

ETHIOPIA and ERITREA

PART TWO

Eritrea and the Issue of Self-Determination

The concept of self-determination after the Second World War was directly associated with those African countries under colonial administration. While Europe was redrawing its boundaries and in some cases creating new nations, in Africa liberation movements were challenging European colonizers one by one and the Europeans were starting to leave Africa. In Africa and Asia, the decolonization process initially referred only to those countries occupied by the Axis powers (Germany, Italy, and Japan), but in the end, the struggle for freedom quickly spread, and by the late 1960s almost all of Africa colonies were free under boundaries drawn during the Scramble for Africa (1881-1914).

The question of self-determination would not be an issue if all formal human associations were based on the desires of the people themselves. However, that is usually not the case, as we have seen throughout world history. If it had not been for conquests and colonialism, forced annexation, and dynastic rules the world would have been composed of people who lived in places and conditions of their choosing. Instead, we have mixed ethnic populations living together under governments that were imposed on them. Nationalism—where each nationality forms its own state—was seen as a dangerous trend and therefore discouraged and sometimes forcefully suppressed. Nationalism became an expression of rebellion. Further, the desire for self-determination does not necessarily mean everyone within certain borders wants to create a “nation.” The “self” of self-determination has often been equated with the entire “nation” and has therefore disregarded the *individual* feelings and aspirations of any given population within that “nation”.

Despite this weakness, the international community adopted self-government as a satisfactory means of self-determination. It had a fundamental error as a doctrine because it assumed nations would generally be self-evident entities and that only nations, as history had delimited them, would constitute natural political units having a complete desire for self-government.¹³⁶

Statesmen understandably argued that the focus of the principle should be on the nation as a historically determined phenomenon, regardless of whether it might be an artificial construct of smaller ethnic communities, against which neither the territorial jealousy of multinational empires nor that of polytechnic studies should be considered.... the obvious remedies for such communities, they argued, included regional autonomy within the framework of a unified State or secession from their governing States followed by independence or association with a political entity of their choosing.¹³⁷

From the start, self-determination was a controversial topic. That was why it accommodated many definitions including association with another political entity. Leading up to Resolution

390 in 1950 the UN did its best to consider the wishes of the Eritrean people through its commissioners (see Appendix A). UN Resolution 390 specifically states that the Commission for Eritrea has taken into consideration

The wishes and welfare of the inhabitants of Eritrea, including the views of the various racial, religious, and political groups of the provinces of the territory and the capacity of the people for self-government, (my emphasis)¹³⁸

In 1950 the process of self-determination for Eritrea as a colony was duly exercised under international law. There are arguments over whether this was a wise decision but nothing can change the fact that it was legal. But we must clearly distinguish between *colonial* self-determination and self-determination of a group or region that is already part of an independent country. In 1950 it was a case of colonial self-determination and that meant the international community was involved. The issue of self-determination for Eritrea was again raised during the 30-year war that followed the abrogation of the Federal Act by the Ethiopian government in 1962. The definition of self-determination this time was different: it had to accommodate the rights of people who had grievances and wished to exercise their right for self-determination. This aspect of self-determination shifts the focus from an international to a domestic issue. The question therefore becomes at what point does the demand of a people for self-determination acquire international legitimacy?

This is a difficult subject for the UN and the international community. When the demand for self-determination is made forcefully by part of the population of an established country with the express goal of secession, the UN cannot legitimize that demand because it will be seen as an intervention in the internal affairs of that country. Though human rights violations can be condemned, that cannot justify interference in the affairs of another country. In most struggles for self-determination, the support of countries of the UN is determined based on the national interests of the powers that be. In a case like the Eritrean rebellion the UN Human Rights Council cannot go beyond expressing its concern even if most people are living under tyrannical and inhumane governments. Eventually, it will be the strength of the rebellion and its likelihood of success that might attract international attention and support.

