

**Symposium on “The Right to Self-Determination in International Law”
Organised by Unrepresented Nations and Peoples Organization (UNPO),
Khmers Kampuchea-Krom Federation (KKF), Hawai’i Institute for Human
Rights (HIHR)**

**29 September – 1 October 2006
The Hague, Netherlands**

**Decolonization: The UN process within the broader movement
Its legacy, contemporary relevance and ways forward.**

By Dr. Eduardo Welsh

First I must explain that my background is in culture rather than law. I therefore have a tendency to see law as a cultural phenomenon and tend to ask what laws say and mean, rather than sticking to their legal scope and application. This sometimes gets me into trouble. I am also an activist, journalist and cartoonist, which means I quite often need a lawyer. I tend to find, however, that lawyers often have a restrictive approach and tend to see things purely in terms of the law, in legalese, omitting other considerations or practical approaches. So sometimes, I tell them, let’s try something new. Let’s tickle the law to see what happens, what it really means.

If we think of our world order, it’s a very new system. When we talk about decolonization in international law, we are talking of a process that began in 1960 with approval of Declaration 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples and will finish with the self determination of the last 17 or so territories remaining on the UN list.

The movement for decolonization, however can be understood as much broader movement, a process of contention which began way before the 1960 declaration and has its roots in the resistance to colonialism all over the globe. It’s as a result of this movement and the resistance to colonialism and imperialism, which had resulted in a number of states gaining independence, that led UN Members to formalize the declaration condemning colonialism.

The UN Declaration was a belated recognition of the right to self-determination of peoples under colonial rule and in many ways it consisted of a process within a process.

If we think about it, colonialism was not simply a process of taking over and administering territories and peoples. It was a complex ideological and cultural project which sought to legitimize the take-over, present it in positive terms and in as far as possible co-opt the local populations into acquiescing and participating in the process. The use of force was always portrayed as being exceptional and often excused as being needed because of the savagery, unruliness and general backwardness of those who resisted. In general these empires succeeded in the aim of co-opting the cooperation of large parts of the population. The ideological aspect was vital to the achievement of stability.

Given this complexity of colonialism, its reverse the decolonization process as defined in the UN Declaration seems exceedingly simple: Merely the granting of independence to countries that had been under the control of colonial powers, countries which existed as geographical entities only because of that very colonial occupation.

We can say that this granting of independence to colonized countries was a very superficial solution which never really addressed the geopolitical, cultural and ideological

complexity of colonialism itself. There is a current of opinion that the achievement of independence of a given territory, by itself, does not accomplish the goal of decolonization. Certain scholars would argue that the new nationalisms that were created, often arbitrarily, mirrored the systems of the colonizer, merely replacing one set of oppressors by another. In fact, this seems to have been the view of the anti-colonial activist Frantz Fanon even before decolonization.

The decolonization “box”

Looking back over history, it seems the UN process of Decolonization was a very limited one. If one imagines colonialism and decolonization as very broad and complex issues, what the UN process has done is to build a small box to delimit and contain the process in very simplistic terms, leaving out its most bothersome and troubling aspects. The problem is reduced to a number of territories being under “alien” administration and is solved by granting them independence from this “alien” power. In this way decolonization becomes a very clear, simple and finite issue, with a very clear simple and finite solution – within the box. The beauty of it is that it claims to achieve the total eradication of Colonialism – without ever really touching on what this very troublesome word is. The word colonialism is therefore neatly fitted into a box and the boxed is closed and put away to be forgotten.

But I would and many people would say that what has been put in the box, what is in the UN process, is not as important as what is left outside the box, that we have to see the UN process part of a much broader and complex process, with a much longer history. We need to rescue the decolonization process from within this confining box and put it in its broader context and discuss it among civil society, media etc. Perhaps then, we can be in a position to take it back to the UN.

What I propose to do now is to first look inside the box to see what we have and to see how decolonization was dealt with at the UN, as a prelude to seeing what we can do outside the box.

The 1960 Declaration

Declaration 1514 (XV) is a curious and limited document, not without its contradictions. It begins with the idea of granting independence to both colonial countries and peoples and upholds the right of all peoples to self-determination. However, it ends with two articles reaffirming the territorial integrity of states and the principle of non-interference in the internal affairs of all states. We can see from this that at the time of the Declaration there was already some concern to limit the scope and extent AND THE MEANING ITSELF of decolonization.

