

VOICELESS MINORITIES IN A GLOBALISED WORLD: SELF-DETERMINATION TO RESCUE?

- Twinkle Chawla & Aditya Goyal*

ABSTRACT

The past few decades have witnessed intense debate over the rights of the minorities. States have bound themselves to numerous International law treaties, conventions and other instruments, which grant rights to the minorities. However, collective rights have continued to elude them. The authors through this article argue that there is a pressing need to confer group rights on minorities in light of the effect of globalisation on their culture. Today, globalisation is not merely an economic phenomenon; it has also diffused popular cultures leading to the creation of shared norms by which people associate themselves. These intense cross-border linkages created between nations pose a potential threat to the cultural uniqueness of the minorities. As globalisation has become more powerful and all-encompassing in its scope, its effects have become more pronounced. The authors propose a non-territorial cultural self-determination as an appropriate mechanism through which the State can afford group rights to the minorities. Self-determination is a wide and flexible principle. It can manifest itself in forms other than secession and independence. The right to self-determination will serve little purpose in the present world if its internal aspect is not recognized. Cultural self-determination will grant autonomy to minorities in issues intrinsically connected to their cultural identity even if they are not concentrated over a particular territory. Autonomy, association or democratic governance will further the will of the people without compromising the territorial sovereignty of the home State. Hence, we believe that cultural self-determination will strike the right balance between territorial sovereignty and collective rights of minorities.

* Students, 4th Year, B.A LL.B (Hons.), National Law Institute University, Bhopal.

1. INTRODUCTION

In the popular sense of the term, States are regarded as political communities where different groups are unified under a single entity.¹ This characterization of a State as a political entity and not as a culturally homogenous group allows for a distinction to be drawn between minority and majority groups. Hence, the identity and autonomy of such minority groups have always been contentious issues for States. Further, the recent events in Crimea and Scotland have stimulated the debate about the extent, operation and content of the right to autonomy, i.e., self-determination. Russia has justified its annexation of Crimea on grounds of its 'responsibility to protect' the ethnic Russians living in Crimea from the tyranny of the government and the Scottish referendum had been carried pursuant to a promise made by the Scottish National Party in its election manifesto to further Scottish national identity. Thus, self-determination is now being sought outside the previously defined confines of de-colonization and human rights violations.

Simultaneously, globalisation has led to exchange of ideas, tradition, technology, knowledge, culture and people. Globalisation has manifested itself as a chain reaction, affecting not only the established State structure, and their relations with each other but also the position of an individual vis-à-vis the State.

The possible domino effect of the expansion of the right of self-determination coupled with the rise of globalisation, brings the rights of the cultural minorities into question. In the light of these developments, this article seeks to analyze the impact of globalisation on the claims of secession by the cultural minorities.

The article shall proceed as follows: Part two analyses the current framework for the protection of minorities vis-à-vis globalisation. Part three discusses the challenges which the process of globalisation poses to minority culture. Part four proposes various solutions to the same. And Part five concludes the article.

¹ Dieter Kugelmann, *The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversity*, 2 Max Planck Yearbook of United Nations Law, 235 (2007).

2. FRAMEWORK OF PROTECTION OF MINORITIES

A minority group is a group- a) which is numerically inferior to the rest of the population of a State; b) which is in a non-dominant position, and c) whose members, being nationals of the State, possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and that shows, even if implicitly a sense of solidarity, directed towards preserving their culture, traditions, religion or language. Such minorities can be national, ethnic, religious or linguistic. Thus, to be termed as a minority, a group must have an objective element (ethnicity, religion, language) which is distinct from the rest of the population and a subjective element (the desire to preserve such ethnicity, religion, language). Nation States wished to assimilate them with the majority,² as such groups, due to their distinct attributes, were viewed as anomalies that had the potential of dividing the Nation State. Hence, historically, the State structure has been such that it incentivizes the State to heed to the demands of the majority.³ This threat of diminution of cultural diversity and the cultural identity of the minority groups propelled International Law to protect it.⁴

Such efforts have been made since the 19th century. It was first granted by the League of Nations through the establishment of minority treaties⁵ and the Permanent Court of International Justice.⁶ This protection was furthered by the United Nations (UN) and other regional organizations.⁷ Article 27 of ICCPR evolved the individual rights of the members belonging to minority groups which could to be exercised in community in others.⁸

² Thomas Musgrave, *Self-Determination and National Minorities* 65 (2000).

³ *Supra* 2, at 10.

