

# Legal Analysis of the Right of Self-determination of "Hong Kong Independence"

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**Abstract**—At present, local awareness is growing in Hong Kong. More and more "Hong Kong independence" advocates "the right to self-determination of the nation" and attempts to separate from the motherland by conducting a referendum. Hong Kong independence members use international jurisprudence as a cloak of social movements and conduct illegal treason activities that have drawn our attention. Through the jurisprudential analysis on the right of national self-determination, this paper traces the international legal origin of the right of national self-determination, and analyzes and reveals the illegality of the abuse of self-determination by the "Hong Kong independence" of the separatist movement.

**Keywords**—"Hong Kong independence"; National self-determination; Review criticism; Separatism

## I. INTRODUCTION

"Hong Kong independence" seriously endangering the security and stability of Hongkong and even the country. They believe that "Hong Kong as a nation enjoys the right to self-determination in both history and national law. From the "Occupy Central" incident in recent years to the humiliation of the Youth New Deal The incident, and then the anti-China trend of Hong Kong college students, the phenomenon of "Hong Kong independence" has intensified. The right to self-determination of the nation has been maliciously exploited by them. The "Hong Kong independence" thinking and the theory of national self-determination are contrary to each other. National self-determination must not be used by people with ulterior motives. Harm the unity and stability of Hong Kong society.

## II. OVERVIEW OF THE RIGHT TO NATIONAL SELF-DETERMINATION

### A. The origin and historical evolution of the right of national self-determination

The right to national self-determination was accompanied by the development of national movements. With the physical destructive power of machine guns, planes and other weapons used for the first time, nationalist enthusiasm accelerated the Austro-Hungarian Empire and Osman before and during the First World War. The disintegration of the empire. The territory of the former empire requires a new sovereign state,

and the principle of self-determination as a means of acquiring a new "nation state" has become a legal tool for the victorious country to re-divide Europe.

After World War II, socialist countries were surging rapidly. The struggle of the people of many colonies and affiliated countries in the world against imperialist rule was growing, and the struggle for national liberation and independence has become a major world trend. Therefore, the Charter of the United Nations, adopted after the establishment of the United Nations Organization in October 1945, declared: "To develop international friendly relations based on respect for the equal rights of people and the right to self-determination." Later, the "Resolution on the Right of Peoples and Peoples to Self-Determination" adopted by the United Nations in 1952 called on the UN member states to "support the principle of self-determination of all peoples and nations." "The people and the nation should first enjoy the right to self-determination before they can fully enjoy everything." Basic human rights." [1] In 1960, the United Nations passed the "Declaration on the Granting of Independence to Colonial Countries and Peoples", proclaiming that "all peoples have the right to self-determination". "The situation that the people are conquered, ruled and exploited by foreign countries denies basic human rights and violates the UN Charter. There is a need to quickly and unconditionally end colonialism in all forms and manifestations." Since then, the right to national self-determination has been widely recognized by the international community as a fundamental right of the people and peoples of the oppressed countries of the world.

### B. Subject restriction of national self-determination

The right of national self-determination has reached the status of rights, but the scope of this right must be explored. The legitimate right to national self-determination clearly applies to Non-Self-Governing Territories, Trust Territories and Authorized Territories... Whether it is also applicable to other Territories is uncertain. Does the self-determination include specific rights applicable to minorities and indigenous peoples within a country? If this would involve the scope of constitutional arrangements within the country, many countries are now fully considering their impact.

With regard to the meaning of "self", one can certainly draw a generally accepted definition of the "people" with self-rights.

Such an approach would encourage States to refuse to accurately award political and economic rights groups that may constitute the most realistic and effective response to self-determination requirements.[2] In fact, if a country solves a national or regional problem by granting autonomy, it will be punished, contrary to the message that the international community should send to countries facing ethnic or regional conflicts.

### C. National self-determination does not include separatism

The explicit acceptance of the principle of national unity and the principle of territorial integrity of States in relevant United Nations resolutions means that the right to separation is not recognized. The right of the people recognized by the United Nations to self-determination is the people under the rule of colonies and foreigners. In today's world, in a unified multi-ethnic country, the right to self-determination of the nation is mainly embodied in sovereign independence and territorial integrity at the international level. At the domestic level, it is mainly embodied in safeguarding national unity. Civil rights are granted to the people of the country by the constitution of that country. Ethnic citizens have equal rights and democratic rights to participate in state and social management.

