

University of Akureyri,
Faculty of Law and Social Sciences, Department of Law
Master's Program in Polar Law

The Rights to Self-Determination of the Indigenous Peoples

- Illustrated by Arctic Indigenous Peoples

Yichao CHEN
February 2010

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Yichao CHEN
Masters Degree Thesis Submitted as Part of Studies for the LL.M
Degree in Polar Law
Akureyri
February 2010

Master's Degree Thesis

Yichao Chen

Kt: 290184-3559

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Gudmundur Alfredsson:

is hereby approved as part of studies towards the LL.M degree in Polar
Law Studies

Akureyri in March of 2010

Master's Degree Examination Committee Members

Department of Law

Faculty of Humanities and Social Sciences

Abstract

This thesis is a legal analysis of indigenous peoples' right to self-determination in the international law. In the beginning, this thesis distinguished three important concepts in the international law: peoples, minorities and indigenous peoples. Then it reviewed the development, content, beneficiary and other aspects of self-determination. Through those reviews, the indigenous peoples' right to self-determination is different from the right to self-determination in the international law. This thesis concluded that the nature of indigenous peoples' right to self-determination is the so-called internal self-determination which was not recognized by the international law now. Finally, through the study on two examples of indigenous peoples in the Arctic area, the approaches for indigenous peoples to realize their self-determination could be different varying with different States. And the extent and measures of indigenous peoples' right to self-determination is always decided by the domestic law, considering the international customary law about the standards of indigenous peoples' right to self-determination is not emerged now. Because the indigenous peoples' right to self-determination was always confused with the right to self-determination in the practice, the thesis also advised another concept for description of indigenous peoples' right to self-determination shall be used in the further development. Finally, although some States didn't recognize the indigenous peoples' right to self-determination, they should protect and promote other rights of indigenous peoples.

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CHEN Yichao

The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.

— *General Comment 12, Human Rights Committee*

Introduction

From history to nowadays, indigenous peoples were discriminated or excluded by the dominated societies all over the world. And many of them still can't get the equal treatment in education, work improve the protection of their individual rights on the basis of non-discrimination, equity and other human rights principles. But accompanying with the globalization and urbanization, more crucial issue for many indigenous groups is possibility that the group may be eliminated in the meaning of the distinct human group. The indigenous peoples' equal worth and dignity can only be assured through the recognition and protection of not only their individual rights, but also their group rights as a distinct group.

The rights to self-determination, which is claimed as one of the most important rights by lots indigenous peoples, is appeared in the independent process of the colonial country after the World War II. In 1960, the General Assembly adopted the Resolution 1514(XV) that called Declaration on the Granting of Independence to Colonial Territories and Peoples. It said that "all peoples have the right to self determination; by virtue of that rights they freely determine their political status and freely pursue their economic, social and cultural development". According to this document, the rights to self-determination should include the justification of independence of

"peoples". And as the common Article 1 of International Covenant on Civil and Political Rights (hereinafter "ICCPR") and International Covenant on Economic, Social and Cultural Rights (hereinafter "ICESCR"), the right to self-determination is not only a political concept but also a kind of legal rights, and even an important human right.

The group who can enjoy this right is called "people". The definition or boundary of "people" is still not clear now. Nowadays, lots of indigenous peoples believe that they should belong to "peoples" in the international law. But the problem is that if the indigenous peoples could be recognized as "peoples", and then enjoy the rights to self-determination which include the request of independence, it would be conflict to the sovereignty and territorial integrity of the existed countries and doesn't helpful to the enjoyment of this rights, no matter in any aspects, by the indigenous peoples.

United Nations Declaration on the Rights of Indigenous Peoples which was adopted by General Assembly in 2007 made a balance between territorial integrity and right to self-determination of indigenous peoples. It claimed that indigenous peoples have the right to self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. This article is almost same as the Common Article 1 of ICCPR and ICESCR. However, there is another article in the Declaration stated that "nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."

So article want to analyze the different meaning and practice of right to self-determination in the international law, and then study on the materials relevant to the right to self-determination of the indigenous peoples, select some self-governance

of the indigenous peoples in the Arctic area as models of enjoyment this rights, and conclude the justification of right to self-determination of indigenous peoples and its different content or intension comparing to the traditional one.

The measure of this research would be based on the legal perspective. Although there are different ways and approaches to the issue of self-determination, such as political measure, philosophic measure and so on, this thesis would treat the topic of right to self-determination of indigenous peoples as a legal issue. This most fundamental measure for this study would be the research of related international treaties, resolutions, cases and other materials for international customary law about this topic. And this study would also use the analysis of works of scholars based on the library and internet research. In reviewing the situation in Arctic area, this thesis will use measures of political science, economy, history and anthropology to conclude fact of indigenous peoples in the Arctic from different aspects.

I. Concepts: Peoples, Minorities and Indigenous Peoples

"Peoples", "minorities" and "indigenous peoples" were some concepts which might be confused in the study of self-determination. This section tries to distinguish these concepts and analyze their definition and rights in the international law.

1. Peoples

Though the ICCPR and ICESCR stated "all peoples have the right to self determination" in the Common Article 1, they did not concern anything about the definition of "peoples". In fact, the United Nation has used the concept "peoples" in lots of instruments since the Charter of United Nations¹, however, the UN never clarified the definition of "peoples" in any official instruments.

The Charter used "peoples" for 11 times. Besides "we the peoples of United Nations" and "employ international machinery for the promotion of the economic and social advancement of all peoples", the Charter stated "the principle of equal rights and self-determination of peoples" in the Article 1 and Article 55. Furthermore, in the Article 73 and 76 which is about the non-self-governing territories and trusteeship system, "peoples" was used for 7 times.

Regarding the context of "peoples" used in the Charter, the meaning of "peoples" could be clarified as level, one is peoples of United Nations and another is peoples on the non-self-governing territories. The first one is focus on the idea of "all mankind" or "all human beings"² and could be understood as the global peoples or the whole of peoples in the member states of UN. And to a member state, the peoples also means the whole peoples in this state, but not other smaller unit which is part of "peoples", such as nation or tribe. Considering the second level which related to the non-self-governing territories, peoples on a specific non-self-governing or trusteeship

1 Such as "We the peoples of United Nations determined..." in the Preamble of the Charter.

2 It is said that "no difficulty appears to arise from the use of the word 'peoples' which is included in the Technical Committee texts whenever the idea of 'all mankind' or 'all human beings' is to be emphasized", Aureliu Cristescu, The Right to Self-Determination: Historical and Current Development on the Bases of United Nations Instruments, United Nations, E/CN.4/Sub.2/404/rev.1, Para 262.

territory could be constituted by lot of nations or tribes, "peoples" also means the whole peoples on the territories but not other small units. The peoples in the UN Charter should be understood as a most comprehensive collective group on a state or territory, and this is the reason that the Charter adopted the concept as the principle of self-determination of peoples, but not nations, ethnic groups or tribes.

Although the concept of "peoples" is still unclear in the international law, there are some characteristics supplied by experts for further study on the rights of peoples. Such as during the International Meeting of Experts on Further Study of the Concept of the Rights of Peoples by UNESCO in 1989, following characteristics were mentioned as inherent in a description (but not a definition) of a 'people' for purpose of peoples' rights³:

"1. a group of individual human beings who enjoy some or all of the following common features:

- (a) a common historical tradition;
- (b) racial or ethnic identity;
- (c) cultural homogeneity;
- (d) linguistic unity;
- (e) religious or ideological affinity;
- (f) territorial connection;
- (g) common economic life;

2. the group must be of a certain number which need not be large (e.g. the people of micro States) but which must be more than a mere association of individuals within a State;

3. the group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have that will or consciousness; and possibly;

³ See Final Report and Recommendation, International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, UNESCO, 1990, SHS-89/CONF.602/7.

4. the group must have institutions or other means of expressing its common characteristics and will for identity".

The above characteristics expressed kind of opinion that "the word 'peoples' should designate large, homogeneous national groupings; that the right of self-determination should be accorded only to peoples who lay an informed claim to it; and that politically backward peoples should be placed in the care of an international trusteeship system which would see to it that they develop the capacity to exercise their right of self-determination".⁴ Antonio Cassese gave a definition more concrete form, describing a people as "a national or ethnic group constitutionally recognized as a component part of a multinational states".⁵

However, some other UN organs hold the idea that the beneficiaries of equal rights and self-determination in the Charter which is literally stated as "peoples", only means peoples occupying a geographical area which, in the absence of foreign domination, would have formed an independent State (colonial territories, Trust Territories, etc.); and another, the commoner situation of peoples occupying a territory that has become independent, but who may be subjected to new forms of oppression, in particular, neocolonialism.⁶

2. Minorities

"When focused on the history of the self-determination, it is clearly that the development of self-determination was, more or less, relating to the protection of minorities groups".⁷ And the minorities, especially ethnic minorities, are closely relevant to indigenous peoples. As lot of indigenous groups are also ethnic, religious or linguistic minorities in a State, it is hard to distinguish these two concept in the

4 See Aureliu Cristescu, *The Right to Self-Determination: Historical and Current Development on the Bases of United Nations Instruments*, United Nations, E/CN.4/Sub.2/404/rev.1, Para 272.

5 Cassese, *The Self Determination of Peoples*, Page 96.

6 Ibid, Para 273-274.

7 See Patrick Thornberry, *Self-determination, Minorities, Human Rights: A Review of International Instruments*, Vol. 38, *International and Comparative Law Quarterly* (1989), Page 868.

practice. So the definition, characteristics and rights of minorities are very crucial for the further study on indigenous peoples' right to self-determination.