⁴ *Report of the Independent Expert on Minority Issues*, United Nations Human Rights Council, *Official Record*, Sess. 78, Sup. 23, UN Document A/HRC/7/23, 6, (28/02/2008) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/113/51/PDF/G0811351.pdf?OpenElement>, last seen on 04/11/2015.

⁵ The Treaty of St Germain-en-Laye, [1919] 226 CTS 8 (Austria); The Treaty of Trianon, [1920] 6 LNTS 187 (Hungary); The treaty of Versailles, 28 June 1919, 225 CTS 412 (Poland); The Convention of Paris, 9 Nov. [1920] 6 LNTS 189 (Danzig).

⁶ *Minority Schools in Albania case*, [1935] PCIJ Reports, Series AB, No. 64 (Permanent Court of International Justice); *German Settlers in Poland case*, [1923] PCIJ Reports, Series B, No.6 (Permanent Court of International Justice).

⁷ *Supra* 2, at 45.

⁸ *International Covenant on Civil and Political Rights*, Art. 27, 999 U.N.T.S. 171 (1976); *Manfred Nowak's U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 288 (N.P. Engel, Kehl, 1993).

Thus, presently under International Law, the rights of minorities can be categorised as:

- i. The rights aiming to protect minorities from extinction and discrimination⁹; and
- ii. The rights designed to preserve and safeguard the ethnic and cultural identity of the group.¹⁰

However, the existing framework of the individual rights is inadequate. Firstly, it only protects the minorities from discrimination and does not mandate states to take positive action in respect of such communities. Secondly, the minorities are not granted collective rights.¹¹ Although, the right to self-determination is a collective right and enshrined under International Law; it provides little protection to the minorities in its existing form. The International Court of Justice (ICJ) has described self-determination, as the need to pay regard to the freely expressed will of the peoples¹² and has recognized its *erga omnes* character.¹³ The term "peoples" was defined in 1989, by the United Nations Educational, Social and Cultural Organization (UNESCO) International Meeting of Experts for the Elucidation of the study of the Concepts of Right of peoples, as "*a group of individual human beings who enjoy some or all of the following common features:*

- i. *a common historical tradition;*
- ii. *a racial or ethnic identity;*
- iii. *cultural homogeneity;*
- iv. *linguistic unity;*
- v. *religious or ideological affinity;*
- vi. *territorial connection; and*
- vii. *common economic life.*"¹⁴

⁹ Supra 6.

¹⁰ Kempin Reuter, *Including Minority Rights in Peace Agreements: A Benefit or Obstacle to Peace Processes after Ethnic Conflicts?*, 9 International Journal on Minority and Group Rights 364, 359-397 (2012).

¹¹ Supra 2, at 136.

¹² Western Sahara case (Advisory Opinion), [1975] ICJ Reports 25 (International Court of Justice).

¹³ East Timor case (Portugal v. Australia), [1995] ICJ Reports 102 (International Court of Justice).

¹⁴ *Report of the United Nations Educational, Scientific and Cultural Organization*, International Meeting of Experts on further study of the concept of the rights of peoples: Final Report and Recommendations, November 27, 1989- November 30, 1989, *Official Record*, SHS-89/CONF.602/7, 7 (22/2/1990) available at http://www.burmalibrary.org/docs18/Rights_of_Peoples-report-UNESCO-red.pdf, last seen on 14/04/2014.

However, the inclusion of minorities in the ambit of ‘peoples’ still remains questionable. It has been argued that the sole purpose of the Minorities Treaties was to keep the ethnic minorities from demanding the right to self-determination.¹⁵ Such reluctance is further evinced by the usage of the term ‘peoples’ in Article 1 of International Covenant of Civil and Political Rights (ICCPR) (which deals with self-determination) and ‘minorities’ in Article 27 of ICCPR (which deals with cultural rights); thereby drawing a distinction between them. However, various jurists, including Thornberry have opined that minorities apposite the vocabulary of peoples whether governments or scholars approve or not.¹⁶ Thus, according to this line of thought, minorities are entitled to the right to self-determination, as they are equivalent to peoples. This theory is premised on the fact that peoples in Article 1 means ‘Nation’, and the criteria of determining the constitution of a State is similar to that of minority and thus, the minorities have a right to self-determination.¹⁷ The second group of theorists, who form the more popular and majority opinion, believe that minorities are not *ipso facto* peoples, and have proposed a ‘right of reversion’ to establish the relationship between minorities and self-determination. This means that only if minority suffers oppression, then they attain the status of people and can exercise the right to self-determination,¹⁸ which is also known as remedial self-determination. Hence, in its present form, the right to self-determination cannot be viewed as an adequate protection for the minorities.

