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Reconstructing Economic Self-Determination from the Third World Approach to International Law

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Abstract

International Law governing the relationship between states has been considered failed in reformatting the principle of economic self-determination (ESD) as a continual link of political self-determination in the post decolonisation era. Such situation has placed the principle to be a vague concept in terms of its meaning and application in current international law. Such situation has contributed to continual economic dependency of the Third World (TW) states on the first world as considered the more developed states. TW states face difficulty to develop their argument to demonstrate people national interest in current international economic context. Having utilised doctrinal and TWAIL approach, this paper argues that there has been a potential meaning of ESD which can be developed from fragmentation of international law, particularly in the United Nations General Assembly Resolutions (UNGA resolutions), the Law of State Succession and the International Human Rights law. This meaning then shapes the fragmented sources to be a principle for TW to be used in their international economic relation, particularly in settling economic dispute relations with Western states.

Keywords

Economic self-determination, International Law, Third World Approach to International Law (TWAIL)

Introduction

This paper identifies the concept of Economic Self-determination (ESD) in international law, within the UNGA resolutions,[1] the law of state succession, and the International Human Rights Law. It has been the ambiguity meaning of political and economic self-determination, and the division between internal and external Self-determination (SD).[2] Hence it needs a reconstruction of self-determination concept within the ESD framework by linking the right and obligation of states, limit the right to people concern, shifting colonial based into treaty based paradigm, and developing the right to be the principle of international law.[3] This paper primarily initiates to identify ESD in the journey of TW in International Law development.

The UNGA resolutions (See the UNGA Resolution 1803 (XVII) 14 December 1962; 3201 and 3202 (S-VI) 1 May 1974, and 3281 of 12 December 1974) have contributed to the development of ESD meaning in the international investment law. The idea illustrated that foreign investments were regarded as a form of neo-colonialism as a continual of political and territory colonialism as they had ever engaged to control and exploited over natural resources in TW state's territory. Consequently, TW states as newly independent states undertook efforts to change international law at that time applicable to foreign investments. In this regard, ESD can be understood as the right of states to regain control over their natural resources from the former colonial state in regard of its foreign investors, and a request to sharing benefit and responsibility toward international community, in particular the developed states.

With these instruments, TW states made it clear that they consider the economic order created and supported so far by developed states as inherently contrary to their needs and desires. Until this economic order is replaced by a new one, TW states would have remained in a condition of poverty and underdevelopment as well as of political and economic dependency. In other words, TW States rejected the idea that they might have

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1 MYA Kadir, "The United Nations General Assembly Resolution (UNGAR) as a Source of International Law: Toward a Reformulation of Sources of International Law," *Indonesian Journal of International Law* Vol. 8 (2011): 275–90, https://doi.org/https://doi.org/10.17304/ijil.vol8.2.4.

2 MYA Kadir, "Application of the Law of Self-Determination in a Postcolonial Context: A Guideline," *Journal of East Asia and International Law.* Vol. 9, no. (1) (2016): 117, https://doi.org/https://doi.org/10.15742/ilrev.v8n2.487.

3 MYA. Kadir, "Defining 'people' and 'Indigenous People' in International Human Rights Law and Its Application in Indonesia," *International Journal on Minority and Group Rights* 26, no. 3 (2019): 373–408, https://doi.org/10.1163/15718115-02602006.

achieved development acting consistently with the system of international economic relations in force, because this system was regarded as a tool designed and controlled by developed countries in order to maintain their supremacy over the TW territory.

Method

This paper uses a doctrinal methodology from TWAIL perspective to be applied in the concept and principle of economic self-determination, by analysing various instruments of international law, i.e. UNGA Resolutions, The Law of State Succession and Human rights, as to defragment the concept from various sources for the developing a new frame for interest of TW states.

ESD and Control over Natural Resources

This idea initially can be seen from the UNGA resolution 1314 (XIII) of 12 December 1958 that established 'the commission on permanent sovereignty over natural resources and instructed it to conduct a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination …due regard should be paid to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries'. The work of this commission[4] to examine the question in relation to the right of self-determination has led to the adoption of resolution 1803 (XVII) of 14 December 1962 framing in the form of a declaration on permanent sovereignty over natural resources (PSNR). [5] This resolution clearly recognised that ESD as follows: a. "The inalienable right of all states freely to dispose of their natural wealth and resources in accordance with their national interests, and in respect for the economic independence of states".[6]; b. 'permanent sovereignty of peoples and nations over their wealth and resources'[7] and also it 'must be based on the principles of equality and the right of people and nations to self-determination'[8]; c. that the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the

4 UNGA Res. 1314 (XIII), 12 December 1958.
5 UNGA Res. 1803 (XVII), December 14, 1962.
6 UNGA Res. 1803 (XVII) para. 4.
7 UNGA Res. 1803 (XVII) para. 2.
8 UNGA Res. 1803 (XVII) para. 7.

recipient States.[9], and d. promoting economic development of developing countries and securing their economic independence.[10]

This resolution can be considered the first resolution that affirms the right of ESD of state and its meaning for TW in International Law. Also the TW states have come to look upon this particular resolution as an International Law source to protect and promote ESD from any foreign economic exploitation.[11] In other words, the first effort of TW states to ESD in the UN system was to develop and promote a declaration of PSNR in 1962. In the article 1 the declaration stated that: it is "the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the state concerned." Article 2 confirmed that "the exploration, development and disposition of such resources…should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities".

The idea of this declaration is that the foreign investor is fully arranged by the host states. The spirit was to confirm and recover the colonial nature of foreign investors in TW states, that is to say that people and nations in colonial period was marginalised from any decision making process, so that TW states still has a belief that in fact, this nature remains continue to some extent in post-colonial context. So this declaration has its significant, *firstly*, to confirm the remaining power of the former colonial states in TW territory and attempt to recover this impact through the UN system. *Secondly*, the national interest should be demonstrated as an economic independence, non-intervention, in terms of issuing authorization, restriction, and expropriation with appropriate compensation. *Thirdly,* this is the right of nations that must be exercised in the interest of their national development and of the well-being of people of the state concerned.[12] *Finally*, in article 4, it is clear that the appropriate compensation will be paid if the state conducted the nationalisation, expropriation or requisitioning on grounds of public utility, security or the national interest. So there is no term compensation for the right of 'authorisation, restriction or prohibition' policy. This indicates the different idea from what is understood under current Bilateral Investment Treaty (BIT) which obligates the state to pay compensation for what conceived disadvantaged of foreign investors.

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9 UNGA Res. 1803 (XVII) para. 8

10 UNGA Res. 1803 (XVII) para. 10.

11 J. Castaneda, "The Underdeveloped Nations and the Development of International Law," *International Organisation*, 1961, 38.

12 Article 1 of the UNGA Res 1803 (XVII) 14 December 1962

Hence it can be said that the declaration of PSNR is a consequence of affirmative action of TW states to ensure their natural resources to free from external exploitation that has occurred during colonial time, in particular in international investment law. This declaration then becomes a legal grounding of TW to exercise its ESD under international law system. It seems that the regular concept of sovereignty conceived need to reaffirm through this declaration in regard of permanent sovereignty over natural resources. This should be traced back from the immediate time of decolonisation period in which Newly independent states rejected existing international economic system as it was regarded the duplicate of former colonialism. So, TW states attempt to strengthen their sovereignty through establishing specific legal standard of protecting natural resources through the UN system as a basis for their economic development.