The international society could not reach a consensus on a strict definition of minorities, so there is not a written-down definition in the international law. But compare to the "peoples" and "indigenous peoples", there are more clues about the characteristics of the minorities groups. Commonly, there are four elements to define the minorities in the international law.

Firstly, the objective element means the group should belong to the ethnic, religious, linguistic and national minorities. The beneficiaries of the rights under article 27 of the ICCPR are persons belonging to "ethnic, religious or linguistic minorities". But the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and

Linguistic Minorities (hereinafter "Declaration on Minorities") adds the term "national minorities". Consequently, only the persons belonging to these four categories could be recognized as minorities in the international law. Other minorities groups, such as political minorities, are not considered as beneficiaries of minority rights in the international law.

The second element is the subjective element which means the members of the groups identified themselves as minorities. It is very important that becoming minorities is the result of free choice and self-identification by the groups, and no one could be forced to be minority.

Amount element is the third one. The number of minorities groups should be less than majorities in a State. Although sometimes minorities groups are more powerful in political or economic fields, they are still minorities groups as long as they are less in the amount of members. In other aspect, the amount of a minority group also should be large enough to be a group.

The fourth element is the time. The States practices are varying differently all over the world, however, refugees and migrant works are not considered as minorities groups usually. Sometimes the groups should live in a state for at least 2 or 3 generations.

According to these four elements, it is explicitly that minorities is a question of fact, not depend on law. "Some states recognized minorities in the national law or set some other limitation, such as requirements of citizenship"⁸, on the minorities groups. Those are inconsistent with requirements of the international law.

The minorities groups should enjoy the equal rights and non-discrimination according to the common principles of the human rights law. The Declaration on Minorities reaffirmed that "states shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law"⁹. It is emphasize on the positive obligations of the States which could imply that States should take some so-called "positive discrimination" measures to eliminate any discrimination to the minorities, not just in the law but also in fact.

The minorities groups have more specific rights according to the Article 27 of ICCPR and the Declaration on Minorities. When Article 27 of the ICCPR requires that persons belonging to minorities "shall not be denied the right to ..." ¹⁰, the Declaration on Minorities stated more explicitly in requiring positive action that "persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and

8 See Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities, Commission on Human Rights, 2005, E/CN.4/Sub.2/AC.5/2005/2, Para 10.

9 Declaration on Minorities, Article 4.

10 See ICCPR, Article 27.

in public, freely and without interference or any form of discrimination"¹¹. It is required more than mere passive non-interference but also including protective measures and encouragement of conditions for the promotion of their identity (art. 1) and specified, active measures by the State (art. 4). Furthermore, the right to identity is also an important right for both minorities and indigenous peoples. States should protect the identity of minorities and encourage conditions for the promotion of that identity.

Although the development of self-determination were related to the minorities and ethnic policy frequently, at present, in the international law the minorities groups are not subjects who enjoy the right to self-determination. The rights of persons belonging to minorities differ from the rights of peoples to self-determination. The rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights. While the right of peoples to self-determination is well established under international law, in particular by common article 1 of the ICCPR and ICESCR, it does not apply to persons belonging to minorities.

3. Indigenous Peoples

Indigenous peoples have lots of other names before, such as "indigenous people", "indigenous population", "aboriginal peoples" and so on. But in the international instruments and some UN organs, the concept of "indigenous peoples" is used most commonly.

International conventions which are related to indigenous peoples are also very few and there is not such a definition which is commonly accepted in the international law. Although the UN adopted the *United Nations Declaration on the Rights of Indigenous Peoples* in 2007(hereinafter "Declaration"), the legal instruments are still only two now and with few state members. One is *The Indigenous and Tribal Populations*

¹¹ Declaration on Minorities, Article 2.

Convention, ILO, 1957 (hereinafter "Convention No. 107") which is no longer open for ratification, but remains in force for 18 countries. Another one is *The Indigenous and Tribal Peoples Convention*, ILO, 1989 (hereinafter "Convention No. 169") which has been ratified by 20 countries.

The ILO Convention 169 adopted some clauses about the definition of indigenous peoples, such as:

1. Tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
2. Peoples who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.¹²
3. The Convention also states that self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.¹³

Although there is no global consensus about a single final definition, some UN groups or other organizations tried to conclude some characteristics of indigenous people for their further work. For example, the Commission on Human Rights defined indigenous peoples as "composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons from a different culture or ethnic origin arrived there from other parts of the world."¹⁴ And the Working Group on Indigenous Populations' Working paper on the

¹² ILO Convention No. 169, Article 1, subsection 1.

¹³ ILO Convention No. 169, Article 1, subsection 2.

¹⁴ Commission on Human Rights, Preliminary Report on the Study of the Problem of Discrimination Against Indigenous Populations (UN Doc. E/CN.4/Sub. 2/L.566 [1972], Chapter II, paragraph 34).

concept of "indigenous peoples" lists the following factors that have been considered relevant to the understanding of the concept of "indigenous" by international organizations and legal experts:

- "1. Priority in time, with respect to the occupation and use of a specific territory;
2. The voluntary perpetuation of cultural distinctiveness, which may include the aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions;
3. Self-identification, as well as recognition by other groups, or by State authorities, as a distinct collectivity; and
4. An experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist."¹⁵

Some regional organizations also summarized briefly some overall characteristics of the indigenous groups identifying themselves as indigenous peoples: "their cultures and ways of life differ considerably from the dominant society and their cultures are under threat, in some cases to the extent of extinction; the survival of their particular way of life depends on access and rights to their traditional land and the natural resources ; they suffer from discrimination as they are being regarded as less developed and less advanced than other more dominant sectors of society; they often live in inaccessible regions, often geographically isolated and suffer from various forms of marginalization; they are subject to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority and so on."¹⁶

It is very difficult to define "indigenous peoples" for lots of and complicated reasons. One reason is that, considering the social, ethnic, religious, historical, linguistic characteristics, the definition of indigenous peoples might distinguish with other

¹⁵ Working paper on the concept of "indigenous people" of the Working Group on Indigenous Populations , E/CN.4/Sub.2/AC.4/1996/2.

¹⁶ See Report of the African Commission's Working Group of Expert on Indigenous Populations/Communities , Adopted by The African Commission on Human and Peoples' Rights, 2005, page 89.

concepts, such as ethnic minorities, peoples on the colony. For example, the definition by the Working Group on Indigenous Populations was critical for its broad area, and did not give prominence to crucial features of indigenous peoples.

Another more important reason is most of people who want to define "indigenous peoples" are not belonging to indigenous peoples. But the indigenous peoples do not want to approve a definition in the international law. During the draft of the Declaration, the indigenous peoples' organization opposed the final definition of "indigenous peoples". They thought the danger of a strict definition is that many governments may use a strict definition as an excuse for not recognizing indigenous peoples within their territories. They insisted that self-identification as indigenous peoples are the fundamental criterion. And finally it is absorbed by the Declaration as a right of indigenous peoples which stated that "indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions."¹⁷

The characteristics of the indigenous peoples and minorities are quite similar. "Persons belonging to indigenous peoples are of course fully entitled, if they so wish, to claim the rights contained in the instruments on minorities".¹⁸ This has repeatedly been done under article 27 of the International Covenant on Civil and Political Rights. But compare to the minorities, the indigenous peoples relate to a specific territory historically which make some of their rights are different from the minorities. The right of indigenous peoples to self-determination is increasingly expressed through self-governing or autonomous arrangements.¹⁹ Both ILO's Convention No. 169 and the UN Declaration recognize indigenous peoples' right to own and control their lands and, to differing degrees, recognize their rights to own, use and manage the natural

17 United Nations Declaration on the Rights of Indigenous Peoples, 2007, Article 33.

18 Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National of Ethnic Religious and Linguistic Minorities, Commission on Human Rights, 2005, E/CN.4/Sub.2/AC.5/2005/2, Para 17.

19 United Nations Declaration on the Rights of Indigenous Peoples, 2007, Article 3-4.

resources on those lands.²⁰ According to the Declaration, States should establish mechanisms to guarantee these rights. Finally, the right to development is understood to imply for indigenous peoples their right to decide the kind of development that takes place on their lands and territories in accordance with their own priorities and cultures. The UN Declaration on the Rights of Indigenous Peoples calls upon States to consult with indigenous peoples to obtain their free, prior and informed consent prior to approval of any project affecting their lands and resources.²¹ ILO Convention No. 169 underlines the right of indigenous peoples to be consulted in relation to developments that may affect them.

4. Differences between the Peoples, Minorities and the Indigenous Peoples

As analyzed above, the international society cannot reach a consensus on all of these three concepts. The real reason leading to this situation is the different status of these three concepts in the international law. Especially the rights to self-determination, which would be analyzed more in this article, is related closely to different statuses. Consequently, it is crucial to clarify the definition of indigenous peoples and distinguish the difference between these three concepts.

One aspects, indigenous peoples is different from the colonial peoples. Indigenous peoples and colonial peoples have common and important characteristic that both of them are victims of colonialism. However, as the oversea territories of the colonial states, almost all of the colonies have been independent under the international trusteeship system of UN. And indigenous peoples are living in the existed country, but isolated and marginalized by the dominant society of the state because of their traditional life, culture and so on.

Another aspect, indigenous peoples are also different from the minorities. The Home Rule Parliament of Greenland adopted a resolution reiterating the distinction between

²⁰ Ibid, Article 25-26.