In this light, the need of collective rights for the minorities cannot be overstated. It is required to sustain their distinct cultural identity. We believe that such sustenance is extremely important for a minority group¹⁹, considering that one of the elements of such a group is their desire to preserve their ethnicity, culture etc. Cultural identity is defined as the aggregate of those factors on the basis of which individuals or groups define and express themselves and by which they wish to be

¹⁵ Supra 2, at 67.

¹⁶ P. Thornberry's *Modern Law of Self-Determination The Democratic or Internal Aspect of Self-Determination with some remarks on federalism* 868 (ChristianTomuschat, 1993).

¹⁷ Felix Ermacora, *The Protection of Minorities before the United Nations*, 327 (1983); Badinter Arbitration Commission's Opinion No. 2 (1992) 31 ILM 1497 (Badinter Arbitration Commission).

¹⁸ Karen Knop, *Diversity and Self-Determination in International Law*, 185 (2004).

¹⁹ Supra 6.

recognized.²⁰ The protection of one's culture is the essence of the right to cultural identity. Though the term culture is not capable of being defined with exactitude yet its wide ambit is well-recognised. Culture is meant to include art, language²¹, traditions and customs²², way of life and the right to make a living in one's own cultural way²³.

Therefore, we can say that the reason of granting rights to minorities under International Law is to preserve the cultural diversity of States and to ensure that they are able to sustain their language and traditions even in the presence of oppressing majority forces. However, such protection does not imply that culture is incapable of change; it only provides that such change must be organic and must be brought only with the consent of the members of the minority group.²⁴ Thus, the right to cultural identity must ensure that neither the State nor any other person thrusts cultural values on the minority group against their will.²⁵ Hence, there is a need of a specific framework to protect the cultural identity of the minorities.

3. GLOBALISATION: THE ADAM'S APPLE?

Globalisation has led to the weakening of State sovereignty and State structures.²⁶ It is a multidimensional phenomenon encompassing not only economic components but also has cultural, ideological, political and other similar facets.²⁷ In the absence of collective rights being

²⁰ *Martin Scheinin's UNESCO Project Concerning A Declaration of Cultural Rights Cultural Human Rights*, 173 (Francesco Francioni, 2008).

²¹ Marc Weller, *Universal Minority Rights, A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, 221 (2007) [Hereinafter "Weller"].

²² *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Res. 47/135, Sess. 47, U.N. Document A/RES/47/135, 2, Article 4(1), (18/12/1992), available at <http://www.ohchr.org/documents/publications/guideminioritiesdeclarationen.pdf>, last seen on 14/04/2015.

²³ Office of the High Commissioner for Human Rights, *Commentary to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 2001, UN Document E/CN.4/Sub.2/AC.5/2001/2, at 56.

²⁴ Claudia Tavani, *Collective Rights and the Cultural Identity of the Roma: A Case Study of Italy*, 176 (2012).

²⁵ Gilbert Ziebur, "Americanization" of Europe? *On the compatibility of economic liberalism and democratic welfare State*, 39 HIS Political Science Series 39, 34-40 (1996).

²⁶ Ulrich Beck, *What is Globalisation?* Business and Economics 86 (2001).

²⁷ *Prasad's Financial Globalisation: A Reappraisal*, 45 (M. AyhanKose, Kenneth Rogoff, Eswar Prasad, Wei, Shang-jine ds, 2006).

granted to the minorities, the homogenizing forces propelled by globalisation have worsened the state of affairs for them.

3.1. Globalisation and Culture

The scholars are not unanimous about the cultural impact of globalisation and it has led to emergence of Cultural Homogenization and Cultural Heterogenization as dominant theories.²⁸ The proponents of Cultural Heterogenization opine that though cultures do not remain unaffected by global flows and globalisation in general, but the actual crux of the culture remains intact and unaffected.²⁹ Different cultural groups develop into heterogenous entities due to different demands necessitated by their environment in order to respond to globalisation.³⁰ Thus, there is no global culture formed. This theory provides that local cultures are likely to get more diversified as a result of resisting globalising forces.