As to what colonialism is, the declaration is rather vague. It recognized that peoples of the world ardently desired the end of colonialism in all its manifestations, but does not define what these are. The only part that really goes some way to describing colonialism is article 1, that: The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights. This idea of alien subjugation, domination and exploitation, which is really the ONLY incisive part of the declaration is never followed up further and these criteria were NEVER applied per se.

In fact, to skirt the issue of what colonialism or alien subjugation, domination and exploitation consisted of, the Member States opted for a different methodology that would not put in cause their own practices. They merely drew up a list of territories to be decolonized. In the end, the idea, contained in the declaration, of granting independence to peoples under alien subjugation, is completely lost sight of. Decolonization becomes a closed instead of an open-ended process and no mechanisms for participation or petition or appeal to the United Nations are made available. All debate and dialogue is closed off. There is only one problem and one solution.

This is how the question of colonialism and decolonization was nicely boxed up and put on the shelf. However, I don't think that with this methodology can ever get one anywhere near ERADICATING COLONIALISM IN ALL ITS MANIFESTATIONS or ending the subjection of peoples to alien domination.

UNPO miniconference

In 2002 the UNPO held a miniconference on decolonisation and I would like to take the opportunity to share some of the common ground Members found.

One of the first things all the participants agreed on was that there was lack of adequate consultation or participation in the negotiating processes leading to independence. In many cases, particular peoples were excluded altogether and their access to negotiation meetings, to Governments, to the UN was deliberately blocked or made impossible. This already demonstrates a certain amount of ill-will or pure repetition of the colonial pattern of subjugation or domination.

Despite this Members identified that in many cases there had been different forms of negotiations, treaties and agreements both with the decolonizing power and with the other groups of the new state.

The identified agreements can be divided as follows:

1. Those between a people and the colonial powers at the beginning of the colonial process to ensure certain rights and protections. (Cabinda, Shan)
2. Between peoples and the colonial state prior to decolonization, to safeguard certain rights upon the independence of the new state. (Moluccas)
3. Between different ethnic groups within the state on the terms of a common future (Shan State)

In none of the cases were the agreements respected and in every case the territorial integrity of the state and the non-interference in the domestic affairs of the state took precedence over forced subjugation of the population and human rights. An even more bizarre twist is that for most of these peoples the situation of oppression actually worsened after supposed decolonization. In the case of the Nagas, for instance two thirds of their territory were considered "unadministered" by the British. How could their control be ceded?

In the light of this, the paper presented by Myo Win, of the Shan highlighted several points of the Decolonization concept to be reviewed in order to get a more realistic picture of what colonialism is:

a. The Alien Concept.

Alien-ness should not be limited to only the European but it should also include African and Asian colonizers, irrespective of skin colour.

b. Maintenance of the former European colonial boundaries:

The maintenance of the former European colonial boundaries as irreversible and sacrosanct national state boundaries should be reviewed on a case by case basis. This is an unending source of ethnic conflicts affecting international stability.

c. The question of geographical separateness:

Geographical separateness between colonizer and colonized should not be a sole defining factor. It should be open to the fact that different political and national entities exist as neighbours without having geographical separateness.

d. Cases of one colonial regime replacing another.

Many oppressed and non-state nations are experiencing this type of colonialism, when one dominant ethnic group took over the mantle of the former colonizer and monopolized the state power at the expense of other ethnic groups.

Further, he noted the transnational or international nature of some of the problems resulting from existing colonial practices and subjugation, which therefore should not be subject to non-intervention by the UN, namely:

- Human rights violations
- Refugees and immigration
- Forced population displacements
- The AIDS epidemic

Needless to say the problems of subjugation, domination and oppression are of a global, international and transnational nature, often leading to cases of outright genocide and massive refugee crises. These are all valid reasons why colonialism is still a question of today.

Evasive Rhetoric

The point of view of many UNPO Members is rarely reflected in the opinions of the mainstream. For those who do not accept that colonialism continues to be a widespread practice and that “alien subjugation, domination and exploitation” is a contemporary reality, then a way is found to describe this reality in different terms. I remember reading a thesis written in the sixties, if I remember correctly, by a Chinese scholar on attitudes towards colonialism at the UN. The author defined many of the practices of colonialism and analyzed the situation of Russia and the then Soviet Union. His judgment of the situation, however, was confined to a footnote. Here, he argued that though many of these colonialist practices had or were indeed taking place, rather than being colonialism, this could better be ascribed to the category of traditional territorial expansionism, as practiced by the Chinese and Roman Empires. It seems that the author implied that this type of expansionism is an entirely different category of behavior, and therefore acceptable.