²¹ Ibid, Article 10.

indigenous peoples and minorities as follows:

"It is important that the world's indigenous peoples have fundamental human rights of a collective and individual nature. Indigenous peoples are not, and do not consider themselves, minorities. The rights of indigenous peoples are derived from their own history, culture, traditions, laws, and special relationship to their lands, resources and environment. Their basic rights must be addressed within their values and perspective."²²

Usually most of indigenous peoples are ethnic, religious or linguistic minorities in a state. Although indigenous peoples' rights to land and nature resources are not stated in the ICCPR, as Human Rights Committee noted, "the Article 27 could be applied to indigenous peoples especially in the case that the preservation of their use of land resources can become an essential element in the right of persons belonging to such minorities to exercise their cultural rights".²³ However, there are some indigenous peoples who are majorities in a state. For example, Mayans count 60% of population of the Guatemala. The 1989 UN Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and states included the following:

"(k) Indigenous peoples are not racial, ethnic, religious and linguistic minorities;
(I) In certain States the indigenous peoples constitute the majority of the population; and in certain States indigenous peoples constitute the majority in their own territories."²⁴

And the more significant point is that, not every minority is belonging to indigenous peoples. Indigenous peoples should relate historically to the territory where they are living, and usually, be oppressed, isolated and vulnerable because of the colonialism.

²² Quoted in "Status and Rights of the James Bay Cree in the context of Quebec's Secession from Canada", submission to the Commission on Human Rights, February 1992, a 63.

²³ General Comment No. 23 of the ICCPR, Human Rights Committee, 1994, Para 7.

²⁴ UN Doc. E/CN.4/1989/22, 40(k)&(I), at 11.

II. Rights to self-determination

As stated in the International Covenant on Civil and Political Rights, "all peoples have the right to self-determination. By virtue of that right they freely determine their political status pursue their economic, social and cultural development". The right to self-determination which is enshrined as Common Article 1 of International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, was one of the most fundamental human rights in the international human rights law. This section would study on the history, nature, beneficiaries, objects and other aspects of this right.

1. History of the right to self-determination

The thought of self-determination could stem from the Social Contract Theory of John Lock and Jean-jacques Rousseau. But as a concept in the international law, self-determination was originated from Europe in 19 century. In the Italian Risorgimento, the separatist movements in the Austro-Hungarian monarchy, 1866 Prague Peace Treaty, "the concept of self-determination had a substantial impact on the European community".²⁵ And during the World War I, Woodrow Wilson who is the president of USA put forward the principle of self-determination in his famous Fourteen Points as the foundation of the peace in Europe. Self-determination as an important political principle was also expatiated by Lenin in the Russian Revolution in the early 20th Centuries. "The concept of self-determination represents one of the most important roots of modern international human rights protection. It is closely associated with the system for the protection of minorities and with the Mandate system established by the League of Nations".²⁶

The concept of self-determination developed further during the World War II and was related to the decolonization movement gradually. In 1941, Roosevelt and Churchill agreed with the Atlantic Charter which stated that all peoples had a right to

²⁵ Nowak, Commentary on ICCPR.

²⁶ Nowak, Commentary on ICCPR.

self-determination. After the World War II, United Nations stated one of its purpose was to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" in Article 1(2) of its Charter. In contrast to a terms commonly used now, the UN Charter did not use the terms of "right of self-determination". The right to self-determination was illustrated in detail and related to decolonization movement closely in the "Declaration on the Granting of Independence to Colonial Countries and Peoples" in 14 December 1960. It is said that "all peoples have the right to self-determination; by the virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."²⁷ "Permanent Sovereignty over Natural Resources went further on the economic aspect of right to self-determination by emphasizing on a full survey of the status of permanent sovereignty over natural wealth and resources as a basic constituent of the right to self-determination."²⁸ The self-determination supplied the struggle of the colonies, and on another aspect, the movement of decolonialization also promoted the development of self-determination.

Although the UN Charter used the terms "the principle of equal rights and self-determination of peoples" in the Article 1 and 55, it did not put the "self-determination" into Article 2 which listed 7 principles should be followed by the member sates. That lead to some argument about the relationship between "the principle of equal rights and self-determination of peoples" and principles in the Article 2. Some professors insist on that "the principle of self-determination is not the real principle of the Charter, but just kind of wish."²⁹ But other professors thought the adoption of the UN Charter "indicate the principle of self-determination developed from a political assumption to the legal standard."³⁰ The principle of self-determination is "part of the Charter and impact deeply on the international politics."³¹ Actually, the UN practice, decolonialization movement, some UN

27 UN General Assembly Resolution 1514(XV), 14 December 1960.

28 UN General Assembly Resolution 1803(XVII), 14 December 1962.

29 See Michla Pomerance, Self-determination in Law and Practice 1982, Page 9.

30 Antonio Cassese, Self-determination of Peoples: A Legal Reappraisal, 1995, Page 43.

31 M.K. Nawaz, The Meaning and Range of the Principle of Self-determination, Vol.82 Duke Law Journal, 1965,

resolutions later has already proved the self-determination is an important legal principle in the international law.

The Declaration on Principles of International Law Friendly Relationships and Cooperation among States in Accordance with the Charter of United Nation which was adopted by UN assembly in 1970 (hereinafter "UN Resolution 2625(XXV)") was the milestone on the history of the principle of self-determination. This Resolution considered the progressive development and codification of some international principles, and believed that securing their more effective application within the international community, would promote the realization of the purposes of the United Nations. As it is stated in the Resolution, "by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter"³². It clarified the contents of "determination" which included political status and economic, social, cultural development. Then the Resolution expressed that the implementation of this principle is in order to "bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned", and "bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle".³³ This statement could be understood as implying the applicable area of this principle. And this document also covered the duty of States under this principle and some ways to realize the principle of self-determination. The UN Resolution 2625(XXV) has double functions which are interpretation of UN charter and illustration of international principles, and it is the crucial evidence to prove that self-determination is a principle in the international law.

For the first time, the right to self-determination was recognized as a collective right

Page 91.

³² UN Resolution 2625(XXV)

³³ Ibid.

in the Common Article 1 of ICCPR and ICESCR in 1966. In these two of most important international human rights treaties, the right to self-determination was stated as the collective right for all peoples. During drafting of these Covenants, "a distinct right to self-determination was initiated by Socialist and Third World States, while most Western States, especially the European colonial powers, argued that self-determination is a principle and not a right".³⁴ In the first draft text presented by Soviet Union, it used the term "every people and every nation to national self-determination" which implied both colonial peoples and national minorities should enjoy this right.³⁵ "In contrast to most of the Covenant's other provisions, which were primarily drafted by the Human Rights Commission, the concrete formulation of the right of self-determination emerged in the General Assembly."³⁶ As GA Resolution 545 (VI) stated, "this article shall be drafted in the following terms: <all peoples shall have the right of self-determination>, and shall stipulate that all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right, in conformity with the purposes and principles of the United Nations, and States having responsibility for the administration of Non-Self-Governing Territories should promote the realization of that right in relation to the peoples of such territories".³⁷

On the basis of GA resolutions, the Human Rights Commission drafted a three paragraph text, which said³⁸:"

1. All peoples and all nations shall have the right of self-determination, namely the right freely to determine their political, economic, social and cultural status.³⁹
2. All States, including those having responsibility for the administration of Non-Self-Governing and Trust Territories and those controlling in whatsoever manner the exercise of that right by another people, shall promote the realization

³⁴ Nowak, Commentary on ICCPR, Page 10

³⁵ E/CN.4/350,47; A/C.3/L.96; E/CN.4/L.21

³⁶ Nowak, Commentary on ICCPR, Page 10

³⁷ For the discussion, see A/C.3/SR.358-372, .397-.403.

³⁸ E/2256, 46; E/2573, 65 f.; A/2929, 13

³⁹ Paragraph one is on the basis of Soviet's draft, then it add the words "and all nations" at the request of Poland. See E/CN.4/L.21,L.23/Rev.1,L.27;E/CN.4/SR.259,7.

of that right in all their territories, and shall respect the maintenance of that right in all their territories, and shall respect the maintenance of that right in other States, in conformity with the provisions of the United Nations Charter."⁴⁰

3. "The right of the peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States."⁴¹

This draft text is debated intensely in the 3rd Committee of the General Assembly, especially on the paragraph 3. The final text of the Article 1 was passed in 1955 on the 3rd Committee of the General Assembly, it was almost the text in the Covenant except some literal changes. Although there are still lots of defects or problems in the Common Article 1, it is the first time self-determination was enshrined in a legally binding international convention as a collective right. Then, there are more other international instruments claimed the right to self-determination as a collective right in their text. For example, in 1981, *African Charter on Human and Peoples' Rights*⁴² stated in the Article 20:"

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it

40 Paragraph two is on the basis of Soviet draft, which be amended in accordance with the United States' request (with slight changes by Egypt) .Such change made it referred primarily to colonial powers but non-exclusively. See E/CN.4/L.21,L.28/Rev.2,L.31;E/CN.4/SR.259,8.

41 Paragraph three is one the basis of the proposal of Chile, this economic component is rejected by Western States , due to afraid that it would sanction the confiscation or nationalization of foreign property. See E/CN.4/SR.261,5.

42 adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

political, economic or cultural."

And in Article 21, it stated:"

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources."

In a conclusion, the provisions subscribed above are familiar with the Common Article 1 in content and expression. Until 1970s and 1980s, the right to self-determination has been commonly accepted by the international society as ICCPR and ICESCR come into force. At the same time, the countries who at one time strongly object to get self-determination into the two Covenants also ratified them. As was made clear in *advisory opinion of 21 June 1971 on The Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* (hereinafter referred to as "**Namibia Opinion**"), "the right of self-determination is now a rule of customary of international law".⁴³ When speaking

⁴³Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971.

of the development of international law in regard to non-self-governing territories, the Court stated⁴⁴:

"A further important stage in this development was the Declaration on the Granting of Independence Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces all peoples and territories which 'have not yet attained independence'."