This is based on the premise that the local cultures will resist the globalising force and will only adapt to the changed environment. Hence, it may be said that Heterogenization presupposes the existence of a collective right of minority groups to assert their cultural identity. However, the right bearers under International Law are the 'persons belonging to minority groups' and not the minority groups.³¹ Hence, this argument of greater diversification may not stand. Even if the theory does stand, the local cultures stand transformed by globalising forces without the consent of the minorities which in itself can be termed as a violation of right to cultural identity.³²

The proponents of the Cultural Homogenization provide that the increased interconnection between countries contributes to forming a more culturally homogenous world by adopting the Western Euro-American model of social organization and life style.³³ Thus, it leads to a convergence of cultures whereby the local cultures are shaped by other

²⁸ Abderrahman Hassi and Giovanna Storti, *Globalisation and Culture: The Three H Scenarios*, 3, 5, in *Globalization- Approaches to Diversity*, (Hector Cuadra- Montiel, 2012) [Hereinafter "Storti"]

²⁹ Ibid.

³⁰ Supra 28, at 6.

³¹ Supra 8, at 288.

³² Supra 24, at 178.

³³ Liebes, *American Dreams, Hebrew Subtitles: Globalisation from the receiving end*, 108 (2003).

powerful cultures and they are not able to maintain their uniqueness against such forces.³⁴

When Mexico acceded to the North American Free Trade Agreement (NAFTA), it did away with a constitutional provision that granted certain village based communal lands (*ejidos*) to the landless peasants, a majority of whom belonged to the minority group. Since land ownership is a part of one's cultural identity,³⁵ here the minority's right was violated due to globalisation. A similar situation was faced by the Turkish minority groups in Bulgaria when it attempted to globalise.³⁶

The effect of globalisation on extinction of languages is also very prominent. The Human Rights Council Report of the Independent Expert on Minority Issues opined that language is an extremely important asset for non-dominant communities especially in times of marginalization where language can become a modicum of gathering solidarity.³⁷ They concluded that there is an irreversible decline in the usage of minority languages due to globalisation and processes of assimilation and cultural dilution.³⁸ This is worrisome as UNESCO has identified that majority of the 6000 languages that are spoken around the world belong to minorities,³⁹ however 55% of world population uses only 15 languages, which represent the majority culture⁴⁰. The Council said that this denial of the possibility of propagating one's language is a violation of the State's obligation of protecting cultural identity.⁴¹ Hence, it can be said that the theory of Cultural Homogenization has gathered some credence over the years.

3.2. Globalisation, Self-Determination and Cultural Identity of Minorities

The self-determination movements have increased manifold in the last 50 years. Certain scholars observe that this to be a result of globalisation

³⁴ George Ritzer, *Globalisation: A Basic Text*, 89 (Wiley Black well, 2010).

³⁵ Supra 21, at 67.

³⁶ Krishna Chaitanya's *The Triumph of Globalisation at the expense of minority discriminations?* 10 MPRA 8 (2008).

³⁷ Supra 4, at 6.

³⁸ Supra 4, at 20.

³⁹ Supra 4, at 6.

⁴⁰ Daniel Nettle, *Vanishing Voices: The Extinction of the world's languages*, 34 (2000).

⁴¹ United Nations Commission On Human Rights, *Commentary to the United Nations Declaration on the Rights Of Persons Belonging To National or Ethnic, Religious and Linguistic Minorities*, U.N. Document E/CN.4/Sub.2/AC.5/ 2005/2, 28, (2005).

whereas others view it as a mere co-incidence.⁴² The supporters of the latter view reason that since globalisation provides greater social and economic benefits, there are less chances of discrimination against people (including minority groups) and hence, they are less likely to demand self-determination.⁴³ Thus, the question that arises is whether globalisation increases the demands of self-determination by minorities.

In the 2003 Working Paper of the Human Rights Council, it was stated that it is not mere coincidence that minority-related issues, have multiplied during the period of globalisation that began with the end of the Cold War.⁴⁴ In the period of the Cold War that preceded the globalisation era, the world was polarised and each State had to choose one Power Bloc. Once the States were aligned, they often oppressed their internal minorities without any protection by the great Blocs.⁴⁵

With the onset of globalisation there has been an enhanced inter-connection of communications, markets and consumer networks and this has led to increased communication at the international level and expansion of self-affirmation at the local level.⁴⁶ Thus there is a forum through which the information across the globe can be shared. This has led to a comparison between and greater awareness about the standards of human rights protection in various Nation States. Moreover, this has caused the identity question to emerge among the minority communities. As the local cultures start getting publicized, the impetus and need to protect the identity is also enhanced. Therefore, globalisation of communications has created increased consciousness about one's cultural identity.⁴⁷ The marginalised minorities have seized this opportunity to make their voices heard. Moreover, the Report observed that:

“Tradition or the relics thereof are reinterpreted in the light of the new concepts of globalisation, giving persons who live in these societies a new sense of belonging and a particular outlook on global processes.”⁴⁸

⁴² David R. Cameron and SooYeon Kim, *Trade, Political Institutions and size of the government*, 15, 45 in *Globalisation and Self-Determination: Is the Nation-State Under Siege?* (David R. Cameron, Gustav Ranis, Annalisa Zinn).

