



Self-Determination and Use of Force in Rojava

Loqman Radpey¹

Accepted: 4 February 2021

© The Author(s), under exclusive licence to Springer Nature Switzerland AG part of Springer Nature 2021, corrected publication 2021

Abstract

After living under the colonialism of the Ottoman Empire, France, and Syria, the Kurds of Syria are developing landmark policy atypical of the Middle East. Recent developments triggered by the 2011 Syrian insurgency, the rise of the ISIS, the onslaught on Kurdish cities, and the resistance of People's Protection Units (YPG) and Women's Protection Unit (YPJ) under the command of Syrian Democratic Forces, have resulted in Syrian Kurds asserting de facto confederalism in the autonomous region known as Rojava in 2016. This allows the population living in the area to retain independent control over their internal and external affairs within the Syrian state along the border with the autonomous Kurdistan Regional Government (KRG) in northern Iraq. Turkey invaded and occupied the Kurdish regions of Rojava under the pretext of eliminating Kurdish forces and Daesh to prevent an allegedly 'terrorist threat'. Turkey justified its invasion by claiming the right of self-defense under Article 51 of the UN Charter. However, Turkey's use of force against the non-state entity of Rojava, which is exercising its right to self-determination, and annexing its territory have legal boundaries. Far from raising any connection between war and terrorism in the Syrian civil war context, the article tries to prove the illegality of the use of force in the context of self-determination. In this situation, other states can take more serious measures to stop Turkey and may request the accused state to comply with *erga omnes* rules related to self-determination. Also, third states are not prohibited to aid self-determination movements politically—short of dispatching troops.

Keywords Kurds · Rojava · Self-determination · Use of force · Syria · Turkey

Introduction

Under the Treaty of Sèvres (10 August 1920), the defeated Ottomans granted autonomy and independence to Kurdistan in Articles 62 and 64. However, this treaty was not ratified and implemented by the signatory states, and Kurdish statehood remained undetermined. The unfulfilled agreement was replaced by the Treaty of Lausanne on 24 July 1923, making no mention of establishing a Kurdish state or independence. As a result, Kurdistan was apportioned among five sovereign states in the contiguous areas of Iran, Iraq, Syria, Turkey, and Soviet Armenia. Accordingly, Kurds numerically were gerrymandered into minorities in these states and the western (Rojava) part of Kurdistan came under Syria.

Syria was under a French mandate (as was Lebanon) reaffirmed by the San Remo Resolution of 1920 (Khoury, 1987).

Although the Syrian Parliament had declared independence on 7 March 1920, Syria's sovereignty was not recognized by Britain or France. The League of Nations had reconfirmed the French mandate for Syria and Lebanon on 24 July 1922 (The Mandate for Syria and Lebanon, 1922). While under the French mandate, the Kurds petitioned three times for administrative autonomy but France rebuffed the petitions. The French collapse in 1940 during World War II and the British campaign against Vichy forces in Syria in June–July 1941 effectively ended the French mandate in the Levant. With the victory of the Syrian nationalists in the parliamentary elections of July 1943 and the start of an Arab revolt, the subsequent new government in France (Free France) recognized the independence of Syria and Lebanon. France withdrew its troops in 1946. Kurdish aspirations for autonomy continued to be ignored (Savelsberg, 2014).

When Hafiz al-As'ad died in June 2000 and, his son, Bashar al-As'ad, seized power, the three months of the 'Damascus Spring' began during which intellectuals sought reforms and ushered in the end of the emergency laws that ruled the nation since 1962 (Yildiz 2005). After 2004, the regime

✉ Loqman Radpey
l.radpey@ed.ac.uk

¹ University of Edinburgh, School of Law,
Edinburgh EH8 9YL, Scotland

evinced some degree of malleability toward the Kurdish cultural rights; however, suppression of the Kurdish leaders continued up to the 2011 uprising. Maashouq al-Khaznawi, an outspoken moderate Kurdish cleric, was hijacked on 10 May 2005 and found dead three weeks later. His assassination sparked the Kurdish demonstrations (Blanford 2005; Phillips 2017). Also, on 7 October 2011, the Kurdish leader of the ‘Kurdish Future Movement’ in Syria, Mishaal Tammo, was assassinated in Qamishli and six demonstrators were shot dead in his funeral (Evans 2011). Long denied human rights by the central government brought about anti-regime demonstrations in Arab cities in April 2011.

Syrian Kurds have been subjected to centuries of systematic discrimination, including ongoing denial of their citizenship rights by the Syrian government. These policies have resulted in Syrian Kurds asserting de facto confederalism within the Syrian state to retain independent control over their internal and external affairs. This de facto union state is located in Northern and Eastern Syria along the border with the autonomous Kurdistan Region of Northern Iraq that is governed by the Kurdistan Regional Government (KRG).

In the aftermath of the Syrian insurgency that has been ongoing since March 2011, the Kurds living in the Autonomous Administration of North and East Syria also known as Rojava replaced Syrian flags with their own. In July 2012, they assumed control of the state institutions. Following, they adopted ‘The Social Contract of Rojava Cantons in Syria’ and established it as the constitution of a self-proclaimed union of Kurdish autonomous cantons. Thereby, they initiated a process of development of a decentralized federal Syrian state. The process culminated in the unilateral declaration of democratic federalism on 17 March 2016 and the establishment of the Rojava social contract as its constitution. In a similar vein, the name of the region was changed from Rojava to Northern Syria on 28 December 2016, thus confirming the existence of the entity as a member state of Syria and an equal multi-ethnic polity, built on pluralism, democracy, women’s empowerment, and ecology (as per the social contract currently known as Social Contract of the Democratic Federation of Northern Syria 2016) via a consociational system. In 2018, the Democratic Federation of Northern Syria changed to the Autonomous Administration of North and East Syria (AANES)—though Rojava is still often used. Currently, the AANES is run by the Social Contract of the Democratic Federation of Northern Syria. No social contract has yet been published for the new established system of 2018.