The problem is when the term of 'the right' attributed to be permanent sovereignty as an absolute right of states, but on the other hand TW has signed a Bilateral Investment Treaty with the home state of investor, on which TW states agree to obligate for an high protection for foreign investors as it can be regarded partly transfer their sovereign right to the foreign investor. Hence it seems a dilemma whether TW states protect their natural resources on one hand, and protect foreign investment on the other.

Colonial Related-Based Economic Arrangement

After the declarations of the PSNR, TW states conceived still difficult to affirm its power over natural resources. This has urged TW to propose more fundamental formulation through the establishment of the Declaration on the New International Economic Order (NIEO) through the UNGA Resolution 3201 and the UNGA Resolution 3202 regarding its program actions on the same day of 1 May 1974. Under this declaration, it is expected that international law would have justified and even supported the actions taken by TW states to gain effective control over means of production and natural resources within their territory and to ultimately achieve economic independence.[13] This effort comes through the UNGA Resolution framework in which TW states could create a coalition to win the vote system. Even though the resolution is not considered legally binding but TW commonly used this resolution to pursue their interest in international economic relation in practices. The resolution provided an insight to the meaning of ESD of

[13] Kenneth J. Vandevelde., "A Brief History of International Investment Agreements," *Journal of International Law & Policy, U.C. Davis*, 2005, 158, https://doi.org/https://ssrn.com/abstract=1478757.

states in the early of independent, which then become a resource for more comprehensive proposal in the NIEO movement and then followed with the charter of economic rights and duties of states (CERDS).

This declaration and program action become a pack of TW proposal to change the Economic order at that time, which was initially led by Algeria as a representative of TW states coalition which also called as Non-Aligned Movement Countries. This declaration was emerged as a consequence of the lack of trust over the developed states as the former colonial states and international law which has been used as a tool designed by the industrialised states to maintain the supremacy over TW states. This is also the subsequent effort of TW to support the previous resolutions on PSNR and to widen the scope of ESD from merely protecting natural resources to other aspects of economic activities. In the other words, it gives more explanation to what is meant the protection of natural resources in practical terms and to place the protection over natural resources as of the NIEO principle. For example, the right to more stable income from primary commodity export, the right to better access of technology and international finance, the right to change the paradigm of natural resources to development recovery and so forth.

Generally, this affirmative action of TW through the UN system may have two purposes: *firstly* to reaffirm its legitimate power over its natural resources in order to fully control them for national interest, and against the colonial nature of investment with full of interference and disadvantaged the national and people in TW territory. *Secondly* is to request the responsibility of FW as developed countries to recover the under development and colonial impact of TW economy. This can be formed such as the opening market access in FW for the product of TW, technology transfer, and other special and preferential treatment in economic matters.[14] This covers the raw materials, recovering food shortage, preferential and special treatment in trade relation, reforming the international monetary system, industrialisation in developing countries, establishing the charter of economic rights and duties of states, and strengthening the role of the UN system in the field of international economic cooperation. [15] the emphases of this declaration that " all efforts should be made: (a) to put an end to all forms of foreign occupation, racial discrimination, *apartheid*, colonial, neo colonial and alien domination and exploitation through the exercise of permanent sovereignty over natural resources." [16] This resolution also ask for 'special programme, including particularly emergency measures to mitigate to difficulties of the developing

[14] See the UNGA Res. 3202 (S-VI) Program Action on the Establishment of A New International Economic Order, 1 May 1974.

[15] See the UNGA Res. 3202, *Ibid.*

[16] The UNGA Res. 3202, section I (a).

countries most seriously affected by economic crisis, bearing in mind the particular problem of the least developed and land locked countries'.[17]And this resolution also reaffirmed "to protect their inalienable right to permanent sovereignty over their natural resources". [18]

Furthermore, this has confirmed that ESD right is belongs to states that has under development and economic crisis post independent. This right seek to the responsibility and concession to the developed states to help them recover from such difficulties. It signifies that TW in 1970s remains struggling to economic self-reliance, economic self-sufficiency, as contradict to dependency and colonialism. Also this places the economic and social council to take a role to define the policy framework and co-ordinate the activities of all organisations that implemented this programme of action.[19] Particularly, concerning investment law it has stated in chapter V on regulation and control over the activities of transnational corporations, highlighted that "all efforts should be made to formulate, adopt and implement an international code of conduct for trans-national corporations:[20] (a) to prevent interference in the internal affairs of the countries where they operate and their collaboration with racist regimes and colonial administrations", and (b) to regulate their activities in host counties, to eliminate restrictive business practice and to confirm to the national development plans and objectives of developing countries, and this context facilitate, as necessary, the review and revision of previously concluded arrangement."

It is obvious that the resolution on NIEO has contributed to place a basis of ESD in terms of the effort of TW to collectively propose their demand and request for economic recovery and responsibility from FW states. This mainly concern on several aspect of economic problem in TW world and seek for ESD in regulating and supervising foreign investment, as well as request for the concern of FW to help the under development in TW states. In this text, ESD can be understood as the right of state to regulate and supervise foreign investment, and the right to ask for economic recovery from FW states for their colonials defect period. So this meaning has no significant different from the previous resolution on PSNR, instead of widening the scope and well formulated the idea from merely declaring part of 'the right' into fundamental framework to change the existing economic order at the time.

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17 The UNGA Res 3202, section X. Special programme.

18 The UNGA Res 3202, section VII (b). Promotion of Co-operation among developing countries.

19 The UNGA Res 3202, section IX (3). Strengthening the role of the UN system in the field of international economic co-operation.

20 The UNGA Res. 3202, section V. Regulating and control over the activities of transnational corporations

Many views of international Jurists have still mirrored pessimistic due to many weaknesses of the TW efforts to ensure the implementation of this resolution.[21] However, the existence of NIEO movement has contributed to a new paradigm to European centric of International Law development. That is to say that the NIEO might consider an attempt of the TW to enforce a new norm of the responsibility of the first world to the TW as at minimum degree can be regarded as *Lege De Ferenda*.[22] Bulajic aptly described that NIEO content is the right to every state and people to exist and to develop equally, even poorest nations should take part as equal partner in civilized countries,[23] despite its legal foundation is still questionable in international law.[24]

Furthermore, the UN Resolution on the Charter of Economic Rights and Duties of States[25] 3281 of 12 December 1974 can be considered as a reformulation of previous UNGA resolutions in more comprehensive articulation. This charter allows states to settle any investment disputes in international arbitration on the basis of sovereign equality. In fact TW mostly has granted these dispute settlements to the International Centre for the settlement of investment disputes (ICSID) through the bilateral investment treaty. The Charter repeats many of the above mentioned principles in the previous resolutions in more systematic way. Article 2 deals with permanent sovereignty over natural resources and its implications on international economic law, as follows: 1. Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities; 2. Each State has the right: *first*, To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment; *second,* to regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply

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21 Moncarz R., "International Trade and the New Economic Order," *Pergamon, United Kingdom,* no. (Ed.) (1995): 1–2.