⁴³ Supra 42, at 67; Supra 36, at 10.

⁴⁴ Supra 41, at 28.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

The electoral supporters of Lega Nord, a political organization that furthers minority interests in Northern Italy, have increased manifold with the onset of globalisation. This is because political actors while representing the interests threatened by globalisation are likely to mobilise popular demands for greater autonomy as a response to globalisation.⁴⁹ ‘Strengthening of local and regional institutions’ has evolved as the response to global forces.⁵⁰ World Trade Organization (WTO), NAFTA and other regional and supranational institutions have developed to further globalisation and have caused lapses in the sovereignty of States. Consequently, the decisions of such institutions have a direct impact on the interests of the people. Therefore, they become additional targets against whom greater demands of autonomy can be sought.⁵¹

The subjective element of the minorities, i.e., the desire to strengthen their ethnic/cultural/linguistic identity is re-enforced due to the increased communications across the world and creation of possibilities of taking international support. The potential of such sensitization can be seen in the 2013 summit held by the Indigenous peoples along with the 9th Ministerial WTO Summit in Bali. The theme of the summit was “*World Trade Organization (WTO) and Indigenous Peoples: Resisting Globalisation, Asserting Self-Determination*” and consequently they passed a declaration renouncing WTO activities and demanded greater participation at the national and international decision making.⁵² This shows that this increased consciousness of rights among the groups can lead to greater demands being sought.

Globalisation calls for local resistance by:

- i. Posing threats of creating a global culture and eroding the cultural identity of the minority groups (Cause of oppression); and
- ii. Providing a platform where no dispute remains local and there is extensive flow of information from one State to the other. This creates more awareness of the minority culture and opens up the

⁴⁹ Tamara Dragadze, *Self-determination and Politics of Exclusion*, Ethnic and Racial Studies 341(1996).

⁵⁰ Beirich and Woods, *Globalisation, Workers and the Northern League Western European Politics*, 132, 130-43 (2000).

⁵¹ Supra 42, at 50.

⁵² *The World Trade Organization and Indigenous Peoples: Resisting Globalisation, Asserting Self-Determination*, World Trade Organization.

possibility of international support in cases of oppression (Facilitates the resistance movement).

Hence, we believe that the minorities are more likely to demand self-determination in a non-polarised and globalised world.

4. SUGGESTED SOLUTION

Article 27 of ICCPR, despite the constraints of International Law, has been used extensively to protect the rights of minority individuals. However, in the past few decades, the following two important observations have been made:

- i. Globalisation has become an inevitable phenomenon and has adversely affected national minorities;⁵³ and
- ii. A definite movement is in place in International Law towards the wider recognition of autonomy and collective rights to minorities, for example, Council of Europe's European Charter for Regional or Minority Languages adopted in 1992 and Framework Convention for the Protection of National Minorities. The Convention on the Rights of the Child-which has 140 signatories- specifically, confers a right on children of minority groups to enjoy their culture '*in community with other members of his or her group.*'⁵⁴

Firstly, individual emphasis on the rights of the minority groups such as right against discrimination does not confer any positive obligations on the State to promote minority culture⁵⁵, which in the light of globalisation faces new challenges and without any intervention by the State it may face extinction. Collective rights are more effective for protecting the cultural identity. As elaborated by Douglas Sanders, "*Cultural minorities seek more than the right of their individual members to equality and participation within the larger society. They also seek distinct group survival. Because economic and social forces, as well as State policies, tend to promote assimilation, the leaders of cultural minorities often look to the State for support. They seek either protection or autonomy as the means to ensure that their collectivities can survive and develop.*"⁵⁶

⁵³ Heading 3, (Globalisation: The Adam's Apple).

⁵⁴ United Nations Convention on the Rights of Child, Art.30, 1989, 1577 U.N.T.S. 3.

⁵⁵ Supra 2, at 78.

⁵⁶ Douglas Sanders, *Collective Rights*, 13 Human Rights Quarterly 370 (1991).