It went on to state:

". . . the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law" .

The Court then concluded:

"In the domain to which the present proceedings relate, the last fifty years, as indicated above, have brought important developments. These developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned. In this domain, as elsewhere, the *corpus iuris gentium* has been considerably enriched, and this the Court, if it is faithfully to discharge its functions, may not ignore."

2. The Beneficiaries of the Right of Self-Determination

Obviously, except for rare international instruments prescribe the beneficiary of the right of Self-determination as nation, most international instrument confirm that the "peoples" is entitled to self-determination. However, the international society hasn't reached a consensus on the definition of "Peoples". Thus, there are still lots of debates or confusions on how to understand and practice this right from time to time.

As mentioned in definition part, the characteristics of "peoples" is vary abroad, but still, there are some clues in the important international human right instruments and cases to reveal the relationship between the Self-determination of peoples and colony

⁴⁴I.C.J. Reports 1971, page 3 1

or Non-Self-Governing Territory. For example, in the beginning of Declaration on the Granting of Independence to Colonial Countries and Peoples General Assembly Resolution 1514(XV)⁴⁵, it point out the purpose of making the resolution was that:

"Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations.

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace.

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of Segregation and discrimination associated therewith."

Consequently, although the paragraph 2 of this Declaration only claimed that "all peoples have the right to self-determination" and concerned nothing about the scope of application, it is obviously that this paragraph is aim at the decolonization.

Furthermore, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations General Assembly Resolution 2625(XXV) 24 October, 1970⁴⁶, we can also find some clues stated that:

"Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

⁴⁵ 14 December 1960, UN DocA/ 4684(1960).

⁴⁶ UN Doc A/8028(1970), 25 UN GAOR Supp (No 28) 121

(a) To promote friendly relations and co-operation among States; and
(b) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;
and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.
The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles."

It can be found that when referred to self-determination of peoples, it has close relationship with colony, colonialism, the purpose of realization of the principle of equal rights and self-determination of peoples is to bring a speedy end to colonialism. And any subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of this principle. This actually implied that the scope of application of the Self-determination principle is: peoples who were on the colony or subjected to alien subjugation, domination and exploitation shall enjoy the principle of Self-determination. Moreover, in the aspect of the manner of exercise the right of self-determination, the resolution specially emphasizes peoples on the colony or Non-Self-Governing Territory.

As mentioned above, Self-determination is connect with colony or Non-Self-Governing Territory in the important international human rights instruments, we can also find this point in some justices and advisory opinions of the International Court of Justice (hereinafter referred to as "ICJ" or the "Court").As part of the Namibia advisory opinion, the Court dealt with the responsibility of a State for a

colonial (or colonial-type) territory. It stated⁴⁷:

"The subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. . .the ultimate objective of the sacred trust was the Self-determination and independence of the peoples concerned. . .As to the general consequences resulting from the illegal presence of South Africa in Namibia, all States should bear in mind that the injured entity is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted."

The opinion above mainly concerned the issues of Self-determination and the "sacred trust" which is a League of Nations Mandate over a territory and continuing under Article 73 of the UN Charter. When mentioned the Self-determination, it only regard to peoples in non-self-governing territories. Another famous case-*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*⁴⁸ also illustrates:

"The Charter of the United Nations, in Article 1, paragraph 2, indicates, as one of the purposes of the United Nations: 'To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . .' this purpose is further developed in Articles 55 and 56 of the Charter. Those provisions have direct and particular relevance for non-self-governing territories, which are dealt with in Chapter XI of the Charter."

In the above statement, the Court definitely indicate whose clauses which are about self-determination in the UN Charter (such as Article 1, Articles 55 and 56) "have direct and particular relevance for non-self-governing territories." Although East Timor Case has been rejected caused by jurisdiction, the Court also give its opinions on Self-determination:

⁴⁷ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, page 16.

⁴⁸ Western Sahara, Advisory Opinion, I.C.J. Reports 1975, para. 54.

"For the two Parties, the Territory of East Timor remains a non-self-governing territory and its peoples have the right to self-determination. Moreover, the General Assembly, which reserves to itself the right to determine the territories which have to be regarded as non-self-governing for the purposes of the application of Chapter XI of the Charter, has treated East Timor as such a territory."

It can be found that, although the beneficiaries of Self-determination is "all peoples" in literally in UN Charter and other international instruments, actually, according to the purpose and context of these instruments and some cases before the International Court of Justice, Self-determination is only applied to peoples on the colony and other non-self-governing territories *de facto*. The United Nations has established the right of Self-determination as a right of peoples under colonial and non-self-governing territory. "The right does not apply to peoples already organized in the form of a State which are not under colonial and non-self-governing territory, since resolution 1514(XV) and other United Nations instruments condemn any attempt aimed at the partial or total disruption of the national unity and the territorial unity, colonial and non-self-governing territory does in fact exist, whatever legal formula may be used in an attempt to conceal it, the right of the subject people concerned cannot be disregarded without international law being violated."⁴⁹

It has been proved in above that the beneficiary of Self-determination is peoples on the colony and other non-self-governing territories. However, this conclusion arises another question about the criterion of the peoples on the colony and non-self-governing territories, especially considering those minorities and indigenous peoples who regard themselves as peoples who are subjected to colonialism or alien dominant. Although there are lots of debates about this criterion, there are only two most important rules which called "salt water" test and "Belgian thesis". In fact, the

⁴⁹ Michla Pomerance: Self-Determination in Law and Practice: the New Doctrine in the United Nations, 1982, appendices IV., Page15

Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter (hereinafter to referred to as "Resolutions 1541 (XV)"), which is the legal basis of the "salt water" test, has stated clearly in its fourth principle that: "*Prima facie* there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it".

⁵⁰According to the UN Charter, the obligation of Member states under Article 73(e) means "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government" ⁵¹ should "transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply". ⁵²

UN Charter confirmed that the counties who administrate the non-self-governing territories have the obligation to transmit information of the non-self-governing territories, at the same time, the Principle 4 of Resolutions 1541 (XV) referred territories whose information should be submitted to the Secretary-General as "a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it." ⁵³Consequently, the non-self-governing territories mentioned in UN Charter are those territories which are geographically separate and are distinct ethnically and/or culturally from the countries administering them. Compared to "salt water", "Belgian thesis" only explained the non-self-governing territory in literally, and lack of the support from UN instruments and states practice. In a word, the beneficiary of the right of Self-determination should be peoples on the

⁵⁰ Resolutions 1541 (XV)

⁵¹ Charter of United Nations, Article 73.

⁵² Ibid.

⁵³ Resolutions 1541 (XV)

colony or other non-self-governing territories which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

3. Collective and Permanent Characteristics of the Right to Self-determination

Differing from other human rights, the right to self-determination is not only unique location but also on account of its collective character. It is not stated as a right of "everyone" or "every human being", but a right of "all peoples". So some scholars commented that "Strictly speaking (in the sense of the dualism of the African Charter), the right thus involved not a human right but rather a collective right of peoples".⁵⁴ But considering that human rights have very broad scope and don't exclusively direct at the isolated individual, right to self-determination should be regard as third generation human rights which provided exclusively to collectivities.⁵⁵

The Optional Protocol 1 of the ICCPR stated in the Article 1 that, "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant". The Human Rights Committee has dealt with lots of cases about the rights of self-determination according with the ICCPR and the Optional Protocol 1, such as: *Mikmaq v. Canada*, *Kitok v. Sweden*, *Croes v. The Netherlands*, *Lubicon Lake Band v. Canada*, *E.P. et al. v. Colombia*, *A.B. et al. v. Italy*, *R.L. et al. v. Canada*, *Mahuika et al. v. New Zealand*, *Diergaandt et al. v. Namibia*, *Gillot et al. v. France*.

For example, in the *Mikmaq v. Canada* case, Grand Captain of the Mikmaq tribal society claimed a violation of the right of self-determination by the Canadian Government. Because those only peoples could enjoy the right of self-determination, it is necessary for the Human Rights Committee firstly to review if the author could

⁵⁴ Nowak, Commentary on ICCPR, Page 14.

⁵⁵ About the doctrine of "three generations", see Karel Vasak, Human Rights: A Thirty-Year Struggle: the Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights, 1977

be the represent of the Mikmaq tribal who claimed themselves as a people. In ruling on admissibility, the Committee considered the author's representative authority and ultimately rejected the communication with the following reasoning:

"The Human Rights Committee observes that the author has not proven that he is authorized to act as a representative on behalf of the Mikmaq tribal society. In, addition, the author has failed to advance any pertinent facts supporting his claim that he is personally a victim of a violation of any rights contained in the Covenant."⁵⁶

This first case implied that, as a collective right, it is very difficult for the author who claimed the violation of right to self-determination to prove himself can be the representative of a people.