22 Elizabeth A Martin, "Oxford Dictionary of Law," *Oxford University Press*, no. fifth edition (2002).

23 Millan Bulajic, "A Changing World Calls for International Economic Law" in Peter Sarcevic and Hans Van Houtte, Legal Issues in International Trade," *Martinus Nijhoff, London*, no. (Ed) (1990): 1.

24 Millan Bulajic, ""General Principles and the Charter of Economic Rights and Duties of States" in Kamal Hossain, Legal Aspects of the New International Economic Order.," *Frances Printer Ltd, London*, no. (ed) (1980): 45.

25 The UN General Assembly adopted resolution 3281 (XXIX) containing the "Charter of Economic Rights and Duties of States" on 12 December 1974, by 115 votes to 6, with 10 abstentions.

with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph; and *third*, to nationalize, expropriate or transfer ownership of foreign property in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States… "

This resolution has extended the meaning of ESD not merely the right to authorise, and supervise the foreign investment, but also in article 10 stated that 'all states are juridically equal and as equal members of international community, have the right to participate fully and effectively in the international decisionmaking process in the solution of world economic, financial and monetary problems…and to share equitably in the benefits resulting therefrom'. Article 14 which acknowledges the duty of 'every state' to promote the welfare and living standards of all peoples and 'in particular those of developing countries'; article 18 which calls upon 'developed countries' to extend an improved and enlarged 'system of generalised non-reciprocal and non-discriminatory tariff preferences to the developing countries' and to 'give serious consideration to the adoption of other differential measures… to meet… development needs of the developing countries'; and finally article 22 which urges all states to promote "increased net flows of real resources to the developing countries' and to expand 'the net amount of financial flows from official sources to developing countries and to improve the terms and condition thereof". Accordingly, the idea of ESD under this charter has reaffirmed the following issues: a. The right to choose its economic system without any interference. (article 1); b. The right to regulate and supervise the foreign investment (article. 2.2.a.b.); c. The right to nationalise or expropriate for the public grounds along with the appropriate compensation (article 2.2.c); d. The responsibility of state to promote the economic development of its people, and to ensure the full participation of its people in the process and benefits of development. (article 7); e. Transferring and sharing benefit of development in science and technology to TW states, (article 13); f. Common responsibility toward the international community in terms of exploring the sea bed, and ocean floor, beyond the limits of national jurisdiction (article 29).

In addition, the charter was intended to promote the establishment of the NIEO based on equity, sovereign equality, interdependence, common interest and co-operation among all states, irrespective of their economic and social system.[26] In regard of ESD, the charter emphasized that "the responsibility for the development of every country rest primarily upon itself …".[27] In the chapter 1 (g) the charter stated the economic relation shall be governed by the principle of (g) equal rights and self-determination of peoples, (i) remedying of injustice which have been brought about by force and which deprive a nations of the natural means necessary for its normal development.

The affirmative idea of UNGA resolutions has the similar purpose to regain control over natural resources from the former colonial states, and to recover TW states and their people from the impact of under development in effect of colonial arrangement. In more obvious word, the various documents of UNGA Resolutions have expressed the idea of ESD as the right of state to protect their natural resources which has linked to the colonial era. This idea can be categorised to six divisions, as follows:

Firstly, the right to authorise, prohibit, restrict and supervise the foreign investment. These rights are absolute in nature and have no conditions as it called 'permanent sovereignty' right. This formulation illustrates that TW were willing to regain control over natural resources and Multinational Company (MNC) from the former colonial states to their own authority and power. This also shows that after a decade of independent during 1960s to 1970s TW states has not hold a power over natural resources in their territory, despite politically they have been recognised as independent states. Therefore the effort was made to complete their independent in economic sector (natural resources) through the United Nations General Assembly system. On the other hand, under current international arrangement, such exercises might be regarded as 'indirect expropriation' by the foreign investors, on which host states have to pay compensation. The term 'indirect expropriation' seems has not accommodated yet in these resolutions. Another issue is the term 'authorisation' used in the UNGA Resolution would have a different meaning with the general term of 'regulation'. The right to authorise means that the states have a full power as the owner of natural resources to directly govern the foreign investors, like the MNC as a private entity. So there is no right for the company to claim the states in international arbitration. Likewise the UNGA Resolutions also do not accommodate the bilateral investment treaty system on which both states signed an agreement for the protection of the investment from one state party.

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[26] UNGA Res. 3281 (XXIX) on the Charter of Economic Rights and Duties of States, preamble para. 4.

[27] UNGA Res. 3281 (XXIX), preamble in reiterating paragraph.

Secondly, the right to nationalise and expropriate the foreign investment shall be exercised with two bases, namely: appropriate compensation and on the ground of public utility, security or national interest which are recognized as 'overriding purely individual or private interests, both domestic and foreign'. This means that such acts may be undertaken only when there is a real, compelling necessity of the state and without discrimination between foreign and domestic investors or between investors coming from different states. This signifies the rejection of TW states toward the *Hull standard* for compensation as proposed by international law which follows the formula of "prompt, adequate and effective" compensation.[28] In such cases the owner shall be paid appropriate compensation….In any case where the question of compensation gives rise to a controversy, the national jurisdiction of the states taking such measures shall be exhausted. However, upon agreement by sovereign states and other parties concerned, settlement of the disputes should be made through arbitration or international adjudication."[29]

In other words, the resolutions merely states that the appropriate compensation was merely subject to nationalisation and expropriation, not for authorisation, restriction or prohibition, and supervision. With this similar approach, the resolution on one side declares that host states shall not be forced to pay compensation according to criteria applicable in other States, particularly the home states of the investors, on the other side they shall remain bound to the respect of some minimum standard of fair treatment and non-discrimination dictated by international customary law to the protection of foreign investors. Surprisingly the linkage of nationalisation and expropriation and the ground of the well-being of people and national interests, not only benefiting foreign investor as it was occurred during colonial time, have little attention in international law argument. Equally, the UNGAR 3171 of 17 December 1973 was also to reaffirm the resolution of PSNR and explained what is meant by 'appropriate compensation' is that "each State is entitled to determine the amount of possible compensation and the mode of payment".[30]

Thirdly is the right should refer to states as it is obviously stated in UNGA Resolution 3201, 3202, and 3282. The right of state will place TW to equally negotiate with other states in international economic relation, while the right of people can be considered merely an internal affair of a state without a legal access to international relations. The ESD of state will place an obligation on foreign investment and home states of investor under international law frame.

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[28] The standard of prompt, adequate and effective compensation for expropriation originally was articulated in 1938 by U.S. Secretary of State Cordell Hull in a note to the Mexican government which was nationalizing U.S. direct investments.

[29] UNGA Res. 1803 (XVII) 14 December 1962, article 4.

[30] UNGA Res. 3171, 17 December 1973, point 3.