The Social Contract of the Democratic Federation of Northern Syria has utilized the power of a different form of self-determination to find solutions to long lasting conflicts by merging previously known principles into uniquely new forms and adding elements that are new in the region. As

the title suggests, the Autonomous Administration should aim at curing and reconciling the fragmentation of the social fabric. To this end, the contract guarantees all strands of society, including social workers, to practice all political, social, and cultural activities, and to enjoy all the merits of free and equal life (the preamble). Through ‘administrative and political decentralization’ (the Preamble), it provided the ground for the participation of all ‘the people’ (the Preamble) living in the region’s cantons in public affairs, on equal levels and ‘the charters of human rights’ (the Preamble). No official status has been granted to any ethnic or religious group. The people, including Kurds, Arabs, Syriacs, Assyrians, Turkmen, Armenians, Chechens, and Circassians, were involved in the formulation and adoption of the text (Radpey & Rose 2017).

The AANES is considered an internal form of self-determination which is known as direct democracy. This form of democracy is realized through the social and political participation of all social segments (Article 7), including all workers. The social and political participation is conducted through the societal units, which are called the councils. These organizations represent the people at all stratifications from villages, neighbourhoods, to towns, and districts, with the authority to decide affairs and formulate policies (Article 49). The innovative text of the social contract may be ‘an optimal solution to address the national, social, and historical issues in Syria’ and helps in a reconfiguring of the regional social and political order. However, the young confederal system has encountered with the Turkish invasion since 2018.

Turkish Invasion of Rojava

Turkey launched ‘Operation Olive Branch’ on 19 January 2018. The operation consisted of the deployment of Turkish troops into the Kurdish canton of Afrin in Rojava. The argument put forward to justify the operation was the elimination of the Kurdish groups of the Kurdistan Workers’ Party (*Partiya Karkerên/krêkaren Kurdistanê*, PKK), the Kurdistan Communities Union (Koma Civakên Kûrdistan, KCK), the Democratic Union Party (*Partiya Yekîtiya Dêmkokrat*, PYD), and Daesh (‘al-Dawla al-Islamiya fil Iraq wa al-Sham’ or the ‘Islamic State of Iraq and the Levant’) and the prevention of an allegedly ‘terrorist threat’ (Identical letters from the Permanent Mission of Turkey to the UN addressed to the Secretary-General and the President of the Security Council 2018). Many Kurdish civilians were killed during the operation (Munayyer et al. 2018). Following this, Turkey occupied Afrin without any objections from any third-party country or international organization.

On 9 October 2019, Turkey continued the invasion, operating under the codename ‘Peace Spring’, with the

help of the Free Syrian Army (FSA) and former members of ISIS and other jihadist members. The invasion followed the US decision to withdraw its troops from Kurdish regions. The presence of the US in Rojava was in the frame of the Global Coalition against Daesh, which was formed in September 2014 to degrading and defeating Daesh. This is where (Global Coalition against Daesh 2014). Kurdish groups in Iraq and Syria are allies to the Global Coalition at the front line of the war to push Daesh out of Iraq and Syria. These groups, especially the Kurdish-led Syrian Democratic Forces (SDF) in Rojava and *Peshmerga* of Iraqi Kurdistan have had a decisive role in liberating and clearing nearly all the territory Daesh controlled in the region. Turkey justified its invasion of Rojava in a series of letters to the UN whereby it claimed its right to self-defense against a ‘direct and imminent threat’ under Article 51 of the UN Charter and contended that it ‘will carry out this operation in support of efforts to facilitate the safe and voluntary return of displaced Syrians to their homes of origin’ (Letter from the Permanent Representative of Turkey to the UN addressed to the President of the SC 2019). However, evidence has shown that this was only a pretence to the implementation of ongoing ethnic cleansing policies in Northern Syria intended to the Kurds living there (Hall 2019).

In a letter sent to the UN by the US in September 2014, the Obama administration relied on Article 51 to legitimize its fight against the Islamic State and al-Qaeda in Syria (Letter from the Permanent Representative of the United States of America to the UN addressed to the Secretary-General 2014). This raises a puzzling question in regard to the Syrian conflict complex: how come both the US and Turkey rely on the same international law framework whilst one supporting the Kurds militarily in their fight against the ISIS and the other trying to eliminate the material basis of the Kurds’ right to self-determination? The Kurds in Rojava do not pose a threat to international security and peace. Turkey’s justifications are controversial and could be considered a violation of the use of force (Peters 2018) and a breach of other principles of international law (Heller 2019). Moreover, Turkey’s actions in the second phase of its intervention have incontrovertibly led to the mass displacement of people, summary executions qualifying as war crimes, and unlawful attacks, as reported by the UN Higher Commissioner for Human Rights (OHCHR 2019) and Amnesty International (Amnesty International 2019). The situation, in turn, begs the question of whether there is any legal boundary to the use of force against a unit such as Rojava that has a claim for self-determination. Turkey’s use of force under the pretext of self-defense against the substate entity of Rojava and the de facto annexation of its territory are illegal. The use of force in the context of extra-colonial self-determination

is restricted by legal boundaries, but they are not sufficient to prevent violence. However, third states, as international actors, can do more and take more serious measures to stop Turkey and prevent violence.

Self-Determination and Extraterritorial Use of Force

Self-determination is arguably the most controversial right of the twenty-first century, plagued by ambiguity whilst so widely recognized with a position of tremendous significance. Some self-determination conflicts have been destined to perpetual failure as they have been faced with intransigent opposition of existing states. Reconfiguration of borders—the congruence of borders of state and the boundaries of nation—has played a critical role in the world order and, sometimes, has destabilized the planet. In fact, in most cases, it is self-determination that has redefined and restructured the world and international relations. Claims to territory or even people as a tangible result of exercising self-determination could cause states to fight and be a war-prone element thereby threatening international peace. Contentious issues about sovereignty and territoriality affect the debate on self-determination, and these unresolved disputes have escalated into enduring wars, especially in the Middle East, and have occasionally led to political reconfiguration of states and sometimes not.