Secondly, it is imperative to acknowledge the collective dimension of minority rights. Minority culture, language, religion are necessarily enjoyed in groups.⁵⁷ The Permanent Court of International Justice in its Advisory Opinion on the subject of Minority Schools in Albania laid down that preserving minority characteristics and satisfying 'the ensuing special needs' are the aim of the minority treaties.⁵⁸ It ensures suitable means for minorities to preserve their traditions, peculiarities and characteristics. If the minorities are deprived of their institutions (either by action or inaction to global forces) they will be compelled to renounce their peculiarities and distinguishing features. The collective enjoyment of cultural practices, religion or particular form of education forms the very basis of their identity.

Thirdly, the present framework for the protection of minorities has proved to be patchy and inadequate.⁵⁹ Though soft law instruments like the 1995 Framework of the Council of Europe on Minority recognize this fact and focus on the content of the right to cultural identity of minorities, they do not provide any redressal mechanism to minorities. This leaves the party remediless even if their rights are violated. The excessive marginalization of the Roma community in Italy evinces the futility of individual rights in a context of repression of a group's identity.

Self-determination by virtue of its inherent flexibility must respond to the above need because the need to confer collective rights on the minorities was never greater than in the globalised world we live in. We will now consider the utility of the various forms of self-determination in solving the proposed problem:

4.1. External self-determination

External self-determination covers the right of peoples to decide their political status and covers within it the right to form a separate Nation State through the process of secession.⁶⁰ Minorities do not have this right to secede from the parent State.⁶¹ However, even if such a right was available, it would be counter-productive for growth of the

⁵⁷ Ibid.

⁵⁸ Supra 6.

⁵⁹ Helen O'Nions, *Minority Rights Protection in International Law: The Roma of Europe*, 49 (2007).

⁶⁰ Ibid.

⁶¹ Reference re Secession of Quebec, [1998] 2 S.C.R. 217 (Supreme Court of Canada).

minorities. In the era of globalisation, countries with large economies and population have better bargaining power than smaller Nations.

Firstly, due to their huge internal demand, they are able to realize operational efficiencies and economies of scale in the production of goods. This results in relatively lower prices of their goods which makes them more attractive for export. The increase in export demands leads to further economies of scale and thus, creates a virtuous cycle triggering growth.

Secondly, industrial Nations are much more likely to secure favorable trade agreements in international forums and in bilateral exchanges. For example, it should not come as surprise that most of the Bilateral Investment Treaties (BITs) are signed between a developed Nation and a developing Nation.⁶² They have been extensively used by the investors of the developed countries to secure their interests in international forums with monetary awards exceeding millions of dollars.⁶³

Thirdly, industrial Nations have larger law making powers in the UN and WTO. The Security Council, the only body of UN with the authority to issue binding resolutions to member States⁶⁴ has five permanent members- Russia, China, France, the UK and the USA. They can veto any substantive Security Council resolution⁶⁵ and thus no binding resolution can be passed by the sole body of UN capable to do so, irrespective of the level of international support unless it satisfies the 'Big Five'. This ensures that they can always make laws suited to their purposes. Pocket veto i.e. the threat to use the veto power has been used to soften the language of unfavorable resolutions. Similarly, though WTO describes itself as a member-driven organization where all decisions and rules are the outcome of negotiations among member governments,⁶⁶ bigger markets, especially the United States of America

⁶² Sarah Anderson and Sarah Grusky, *Challenging Corporate Investor Rule: How the World Bank's Investment Court, Free Trade Agreements, And Bilateral Investment Treaties Have Unleashed a new era of corporate power and what to do about it*, Federal Watch18 (2007).

⁶³ Iboronke T. Odumosu, *The Antinomies of the (Continued) Relevance of ICSID to the Third World*, 8 San Diego International Journal 345 (2007).

⁶⁴ Charter of the United Nations, Art. 25, 1949, 1 U.N.T.S. XVI.

⁶⁵ *Supra* 64, Art. 27(3).

⁶⁶ The WTO, World Trade Organization, available at http://www.wto.org/english/thewto_e/thewto_e.htm#decision_making, last seen on 14/04/2015.

and European Union create power asymmetry by threatening to exit the organization and promising incentives.⁶⁷

Hence, we do not believe that rallying for external self-determination will solve the problem of diminishing cultural identity of minorities.