This illustrates that the economic problem post-colonial was under the burden of states as a representative of their people. The use term 'people' simultaneously with 'state' in some UNGA Resolutions such as 1803, only indicates that basically people and states cannot be separated in general sense. But it should be noted that international law is established based on the state not the people, so peoples have no legal standing in international law. This understanding can be seen from article 1 of the UNGA Resolution 1803 that declares: "the right of people and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the states concerned." Also in article 7, it has reaffirmed that "Violation of the right of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the charter of the United Nations and hinders the development of international cooperation and the maintenance of peace".[31]

Fourthly is the right to share a common responsibility and benefit toward TW states. The idea can be traced in the article 29 of CERDS concerning common responsibility toward the international community in terms of exploring the sea bed, and ocean floor, beyond the limits of national jurisdiction. This proposition becomes a trigger for TW to develop what is called Common *heritage of humankind which* initially was proposed by a Malta (Arvid Pardo) representative in the UN system. This principle might represent the worries of TW over the continuation of exploitation beyond national jurisdiction, as TW admitted their lack of technology to do so, therefore this principle can be regarded as part of the ESD of TW coalition for a long term economic development to remedy colonial defect. This principle is designed to share the benefit of natural resources among people in the world, not only for those who have the ability to exploit it, but also all people and state in the world. This intends to declare the sea bed and ocean floor 'underlying the seas beyond the limits of present national jurisdiction' as a common heritage of humankind.[32] This principle has been supported by the majority of TW states as formulated in the United Nations Conference on the Law of the Sea (UNCLOS 1982). Essentially, the principle cannot be seen as merely for sharing the benefits, but also for sharing the impact of this exploitation. This needs to be regulated in order to protect the world and its environment from any destruction of exploitation. Hence, it would be an asset for all state and its people not just for some. The proposed principle should be reinforced as an international obligation to place an enforcement of benefit sharing of any natural exploitation over territories beyond national jurisdiction. *Fifthly* is the

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[31] UNGA Res. 1803 (XVII) 14 December 1962, article 7.

[32] Anand R.P., "Studies in International Law and History, an Asian Perspective.," *Martinus Nijhoff Publishers, Leiden*, 2004, 180–96.

right to nationally based disputes settlements between host states and foreign investors. If there is a request to international arbitration will be subject to host states decision independently. This proposition implied the rejection of TW states to any effort from FW to protect their foreign investment through diplomatic protection, or other forms of political sanction under the labelled of international law. So, all disputes will be settled in a national arrangement.

Sixth, there are other meanings can be deduced from the these Resolutions, such as the right to participate fully and effectively in international decision making process, the right to review and revise the colonial related treaties. Thus far, these rights may consider a request of TW states toward the developed states under the UN General Assembly system without totally accepted in international law framework. But TW remains insist to use these resolutions as their argument in competing with foreign investment and developed states on economic related affairs.

The Law of State Succession

The Right of Newly Independent States to Freely Negotiate the Predecessor Treaties

Decolonisation from European power after the World War II has been considered the turning point of International Law in redesigning the new world order. This process requires legal bases and has legal implication, in particular in terms of International Law of state succession. But this was not well formulated in early period in which each TW states has divergent approaches to the treaties and the property of the former colonial states.[33] This was aptly described by Jennings that the law of succession is "a subject which presents such a rich diversity of practices as to give some plausibility to a surprisingly varied range of theoretical analysis and doctrine."[34]

Concerning this, the International Law Commission discussed the issues at the first session's agenda in 1949[35] as to prepare the legal status and its impact of the increasing independent of TW states at that decade. Moreover

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[33] Edwin. D. Williamson, "'States Succession and Relations with Federal States,'" *American Society of International Law*, 1992. https://doi.org/10.1017/S0272503700094118. *See also* Dhezya Pandu Satesna, "Legal Personality of ASEAN As the Subject of International Law: Contemporary Developments". *International Law Discourse in Southeast Asia* 1, no. 1 (2022): 65-78. https://doi.org/10.15294/ildisea.v1i1.56871.

[34] R.Y. Jennings, "General Course on Principles of International Law," *RdC* Vol. 121 (1967): 437.

[35] The problem of state succession was placed on the ILC's agenda at its first session in 1949, following the recommendation of Lauterpacht in his survey (UN Doc. A/CN.4/1/Rev.1, 10 Feb. 1949), 1 Yearbook ILC (1949)

the dissolution of the Soviet Union and the Yugoslavia urges this formulation become more essential to the response of international law. In particular, the United States has its interest to well settle this issue in particular in relation to the US related treaties with the predecessor treaties. In particular, the US tends to consider that the predecessor treaties inherited to the successor states as called the universal succession.[36] On the other side, TW has been reluctant to such idea as they do not have a free choice to determine whether they need to be bound or not to the predecessor treaties.

The question relating to states succession refers to two conventions: *the Vienna Convention on State Succession in Respect of Treaties (Vienna Convention 1978)* and *the Vienna Convention on State Succession in Respect of Property, Archives and Debts (Vienna Convention 1983).* The former has entered into force on 6 November 1996, but the later has not entered into force yet.[37] These conventions are designed in responding the legal constraints in states' succession of post-colonial time and to face the challenges ahead. [38]

One may consider that the emergence of this convention is rather late, but its significant can be seen in terms of supporting and strengthening the TW view of ESD idea as already set out in several UNGA resolutions above. This places a normative ground for the ongoing succession of states as a result of self-determination movement, and confirms that the successor states as a newly independent states has a full right to economic self-determination in relation to the treaties of predecessor states. In practice, however, it would have more problematic in term economic treaties such as established investment treaties in which the investor will conceive treated discriminative and lose their profits for the unilateral act of a new state, as in effect investor can claim a state for compensation in the international arbitration.

The Vienna Convention 1978 confirms that the process of territory transfer from one state to another state or the replacement of one state by another have legal consequence. The convention used the term 'newly

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[36] Edwin D. William, a legal adviser of the US department stated that "while we recognise that the law in this area is somewhat unsettled, we have decided that the better legal position is to presume continuity in treaty relations between the United States and the former republics", See Edwin D.Williamson, *Op.cit.*, p. 4-5.

[37] Additionally, the International Law Commission (ILC) also intends to formulate the other two conventions in relation to the membership to international organisation and the nationality of natural and legal persons, but it has considered failed so far. See Vaclav Mikulka, State Succession and its Impact on the Nationality of Natural and Legal Persons and State Succession in Respect of Membership to International Organizations, in Outlines Prepared by Members of the Commission on Selected Topics of International Law, U.N. GAOR Intl Law Commission, 45th Sess., at 26, 39, U.N. Doc. A/CN.4/454 (1993).

[38] The problem of state succession was placed on the ILC's agenda at its first session in 1949, following the recommendation of Lauterpacht in his survey (UN Doc. A/CN.4/1/Rev.1, 10 Feb. 1949), 1 Yearbook ILC (1949)

independent states' to illustrate the TW as a post-colonial states which means" a successor states the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor state was responsible", (Article 2 (f)). The convention mostly focused on the predecessor treaty with other states and its impact to the newly independent states. Hence it can be argued that the convention confirms that TW states are free to determine whether or not they will continue the predecessor treaty or, TW states have a right to choose between to continue and to cease any predecessor treaties, in particular in economic affairs. If so TW can negotiate the predecessor treaties based on their people concern and national interest. However, the convention does not explain how to settle the absence of treaty or the unequal treaty between pre-TW states and their former colonial. Of course, this idea has been covered in the UNGA resolution set out above, that TW states has a right to nationalisation or expropriation the foreign investment property along with appropriate compensation.