Self-determination was pressed into service to decolonize or achieve independence of entities, which had suffered from colonizers. Now, the right has prevailed beyond the context of classical colonialism. Around the globe, groups linked by race, language, religion, and custom invoke their political status. The phrase of ‘all peoples’ in the Article 1(1) of both International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESC) and other key primary texts has made the application of the rights granted difficult as the wording of the Article has not determined the way of implementing it. It is nonetheless self-determination, which has encouraged group aspirations to forge their political power on a relatively defined territory. Oppressed ethnic or national groupings have been challenging the modern state structure that submerges them. Some are seeking a degree of separation or autonomy from their host states; they seek to redefine acknowledged states’ boundaries to create a new independent political entity pacifically or violently by referring to the right to self-determination.

The International Court of Justice (ICJ), in East Timor (1995), referred to self-determination as *erga omnes* that is ‘irreproachable’ and ‘one of the essential principles of contemporary international law’ (ICJ Reports, Portugal v. Australia 1995). A few factors are involved in registering the right as *erga omnes* obligation: having a fundamental role in foundation of international law (Articles 1(2) and

55 of the UN Charter, the Friendly Relations Declaration, the Human Rights Covenants), universally drafted toward all peoples and bound on all States to realize it, associating with a number of state-biased principles (equal sovereign, non-intervention, and the prohibition of the threat or use of force), having a central role in the treaties that many states are parties to them and are considered customary law (the UN Charter, ICCPR, and the ICESCR). The prohibition of use of force is one of principles of international law, which is harmonized with self-determination. This is the case with the other principles, including the peaceful settlement of disputes, respects for human rights, international cooperation, and good faith (Cassese 1995).

The prohibition of use of force is one of principles of international law that has helped colonial and a few non-colonial territorial entities like the Kurds of Rojava advance their claims. They have been aided by the prohibition against the use of force by oppressive states. Article 2(4) of the UN Charter prohibits the threat or use of force by UN and non-UN members, except in instances of self-defense against armed attack under Article 51. More broadly, the Charter proscribes the forceful annexation of territory. The Charter interconnects the proscription of the use of force and self-determination by prohibiting the use of force ‘in any other manner inconsistent with the Purposes of the United Nations’ (Crawford 2006). This does not narrow the proscription—the principle of ‘equal rights and self-determination of peoples’—is among the stated purposes of the United Nations established in Article 1(2) of the Charter. The use of the word ‘other’ extends the prohibition of the use of force to the context of equal rights and self-determination of peoples. Therefore, the use of force is banned against peoples laying a claim to their right to self-determination.

Historically, though, the UN has not applied these key clauses of the Charter to protect political groups seeking self-determination or condemn states that threaten them. ‘Territorial integrity [...] of any state’ under Article 2(4) does not cover territories undergoing self-determination; it does not extend to the use of force against colonial self-determination units or territories that is not covered by Article 2(4) prohibition. Though a close reading of Article 2(4) should protect self-determination projects, the UN has relied on other resolutions when attempting to constrain interventionist states. A relevant example concerns the African colonies of Guinea-Bissau, Angola, Cape Verde, and Mozambique, which were hindered from exercising their right to self-determination by their administering power, Portugal. The Security Council condemned Portugal’s ‘military operations and all acts of repression’ preventing the people of these territories from exercising their right to self-determination and independence on the basis of Resolution 1514 (XV). The Council did not refer to a violation of Article 2(4). In

other words, Article 2(4) does not protect imperial states engaged in military operations directed against territory entitled to self-determination but controlled through forms of colonial or alien domination.

These precedents, though, demonstrate that the use of force is illegal for colonizers defending their colonial claim in a context of colonial self-determination as the use of force, in this context, is a violation of the right to self-determination. This precedent produces an interpretation of Article 2(4) that the invasion and occupation by a foreign power to decide the statehood and governmental form of a self-determined entity is likewise illegal. Moreover, the prohibition of the use of force means that no state may use force to deny the right of ethnic or racial groups equal access to government, and that no state may implement coercive measures to disenfranchise people of their right to self-determination—for example, when a self-determined unit is invaded and forcibly annexed without being allowed to opt for incorporation or any alternative status. In this case, the non-state self-determined unit may not use force to exercise its right to self-determination, but under international law, a non-state colonial entity’s use of force to assert its right to self-determination is unlikely to be characterized as illegal. This is, however, subject to a caveat and further precisions when the scenarios arise:

1) Third parties impede a non-state entity’s right to self-determination through the use of force.

In international law, the use of force by a claimant that advocates the use of force to assert its right to self-determination is most likely not doing so by asserting or believing that force is unlawful. The legal personality of a non-state entity here follows from its right to self-determination and its use of force is ‘legally neutral’, that is, it has not been regulated in international law. The assistance or opposition to the entity by other states is dealt with in the Declaration on Friendly Relations, which bans every state from ‘any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence’. Nonetheless, it entitles these peoples ‘to seek and receive support’ in pursuit of the exercise of their right to self-determination. In this relationship, the principle of self-determination outweighs the prevention of the use of force against the territoriality or political unity of a state although it is inconsistent with the purposes of the UN. The ‘territorial integrity of any State’ in Article 2 paragraph 4 does not involve the territory, which is exercising its right to self-determination. This statement has been countenanced doctrinally by a certain number of international law scholars. A relevant state practice involves the African colonies of Guinea-Bissau,

Angola, Cape Verde, and Mozambique, which Portugal, as their administering power before 1974, hindered from exercising their right to self-determination. The Security Council condemned Portugal's 'military operations and all acts of repression' (SC Res 322 1972) against the peoples of those Territories to exercise their right to self-determination and independence (Crawford 2006). Therefore, the use of force against a self-determination entity by another state is a violation of Article 2 paragraph 4 of the Charter. In other words, it abrogates one of the purposes of the UN.