Separatists believe that they must act to defend the right of national self-determination. They believe that all nations in the world, whether they are colonial or national, within the territory of a country, apply the principle of national self-determination. Every fragmented nation can establish an independent state through the right of national self-determination.[3] This is a distortion of the right to self-determination of the nation. If every nation has an unrestricted right to separation, then the entire international community will be out of order. Not every nation must or can establish its own nation state, and the realization of the rights of each nation must also take into account the rights and interests of other nations.

## III. THEORETICAL ANALYSIS ON THE RIGHT OF SELF-DETERMINATION OF "HONG KONG INDEPENDENCE"

### A. Improper subject of national self-determination

At present, "Hong Kong independence" people pay great attention to the discussion and research on Hong Kong's right to self-determination. They start with the concept of "Hong Kong nation", the right subject of self-determination, and put forward a brand new "powered by the theory of citizen nationalism." The concept of Hong Kong citizenship. Judging from the scope of the subject of the right to self-determination, the definition of the subject of self-determination in international law has evolved from overseas custody territory to colonial territory to non-self-governing territories, but non-self-governing territories are defined as geographically separated, ethnically or culturally distinct territories.

<sup>1</sup>A "citizen nationalism" assertion that the nation should include all those who identify with the political creed of the nation, regardless of their ethnicity, color, creed, gender, language or ethnicity.

<sup>2</sup>The Trust Territory is a territory that is placed under the International Trusteeship System under the Trusteeship Agreement..

Hongkong is China's inherent territory. He belongs to a system with Chinese culture. It belongs to the same family. Although it was historically occupied by the British colony, it has returned to the embrace of the motherland in 1997 and has been recognized by all countries in the world. Hong Kong does not belong to people or peoples with "collectiveness" or "holisticity". From the perspective of history and reality, the so-called "civilian nation" in Hong Kong is a "pseudo-concept" that emphasizes only the rights that some minority people want in Hong Kong, not collective ethnicity. right. The so-called "Hong Kong citizenship" is not a colony or an oppressed nation. Its situation is different from that of self-determination. Hongkong is different from the definition of subject concept in the right of national self-determination. On this basis, the right to self-determination does not exist at all.

### B. Deviating from the purpose of national self-determination

According to previous investigations, national self-determination is a norm recognized by international law. It was originally used to seek the independence and development of the colonial nation. Although some scholars later believed that national self-determination can also be used for oppression within the country, it is urgent to pursue politics and economy. The nationality of cultural rights, but it is not applicable to Hong Kong. Back in the embrace of the motherland, Hongkong citizens have benefited greatly from the policy of "one country, two systems". It has a high degree of autonomy in politics, economic and cultural development has achieved remarkable achievements, and the mainland has contact with Hong Kong. It is getting closer and closer, and the prospects for development are stable and good. There is no such thing as causing Hong Kong to exercise its right to self-determination. The essence of Hong Kong independence advocates for national self-determination is to realize the separation between Hong Kong and the Mainland through "self-determination". However, according to previous investigations, the independence of the purpose of rights under the perspective of the right to self-determination is not the same as separation, although the result of the separation may be independent, but not enough to express the meaning of the right to self-determination. [4] More importantly, the exercise of the right to self-determination must be based on the principle of safeguarding national sovereignty and territorial integrity, which necessarily requires that the right to self-determination cannot be achieved by achieving separation. Therefore, the right of national autonomy determined by the Hong Kong independence is absolutely incompatible with the purpose of self-determination.

## IV. A LEGAL CRITIQUE OF THE "HONG KONG INDEPENDENCE" NATIONAL SELF-DETERMINATION RIGHT

### A. Independent of sovereign states, contrary to the principles and purposes of international law

Any attempt to destroy the unity and territory of the country in part or in whole is inconsistent with the purposes and principles of the Charter of the United Nations. International law allows the pursuit of the independence and development of a nation through national self-determination. The ultimate goal