This understanding can be viewed from article 10 (1) which stated that "when a treaty provides that, on the occurrence of a succession of states, a successor state shall have the option to consider itself a party to the treaty…". Article 10 (2) also added that "if a treaty provided that, on the occurrence of a succession of states, a successor state shall be considered as a party to a treaty, that provision takes effect as such only if the successor State expressly accepts in writing to be so considered". Article 13 firmly states the recognition to the principle of permanent sovereignty over natural resources as stated in the UNGA resolutions as it is said that "Nothing in the present Convention shall affect the principles of international law affirming the permanent sovereignty of every people and every state over its natural resources." This formulation reaffirms the declaration of PSNR as an ESD idea of TW states. Then, article 15 on succession in respect of part of territory also stated that: (a) treaties of the predecessor state *cease to be in force* in respect of the territory to which the succession of States related from the date of the succession of States; and (b) treaties of the successor State are in force in respect of the territory to which the succession of states relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Furthermore, article 16 held that "A newly independent state is not bound to maintain in force or to become a party to, any treaty by reason only of the fact that at the date of the succession of states the treaty was in force in respect of the territory to which the succession of states relates." Hence the

TW states have been regarded as clean states during their independence. Article 24 also concerns on the freedom of newly independent state to be bound with the predecessor bilateral treaties when "(a) they expressly so agree; or (b) by reason of their conduct they are to be considered as having so agreed." Article 40 states that "the provision of present Convention shall not prejudge any question that may arise in regard to a treaty from the military occupation of a territory". This idea places a free space for such military occupation of a territory as mostly occurred in the TW states in colonial time.

Furthermore, this convention uses the term the former 'dependent territory' to illustrate the post-colonial states or newly independent states. So, it can be said that the decolonisation process of TW states becomes an underlying background of this law of state succession. [39] Hence, according to Vienna convention 1978, a newly independent state has a full right to decide its status in respect to the predecessor states' treaties, although economically it is not such clear cut between a successor states and a predecessor states in term of decolonisation, as the strong link to the colonial power would be a challenge for a new state to obey or to accept the arrangement from colonial power. Therefore, TW have developed their own practices from their succession from the former colonial states. And it should be noted that TW succeed from the former colonial to be existed equally one another, not to replace the former colonial states as what happened in the case of the Soviet Union and Yugoslavia or the unification of Germany. On the other side, the law of state succession has been criticised by some scholars as it has not based on the states practices, its substance and methodology that contributed to the problem of its application in international society.[40]

The Right to Possess the Predecessor States' Property

Beside Vienna convention 1978, there is another Vienna convention in 1983 which has not yet entered into forced.[41] This convention justified some of TW concern in relation to the property of the predecessor states as the former colonial states. If under the UNGA resolution TW states collectively agree to regain control over their natural resources which was under control of the

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[39] See the consideration of the both Vienna Convention on succession of states in respect of treaties 23 August 1978 and in respect of states Property, Archives and Debts Done at Vienna on 8 April 1983 which states "Considering the profound transformation of the international community brought about by the decolonisation process,".

[40] Matthew. C.R. Craven, "The Problem of State Succession and the Identity of States under International Law," *EJIL 9*, 1998, 142–46, https://doi.org/http://dx.doi.org/10.1093/ejil/9.1.142.

[41] See the status of this convention at http://untreaty.un.org/cod/avl/ha/vcssrspad/vcssrspad.html, accessed on 29 January 2016.

former colonial states. This convention confirmed that the newly independent states have a right for such property in their territory which was related to the activity foreign investor and former colonial states.

The term foreign investment or foreign property was in line with the term 'state property of the predecessor states". As article 8 of this convention stated that "State property of the predecessor states" means property, rights and interest which, at the date of the succession of states, were, according to the internal law of the predecessor state, owned by that state". Hence, the transfer of such property was recognised without compensation as pointed out in article 11 that "Subject to the provisions of the articles in the present Part and unless otherwise agreed by the state concerned or decided by an appropriate international body, the passing of State property of the predecessor State to the successor State shall take place without compensation".

In terms of TW states transfer territory from the former colonial states article 14 (1) explained that "when part of the territory of a states is transferred by that State to another state , the passing of State property of the predecessor State is to be settled by agreement between them. In sub (2) of the article 14 describes that "In the absence of such an agreement: (a) immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State; (b) movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State."

Notwithstanding the former colonial states resistance to such article, the idea of this convention 1983 was much related to justify and to confirm the idea of ESD as set out under the UNGA resolutions. Even more this convention use a strong language that newly independent states as called TW states have the right to the 'immovable property of the predecessor states situated in the territory to which the succession of States relates shall pass to the successor State' (article 15 a); also the 'immovable property , having belonged to the territory to which the succession of States relates, situated outside it and having become state property of the Predecessor State during the period of dependence , shall pass to the successor states' (Article 15 b); and in case of the 'immovable property' associated with 'the creation of which the dependent territory has contributed , shall pass to the successor State in proportion to the contribution of the dependent territory',(Article 15 c). Similarly the movable property has treated equal to immovable in this article as stated in article 15 (d, e, and f). This convention also mentioned the obligation of the predecessor state to pass the archives without compensation (article 23), including to the newly independent states (article 28).

In regard of the debt of the former colonial states, article 38 (1) highlighted that "when the successor state is a newly independent State, no state debt of the predecessor State shall pass to the newly independent State, unless an agreement between them provides otherwise in view of the link between the state debt of the predecessor State connected with its activity in the territory to which the succession of States relates and the property, rights and interest which pass to newly independent State." This convention can be said strengthening the idea of ESD of TW states which has initiated in post immediate of independent to free from any duty and obligation of the former colonial including debt, and to regain control over natural resources which is called the predecessor property in this convention. However, this convention is hard to be entered into forces, since the content is fully support the post-colonial states in terms of property, archives and debt.[42]

From the decolonisation perspectives, the state succession has its based from the right to self-determination. It is to say that a state has full right to decide and negotiate in regard to the treaties, property, archives, and debt. This then becomes what is called the right to economic self-determination in relation to any economic affairs of sates. As it has mentioned at outset, which the right of self-determination has merely been understood from political symbol perspectives, not in relation to economic affairs. Hence the law of state succession would have been tightly related to the right of ESD in relation to the economic based related treaty, property, debt and archives. So the optional theory might be considered relevant to fix this problem.

This background has underlying the development of the law of succession in terms of 'whether a newly independent states could automatically regard themselves as members of international organisations, whether they were entitled to overseas asset or liable for public debt, whether they had an obligation to respect contracts or concessionary agreement relating to that territory, or whether they were any constraints governing the granting or withholding the nationality.'[43] Following the state practices and legal theory which has been developed in International Law, it can be seen that states succession can be settled by three approaches: firstly: the continuation of treaties, secondly, the discontinuity of previous treaties as it is known 'tabula rasa' or clean state' doctrine. And thirdly, the right of the new states to

[42] Matthew. C.R. Craven, "The Decolonisation of International Law: State Succession and the Law of Treaties," *Oxford: Oxford University Press.*, 1967, 1–6.