2) A unit, with a valid right to self-determination, is invaded and annexed by force without being allowed to assent to its incorporation into a territory or any other alternative status.

Using force for annexing a self-determination territory without considering its people's animus or acquiescence is illegal, and the unlawfulness would be more severe due to the special status of the territory. Goa, as an example, was annexed by the enclaving state of India in January 1961, although it was justified by historical title than annexation. As a non-self-governing territory, Portugal had sovereignty over Goa. To Crawford, self-determination here 'is not so much that it cures illegality as that it may allow illegality to be more readily accommodated through processes of recognition, whereas in other circumstances, aggression partakes of the nature of a breach of a preemptory norm and is not, or not readily, curable by lapse of time or acquiescence'. In this context, peaceful settlement of the dispute is a paramount issue superior to any claim of the enclaving or invading state. On that ground, unless the people showed their consent or the annexing state is the enclaving state, the right of a self-determination unit to self-determination will not vanish if the unit is annexed by external force (Crawford 2006). Goa was off list of non-self-governing territory by the Committee of Twenty-Four by a treaty of 31 December 1974.

3) A self-governing entity is created following an applicable right to self-determination by an intervening unlawful external force.

This situation is contrary to Article 2 paragraph 4. Two statuses are envisaged: local insurgents amid a civil war seek external assistance to undergird their effectiveness in pursuit of and in defence of their right to self-determination and independence. The General Assembly (GA), on several occasions, has persuaded and requested all states to provide material and moral succor to rebellions under colonial rule, as in Resolution 2105 (XX) (UN General Assembly 1965) and Resolution 2795 (XXVI) (UN General Assembly 1971). Here, the lawfulness of military or civil assistance and its amount is not relevant. Consequently, the receipt of external aid by a self-determination unit may be allowable, and this animus does not affect its effectiveness (Crawford 2006).

In the second status, a local self-government emerges by external military intervention, which is the fourth situation pertaining to the relation between self-determination and the use of force.

4) Alternatively, a self-governing entity is constituted in violation of an applicable right to self-determination by an external unlawful force that could lead to two eventualities:

- a. The self-governing entity would prevail, and its unlawfulness would not be an obstacle to its recognition as an emerging state.
- b. *Ex injuria non oritur jus*; the illegal origin of the entity will determine its non-recognition by the international community. The status of the self-governing entity and the legal use of force are two distinct matters; unlawful military intervention should not prevent the self-governing entity from exercising its right to self-determination.
- c. The status of the local self-government and lawfulness of the use of force are two distinct matters; therefore, unlawful military intervention should not prevent the unit from asserting its right to self-determination (Crawford 2006).

Bangladesh and Cyprus could be considered within these situations.

Bangladesh

Bangladesh (erstwhile East Pakistan) was a part of state of Pakistan (created in 1947), which was geographically divided (1200-km landmass in between). The central government in Islamabad applied systematic discrimination against the people of East Pakistan, an absolute majority of whom ensured victory in the elections of December 1970 for the National Assembly. Nevertheless, it was suspended on 1 March 1971, leading to martial rule in East Pakistan and subsequent repression, genocide, and crimes against humanity, with millions of Bengalis fleeing their home to India. The independence of Bangladesh was declared by the Awami League on 10 April 1971. A 2-week-long large-scale war between India and Pakistan ended on 17 December with the surrender of the Pakistan army. Pakistan recognized Bangladesh on 22 February 1974, whilst 28 states granted *de jure* recognition. Although there was a movement supported by Bengalis, the Indian intervention was effective in the emergence of Bangladesh. Despite the illegal intervention of India as the third state (violation of the UN Charter) (for powers intervention and their support in self-determination cases see, Sterio 2013) and its effective and continued presence, Bangladesh was recognized as a new member of the international community—unlike other cases—as a result of misconduct, genocide, or crimes against humanity by the Pakistan army and the state, especially in

1971 to 1972 (Crawford 2006). Also, the balance of power (India with a hand from the USSR against Pakistan) was a decisive factor in the emergence of a separate Bangladesh (Fisch 2015).

The insurgency for autonomy and also independence was supported substantially by Bengalis. East Bengal was not a non-self-governing territory by 1971 although it was 'geographically separate and distinct ethnically and/or culturally from the country administering it' (Principle IV of Resolution 1541 (XV)) (see Chapter XI of the Charter). However, the West Pakistan state 'arbitrarily' placed the East 'in a position or status of subordination' (GA Resolution 1541 (XV), Annex, Principle V). In fact, Bangladesh suffered from a *carence de souveraineté* after 25 March 1971. The genocide was carried out and the territorial and political contiguity of East Bengal in 1971 characterized East Bengal as a self-determination seeking entity. GA Resolution 2793 (XXVI) of 7 December 1971 did not refer to the right of self-determination, and on 21 December 1971, the SC called for 'withdrawals of all armed forces to their respective territories'.

This case refers to paragraph 7 of the Declaration of Friendly Relations 1970, in which, by connecting and safeguarding territorial integrity to representative government, secession is authorized if various populations of a territory are not represented in the government of that state or part of its population is excluded. This situation forces the population or group to establish a representative government through secession. These circumstances bear directly on the aforementioned predicament of the Middle Eastern Kurds. Since the Kurdish population has never been represented in the established governments in Iran, Syria, and Turkey, it may be eligible for secession. Iraq is an exception. The Kurds have been represented from 2003 to the present time, although there are conflicts between the Kurds and Baghdad on matters such as oil resources and the distribution of income resulting from selling it (Butler 2015). However, at the same time, Iraqi governments have cut the Kurdistan Regional Government's budget since February 2014 (KRG Cabinet 2016), and Iraqi Kurdistan has never received its allotted share of the federal budget (Lyon & Al-Salhy 2014; Reuters 2016). Therefore, the central governments in Iran, Syria, and Turkey could not rely on territorial integrity to prevent secession.