In some later cases, the Human Rights Committee also emphasized on the collective characteristic of the right of self-determination, and the individual complaint procedure is only admissible for individual authors. Although sometimes the Committee recognized that the author of the communication could represent a group who regard themselves as a people, a group could not be the subject who submits a communication to Human Rights Committee under the Optional Protocol 1. For example, the Human Rights Committee concluded in the *Lubicon Lake Band v. Canada* Case that:

"With regard to the State party's contention that the author's communication pertaining to self-determination should be declared inadmissible because "the Committee's jurisdiction, as defined by the Optional Protocol, cannot be invoked by an individual when the alleged violation concerns a collective right", the Committee reaffirmed that the Covenant recognizes and protects in most resolute terms a people's right of self-determination and its right to dispose of its natural resources, as an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. However, the Committee observed that the author, as an individual, could not

⁵⁶ Mikmaq v. Canada case, Human Rights Committee.

claim under the Optional Protocol to be a victim of a violation of the right of self-determination enshrined in article I of the Covenant, which deals with rights conferred upon peoples, as such"⁵⁷.

Literally, "peoples" is a concept implied collectivity in itself. And in fact, the Human Rights Committee has recognized, obviously and frequently, the right of self-determination is a collective right and can not be admissible in the individual communication procedure under the first OP of ICCPR. Consequently, the right of self-determination in no case can be conceived of as an individual rights. This collective character would also impact on the application and enforcement of the right to self-determination.

4. Realization of Right to Self-Determination

Some scholars argue that "Article 1 of ICCPR which regulates the Self-determination shall be applied and enforced like other rights of the Covenant."⁵⁸ However, there wouldn't be so many controversies about the right of Self-determination, if the application of this right was simply similar to any other human rights. The reason why there are so many debates on Self-determination is Self-determination connecting with the separation from time to time. States often show off sensitivity when talk about Self-determination, and afraid the application of Self-determination will endanger the territory integrity. So the question is whether the right of Self-determination is equivalent to the right of separation in the international law.

In fact, there are no international instrument states that the right of Self-determination equals to the right of separation. Separation is only one measure for peoples on the non-self-governing territories to attain the fully Self-determination of political status. For example, the Resolution 1514(XV) claimed in the paragraph 4 that: "all armed action or repressive measures of all kinds directed against dependent peoples shall

⁵⁷ Communication No. 167/1984 (26 March 1990), *Lubicon Lake Band v. Canada*, Para. 13.3.

⁵⁸ See Nowak, *Commentary on ICCPR*, Page 15.

cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected."⁵⁹ The principle VI of Resolution 1541 (XV) divided measures into three categories: "A Non-Self-Governing Territory can be said to have reached a full measure of Self-government by :

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State".⁶⁰

Then in 1970, the Resolution 2625(XXV) also reaffirmed that "the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."⁶¹ These instruments clearly pointed out other measures (to associate with or integrate with an independent State) to reach the Self-determination except for the separation.

As said above that, separation, association or integration is all measures to determine the political status for peoples. In another aspect, to "freely pursue their economic, social and cultural development", "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".

As a right enshrined in the ICCPR and ICESCR, not only States having responsibility for the administration of Non-Self-Governing and Trust Territories, but all State Parties of these Covenants have the obligation to "promote the realization of the right

⁵⁹ Resolution 1514 (XV).Declaration on the Granting of Independence to Colonial Countries and Peoples

⁶⁰ Resolution 1541 (XV). Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter.

⁶¹ UN General Assembly Resolution 2625(XXV), Declaration of Principles of International Law Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations.

of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations"⁶². In the opinion of the Human Rights Committee, the above clause "imposes specific obligations on States parties, not only in relation to their own peoples but *vis-à-vis* all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination". The general nature of Article 1, paragraph 3 of the Covenants is confirmed by its drafting history. It stipulates that "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination. "Such positive action must be consistent with the States' obligations under the Charter of the United Nations and under international law: in particular, States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination. The reports should contain information on the performance of these obligations and the measures taken to that end".⁶³

⁶² ICCPR and ICESCR, Common Article 1, Para. 3.

⁶³ ICCPR General Comment No. 12: The right to self-determination of peoples (Art. 1) : . 13/03/84.

III. Indigenous Peoples' Right of Self-determination

Indigenous peoples were similar with minorities in some aspects, but subjected to much more oppression, discrimination and marginalization by the colonialism than minorities. When prepare to carry out some projects, the government will evaluate the impact on indigenous peoples on its Environmental Impact Assessment Report, the indigenous peoples is the object of such evaluation, they do not enjoy the equal status as the government or have the opportunity to negotiate with the government. Thus, the indigenous peoples considered that this passive situation is caused by enjoying no right of Self-determination. However, in one aspect, indigenous peoples have a very close relationship with colony, the territory of which had been invaded by the colonist; in other aspect, the indigenous peoples have already lived together with the outsider in a existed State. So this situation mentioned above is different from the peoples on the colony or other non-self-governing territory stipulated in international human rights instruments.

Considering the principle of sovereignty and territorial integrity, to realize the Self-determination of the indigenous peoples would lead to the separation of the State's territory, the controversy on the indigenous peoples' right of Self-determination is developing more and more intensively. This could be reflected by the voting situation of the Declaration on the rights of indigenous peoples. Although this Declaration was adopted by 147 States in favors, but actually most States which have lots of indigenous peoples settled were voting for against(Australia, Canada, New Zealand and the United States) or abstentions (such as Colombia, Georgia, Kenya, Nigeria, Russian Federation and so on). The United Nations try to establishe minimum standards for the indigenous peoples and it promote the harmony and cooperation between States and indigenous peoples. However, if the standard about the indigenous peoples' right of self-determination was not be clarified clearly, the Declaration could not be applied effectively by those States.

1. The Emergence and Development of the Issue of Indigenous Peoples

If analyses from the view of indigenous peoples, the problem of indigenous peoples are totally caused by outsider or "other peoples" (actually are the colonial powers in the history). In America, there wouldn't be any aggression, expansion, exploitation and discrimination against them and the indigenous peoples will live peacefully if there is no discovery of American Continent by Columbus in 1492 or the rapid and extensive spread of the various European powers from the early 15th century onwards towards them. The term indigenous peoples are opposite to the outsider, and "indigenous peoples", "aborigines" or "aboriginal" are titles to mean those who inhabit a geographic region with which they have the earliest known historical connection. As Elsa Stamatopoulou's opinion,⁶⁴ the words "native", "indigenous", "aboriginal", "Indian" and etc. could almost be used interchangeably, because those words are the imperfect titles given by the outsiders. Indigenous peoples usually insist on the self-identification which is considered as an important right of indigenous peoples by UN. Almost all the indigenous peoples called themselves in their own name such as Sioux, Penan, Yanomami and so on which means "human being" in their language. Usually, the representatives of the indigenous peoples like the title of "people of the land" or "first nation".

How to call the indigenous peoples is not a simple question of form, it illustrates an important fact: the destiny of indigenous peoples is closely connected with the colonial plundering starting from 500 years ago. Some Latin American States propose to celebrate the discovery of American Continent in 1992, but African States strongly oppose this proposal because in their opinion this proposal equals to celebrate the colonialism in American Continent. Finally, the General Assembly of UN denied the proposal to take the year 1992 as the International Year for discovery of American Continent. Then in 1993, The 1993 International Year for the World's Indigenous People was proclaimed by the United Nations General Assembly "to strengthen

⁶⁴ Elsa Stamatopoulou, *Indigenous Peoples and United Nations: Human Rights as Develop Dynamic*, Vol. 16 Human Rights Quarterly(1994), page 73.

international cooperation for the solution of problems faced by indigenous communities in areas such as human rights, the environment, development, education and health". Subsequently, The UN General Assembly decided on 23 December 1994, that the International Day of the World's Indigenous People should be observed on August 9 every year during the International Decade of the World's Indigenous People (resolution 49/214). Later on 20 December 2004, the Assembly decided to continue observing the International Day of Indigenous People every year during the Second International Decade of the World's Indigenous People (2005-2014) (Resolution 59/174). This event means the work of the United Nations through the Human Rights Commission and the Working Group on Indigenous Peoples and the non-governmental organization of indigenous peoples have taken great strides in improving the status of the indigenous peoples.

Just as professor Berman's opinion, indigenous peoples are the first victim of the colonialism and were suffered for hundreds years.⁶⁵ Colonial expanding made the indigenous people couldn't live continually as a specific society. At that time, International law supplied legitimating for European behaviors (colonialism) in many aspects; colonization, occupation and depreciation of the culture, religion faith and achievement of the conquered and hostile indigenous peoples are legitimate in international law.⁶⁶ Pre-empt, conquest and prescription are the legal manner to obtain the territory and the concept relating to obtaining the territory such as right of discovery, *bona vacantia* and standard of civilization are the legitimate base of the European governing.⁶⁷

Indigenous peoples' hometowns are occupied by colonist around the world, though indigenous peoples are even the majority in some area, they are still in a subservient status. What they obtained is political and economic compression, what they lost is

⁶⁵ Howard R. Berman, Remarks on "*Indigenous Peoples and the Right to Self-Determination*"(Crosscutting theme II), ASIL, Proceedings(1993), page 190.

⁶⁶ Henry J. Steiner and Philip Alston: *International Human Rights in Context: Law, Political, Morals*. p.1007.