[43] Matthew. C.R. Craven, *Ibid.*, 21.

negotiate all previous treaties, as it is called Nyerere doctrine or the optional doctrine.[44]

This optional doctrine become popular as it has advanced the perspective of Third world states in facing traditional International Law that place the universal succession doctrine in which new independent states has inherited fully the rights and duties of predecessor states had made without exception. This doctrine opens the argument that the new states can select which are treaties would benefit to them. This doctrine originated from the name of the first president of Tanzania, *Julius Nyerere,* which considered that any international treaties dating from colonial period should be renegotiate when a state becomes independent, as the state should not be bound by something that states was not in a sovereign position to agree at the time. This will grant the new states optional to the existing treaties of predecessor states. In the other words a state can choose to accept the treaty or to refuse it. If we compare to the clean states doctrine, the optional doctrine can be considered more advanced to some degree.[45]

Other related theory of this optional theory is the clean states theory. This doctrine confirms that a new state has no legal responsibility to inherent any previous agreement or treaty made by the predecessor states. The new states are clean states as a new born baby. It is also called *tabula rasa doctrine.* It is originated from the understanding of the law as the expression of sovereign will, and the new sates has no relation before as they has no sovereignty before. This can be applied in new states as fully transferred of territory or transfer part of territory.[46] So there is no transfer of right and duties from the predecessor sates to the successor states.[47] The new states are free of all rights

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[44] See "State Succession and the Nyerere Doctrine", http://www.unep.org/dec/onlinemanual/Compliance/Resource/tabid/594/Default.aspx, accessed at 15 February 2020.

[45] It can be noted that the states succession in ninetieth century was different with the twentieth century. The former category tended to accept the continuity of treaty obligation, as their dissolution was caused by voluntarily consensus among them. The most examples, of this category are the greater Colombian Union, formed between 1820 and 1830, which later dissolved into Colombia, Ecuador and Venezuela, In contrast, the latter category was to reject this continuity as their dissolution or independent was rooted from the struggle to free from colonialism which cover along unbalance military constrain and it was a hard negotiation with the former colonial states afterward. See Edwin D. Williamson, 'States Succession and Relations with Federal states' *American Society of International Law*, April 1, 1992, pp. 3-4.

[46] Kevin. H. Anderson, "International Law And State Succession: A Solution To The Iraqi Debt Crisis?," *Utah L.*, no. Rev. (2005): 401, 406, 407. Also see Akbar. Rasulov, "'Revisiting State Succession to Humanitarian Treaties: Is There a Case for Automaticity?,'" *14 European Journal of International Law*, 2003, 141–48.

[47] Kevin H. Anderson, *Ibid.*

and obligation. However, this doctrine faced the problem in relation to whether the successor states also free from the property or the debt of predecessor states.

Essentially, the birth of new states was impacted to the existing treaties which are related to the territory of new states or in relation to the predecessor states or the private parties of colonial powers. This becomes a question on new states responsibility to such agreement. In particular the agreement is used as a means of colonisation. In this regard ESD become relevant to place a perspective in different interpretation of International Law. This led to understanding that TW states have fully rights to examine that economic treaty on behalf of the interest of their people. Hence the benefit of people becomes bedrock to whether a TW states would continue or suspend the existing economic treaties. The colonial power interest should be diminished to minimal degree if there is evident that it would disadvantages the people of the new states. This sense indicated that the economic treaties signed by the former colonial power which has been adversely impacted to the people in new states have to be renegotiated.

ESD of state would give more power to TW states to choose whether they have a willingness to join the previous treaties or not. In this sense, a newly independent state has full right to decide which treaty to join and which treaty to cancel. However, Udokang described that the attitude of TW states to the existing treaty is depended on the legal arrangement of the former colonial power to settle how the new sates should behave and in order to ensure and safeguard the continued protection of acquired rights and vested interests within the territory of the new states. British have prepared it in the newly framed constitutions of the states such as Kenya and Ghana, Burma. The French had prepared on the signing of cooperation agreement on Monetary, economic and financial matters with dependent state shortly before it acquires its full statehood, such as with Malagasy Republic and Federation of Mali in 1960, provisional agreement with Algeria in 1962 regarding 'peaceful enjoyment of patrimonial rights acquired in its territory before self-determination' and 'no one will be deprived of these rights without fair compensation previously agreed upon". Equally America also prepared such treaty with the Philippine on safeguarding the property rights of the United States citizens; Dutch had protected its economic right in Indonesia at the roundtable meeting 1948.[48] Thus, ESD under the law of state succession is the right of successor states to negotiate and to terminate the predecessor treaty based on people utility and national interest.

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[48] Okon. Udokang, "Succession of New States to International Treaties," *Ocean Publications, Inc, New York*, 1972, 463–469.

ESD under International Human Rights Law

International Human Rights law through article 1 (1) of the International Covenant on Civil and Political Rights (ICCPR) [49] and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966[50] described the notion of ESD that: "All peoples have *the right of self-determination*. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". This phrase 'All peoples have the right of Self-determination' has become a benchmark in the Law of self-determination and has been used widely in different contexts despite having no explicit definition in terms of content and applicability. The right significantly refers to the 'people' under colonisation from a western power and subsequently followed by an oppressed people or minority within a state. In other words, it can be rephrased that all colonised people have the right to determine their 'political status', therefore, colonised people become what are so called 'post-colonial states'. These states as a representative of colonised people still have a right to pursue their economic development as the 'right of economic self-determination'.

An international human right covenant does not place the term ESD explicitly as one phrase, but in one sentence. However, the wording 'self-determination' is always subsequently followed by economic aspects in order to highlight that there was a strong link between self-determination and economic development aspects in new emerging states. An overview on how ESD was defined in the human rights covenants is as follows: 1. The right of 'all people' to freely pursue their economic development based on the virtue of the right to self-determination; 2. the right of 'all people' to freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and International Law, and 3. 'Developing countries', with due regard to human rights and their national economy, may determine to

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[49] International Covenant on Civil and Political Rights - Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. *See also* Nurul Fatimah Khasbullah, "Framework for the Implementation of the UN Guiding Principles on Business and Human Rights for the Protection of Women's Rights in Business Activities in Indonesia". *International Law Discourse in Southeast Asia* 1, no. 2 (2022): 99-122. https://doi.org/10.15294/ildisea.v1i2.58363.

[50] International Covenant on Economic, Social and Cultural Rights - Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.[51]

These human rights covenants explicitly state that ESD is the right of 'all people' after achieving political status of self-determination to freely dispose of their natural wealth and resources, and the right of developing states to guarantee economic rights to non-nationals. There is not clear who is non-national here. Basically, this definition has limited the right of ESD to the 'people' within a state, rather than the right of the state in international economic order. This idea could not be fully accepted by the TW states as it was a strong relation between fulfilling the right of a people in a state and the right of a state over its former colonisers and international economic powers.[52]

The idea has been followed by article 19 and 20 of the African charter it states that: "Nothing shall justify the domination of a people by another"; All people shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination; Colonised or oppressed peoples shall have the right to free themselves from the bond of domination by resorting by any means recognised by international community". Equally, the declaration of the right of indigenous people 2007 in article 3 states that "Indigenous peoples have *the right to self-determination.* By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Then in article (4) the meaning of self-determination is limited to internal self-determination as it states: "Indigenous peoples, in exercising their *right to self-determination*, have the right to *autonomy* or *self-government* in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions".