4.2. Internal self-determination (Territorial)

Internal self-determination covers the right of people to decide the form of government, choose their rulers and participate in the decision making process of the State and to exercise autonomy in selected matters. It can be utilized to give minorities more autonomy in matters affecting them. Firstly, since internal self-determination does not infringe upon the territorial integrity of the host State, it is a more acceptable solution than secession or independence. Secondly, there is ample State practice for the grant of autonomy within the State structure itself in regions which are heavily populated by a particular minority group. Thirdly, autonomy would ensure that minorities would have the same opportunities to protect, promote and profess their culture and identity as the majorities do.⁶⁸

However, it might not always be practical to give internal self-determination to minorities.

Firstly, internal self-determination is a *territorial* right i.e. autonomy is granted over a particular region.⁶⁹ This assumes that the minority is numerically heavily located in a particular region of the country. As the case of Muslims in India and whites in America demonstrates, this might not always be true. In such cases, granting them autonomy over a particular region is not possible.

Secondly, even when a minority is concentrated in a particular geographical region of the country, granting them internal self-determination will create the parallel problem of the creation of minorities within the newly formed majorities. With the grant of regional autonomy, the group (cultural, religious or linguistic) which was hitherto the majority in that region will now become the minority and

⁶⁷ Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56 *International Organization* 339-74 (2002).

⁶⁸ S. Deets and S. Stroschein, *Dilemmas of autonomy and liberal pluralism: examples involving Hungarians in Central Europe*, 11 *Nations and Nationalism* 295 (2005).

⁶⁹ *Supra* 16, at 76.

face the same problems in that region which the minorities had previously encountered. In the absence of any State intervention, there is a real likelihood that they might face marginalization in that specific region. As has been demonstrated in the case of former Yugoslavia and Soviet Union, ethnic self-determination is as likely to lead to new intolerance by new majorities for new minorities and create instability.

Hence, granting of international self-determination in the form of territorial autonomy may not serve the purpose.

4.3. Cultural Self-determination (Non-territorial self-determination)

Cultural autonomy guarantees cultural minorities certain benefits irrespective of their place of residence within the country.⁷⁰ It relates to self-government by the minority over specific aspects of life such as education, language, culture and religion, but within a territory over which the minority groups do not enjoy legislative or regulatory autonomy.⁷¹

We believe that granting cultural self-determination to minorities is the most plausible solution in the context of the identity issue. Primarily, it will ensure that minorities get a voice with respect to matters, which directly affect their identities even if they are geographically scattered within the country. Secondly, it will not pose the problem of creating minorities within minorities.

Cultural self-determination, may however be beset with the below-mentioned problems. Firstly, the right cannot be sought as a matter of instant enforcement as presently, International Law does not grant minorities a general right of autonomy.⁷² In States, such as Germany where autonomy rights have been granted, it is a result of external political arrangements rather than operation of International Law.

⁷⁰ H. Hannum and R.B. Lillich, *The Concept of Autonomy in International Law*, 74 American University International Law Review 883 (1980).

⁷¹ Ibid.

⁷² Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Final Report on the Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities*, Sess. 45, U.N. Document E/CN.4/Sub.2/1993/34, 88, (16/07/1993) available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G93/143/20/PDF/G9314320.pdf?OpenElement>, last seen on 14/04/2015.

However, many scholars have argued in favor of an ‘emerging’ right of autonomy.⁷³ Commission on Security and Cooperation in Europe in the Copenhagen Document, a soft law instrument, mentions autonomy as a ‘possible means’ for the protection of identity of minorities.⁷⁴ Uruguay,⁷⁵ Hungary,⁷⁶ Ukraine and Austria⁷⁷ have also admitted the validity of the principle. We believe that in light of the increased acceptance of the possibility of such a right among States and the proven futility of other mechanisms, International Law must seize this opportunity to make great advances towards recognizing a right of cultural autonomy.

Secondly, most of the States view granting cultural autonomy to a particular region as the first step towards self-determination and secession.⁷⁸ For example in 2008, Kosovo, an autonomous territory of Serbia inhabited mostly by Albanians, declared its independence from Serbia. The majority of the international community recognized Kosovo as an independent State fulfilling all the criteria under Article 1 of the Montevideo Convention, 1933. In many cases, the existence of a neighboring minority dominated State adds to such concerns. The recent incident about the secession of Crimea from Ukraine to Russia despite much international protests further allays such fears. However, in our opinion, such fears are unfounded in International Law. Secession and autonomy are alternatives to each other. If the minorities feel threatened about their identity, they would pose problems to proper functioning of State institutions. Autonomy makes the minority feel safe and it prevents massive exodus of the members of the minority. Therefore, it acts a powerful container of secessionist demands. It acts as a possible solution because it provides a feasible alternative to minority territorial segregation and satisfies the demands of minorities while preserving its territorial integrity.⁷⁹

⁷³ Ibid.