Cyprus

A constitution for the newly independent Republic of Cyprus was agreed to by Great Britain (the administering power), the two constituent communities of Greek and Turkish in Cyprus, Greece, and Turkey between 1959 and 1961. By means of a 'Treaty of Guarantee', the constitutional structures and territoriality of Cyprus were to have been

preserved, with the inclusion of community institutions that has been implemented (Treaty of Guarantee 1960). Nevertheless, discord soon becomes apparent, and the 1960 Constitution was incapable of being performed. On 15 July 1974, the Greek Cypriot national military body, with support from the government of Greece, ousted the president of Cyprus and opened the door to union with Greece. Turkey intervened militarily in July and August 1974, basing its action on Article IV of the Treaty of Guarantee. The GA urged 'the speedy withdrawal of all foreign armed forces and foreign military presence and personnel from the Republic of Cyprus and the cessation of all foreign interference in its affairs' (GA Res 1974). On 13 February 1975, a Turkish Federated state of Cyprus was declared by the Turkish community in the north of Cyprus, and later on 15 November 1983 was replaced by the independent Turkish Republic of Northern Cyprus (TRNC). Three days later, the SC called upon 'all States not to recognize' (SC Res 1983) the putative entity, and the Turkish recognition of the TRNC was disavowed (SC Res 1984). No international or European organization has recognized the TRNC.

The first two situations, as mentioned earlier, currently apply to the Syrian Kurds. First, Turkey's use of armed force prevents the non-state region of Rojava from exercising its right to self-determination. Under international law, a non-state colonial entity's use of force to assert its right to self-determination is unlikely to be characterized as illegal. The acknowledgement of the right or capacity of the entity to exert force to defend its rights relies on the legal personality that its status as a self-determined unit confers upon it. The use of armed force is consistent with Article 7 of the General Assembly's Declaration on the Definition of Aggression (UN General Assembly 1974). In this context, the use of force is considered a form of self-defense against an oppressive state (Crawford 2006). Article 7 provides that '[n]othing ... could in any way prejudice the right to self-determination, freedom, and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination'.

The international community has not yet accepted that the use of force to realize self-determination is lawful. Under the Declaration on Friendly Relations (GA Resolution 2625 (XXV)), states are barred from implementing 'any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence'. The Declaration entitles people 'to seek and to receive support' (UN General Assembly 1970) in pursuit of their right to self-determination. This is contradicted in

the other relevant paragraph of the Declaration as '[n]othing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples'. This condition, though, is contingent on 'a government representing the whole people belonging to the territory without distinction as to race, creed or colour'.

Secondly, using force to annex a self-determination territory is illegal without accounting for the consent of its people. The unlawfulness of such an annexation should be treated more severely in the special cases of a territory exercising a right of self-determination. Where a state annexes a territory on behalf of, or at least with the support of, a people having the right of self-determination, their self-determination alone does make the annexation legal—consider Russia's annexation of Crimea. Yet, it 'may allow illegality to be more readily accommodated through the processes of recognition, whereas in other circumstances aggression partakes of the nature of a breach of a peremptory norm and is not, or not readily, curable by lapse of time or acquiescence' (Crawford 2006). In this context, peaceful settlement of the dispute is a matter of paramount importance, greater than any claim of the enclaving or invading state for annexation. On these grounds, the right of a people and its territory to self-determination will not end if the territory is annexed by an external force unless the local population consents or the annexing state is the enclaving state. The non-self-governing territories of East Timor and the Baltic States (Estonia, Latvia, and Lithuania) are a few examples worth mentioning as their annexation, by Indonesia and the Soviet Union, respectively, did not end their right to self-determination. The Baltic States regained their independence in 1991, and East Timor (now Timor-Leste) achieved independence in 2002. A question is raised in the case of third states: when a force, as a liberation movement, resists the external force, how and to what extent do third states have the authority to assist non-colonial liberation movements?

Third States and Liberation Movements

Customary international law considers an organization a holder of self-determination provided that it acts on behalf of the whole people. For external self-determination, the organization could be a liberation movement, any other representative body or entity. One of the key markers of success in political self-determination is the existence of a political body, which claims to be representative.

If a state deprives peoples of their right to self-determination, other states may request the accused state to comply with the corresponding *erga omnes* rules related to self-determination; the relevant issue here is of international jurisdiction. As per state practice and the spirit of provisions on the use of force in the UN Charter, sending and deployment of troops by third states to support people claiming self-determination are prohibited. Also, all states are prohibited from assisting, militarily or economically, the accused state. Nonetheless, in colonial situations, third states were permitted to aid liberation movements through the supply of equipment and finance—short of dispatching troops, albeit no more than this, lest peace and security be jeopardized (ICJ Reports, *Nicaragua v. the United States of America* 1986). This practice is widely sanctioned. By contrast, colonial national liberation movements 'do not possess a legal right to enforce their substantive right to self-determination by resort to war, nevertheless [they] have a legal licence to do so'. In any situation related to self-determination, a forcible measure taken by any part—the accused state, liberation movements, and third states—is forbidden. Namely, international law is not neutral towards the war for self-determination. Regarding internal self-determination, racial groups have been furnished with a legal licence to use force, so long as its use is consistent with the limits mentioned above (Cassese 1995).

Additionally, third states are endowed with a 'licence' to enforce self-determination (ICJ Reports, the *Israeli Wall Advisory Opinion* 2004). The intervening state's infringement on *erga omnes* obligations would oblige third-party states to take countermeasures permitted by international law against the respective state. This is possible through concerted action—e.g., the General Assembly forum. A state that intends to take action unilaterally should settle the dispute peacefully (e.g., conciliation) before resorting to other necessary, proportional countermeasures such as sanctions. Simultaneously, they must be congruent with international standards. So far, no unilateral countermeasures have been taken by states against the violation of self-determination by other states (Cassese 1995). State practice provides examples in cases of officially unrecognized but *de facto* breaches against the enforcement of self-determination, especially in Kampuchea, Namibia, the Turkish-Cypriot state, and Southern Rhodesia. The UN took countermeasures against Southern Rhodesia (UN Security Council 1965: Resolution 202, 216, 217 and UN Security Council 1966: Resolution 221, 232) and South Africa (UN Security Council 1963, 1977; UN General Assembly 1963) and enforced measures against Iraq (UN Security Council 1990). The international community must consider a state's unilateral actions that violate peoples' right to self-determination invalid, not recognize such situations, and respect the sovereignty and territorial integrity of respective states. They may also engage in conflict resolution.