Two aspects of this Eritrean self-determination issue must be recognized. The first is, as I have argued, Eritrea was never a colony of Ethiopia during the federal period. Throughout the struggle, no member of the UN except those very few that had a vested interest in the region referred to Eritrea as being in a colonial relationship. Far from being a colony of Ethiopia, Eritrea was always the heart of Ethiopian civilization, language, culture, and religion. Beginning in the 1960s those Eritreans who started or joined rebellions to exercise their right to self-determination could not justify their struggle from the concept of colonial self-determination.

The second point is that during the earlier years of the Eritrean War, at least up until the intensity of the war forced the government to come to a round-table discussion with the government of Ethiopia, the position of the EPLF was open to discussion. At various conferences under the auspices of international organizations and even some governments, the

EPLF was not insisting on secession as the only option for the Eritrean people to exercise their self-determination. I was part of these consultations on the Ethiopian side until I left at the end of 1985. After I left Ethiopia, as I described earlier, I had numerous encounters with the EPLF. It was clear to me then that the EPLF was prepared to discuss other options including going back to the federation or designing another system of regional autonomy. The EPLF did not insist on secession. In May 1989 when I went to Nakfa and discussed the possible coup d'état and requested the participation of the EPLF, it was made very clear to me and to the team I was with that the EPLF would be part of the transitional government to be established after Mengistu was overthrown. At that time, we would discuss the future of Eritrea without preconditions. In June 1989 there were two successive meetings held in the USA under the auspices of the Carter Center. In the second session, the Eritrean delegation was led by Isaias himself. At a news conference on June 29 in London he reported that "his group was prepared to immediately enter into serious unconditional negotiations." He said that the EPLF had three options in their proposals for peace and self-determination including independence, a referendum on the future of the province, and regional autonomy. Speaking to the *New York Times* Isaias said: "We don't want to talk about independence now. We don't want to talk about Ethiopian political and territorial integrity. Let's agree that we talk and talk without preconditions in the presence of a third person and an official meeting."¹³⁹ By the end of 1989 the situation on the ground had changed dramatically and they were able to end the war and gain their independence.

Those who want to argue about whether the war was legal or illegal based on the right to self-determination should be aware of a paradox in international law: a struggle for self-determination can be judged legitimate only if the separatists succeed. In other words, once the demand for self-determination by a group within a state becomes a revolution, the right of self-determination that they claim is recognized internationally only if the revolution is successful.

In the case of Eritrea, the struggle was legitimate in hindsight because the EPLF was successful, but that does not make the 30-year war legal under international law. When Eritrea decided to exercise national self-determination to separate from Ethiopia it gained international legitimacy only when the facts on the ground dictated its success and the EPLF came out victorious. They won the war and their independence. Nobody can take that away from the Eritrean struggle. Many commentators have noted this paradoxical aspect of international law regarding self-determination:

It is this retrospective character that makes the equation of success and legitimacy useless as an aid to legal analysis of the right of self-determination... The international jurist can act only as a historian, chronicling instances of valid claims to self-determination after they succeed but are unable to offer an opinion concerning their legitimacy before they reach or fail to reach, fruition.¹⁴⁰ Self-determination is not a right under international law, but by history and provided the act of self-determination is crowned with success...¹⁴¹ History, bestowing its "grace" upon an attempt at self-determination, thereby recognizes the group's (historical) right ex-post.¹⁴²

In cases of secession, it is less a question of right than success or failure.¹⁴³ The inevitable conclusion is that secession forms no part of the concept of self-determination and its revolutionary character derives legally only from success.¹⁴⁴

The Eritrean struggle succeeded because it gradually gained the support of the great majority of its people and was also able to mobilize the sentiments of some segments of the international community and those who had a vested interest in the cause of the Eritrean people. It succeeded because it was able over time to organize a formidable force while at the same time, the Mengistu regime was failing to get the continued support of the people to continue its reckless conduct of this war. The issues discussed above do not make this resounding success any less deserving but history must be put in proper perspective.