The framing of these problems in a way that skirts the essential issue of subjugation, domination and exploitation is unfortunately common to much contemporary scholarship, journalism and political discourse. A few examples:

Horowitz

Some of the literature available now relates some of these questions in really unbelievable terms. *Ethnic Groups in Conflict*, by Donald Horowitz, published in 1985 (but I believe recently reedited) is such a case. Horowitz seeks to analyze “separatist” ethnic groups, which he characterizes as being either “backward” or “advanced”. I quote:

By far the largest number of secessionists can be characterized as backward groups in backward regions. They often attempt to secede rather soon after independence or after rejection of the claims they advance... All of them feared competition with their neighbors within the bounds of a single political arena. Fears of this kind were not merely based on numerical inferiority, but on a sense of weakness vis a vis a more efficient, aggressive, sharp witted, dynamic, industrious and better educated members of other ethnic groups.¹ (among the peoples he list are the Nagas and Karens).

What seems obvious here is that Horowitz emphasizes criteria for competition rather than simply difference (or cooperation). To many of these peoples, the idea of decolonization and of self-determination is that they may continue to live their lives and control their affairs in their own way, without imposed external forms. To them, control over land and resources is most important, not setting up a civil structure service where they can compete for administrative jobs. The whole criteria of advanced and backward therefore merely mirrors the colonial distinctions or prejudices and the colonial pretext for imposing a colonial administration. Note also that Horowitz does not specify what the early claims that are rejected were. In the case of the Nagas this was the right to self-determination and independence itself, based on the fact that most of the people had never come under British administration and had never considered themselves part of India or the British Empire. In many other cases, the “claims” would all to likely to be that the state violated agreements or treaties with the peoples concerned.

Botswana Government

The sad thing about how Horowitz frames his view of ethnic conflict is that his attitude is directly mirrored in the policies of certain governments who take it upon themselves to destroy the lifestyles of other groups based on prejudices that they are backwards and need to be developed or modernized. A case in point is the cruel and tragic forced removal of the San

¹ Donald Horowitz *Ethnic Groups in Conflict*, the University of California Press, 1985, pages 236-237

bushmen in Botswana from the Kalahari.² One can only be skeptical about the reasons for doing this and its all too obvious to see that the discourse is precisely the same discourse and practice formerly used by European colonial powers.

Ted Gurr, Peoples versus States

This study published by the Carter Center for Peace frames a number of conflicts around the world in terms of whether they are fights for democracy or not. The implication seems to be that the legitimacy of a struggle depends on whether it is a struggle for “democracy” or not. This reductive approach is too simplistic. Political rights cannot be reduced to just electing a Government. Democracy itself is a combination of institutions and rights, including a functioning and just legal system and effective ways of participatory democracy. Elections are too often seen by the West and the international community as a legitimating a “democracy” regardless of whether the other aspects of participatory democracy such as the justice system function properly. All too often, when this is not the case, they are simply legitimating corrupt governments that persecute people or entire peoples with absolute impunity. Among the targets of such governments are those who voice a peaceful and democratic demand for self-determination, and put the right of self-determination into practice through non-violent organization and civil participation.

Portuguese discourses

Another aspect of this discourse is the sheer hypocrisy and double standards adopted by representatives of former colonial powers. Relating to the treaty of Simulambuco and others signed between representatives of the of the Cabindans and representatives of the Portuguese, for instance, the constitutionalist Almeida Santos argued that the Treaty of Simulambuco was not a “real” treaty because it was not signed with a recognized agent of the Portuguese Government and would always have to be understood “in conjunction with the Resolutions of the Berlin Conference, which ratified the Portuguese Crown’s right of sovereignty over the Cabinda Enclave, a right also expressly recognized in the Treaty of Simulambuco”. With so much legitimacy, Luiz Aguiar ironizes, one can just as easily affirm that Cabinda is an integral part of Angola as that Portugal’s sovereignty over the whole of Angola is beyond question.³

Similarly, another recent Portuguese book, publicized on the internet, advertises that Cabindan identity only exists due to the Portuguese. This can only be a gross overstatement of the importance of the anthropological studies made by the Portuguese, its surely ridiculous to argue that the Cabindans had no identity before the Portuguese arrived, in the sense that they had no kingdom, no social structure, no idea of belonging or not to a certain community. It is really extraordinary that such chauvinist nonsense is still being published.