Extraterritorial Use of Force in Rojava

Throughout the centuries, Kurds, as the largest stateless ethnolinguistic nation in the world, have cooperated with and rebelled against dominant political powers to gain the control over their land through some degree of self-governance and, on various occasions, have proactively mobilised to fashion an independent territorial state of their own. Establishing Kurdistan as an independent state has been a long-held aspiration for Kurds. The right to self-determination—as a multifaceted driving force—and its exercise has led to unpredictable clashes and tensions between Kurds and ruling governors since 1916. Most secessionist movements have been settled by the rule of force rather than the rule of law as violence has been the outcome. Kurdish self-determination and subsequently statehood would cause considerable change in the geopolitics of the Middle East and some neighbouring countries. The central governments ruling them may not tolerate a newly formed nation-state or any border change as they always advocate for the territorial integrity of their host states.

After announcing the end of the ISIS on 23 March 2019, defeating other Jihadist and extremist groups and recapturing some disputed areas in Iraq and Syria, the Kurds who represent majority populations in their respective regional territories are preparing themselves for post-ISIS Middle East. The Kurdish question has become more significant in the period since 1991 and after withdrawal of Saddam's forces from Kurdish regions in the north of Iraq and more importantly after the 2011 Syrian uprising. Since the beginning of the Syrian uprising, people in Syrian Kurdistan have been fighting not only against Assad's regime but also other extremists. At the same time, they have been trying to establish a democratic government through the implementation of a model of the hybrid political system: federalism and the rejection of the nation-state structure as a form of internal self-determination.

Turkey's ongoing invasion and subsequent annexation of the Kurdish regions have sparked international controversy given that Kurds are precluded from exercising their right to self-determination under the pretext of Turkey's preemptive measure. The illegality of Rojava annexation is more serious due to its status of self-determination and the lack of people's animus to act. The right to self-determination of people in Afrin, Serê Kaniyê, Tell Halaf, Girê Spî, and elsewhere under Turkish occupation cannot be implemented by the occupying power; Turkey's withdrawal from Rojava is a necessary prerequisite for the realization of local self-determination (Bhuta 2010). Turkey and its allies have also weaponized water against the Kurdish regions of northern Syria by cutting and restricting water supplies. In its report in September 2020, the UN Independent International Commission of Inquiry on the Syrian Arab Republic documented continuing and widespread patterns of violations and abuses, particularly war crimes of pillage and hostage-taking, property appropriation,

the use of civilian houses for military purposes by Turkish forces and the Syrian National Army, arbitrary detentions, interrogation of Kurds about their faith and ethnicity by Turkish officials, denial of food or water to Kurdish prisoners, and the coercive expulsion of civilians primarily of Kurdish origin from areas of Afrin, Serê Kaniyê, and Girê Spî under effective Turkish control. The report also documented the precarious situation of Kurdish women and girls subjected to forced marriage, abduction, rape, and sexual violence. Turkish-backed forces have also participated in the looting and destruction of religious and archaeological sites of profound significance protected by UNESCO (UN Commission of Inquiry on Syria 2020). The Turkish government has been pursuing a set of policies and institution-building efforts that may indicate plans to pave the way for de facto annexation. Since the invasion, occupied districts have been administered directly by Turkish governors, and the Turkish government has established public schools using a curriculum similar to the Turkish Ministry of Education, opened branches of the Turkish postal services, built a new campus of Gaziantep University, and used Turkish symbols in the public space.

In the colonial situation, movements of resistance to colonialism are entitled to receive military support from states, which led to the ultimate win of the movements. The peoples of colonies neither hold a right to utilize force nor are they held accountable for using force against the oppressor state that infringes on their self-determination (Cassese 1995). This view is reflected in the Declaration of Friendly Relations 1970 and Definition of Aggression 1974. In the extra-colonial context and non-colonial national liberation movements, international law lacks a clear rule. In this contexts, the state has almost always prevailed because external support would be considered an unlawful intervention and is usually not provided to the secessionist or autonomy movements, whilst the state is entitled to receive any assistance, including military equipment, to subdue or overwhelm the liberation forces.

Conclusion

The illegal second phase of the Turkish military offensive (Janik 2019) in northeastern Syria that began in October 2019 has been condemned by the Arab League (Arab Foreign Ministers 2019); the European Council (Council of the EU 2019); NATO (UK & NATO 2019); the Chairs of the Foreign Affairs Committees of the Parliaments of Germany, France, and the UK; the European Parliament; and the House of Representatives of the USA (Engel & European Allies 2019). The basis of these condemnations is Turkey's unlawful use of force against the Kurdish forces and infringement on the sovereignty of the Syrian state. These bodies called on Turkey to cease the unilateral military action and withdraw its forces from Syrian territory. Addi-

tionally, they have proposed or temporarily enacted a series of sanctions (US Congress 2019) and restrictions. Under international law, states are banned from assisting Turkey and may request it comply with obligations *erga omnes*. They also must refrain from assisting Turkey's efforts in area where the rights of local groups are ignored. The occupying state should not be immune from condemnation diplomatic pressure or external sanctions. Recently, Swedish Foreign Minister Anne Linde reiterated the EU's opposition to the Turkish intervention and urged Turkey to withdraw from Rojava, at a news conference in Ankara alongside Turkish Foreign Minister Mevlut Cavusoglu. If other states do not similarly confront Turkey, Rojava will become another example of Turkey's pattern of permanent occupation and intervention, carried out elsewhere in Northern Cyprus, Libya, Iraqi Kurdistan, and Nagorno-Karabakh.