⁶⁷ Howard R. Berman, Remarks on "*Indigenous Peoples and the Right to Self-Determination*"(Crosscutting theme II), ASIL, Proceedings(1993), page190

land, culture, ethnical tradition, even life. The worst thing is that such treatment is not the historical event, it still happens today. The current international law haven't provide enough protection to indigenous peoples. The decolonization movement booming in 1960s to 1970s make the peoples in colony established their own country, but makes no change to the status of the indigenous people. Attempts to provide for an adequate protection of indigenous peoples date back to the 16th century when Francisco de Vitoria suggested that legal principles of indigenous peoples had to be respected.⁶⁸ Despite the development of international human rights under the aegis of the United Nations, international law has, so far, not been successful in finalizing a regime designed for the protection of indigenous peoples.⁶⁹

Mainly reasons to cause the problem of indigenous peoples are as follows. The first one is the basic attitude of States where indigenous peoples lived towards them. Such State considered that the lifestyles of the indigenous peoples are barbaric, low-grade and incompatible with civilization. So what they do is to impose them to suit the mainstream society but not to protect them. Second, the international organizations and professors treat the indigenous peoples as minority but not a special group. However the indigenous peoples are group other than the minority or women, only to protect the equal right of them and let them to participate in the majority society is not enough.⁷⁰ Consequently, clarify the characteristics and the special claim of the indigenous peoples seems the most important issue for solving the problem of indigenous peoples. However, the international society, international relationship system, international organizations and international law are all composed by States. The indigenous peoples, which are the object of the international law recognized by the international society from the beginning of 80s, have to endeavor tough efforts if they desire others to understand the claim of them.

⁶⁸ Francisco de Vitoria, *Reflecciones sobre los Indios y el derecho de la guerra*, Buenos Aires: Espasa-Calpe, 1946.

⁶⁹ Rfidiger Wolfrum: *The Protection of Indigenous Peoples in International Law*

⁷⁰ See Andree Lawrey: *Contemporary Efforts to Guarantee Indigenous Rights Under International Law*, *Vanderbilt Journal of Transnational Law*(1990), page 707

Since the mid-1970s, indigenous peoples were organizing together and participating in lots of transnational activities to protect themselves. Taking United Nations for an example, indigenous peoples and their interests are represented in the United Nations primarily through the mechanisms of the Working Group on Indigenous Populations (WGIP). In April 2000 the United Nations Commission on Human Rights adopted a resolution to establish the United Nations Permanent Forum on Indigenous Issues (PFII) as an advisory body to the Economic and Social Council with a mandate to review indigenous issues. In late December 2004, the United Nations General Assembly proclaimed the Second International Decade of the World's Indigenous People from 2005 to 2014. The main goal of the new decade will be to strengthen international cooperation around resolving the problems faced by indigenous peoples in areas such as culture, education, health, human rights, the environment, and social and economic development. In September 2007, after a process of preparations, discussions and negotiations stretching back to 1982, the General Assembly adopted the Declaration on the Rights of Indigenous Peoples. The non-binding declaration outlines the individual and collective rights of indigenous peoples, as well as their rights to identity, culture, language, employment, health, education and other issues. Four nations with significant indigenous populations voted against the declaration: the United States, Canada, New Zealand and Australia. Eleven nations abstained: Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa and Ukraine. Thirty-four nations did not vote, while the remaining 143 nations voted for it. Of course, there are also various organizations devoted to the preservation or study of indigenous peoples. Of these, several have widely recognized credentials to act as an intermediary or representative on behalf of indigenous peoples' groups, in negotiations on indigenous issues with governments and international organizations.

Through continuous development during 20 years, for one aspect, indigenous peoples have achieved a lot in claiming and maintaining the rights; for another aspect, the way to develop is to participate in the activity of Working Group on Indigenous

Populations, which is the lowest institute among United Nations, so lots of the demands such as economic and cultural right, land right, right of Self-determination are often refused by the higher international institutions. Especially the demands of right of Self-determination are arising strong reaction in States which have the indigenous peoples' problem, because in their opinion, Self-determination is the severe challenge to existed States.

2. The Declaration: Balance between Self-determination and Sovereignty Integrity

As it is stated above, although there are still so many debates about the right to self-determination of indigenous peoples, this rights was enshrined by the Declaration on the Rights of Indigenous Peoples (hereinafter "the Declaration") in 2007. The Declaration claimed that:

"Article 3

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.

Article 4

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."

Although it is said above, the right of self-determination is not equivalent to the right of separation, it do entitled the people who enjoyed the right of self-determination a right to establish an independent country.

On another aspect, the sovereignty over territory is the most extensive form of jurisdiction by a State under the international law. In general terms, it denotes full and unchallengeable power over territory and all the persons from time to time therein. It may be subject to certain limitations, "such as guarantees of human rights and diplomatic privileges, but apart from exceptions that are positively established, a

state's sovereignty over its territory is absolute and complete".⁷¹

The Article 2 of the United Nations Charter implied that it is an important principle of an equality of States and also include the territorial integrity and political independence. "Territory is also one criterion for Statehood and hence is essential for an entity to become a State".⁷² As it is commented by Committee on the Elimination of Racial Discrimination (hereinafter "CERD"):

"in accordance with the Declaration on Friendly Relations, none of the Committee's actions shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and possessing a Government representing the whole people belonging to the territory, without distinction as to race, creed or colour. In the view of the Committee, international law has not recognized a general right of peoples unilaterally to declare secession from a State. In this respect, the Committee follows the views expressed in An Agenda for Peace (paras. 17 and following), namely, that a fragmentation of States may be detrimental to the protection of human rights, as well as to the preservation of peace and security. This does not, however, exclude the possibility of arrangements reached by free agreements of all parties concerned"⁷³.

If the right to self-determination of the indigenous peoples has the same content and meaning to this right of "peoples", it implied that the indigenous peoples also has the right to secession from the State where they lived. However, differently from the peoples in the colonies after the Second World War, most of the indigenous peoples lived under the sovereignty of a independence state. So it would lead to the dissatisfaction of the States and even the treat to the peace of the world, if the

⁷¹ Textbook on International Law, by Martin Dixon, 5th Edition, Oxford Press, 2005, page 144.

⁷² North Atlantic Coast Fisheries Case, UK v. US, 11 RIAA (1910) 167.

⁷³ General Recommendation No. 21: Right to self-determination, CERD, Forty eighth session, 1996, Para 5.

indigenous peoples have the right to self-determination which include the right to secession.

So, as stated above, some States which have problems of indigenous peoples made opposition or abstain in the voting of the Declaration because of the clauses of self-determination. By contrast, in a joint statement made on October 16, 2006, after the adoption of the draft Declaration by the Human Rights Council, Australia, New Zealand, and the United States focused on a more fundamental concern with the Declaration: self-determination.⁷⁴ These states called the draft Declaration text "confusing, unworkable, contradictory and deeply flawed" and asserted that the right of self-determination, declared in Article 3, "could be misrepresented as conferring a unilateral right of self-determination and possible secession upon a specific subset of the national populace, thus threatening the political unity, territorial integrity and the stability of existing UN Member States."⁷⁵ Other concerns raised in the joint statement seem to stem from this central worry that unilateral self-determination could lead to secession.

As a bridge over the gap between the sovereignty over territory and the right to self-determination, "a balance needs to be struck between protecting the human rights and preserving the fabric of international society".⁷⁶ The international community apparently has recognized the necessity of the balanced understanding in the right to self-determination of the indigenous peoples. In the final version of the Declaration, indigenous peoples' right to self-determination was enshrined as said above. But it also states: "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of United Nations or constructed as authorizing or encouraging

⁷⁴ See Press Release, U.S. Mission to the UN, Statement by H.E. Ambassador Rosemary Banks, on Behalf of Australia, New Zealand and the United States, on Item 64(a) The Declaration on the Rights of the Indigenous Peoples, in the Third Committee of the 61st UN General Assembly (Oct. 16, 2006), available at [http://www.usunnewyork.usmission.gov/press releases/20061016 294.html](http://www.usunnewyork.usmission.gov/press%20releases/20061016%20294.html).

⁷⁵ Ibid.

⁷⁶ Textbook on International Law, by Martin Dixon, 5th Edition, Oxford Press, 2005, page 148.

any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereignty and independent States"⁷⁷.

Obviously, on the issue of indigenous peoples' self-determination, the Declaration made a balance between the right of self-determination and the sovereignty, territorial integrity. Although the Declaration mentioned "autonomy" or "self-government" as measures to exercise the right of self-determination by indigenous peoples, it did not make any limitation on the content and area of indigenous peoples' right to self-determination.

Consequently, the Declaration tried to make a balance and added the Article 46(1), however, despite the addition of Article 46(1), Australia and the United States still expressed their opposition to Article 3 when they explained their votes against the Declaration. Noting that it has "long expressed its dissatisfaction with the references to self-determination in the declaration," Australia proceeded to define self-determination as limited to two scenarios, both of which it believed were inapposite to indigenous peoples: "decolonization and the break-up of States into smaller States with clearly defined population groups"; and situations "where a particular group within a defined territory is disenfranchised and is denied political or civil rights."⁷⁸ Furthermore, Australia said that self-determination is "not a right that attaches to an undefined subgroup of a population seeking to obtain political independence."⁷⁹ Seemingly ignoring the function of Article 46(1), Australia concluded its discussion of self-determination by stating that it "does not support a concept that could be construed as encouraging action that would impair, even in part, the territorial and political integrity of a State with a system of democratic representative Government."⁸⁰ And the United States also insisted that the right to self-determination is addressed in Common Article 1 of the International Covenant on

⁷⁷ UN-DECRIPS, Article 46, Paragraph 1.

⁷⁸ U.N. GAOR, 61st Sess., 107th plen. mtg. at 14-15, U.N. Doc. A/61/PV.107 (Sept. 13, 2007)(statement of Ambassador Robert Hill, Permanent Representative of Australia).

⁷⁹ Ibid.

⁸⁰ Ibid.

Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, where it is "understood by some to include the right to full independence under certain circumstances"⁸¹, so although the Declaration used concepts of the right to autonomy and self-government, it was still "confusing" and "flawed". So in order to dispel the misgivings about the right of self-determination of indigenous peoples, it is important to clarify the essential content of indigenous peoples' right of self-determination.