⁷⁴ *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, Organization for Security and Co-operation in Europe, available at <http://www.osce.org/odihr/elections/14304?download=true>, last seen on 14/04/2015.

⁷⁵ UN General Assembly, 51st Session, Third Committee, Summary Record of 27th Meeting, (13/08/1997), 46, UN Document A/C.3/51/SR 27.

⁷⁶ Supra 41, at 55.

⁷⁷ UN General Assembly, 48th Session, 3rd Committee, Summary Record of 22nd Meeting, (30/11/1993), 52, UN Document A/C.3/48/SR.22.

⁷⁸ G. Welhengama, *The Legitimacy of Minorities’ Claim for Autonomy through the Right of Self-Determination?* 68 Nordic Journal of International Law 417 (1999).

⁷⁹ P. Pazartzis, *Secession and international Law: the European dimension*, 350, 361 in *Secession: International Law Perspectives* 361 (M.G. Kohen, 2006).

Even though the aforesaid problems with the enforcement of cultural autonomy do exist, International law must respond to the ebb and flow of the repressed communities. Such recognition is not difficult to achieve as International Law and self-determination, in particular, are flexible concepts and can be moulded to suit the demands of a situation. Law responds to various substantive economic, political, scientific and social issues. International Law's response to external changes indicates its permeability and shows how it transforms the dictates of changing environment into legal forms and solutions.⁸⁰ For example, self-determination which was initially equated only with the decolonization process, was used with equal vigour in the context of realising the will of 'peoples' in any form of oppression. Additionally, the arguments against cultural autonomy deal with the modalities of its execution and are not principle based. Such implicit recognition to the concept of cultural self-determination must be taken further by International Law.

International Law, in our opinion, is the most appropriate medium through which such a solution can be negotiated as the problem of repression emanates from the State itself, who on *its own accord* would be reluctant to grant protection to such groups due to deep-rooted fears of secession. Additionally, any measure of protection granted to the minorities against globalisation will not be feasible without the alignment of the policies of all States towards such a global force.

Therefore, in the light of aforementioned consideration, we believe that, cultural self-determination is the most probable solution against the repression of cultural minorities with the process of globalisation.

5. CONCLUSION

The issue of minority rights has always been a source of contention and debate in International Law. We began our analysis with a discussion on how the present framework of individual rights unaccompanied by any positive obligation on the State and collective rights to preserve the cultural identity is inadequate in the interconnected world we live in. Further, with the onset of globalisation and lapses in State sovereignty, the issue of minority rights must be seen in new light and it is incumbent upon International Law to respond to the above changes. A possible

⁸⁰ Sharyn L. Roach Anleu, *Law and Social Change* 45 (2000).

response, we conclude, can be providing a form of self-determination which is tailored according to the needs of the minority community in this era.

It is accepted that only oppressive marginalization can lead to assertion of rights by the people. Globalisation, by leading to further marginalization of minority cultures and by enhancing communication, provides for dispersal of information about local cultures and thus in net effect increases the chances of exercise of self-determination by such communities.

Hence, it is put forth that minorities are more likely to demand self-determination in the globalised world. The globalisation phenomenon has proved to be inexorable, with States with ideology diametrically opposite to free market like Cuba choosing to globalise. If globalisation is bound to stay for a long time, it is imperative that it must be considered legitimate by people. Considering that the minority groups detest lack of participation in decision making of those aspects that affect them and are not against trade and the basic postulates of globalisation, the grant of internal self-determination to the minority groups can confer both support and greater legitimacy to the process of globalisation.

We have proposed cultural self-determination as a solution to the problem of minorities. Being a right which is unconnected with territory, it furthers the notion that a greater fragmentation of the World may not eventually solve the distinct problems of every group which emanate from a lack of recognition of communities. Such a form of self-determination will ensure that minorities have a right to be heard in respect of matters that affect their interests and will also be consistent with the sovereignty of States.

Every State institution or policy needs legitimacy in order to be effective. Hence, rights have always been seen as a trade-off between maintaining State sovereignty and gathering legitimacy. A unique aspect of the globalisation era is that not only the legitimacy of an absolute State is in question but also the effects of the globalising forces are being examined. It is thus, imperative for States to recognise and conceive new forms of rights to protect the uniqueness and peculiarities of minorities, in order to continue to reap benefits out of globalisation.