In other words, all international instruments agreed that self-determination is considered not merely as having a political status, but also economic, social and cultural. Two objectives of the rights explicitly state: "political status and economic, social and cultural development". The word 'and' can be interpreted into three possible meanings: simultaneously,

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[51] Article 1 (1, 2) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966) and article 3 the declaration of right of indigenous people 2007. For further discussion in Indonesian context, also *see* Mohammad Wahyu Adji Setio Budi, "Indonesian State System Based on Pancasila and the 1945 Constitution: A Contemporary Developments". *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (2022): 1-16; Finda Hastin Nurkhasanah, "The Challenge of Pancasila in Fair Law Enforcement". *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 2 (2022): 239-64; Ahmad Yanta Fairuz Zudana, "How Does Pancasila Work to Solve Social Problems?". *Indonesian Journal of Pancasila and Global Constitutionalism* 2, no. 1 (2023): 1-34.

[52] See Frederick E. Snyder and Surakiart Sathirathai. *Third World Attitude Toward International Law: An Introduction*, Netherlands: Martinus Nijhoff Publisher, (eds), 1987.

subsequently or separately. The meaning can be exchangeable either from economic, social and cultural development to a political status or adversely from political status to economic independence. The latter tend to be in line with current understanding of ESD in international law. In different approaches, this notion has also inspired other rights of developments,[53] which are derived from the right of individual as it is understood from International Human Rights Law in general. But, ESD is concerned to collective identification to be a subject of international relations, which is a state, on contrary to individual approach of human rights law arrangement.[54]

It is important to highlight that differently from the above mentioned UNGA resolution, they are legally binding treaties. Their article 1(2) of the ICCPR read as follows: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." This article is nevertheless rather different from the resolution on permanent sovereignty over natural resources. In particular, ESD under the Human Rights has no reference to the right to expropriate or nationalize; on the contrary, the fact that when disposing of their wealth and resources States shall keep in respecting their obligations. The use of term 'may' indicates that it has an optional in the meaning in terms of people may or may not dispose this right. In view of that, under the human rights ESD has been downgrading into internal rights of people under a state's obligation, instead of the right of state over foreign investment or the former colonial states.

In connection with article 1 of the Covenant, the Human Rights Committee refers to other international instruments concerning the right of all peoples to self-determination, in particular 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 by the General Assembly on 24 October 1970 (General Assembly resolution 2625 (XXV))."[55] "The Committee considers that history has proved that the realization of and respect for the right of self-determination of peoples

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[53] See Declaration on the Right to Development (4 December 1986), GA Res. 41/128. The US was the only state that voted against this resolution (146 to 1 with 8 abstentions).

[54] Allot proposed three stages of historical development of self-determination; practico – symbolic reciprocal (800- 1789), hegemonic self-determination in a clime of subjectivity (1789- 1945), and collective self-determination with an aura of constitutionalism (1945-). See Allott. P., in "Self-Determination-Absolute Right or Social Poetry? In Tomuschat, *Modern Law of Self-determination,* the Netherlands: Kluwer Academic Publishers, (ed.) (ed.) (1993), p. 181.

[55] The Human Rights Committee, General Comment 12 (1984), paragraph 7.

contributes to the establishment of friendly relations and cooperation between States and to strengthening international peace and understanding."[56] Under article 40 of the ICCPR, the states party has to submit report within one year of its entry into force, however the Committee admitted that only a small number of states have submitted a report on time.[57]

Furthermore, the Vienna Declaration and program of Action of human rights that was adopted on 25 June 1993 was established to promote the implementation of human rights worldwide. This was issued as a confirmation of the further need for the protection of human rights as it has stated in previous HR declaration 1948 and various conventions. The spirit of these human rights law framework was to oblige states to take into account individual and collective rights of its citizen. ESD as the right of states in the UNGA resolutions also place this responsibility implicitly as 'for the people utility and national interest' in terms of setting the objective of ESD.

The meaning under IHRL that views ESD as the right of people and the obligation of states over its people seems implies the right refer to an internal affairs of states instead of external one. While the state itself has no right to challenges the existing west-centric international law which is away from the benefit of people of TW states. So ESD under the human rights law has been limited from the ESD under the UN general assembly resolutions. TW states then has the obligation over its people, while MNC has been bound by the treaty with the states, and no direct link to the people. So, generally ESD aims to restore and remedy economic problems caused by colonialism. Internally, this would include having a remedy for the economic problems of a people in a new state and to accelerate economic development. Meanwhile, the external ESD may comprise the right to direct or indirect claim of appropriate compensation from coloniser states for destruction of political, social and cultural during colonialism, to decide their own policy on economic developments in relation to international economic institutions, to develop an equal relation among all states regardless their economic status, to pursue economic sovereignty on natural resources, and to develop economic capacity of the new states.

Equally, other scholars such as Cassese,[58] Summer[59] considered ESD the right which much related to the situation after the decolonisation process. The existence of colonial states' companies in former colonised states should not be

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[56] *Ibid.*, paragraph 8.

[57] The Human Rights Committee, General Comment 30 (2002), paragraph 2.

[58] Economic self-determination in Cassese, A. *Self-Determination of Peoples, A Legal Reappraisal*, Cambridge: Cambridge University Press, 1995, p. 99.

[59] Summer, J. *People and International Law, How Nationalism and Self-Determination Shape A Contemporary Law of Nations,* Leiden: Martinus Nijhoff Publisher, 2007, p. 179.

treated with injustice. In other words, Jackson obviously explained the core meaning of ESD that due to "negative sovereignty not being sufficient to complete self-determination, TW states therefore have a legitimate claim to international socioeconomic assistance, compensation, and relief not only on the backward-looking grounds that they suffer from past exploitation by colonial powers and the world capitalist economy but also in the forward-looking expectation that they will thereby develop the capabilities of positive sovereignty".[60]

Anthony Carty in 1984 expressed his concern on the right of ESD as 'a present common theme', and an 'obsessive repetition ' from various formulation of the UN Human Rights Covenants, 1970 declaration on the principles of friendly relations among states, and the likes. Carty mentioned that "the right is seen as affording a framework for the struggle of developing countries to attain the economic independence which has not followed automatically upon the attainment of political independence".[61] It has been an indication of a crisis in legal theory of ESD as a consequence of 'the reduction of basic legal concepts to a purely ideological role'[62] in international system. So the ESD now become on 'a level an abstraction as to have no contact with material reality'.[63] The issue of marginalisation of ESD has been illustrated by Carty that "the historical dimension of colonialism has created a relationship of dependence on the part of developing countries towards developed countries, which is not properly taken into account in present aid and 'industry sharing' policies toward developing countries", or in different expression he described the situation of Latin America studies as " that legal independence is supposed to be nothing more than a breakdown of European mercantilism and a preparation, or sine qua non, for the integration of new states into a liberal world economic order."[64]

Conclusion

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[60] See Robert H. Jackson. *Quasi-States: Sovereignty, International Relation and the Third World.* Cambridge: Cambridge University Press, 1990, p. 133-134.