3. The Internal and External Self-Determination

Cassese made a distinguishing between internal self-determination and external self-determination.⁸² This division was widely accepted in the academic, but still lack of supporting in the international law. According to this division, the external self-determination focus on determining the political status and social, economic development free from external interference, when the internal one, in its natural, based on a democratic element in the decision-making process. This distinguishing is commonly accepted in the academic fields, but not in practice.

Classical types of exercise of the right of self-determination include "a declaration of national independence, the consolidation of various peoples into a unified or federal States, dismemberment, and secession of a territory with simultaneous creation of a separate State, annexation by another federation of States or express confirmation of allegiance to a certain State".⁸³ The decision to follow one of these paths, however, requires that the people in question freely express its desire to do so. "The classical means to ascertain this desire is the holding of a referendum under conditions ensuring a free decision".⁸⁴

⁸¹ Press Release, U.S. Mission to the UN, Explanation of Vote by Robert Hagen, U.S. Advisor, on the Declaration of the Rights of Indigenous Peoples, to the UN General Assembly (Sept. 13, 2007), available at [http://www.usunnewyork.usmission.gov/pressreleases/20070913 204.html](http://www.usunnewyork.usmission.gov/pressreleases/20070913%204.html). This characterization of the Common Article 1 right to self-determination is somewhat misleading.

⁸² Cassese, The Self-Determination of Peoples, in Henkin 92, 96 ff.

⁸³ Cassese, The Self-Determination of Peoples, in Henkin 92, at 98ff.

⁸⁴ Ibid, 102 ff.

Some scholars insisted that the free determination of their political status can be achieved both by providing broad autonomy within a given State and by granting the relevant people corresponding participation in the State's political decision-making process. Expressed in the right of internal self-determination are its permanent characters, as well as the view that the factual recognition of the right of self-determination represents a prerequisite for the enjoyment of other (individual) human rights.⁸⁵

In fact, the concept of internal is not limited to the political sphere. CERD commented that:

"In respect of the self-determination of peoples two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination. In consequence, Governments are to represent the whole population without distinction as to race, colour, descent or national or ethnic origin. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation."⁸⁶

In the opinion of CERD, the differences between internal and external, actually, means the distinguishing between economic, social and cultural aspect and political aspect, as it is claimed in the Common Article 1.

⁸⁵ E.g. Gros Espiell, Self-determination 10; Marie, 1986 HRLJ at 198.

⁸⁶ General Recommendation No. 21: Right to self-determination, CERD, Forty eighth session, 1996 Para 3.

However, according to the original draft of the Covenants by the Human Rights Commission, the right of self-determination was to include "permanent sovereignty over natural wealth and resources", so that a people could in no case be deprived of its own means of subsistence. Through the background of the Covenants, it is remarkable that the economic self-determination was not limited to the internal aspect as CERD commented. The right of all peoples to free disposition over natural resources could apply with regard to other States and foreign companies. And internally, the governments of sovereign States or of States having responsibility for the administration of Non-Self-Governing and Trust Territories may not waste raw materials at the expense of the interests of the relevant peoples or transfer control over natural resources to other States or foreign companies without corresponding compensation for the benefit of these peoples.⁸⁷

Actually the external or internal distinguishing do not depend on the political sphere or economic, social and cultural sphere, but depend on the measures or content to realize this right. The appearance of external self-determination was relative to the internal self-determination. Before the scholars put forward the concept of internal self-determination, there was not the concept of external self-determination, although the right of self-determination did mean external self-determination in most cases. The external self-determination mainly concerned the international status of peoples not only in political but also economic, social and cultural sphere. To some extent, it closely related to the principle of sovereign equality of states.⁸⁸ Based on the international instruments and international customary law, such as the Article 1 of UN Charter, Common Article 1 of the Covenants, and the legislative background, related instruments and resolution of these articles, Antonio Cassese divided the external self-determination into three aspects: "the external self-determination of colonial peoples"⁸⁹; "the external self-determination of peoples subjected to foreign

⁸⁷ See Cassese, *The Self-Determination of Peoples*, in Henkin 92, at 103.

⁸⁸ See Allan Rosas: *International Self-determination*, on *Modern Law of Self-Determination*, 1993, at 227.

⁸⁹ Cassese, *Self-determination of Peoples: A Legal Reappraisal*, Cambridge University Press 1995, page 71-73.

domination or occupation"⁹⁰; and the "whole peoples in a State freely determined their political status and economic, social, cultural development without the intervention of other States"⁹¹.

However, actually Cassese confused the self-determination with the state sovereignty in the third category. As Gudmundur Alfredsson argued, interfering in the internal affairs of a State is obviously infringing the sovereignty of the State which includes the principle of territory integrity and independence. It also violated the principle that prohibition of armed force, if this constituted armed intervention. In this case, the statement of violation of self-determination was utterly useless to the injured State.⁹²

And the concept of so-called "peoples subjected to foreign domination or occupation" is also not very clear in Cassese's theory. This statement is originated from the Declaration on Principles of International Law which said "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [of equal rights and self-determination]". As Cassese said, "alien subjugation, domination and exploitation" means foreign military domination in fact. Cassese think the right of self-determination of peoples on a State would be violated, when this State was aggressed and dominated by other foreign States. However, the most useful international principle which justified the armed act of peoples of the injured States should be the right of self-defense. In this situation, Cassese also confused the concept of "right of self-defense" and the "right of self-determination". There is another one exceptional case according to his second category that is the Palestinian territory which dominated by Israel. It is helpful to recognize that the right of self-determination of Palestinian people was violated, because Palestine still have not established an independent State who commonly recognized as the subject enjoyed the right of self-defense in the international law. But this case is really special in the

⁹⁰ Ibid, page 90.

⁹¹ Ibid, page 55.

⁹² See Gudmundur Alfredsson, *Different Forms of and Claims to the Right of Self-determination*, in *Self-determination: International Perspective*, St. Martin's Press, 1996, page 86.

international community, so the second category of Cassese's theory is not universally applicable *de facto*.

It is obviously that two of these three categories are applicable to peoples on a sovereign state, and virtually include lots of other international principles such as principle of sovereign equality of states, principle of non-intervention, and right of self-defense and so on. It is not necessary use the right of self-determination to cover these principles for avoiding the confusion of different concepts. If excluded these two aspects, the remained one which could distinguish from other international principles and exist independently is the first aspect that the self-determination of peoples on colony and other Non-Self-Governing territories.

As the statement of Cassese, the internal self-determination means the rights of fully self-government which indicate that peoples should really freely determine their own political and economic regime. The most important character of internal self-determination which different from the external one is the permanent character. Based on this permanent character, James Anaya called internal self-determination as "ongoing self-determination", and external one as "constitutive self-determination"⁹³.

Helsinki Final Act supplied an evidence to support the permanent character of internal self-determination. It claimed in its Part VIII that:

"By virtue of the principle of equal rights and self- determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development."⁹⁴

Some scholars insisted that the "always" and "when and as they wish" actually implied that the right of self-determination is not the right which could not be

⁹³ See James Anaya: *A Contemporary Definition of the International Norm of Self-determination*, Transnational Law & Contemporary Problems, 1993, page 151.

⁹⁴ Conference on Security and Co-operation in Europe, Final Act, Helsinki 1 August 1975.

exercised after peoples have got the independent status, but also the right which could be implemented continuously.⁹⁵

However, the permanent character mentioned above is only an abstract concept, which is less complex than the concept of internal self-determination. Cassese classifies the beneficiary of internal self-determination into three categories, namely, (1) all peoples in a sovereign state; (2) minority group, including ethnic, religious and linguistic minority and indigenous peoples; (3) racial groups being refused to participate in government and political affairs. In accordance with Cassese's opinion, "internal self-determination of peoples in sovereign states means people have a right to enjoy a representative democratic government"⁹⁶. He thinks such right has been confirmed by international conventions such as ICCPR and ICESCR in 1966. In Common Article 1, it states: "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". Cassese considered "freely" has two levels of implications: firstly, it asks people to select their representative and political leader without control or inappropriate impact by domestic powers. In this level, internal self-determination is considered to be the concentrated expression of civil and political rights. Secondly, it means to exclude the foreign intervention which related to the external self-determination together closely.⁹⁷ However, these two levels implied in "freely" seems only Cassese's own explanation. Especially for the first level, there is no basis at all.

Declaration on Principles of International Law and 7 paragraphs explanatory presentation haven't definitely mentioned the concept of internal self-determination in literal, let alone concepts such as democratic system. The expression in Article II of *Declaration on the Granting of Independence to Colonial Countries and Peoples* is

⁹⁵ Such as Jean Salmon: *Internal Aspects of the Right to Self-determination: towards a Democratic Legitimacy Principle?*, in *Modern Law of Self-determination*, 1993, page 269.

⁹⁶ Cassese, *Self-determination of Peoples: A Legal Reappraisal*, Cambridge University Press 1995, page 102.

⁹⁷ *Ibid*, page 55.

similar with the Common Article 1 in ICCPR and ICESCR. From the purpose and other six paragraphs, there is not any meaning about internal self-determination or representative democratic government implied in this instrument.

So far, as it is mentioned above, only Helsinki Final Act 1975 and the General Comment of CERD concerned "internal" or "internal self-determination". But it could not be proved that international law have recognized the "internal self-determination", because these two instruments are not legal binding instruments and with ambiguous terms. So the aspect of non-intervention in the so-called "internal self-determination" has been already an independent principle in the international law, and the aspect of democracy still lack of evidence in the international law. Lots of scholars considered that the internal self-determination should relate to democracy⁹⁸, but even Cassese accepted that this aspect of internal self-determination "did not form an international customary law".⁹⁹

And in the situation of minorities groups or racial groups being refused to participate in government and political affairs as the beneficiaries of internal self-determination, it is similar with the above statement. Some interpretations were overlapped with other human rights or international principles, and some are purely literal interpretations by scholars and lack of evidence in the international law.