Incisive Rhetoric

Fortunately, there is an increasing amount of scholarship that questions this type of discourse and ideology. There is an increasing field of study looking into the cultural roots of imperialism. In other words how ideas of power were structured and written into narratives, creating an omnipresent and so less discernable system of beliefs, which served the goals of domination. Said’s culture and imperialism, looks into how imperialism was not solely imposed, but was an interactive process which relied on a broad network of cultural ideas, including scholarship, to maintain a stable status quo and to co-opt native participation in maintaining colonial order.

So if we look at decolonization we are looking far further than a mere series of independences towards a practice of eradication or curing the cultural and oppressive roots of colonialism. This is a process that is very much being addressed by scholars and activists today in all cultures. It is very much a burgeoning movement to which the UNPO experience is most relevant, and in which UNPO members should have a more prominent participation.

² See the campaign by Survival International

³ Luiz Aguiar *O Livro Negro da Descolonização* 198?, page 422

Problematizing nationalism

One point of particular relevance to the UNPO, of this trend of scholarship, is the recognition that nationalism and that the nations/states created upon decolonization did not necessarily cope well with or address the problems created by colonialism. I cite a passage from Said:

Fanon was the first major theorist of anti-imperialism to realize that orthodox nationalism followed along the same track hewn out by imperialism, which while it appeared to be conceding authority to the nationalist bourgeoisie was really extending its hegemony. To tell a simple national story therefore is to repeat, extend, and also to engender new forms of imperialism. Left to itself, nationalism after independence will “crumble into regionalisms inside the hollow shell of nationalism itself”. The old conflicts between regions are now repeated, privileges are monopolized by one people over another, and the hierarchies and divisions constituted by imperialism are reinstated, only now they are presided over by Algerians, Senegalese, Indians etc.⁴

Identity, Chaos and Order

The reduction of complex problems to the question of singular identities is an issue broached by Amartya Sen, who argues that this simplification and the neglect of multiple identities loyalties and affiliations is one of the main reasons for identity leading to violence.⁵ Extrapolating this lesson to the case of nationalism, we find that this often has meant the suppression of other older and established identities. In this event, nationalism becomes a problem and not a solution. The bias of the powers that be that see nationalism as providing stability is not shared by many of the world’s peoples.

Similarly, much of the language used to marginalize other identities is a legacy of colonialism. Such is the case with “tribalism” which is often associated with the problems existing within nations today. But tribes generally have their own long established and fair means of social participation, and long cultural and political traditions. In this context I am reminded of the saying of a famous physicist that “Chaos is just another form of order”. The order of one can often mean the disorder of the other. This is the case with imposed identities and system of governments which often create chaos in existing cultural systems. So the accusations of chaos are actually mutual. I am reminded of a representative of a small tribe at a talk hosted by Survival International, who when asked what he thought about government and democracy replied. “Who invented such a stupid idea: to choose somebody else to take the wrong decisions on your behalf”.

Ways forward

I think the way forward can lie at the UN, but that essentially we need to take decolonization out of the UN box and have a broad understanding of what has happened within civil society, before it is raised at the UN again.

There needs to be a broad and frank discussion in civil society, that will aid to “decolonize the mind” and free people of prejudices and fixed ideas⁶, such as that any meaningful discussion of rethinking nations states and if necessary revising borders, will inevitably lead to chaos and violence.

Part of this process should also be done by responsabilising the media and the way they represent Unrepresented Peoples and the issues they face. Some work is already being done in this area, but it is just a beginning.

Ultimately, we need to recognize that alien subjugation, domination and exploitation by one people over another, or by a Government over a nation or ethnic group is very much a contemporary problem and that these acts cannot be given protection to under international

⁴ Edward Said *Culture and Imperialism* 1993, page 330

⁵ Amartya Sen *Identity and Violence. The Illusion of Destiny* 2006

⁶ Such a conference was held in Amsterdam in 1992. See Jan Nederveen and Bhikku Parekh *The Decolonization of the Imagination. Culture, Knowledge and Power* Zed books 1995.

law when they clearly violate the letter and the spirit of the 1960 Declaration on decolonization.