of national self-determination does not include secession. The right to self-determination hopes to help people who are discriminated against, oppressed and enslaved to obtain better political, economic and cultural rights. The original intention of the establishment of the right to self-determination of the nation was beautiful, but it was used by many separatists in an attempt to achieve the ulterior political purpose behind it through the legal cloak of the right of national self-determination. The Hong Kong independence elements have enormous political ambitions and hope to become an independent country to get rid of the rule of the motherland. Obviously they know that their strength is weak and their wishes cannot be reached. Therefore, they have found support from international jurisprudence and imagined using "national self-determination." "Right" to win the sympathy of each country and help them gain independence. The inviolability of national sovereignty and territorial integrity is a principle that is universally respected by all countries in the world. The internal affairs of a country can only choose the right solution by itself, and others have no right to dictate. [5] No matter how many people call for their right to self-determination to be protected, these claims are contrary to the principle of international law protecting the sovereign and territorial integrity of States. The Hong Kong issue is a matter of China's internal affairs and must not be based on the right of national self-determination. Solve, otherwise it will destroy the integrity of the country's territory, and in essence it is a treasonous act of splitting the motherland.

#### *B. The "separatist movement" is an invalid path*

The Hong Kong independenceists advocate "true universal suffrage" for political purposes and "referendum" as the form of self-determination. In the end, they only want to split the motherland. According to customary international law, division can only be legally justified when the existence of a group is threatened. The separatist movement of the Hong Kong independence elements has no legitimacy. It is far from the separation right under the national self-determination. National self-determination must achieve the political will to protect the weak people from seeking independent development. However, national self-determination will never protect the political ambition of the traitors. In theory, this "separatist movement" is not a derivative of the right to self-determination, but a political path of internal division, and will certainly not receive a positive evaluation of international law.

Judging from the effect of practice, there are also many countries that engage in separatism through national self-determination, but the results are ineffective. The Québec separatist movement's several referendum solutions were finally given invalidity by the Clear Act passed by the Canadian Federal Parliament. No matter what the vote is, it is ineffective to get the federal government's recognition, because it is placed under the effective rule of the central government, and there is no possibility of solving any problem through national self-determination. Kosovo is independent of the sovereign state Serbia, and its parliament has adopted a Declaration of Independence without the consent of the state, making itself an independent new sovereign state that the world wants to recognize. Although 62 countries have

successively recognized Kosovo's national status, their independence has remained illegal. In the case of a sovereign state, ethnic separation will not be recognized by the international community.

#### *C. The independent desire behind the human rights shield is not tolerated*

Some Hong Kong elements explained that they had to exercise their right to self-determination because their human rights were oppressed and the state could not protect their political, economic and social rights. Because one country, two systems can hardly satisfy the infinite desire of some people, they take human rights as a cover, and in fact become an independent country is what they call the real demand. This view is self-evident and extremely laughable. What kind of "political, economic, cultural, and social" self-determination is required for Hong Kong independence? in fact, in the design of the "one country, two systems" system and the Hong Kong Basic Law, the relevant contents of Hong Kong's autonomy are clearly defined and fully guaranteed. One country, two systems clearly stipulates that the Hongkong people themselves govern Hongkong and have great autonomy in many matters.

If such autonomy does not satisfy their desires, then they want The human rights obtained through self-determination can only be the right to become an independent country. It can be seen that behind "human rights" is the ambition of "independence". No matter how heavy the treatment is, it will be difficult to satisfy. In the previous analysis, it has been clearly pointed out. The claim of "Hong Kong independence" does not have the right to subject qualifications, does not conform to the right purpose of self-determination, and is even less in line with his use of "human rights" as a scorpion to expand the scope of "national self-determination". [6] Obviously, the people of Hong Kong have very good human rights protection, there is no such thing as the advocacy of Hong Kong independence. Autonomy ", has a high protection of human rights, in this sense, we see that the theory of seeking national self-determination under the oppression of human rights in Hong Kong alone who proposed is not legitimate, it is invalid.

### V. CONCLUSION

The right of national self-determination has a good legal help for resolving the independence of colonial countries. However, the phenomenon of national self-determination is very common in the international community. It has become an umbrella for separatist movements in many regions, seriously jeopardizing national sovereignty and territorial integrity. The international community should severely criticize this behavior. There is no one in China that can use the "national self-determination" to solve the Hong Kong problem. The independence of Hong Kong independence through national self-determination can not be achieved. The premise of recognizing the right of national self-determination is that it can not violate the purposes and principles of the Charter of the United Nations. Exercise, so you don't have to shoot a shot, you don't have to oppose any attack, and any behavior driven by evil political purposes will not break.

<sup>3</sup>The "Hong Kong Public Chronicles" and the Youth New Deal are represented as the representatives to promote the so-called "referendum self-determination", of which "Hong Kong independence" is also one of the "referendum" options.

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