National liberation movements recognized under international law are restricted to those colonies and other territories acknowledged by the UN General Assembly, such as Palestine. For now, states should take responsibility and condemn states using force against a people claiming the right to self-determination. International law should provide states with the necessary tools to do so. States are not prohibited to financially and politically aid the SDF as a partner in the Global Coalition against the Islamic State and other terrorist groups and may be able to grant it observer status within international organizations. The Kurdish-led SDF in Rojava and the *Peshmerga* of Iraqi Kurdistan have played a decisive role in liberating and clearing nearly all the territory that the Islamic State controlled in the region.

Self-determination is the *summa* of human rights, and deference to peoples' human rights leads to the fulfilment of their self-determination. The UN Charter makes it clear that human rights broadly, and self-determination more specifically, is legally protected and that foreign states may not infringe on it. Every state has the duty to promote, through joint and separate actions, realization of the principle of equal rights, and self-determination of peoples—in accordance with the provisions of the Charter. States can also render assistance to the UN in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle (ICJ Reports, *Portugal v. Australia* 1995). Taking into account the laws surrounding self-determination, the use of force, and obligations *erga omnes*, a more appropriate response to protect the Kurds in Rojava would be to establish a permanent internationally protected zone in northern Syria. The international community has already set a precedent for this with the success of the no-fly zone over northern Iraq in the 1990s to protect the Kurds there from Iraq's oppressive Ba'ath regime. Multilateral action to restrain Turkey and ensure the self-determination of Rojava would be the best policy to protect the rights of the local

population today and international law principles into the future.

Acknowledgements The author is grateful to Professor Anne Peters, director at the Max Planck Institute for Comparative Public Law and International Law; Professor Nehal Bhuta, the Chair of Public International Law at the University of Edinburgh; Dr Michelle Burgis-Kasthala and Filippo Fontanelli, Edinburgh Law School; Dr James Summers, Lancaster University, for their meticulous comments and useful input on earlier versions of this article that helped the manuscript argued with greater rigour.

References

- Amnesty International. (2019). *Syria: Damning evidence of war crimes and other violations by Turkish Forces and their allies*. <https://www.amnesty.org/en/latest/news/2019/10/syria-damning-evidence-of-war-crimes-and-other-violations-by-turkish-forces-and-their-allies/>
- Arab Foreign Ministers. (2019). Turkish attack in Syria condemned as 'invasion of an Arab State's land' previous. *Arab News*. <https://www.arabnews.com/node/1567876/middle-east> (Accessed 20 February 2021).
- Bhuta, N. (2010). New modes and orders: The difficulties of a Jus Post Bellum of Constitutional Transformation. *University of Toronto Law Journal*, 60(3), 799–854.
- Blanford, N. (2005). A murder stirs Kurds in Syria. *Christian Science Monitor*. <https://www.csmonitor.com/2005/0616/p01s03-wome.html> (Accessed 20 February 2021).
- Butler, E. (2015, April 10). Iraqi Kurdistan's battle with Baghdad over oil revenues. *BBC*. <https://www.bbc.com/news/business-32220764>
- Cassese, A. (1995). *Self-determination of peoples: A legal reappraisal*. Cambridge University Press.
- Committee on Foreign Affairs, Engel & European Allies Condemn Turkey's Invasion of Northern Syria. (2019). US House of Representatives. <https://www.foreignaffairs.house.gov/2019/10/engel-european-allies-condemn-turkey-s-invasion-of-northern-syria> (Accessed 20 February 2021).
- Council of the EU. (2019). Declaration by the High Representative on behalf of the EU on recent Developments in North-East Syria. <https://www.consilium.europa.eu/en/press/press-releases/2019/10/09/declaration-by-the-high-representative-on-behalf-of-the-eu-on-recent-developments-in-north-east-syria/> (Accessed 20 February 2021).
- Crawford, J. (2006). *The creation of states in international law* (2nd ed.). Oxford University Press.
- Evans, D. (2011). Syrian Kurdish anger smolders after activist death. *Reuters*. <https://www.reuters.com/article/us-syria-kurds/syrian-kurdish-anger-smolders-afteractivist-death-idUSTRE79D3H920111014?edition-redirect=ca> (Accessed 20 February 2021).
- Fisch, J. (2015). *The right of self-determination of peoples: The domestication of an illusion*. Cambridge University Press.
- Hall, R. (2019, November 29). 'When they come, they will kill you': Ethnic cleansing is already a reality in Turkey's Syrian Safe Zone. *Independent*. <https://www.independent.co.uk/news/world/middle-east/turkey-syria-safe-zone-ethnic-cleansing-death-toll-sna-a9225896.html>
- Heller, J. K. (2019). Is the Art. 5 Doomsday scenario plausible? *OpinioJuris*. <https://www.opiniojuris.org/2019/10/15/is-the-art-5-doomsday-scenario-plausible/> (Accessed 20 February 2021).
- International Court of Justice Reports (1986). *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua*

