law and human rights law. In the former case the right to development relates to States and in the latter to other collectivities other than States, in particular to people.

³¹ UN Doc. E/CN.4/1990/9 of 6th February 1990, Report prepared by the Secretary-General pursuant to Commission on Human Rights Resolution 1990/45, VII: Conclusions and Recommendations Emerging from the Consultation, p. 4.

³² UNGA Resolution 41/128 of December 1986, Article 8(2).

³³ UNGA Resolution 2625 (XXV) of 24 October 1970, Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in accordance with the UN Charter.

or in part, the territorial integrity or political unity of sovereign and independent States.³⁴ Assam is not an exception to it as the international community does not want to extend support to the Assamese right to self-determination for sovereign homeland by disintegrating present India.

Conclusion

Assam represents a mini-India with diverse people and ethnic groups living together. The post-colonial situation produces a certain degree of political disorder, coupled with the historical grievances and growing political aspirations of people in an extremely contested multiethnic space which makes the region the most unstable and politically volatile zone in South Asia. Most of the ethnic groups are either claiming autonomy or right to self-determination or sovereign homeland in present Assam. Granting internal self-determination and recognition of group rights (Kymlicka, 1995) for self-development to the ethnic people usually pave the way for resolving many ethnic based conflicts in post-colonial societies. Recognition of group rights which protects vulnerable ethnic communities, constitutes a precondition for realisation of internal self-determination. This also usually neutralises secessionist demands of ethnic minorities and allows the potential insurgents to transform into stakeholders of a democratic system (Gogoi, 2016). However, application of external/territorial self-determination for ethnic people in a non-colonial context remains highly contested in international legal parlance. It would have been a catastrophe if the major international legal instruments confer the right to self-determination for territorial independence. Therefore, the ethnic communities fighting for self-determination need to realise that under the United Nations regime no legal instruments, be it UN Charter or ICCPR or ICESCR, would allow them to achieve their goal for sovereign homeland by seceding from the existing state. The ethnic communities fighting for right to self-determination always highlight the fact that they have been neglected and deprived of economic development in their own homeland and taken away their indigenous right over land and natural resources. Therefore, instead of fighting for territorial self-determination, people of Assam need to rearticulate its position for political and economic rights for realising the internal self-determination and economic development – ‘a constitutive aspect of democracy to realise substantive democracy’ (Chandhoke, 2012, p.158) which is quite feasible under Indian federalism and existing international laws. This perhaps could be a realistic solution for which is not impossible.

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³⁴ UNGA Resolution 2625 (XXV) of 24 October 1970, Principles of Equal Rights and Self-Determination of Peoples, § 2: 'Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which could dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or culture.'

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