[61] Anthony Carty. "From the Right to Economic Self-determination to the Right to Development: A Crisis in legal Theory", *Third World Legal Studies*, Vol 3, article 5, 1984, p. 73. Accessed from https://scholar.valpo.edu/twls/vol3/iss1/5/, at 1 January 2023.

[62] Anthony Carty (1984), *Ibid.*

[63] Anthony Carty (1984), *Ibid.*

[64] Anthony Carty (1984), *Ibid.* Also compare with Dhanny Saraswati, and Zaeda Zulfa. "Liberalization of the Health Sector and Fulfillment of the Right to Health: How Does International Law Respond to This Condition?". *International Law Discourse in Southeast Asia* 2, no. 1 (2023): https://doi.org/10.15294/ildisea.v2i1.58372.

ESD is the right of state to control their natural resources in relation to postcolonial era. However, all formulations of ESD of states placed in limited context without clear of its content and application in current international arrangement. These views to some degree also represent the ESD from the observation of the European western scholars. Therefore, ESD should develop as a legal principle for TW states to fight with the western power which has already strong economically. Several UNGA resolutions, including the Declaration of PSNR, NIEO movement, and the CERDS, confirm that ESD is the right of state to regain control over their natural resources from the former colonial states for the well-being of their people. Equally the law of state succession also provides the term 'newly independent states' to describe post-colonial states that has a free right to join the predecessor states' treaties and a right to be in possession of a foreign property within their territory. On the other side, the development of international human rights law under the treaty system has placed the obligation over the states to ensure the economic development of their people. It is then an opportunity of state parties to the Human Rights Convention to reformulate this in their ratification and its national law respectively

References

Anand R.P. "Studies in International Law and History, an Asian Perspective." *Martinus Nijhoff Publishers, Leiden*, 2004, 180–96.

Budi, Mohammad Wahyu Adji Setio. "Indonesian State System Based on Pancasila and the 1945 Constitution: A Contemporary Developments". *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 1 (2022): 1-16. https://doi.org/10.15294/ijpgc.v1i1.56875.

Bulajic, Millan. ""General Principles and the Charter of Economic Rights and Duties of States" in Kamal Hossain, Legal Aspects of the New International Economic Order." *Frances Printer Ltd, London*, no. (ed) (1980): 45.

Bulajic, Millan. "A Changing World Calls for International Economic Law" in Peter Sarcevic and Hans Van Houtte, Legal Issues in International Trade." *Martinus Nijhoff, London*, no. (Ed) (1990): 1.

Craven, Matthew, C.R. "The Decolonisation of International Law: State Succession and the Law of Treaties." *Oxford: Oxford University Press.*, 1967, 1–6. https://global.oup.com/academic/product/the-decolonization-of-international-law-9780199217625?cc=id&lang=en&.

Carty, A. "From the Right to Economic Self-determination to the Right to

Development: A Crisis in legal Theory", Third World Legal Studies, Vol 3, article 5, 1984. Accessed from https://scholar.valpo.edu/twls/vol3/iss1/5/, at 1 January 2023.

Carty, A. "The Problem of State Succession and the Identity of States under International Law." *EJIL 9*, 1998, 142–46. https://doi.org/http://dx.doi.org/10.1093/ejil/9.1.142.

Castaneda, J. "' The Underdeveloped Nations and the Development of International Law.'" *International Organisation*, 1961, 38.

D. Williamson, Edwin. "'States Succession and Relations with Federal States.'" *American Society of International Law*, 1992.

H. Anderson, Kevin. "International Law And State Succession: A Solution To The Iraqi Debt Crisis?" *Utah L.*, no. Rev. (2005): 401, 406, 407.

Jennings, R.Y. "General Course on Principles of International Law." *RdC* Vol. 121 (1967): 437.

Kadir, MYA. "Defining 'people' and 'Indigenous People' in International Human Rights Law and Its Application in Indonesia." *International Journal on Minority and Group Rights* 26, no. 3 (2019): 373–408. https://doi.org/10.1163/15718115-02602006.

Kadir, MYA. "Application of the Law of Self-Determination in a Postcolonial Context: A Guideline." *Journal of East Asia and International Law.* Vol. 9, no. (1) (2016): 117. https://doi.org/https://doi.org/10.15742/ilrev.v8n2.487.

Kadir, MYA. "The United Nations General Assembly Resolution (UNGAR) as a Source of International Law: Toward a Reformulation of Sources of International Law." *Indonesian Journal of International Law* Vol. 8 (2011): 275–90. https://doi.org/https://doi.org/10.17304/ijil.vol8.2.4.

Khasbullah, Nurul Fatimah. "Framework for the Implementation of the UN Guiding Principles on Business and Human Rights for the Protection of Women's Rights in Business Activities in Indonesia". *International Law Discourse in Southeast Asia* 1, no. 2 (2022): 99-122. https://doi.org/10.15294/ildisea.v1i2.58363.

Kenneth J. Vandevelde. "A Brief History of International Investment Agreements." *Journal of International Law & Policy, U.C. Davis*, 2005, 158. https://doi.org/https://ssrn.com/abstract=1478757.

Martin, Elizabeth A. "Oxford Dictionary of Law,." *Oxford University Press*, no. fifth edition (2002).

Moncarz R. "International Trade and the New Economic Order." *Pergamon, United Kingdom,* no. (Ed.) (1995): 1–2.

Nurkhasanah, Finda Hastin. "The Challenge of Pancasila in Fair Law Enforcement". *Indonesian Journal of Pancasila and Global Constitutionalism* 1, no. 2 (2022): 239-64.

https://doi.org/10.15294/ijpgc.v1i2.59812.

Rasulov, Akbar. "'Revisiting State Succession to Humanitarian Treaties: Is There a Case for Automaticity?'" *14 European Journal of International Law*, 2003, 141–48.

Saraswati, Dhanny, and Zaeda Zulfa. "Liberalization of the Health Sector and Fulfillment of the Right to Health: How Does International Law Respond to This Condition?". *International Law Discourse in Southeast Asia* 2, no. 1 (2023): https://doi.org/10.15294/ildisea.v2i1.58372.

Satesna, Dhezya Pandu. "Legal Personality of ASEAN As the Subject of International Law: Contemporary Developments". *International Law Discourse in Southeast Asia* 1, no. 1 (2022): 65-78. https://doi.org/10.15294/ildisea.v1i1.56871.

Udokang, Okon. "Succession of New States to International Treaties." *Ocean Publications, Inc, New York*, 1972, 463–69.

Zudana, Ahmad Yanta Fairuz. "How Does Pancasila Work to Solve Social Problems?". *Indonesian Journal of Pancasila and Global Constitutionalism* 2, no. 1 (2023): 1-34. https://doi.org/10.15294/ijpgc.v2i1.59808.

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