- v. the United States of America*). <https://www.icj-cij.org/en/case/70/judgments>
- International Court of Justice Reports (1995). *Case concerning East Timor (Portugal v. Australia)*. <https://www.icj-cij.org/en/case/84/judgments>
- International Court of Justice Reports. (2004). *The Israeli Wall or legal consequences of the construction of a wall in the occupied Palestinian Territory*. <https://www.icj-cij.org/en/case/131>
- Identical letters from the Chargé d'affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the Secretary-General and the President of the Security Council. (2018). S/2018/53. <https://www.undocs.org/en/S/2018/53> (Accessed 20 February 2021).
- Janik, R. (2019). Research services of German Bundestag rejects Turkey's Syria invasion: illegal, but who cares? *OpinioJuris*. <https://www.opiniojuris.org/2019/10/23/research-services-of-german-bundestag-rejecting-turkeys-syria-invasion-illegal-but-who-cares/> (Accessed 20 February 2021).
- Khoury, Ph. Sh. (1987). *Syria and the French mandate: the politics of Arab nationalism, 1920–1945*. Princeton University Press.
- KRG Cabinet. (2016). Official KRG Response to statements made by Prime Minister of Iraq, Haider al-Abadi. *Kurdistan Regional Government*. <http://cabinet.gov.krd/a/d.aspx?s=040000&l=12&a=54240> (Accessed 20 February 2021).
- Letter from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council. (2019). S/2019/804. <https://www.undocs.org/S/2019/804> (Accessed 20 February 2021).
- Letter from the Permanent Representative of the United States of America to the UN addressed to the Secretary-General. (2014). S/2014/695. http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/sl_2014_695.pdf (Accessed 20 February 2021)
- Lyon, A. & Al-Salhy, S. (2014). Iraq's Maliki threatens to cut funds if Kurds pipe oil to Turkey. *Reuters*. <https://www.reuters.com/article/us-iraq-kurdistan-oil-idUSBREA0B0AY20140112> (Accessed 20 February 2021).
- Munayyer, W., J. Sterling, & E. Mackintosh. (2018). 'This is a massacre': Turkey's bombs drive families into caves. *CNN Edition*. <https://www.edition.cnn.com/2018/02/01/middleeast/syria-kurds-assault-civilians-intl/index.html> (Accessed 20 February 2021).
- Office of the UN High Commissioner for Human Rights (OHCHR). (2019). Turkey's Syria Offensive could Spark another Catastrophe, Warn Humanitarians. <https://www.news.un.org/en/story/2019/10/1049051> (Accessed 20 February 2021).
- Peters, A. (2018). The Turkish operation in Afrin (Syria) and the silence of the Lambs. *EJIL:Talk*. <https://www.ejiltalk.org/the-turkish-operation-in-afrin-syria-and-the-silence-of-the-lambs/>
- Phillips, D. L. (2017). *The Kurdish Spring: A new map of the Middle East*. Routledge.
- Radpey, L., & Rose, G. (2017). A new creative Kurdish Constitution in the Middle East. *Creativity Studies*, 10(1), 72–83.
- Reuters World News. (2016, February 16). Iraqi Kurdish deputy PM says deal with Baghdad 'easy' if salaries paid. *Reuters*. <https://www.reuters.com/article/us-mideast-crisis-iraq-kurds-idUSKCN0VP22Z>
- Savelsberg, E. (2014). The Syrian-Kurdish movements: obstacles rather than driving forces for democratization. In D. Romano and M. Gurses (Eds.), *Conflict, Democratization, and the Kurds in the Middle East: Turkey, Iran, Iraq, and Syria* (pp. 85–107). Palgrave Macmillan.
- Social Contract of the Democratic Federation of Northern Syria. (2016). *Rojava Information Center*. <https://rojavainformationcenter.com/storage/2019/12/2016-Social-Contract-of-the-Democratic-Federation-of-Northern-Syria.pdf> (Accessed 20 February 2021).
- Sterio, M. (2013). *The right to self-determination under international law: "Selfistans," secession and the rule of the great powers*. Routledge.
- The Global Coalition against Daesh. (2014). *Home page*. <https://theglobalcoalition.org/en/>
- Treaty of Guarantee, 16 August 1960, 382 UNTS 475, art. 185.
- UK's Johnson and NATO's Stoltenberg: Turkish operation in Syria must end. (2019, October 15). *Reuters*. <https://www.reuters.com/article/us-syria-security-turkey-johnson/uks-johnson-and-natos-stoltenberg-turkish-operation-in-syria-must-end-idUSKBN1WU27W>
- UN General Assembly. (1963). Resolution 1899 (XVIII). Question of South West Africa. Adopted 13 November.
- UN General Assembly. (1965). Resolution 2105 (XX). Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Adopted 20 December.
- UN General Assembly. (1970). Resolution 2625 (XXV). The declaration on principles of International Law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations. Adopted 24 October. A/8082.
- UN General Assembly. (1971). Resolution 2795 (XXVI). Question of the Territories under Portuguese administration. Adopted 10 December.
- UN General Assembly. (1974). Resolution 3314 (XXIX). Definition of Aggression. Adopted 14 December. Supplement No. 19 (A/9619 and Corr. 1).
- UN General Assembly. (1974). Resolution 3212, Question of Cyprus. Adopted 1 November.
- UN Commission of Inquiry on Syria. (15 September 2020). <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26237&LangID=E> (Accessed 20 February 2021).
- UN Security Council. (1963). Resolution 181. Policies of apartheid of the Government of the Republic of South Africa. Adopted 7 August.
- UN Security Council. (1965). Resolution 202. Southern Rhodesia. Adopted 6 May.
- UN Security Council. (1965). Resolution 216. Southern Rhodesia. Adopted 12 November.
- UN Security Council. (1965). Resolution 217. Southern Rhodesia. Adopted 20 November.
- UN Security Council. (1966). Resolution 221. Embargo against Southern Rhodesia. Adopted 9 April.
- UN Security Council. (1966). Resolution 232. Sanctions on Commodities against Southern Rhodesia. Adopted 16 December.
- UN Security Council. (1972). Resolution 322. Territories under Portuguese Administration. Adopted 22 November.
- UN Security Council. (1977). Resolution 418. Establishment of an Arms Embargo against South Africa. Adopted 4 November.
- UN Security Council. (1983). Resolution 541. Declaration by the Turkish Cypriot community of its secession from Cyprus. Adopted 18 November.
- UN Security Council. (1984). Resolution 550. Secessionist actions in Cyprus. Adopted 11 May.
- UN Security Council. (1990). Resolution 661. Sanctions against Iraq. Adopted 6 August.
- US Congress. (2019). Protect against conflict by Turkey. Act H.R.4695. <https://www.congress.gov/bill/116th-congress/house-bill/4695/text> (Accessed 20 February 2021).
- Yildiz, K. (2005). *The Kurds in Syria: The forgotten people*. Pluto Press.