In a word, the description of internal self-determination could be concluded as these points, including:

(1) all peoples in existed sovereign States have the right to freely determination their political, economic, social and cultural status, and forms of government with foreign intervention. This is overlapped with the principle of non-intervention in the international law.

⁹⁸ Such as Thomas Frank thought the internal self-determination should be understood as "entitlement to democracy", see Nihal Jayawickrama, *The Right of Self-determination - A Time for Reinvention and Renewal*, Suskachewan Law Review (1993).

⁹⁹ Cassese, *Self-determination of Peoples: A Legal Reappraisal*, Cambridge University Press 1995, page 103.

(2) Racial groups as part of peoples in existed sovereign States have the right to equally participate the decision-making process on the basis of non-discrimination. But this is the fundamental content of the principle of non-discrimination which is one of most important human rights principles.

(3) The minorities groups should enjoy the right to autonomy in some degrees. But the issues about the minorities' right of self-determination are still very controversial now.

(4) The whole peoples in the existed sovereign States have the right to enjoy the representative democratic government. As an issue of domestic political system, whether it could be regulated by the international law. This point is the most controversial one in these four points.

Consequently, it is stated above that lots contents of internal of self-determination is still controversial in the international community at present, except other aspects of internal self-determination is overlapped with existed other international principles. In the perspective of legal positivism, the internal self-determination could not be supported by the international law, not only the legal binding treaties but also the international customary law. Whether the distinguishing of internal and external self-determination could solve problems which the right of self-determination faced in the new situation of future, this should be studied further.

4. Interpretation of Indigenous Peoples' Right to Self-determination

As stated above, for the first time in international law, Article 3 of the Declaration on the Rights of Indigenous Peoples explicitly recognizes the right of indigenous peoples to "self-determination." Although the Declaration passed with the overwhelming majority, lots of States where abundant indigenous peoples settled vote against this Declaration for worrying about the self-determination issue. This part tries to review the root of the indigenous peoples' right to self-determination, and interpret its meaning in the Declaration and clarify its contents in the international law.

As explained above, the right of self-determination in the international law only applied to the peoples on the colony and other Non-Self-Governing territories. But lots of western scholars queried this scope of application, accompanying with the end of the decolonization movement. The internal and external self-determination theories were also appeared in that atmosphere. Whether indigenous peoples could constitute the concept "peoples" in the international law also was becoming an important controversial issue in that time. To indigenous peoples, this issue related to a series of problems such as the protection of their other human rights, their status in the international community and so on.

The United Nations paid attention on whether indigenous peoples could be recognized as "peoples" who enjoyed the right of self-determination in the international law, since the UN Working Group on Indigenous Populations established. Finally, it selected the "population" instead of "peoples" to avoid invoking the right of self-determination by the indigenous peoples. Similar issues of diction also included the "International Decade of the World's Indigenous People", "Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people" and "United Nations Voluntary Fund for Indigenous Populations". When the General Assembly claimed "International Decade of the World's Indigenous People" in its resolution 48/163 of 21 December 1993 and "Second International Decade of the World's Indigenous People" in resolution 59/174 on 20 December 2004, it also used the word "people" but not "peoples" for the same reason.

But indigenous representatives always stress that they are "peoples" and not merely "populations" or "groups". Indigenous peoples noticed that the right to self-determination is enjoyed by "peoples", while they become familiar with modern international law. "In any case, many of them in the past were viewed by states as sovereign nations and thus several treaties were concluded with them".¹⁰⁰ The ILO

¹⁰⁰ Elsa Stamatopoulou, *Indigenous Peoples and United Nations: Human Rights as Develop Dynamic*, Vol. 16 *Human Rights Quarterly*(1994), page 73.

changed its terms earlier than UN. Compared to the term used in the No.107 Convention, 1957 which is "the Indigenous and Tribal Populations", the ILO No.169 Convention, 1989 accepted the terms of "Indigenous and Tribal Peoples". However, it also claimed in the Article 1(3) that "the use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law". Nowadays, from the adoption of Declaration on the Rights of Indigenous Peoples to the establishment of Expert Mechanism on the Rights of Indigenous Peoples, it is obviously that the so-called "indigenous peoples" have been universally accepted in the UN system progressively. But in the arena of United Nations whose action mainly participated by member States, the main leadership of this issue is still controlled by sovereign States.

In fact, comparing to the reasons why States rejected indigenous peoples on the issue of self-determination - mainly focus on the anxiety of secession or independence, the reasons why indigenous peoples call for self-determination are more complicated. Jeff J. Corntassel and Tomas Hopkins Primeau divided indigenous peoples into three categories in the terms of the extension of the right to self-determination. The first type are those groups (or amalgams of groups) asserted and were extended the right of self-determination under the decolonization process, many only after bloody wars of "national liberation". The second type of aboriginal peoples was in the Eastern Hemisphere and consists of what have also been referred to as "non-state nations". Non-state nations can be considered the more broadly conceived "indigenous" groups, because some powerful states within this hemisphere have steadfastly refused to recognize the presence of any indigenous groups within their territories as they equate "indigeneness and [Western] colonization". And the third type has been referred to as "indigenous populations" which are found in settler-colonial societies, and are chiefly comprised of "native" groups found primarily in the Western Hemisphere (although with some exceptions such as Australia, New Zealand, Israel, and South Africa). In the Process of decolonization the right of self-determination was extended or forcibly exercised by the "settlers" from the colonizing group, while the indigenous

population remained subjugated, excluded, and marginalized. These are "indigenous groups" as they are more traditionally conceived.¹⁰¹

According to the generally accepted or widely used definition of indigenous peoples, only the last category is the indigenous peoples with some basic characters which have historical relationship with the colonialism or cultural relationship with ancestors on the territory. The first category is actually the peoples on colony whose right of self-determination was recognized by the international law. And the second category is the national, ethnic, religious or linguistic minorities whose rights are different from the indigenous peoples as stated above. The truly indigenous peoples are the third category in the statement of Jeff J. Corn tassel and Tomas Hopkins Primeau. It is unnecessary to divided indigenous peoples into these categories in fact. But their description of the third category could indicate a crucial reason why indigenous peoples seek for right of self-determination.

Even at present, most of indigenous peoples were subjugated, excluded, and marginalized by dominate societies. As some scholars point out, "many governments based their policies on the assumption that indigenous peoples' cultures and languages would disappear through integration and assimilation by the dominant culture - what modern political science calls 'the nation state'. Therefore, states have not tolerated the assertion of indigenous identities through language and indigenous-controlled education. Such cultural intolerance, forced conversion into the religion of the dominant community, pressure to abandon traditional ceremonies, seizing of indigenous lands, and outright terrorization and killing have been the order of the day for millions of the world's indigenous people".¹⁰² The extension of colonialism impacted deeply on indigenous peoples with depriving of their independence, territories and rights to determination their status. And after several centuries have

¹⁰¹ See Jeff J. Corn tassel and Tomas Hopkins Primeau: *Indigenous Sovereignty and International Law: Revised Strategies for Pursuing Self-Determination*, Vol.17, Human Rights Quarterly (1995), page 352-353.

¹⁰² Elsa Stamatopoulou, *Indigenous Peoples and United Nations: Human Rights as Develop Dynamic*, Vol. 16 Human Rights Quaterly(1994), page 65.

been passing, indigenous peoples still in the most vulnerable position in their states. "So indigenous peoples would doubt whether their governments have the desire or ability to promote their life better",¹⁰³ and they seek to determination their destiny by themselves.

However, although most indigenous peoples call for the right of self-determination, theirs goals of realization of self-determination are varying differently between different groups. In the analysis by Hannum, "the ultimate political status sought by indigenous groups through self-determination varies tremendously, reflecting the diversity of situations in which indigenous peoples find themselves and the diverse character of indigenous groups themselves. Some groups aspire to complete independence and statehood, while others demand autonomy or self-government only in specific areas, such as full control over land and natural resources."¹⁰⁴ Lawrey also agreed this conclusion and pointed out that "not all indigenous groups are demanding self-determination in its fullest, external sense: many groups simply want greater control of their own affairs within the confines of the state"¹⁰⁵.

The demand of self-determination of indigenous peoples in the practice could prove the correctness of above analysis. For example, in February 1992, the Grand Council of the Crees of Quebec submitted a 220-page report to the Commission on Human Rights in which they made an interesting analysis of their right to self-determination. The report concluded that:

"8. A state may include more than one 'people', each of which is entitled to the exercise of the right to self-determination. The right to self-determination of each people must be recognized and respected in accordance with international law, without discrimination.

¹⁰³ Andree Lawrey: *Contemporary Efforts to Guarantee Indigenous Peoples Under International Law*, 23 Vanderbilt Journal of Transnational Law (1990), Page 762.

¹⁰⁴ Hurst Hannum, *New Development in Indigenous Rights*, Vol. 29, Virginia Journal of International Law(1988) page 671-672.

¹⁰⁵ Andree Lawrey, *Contemporary Efforts to Guarantee Indigenous Rights Under International Law*, Vol.23 Vanderbilt Journal of Transnational Law(1990), page 763.

9. In the context of Quebec, the Quebec peoples and indigenous peoples constitute 'peoples' under international law. The reality is that there are potentially conflicting claims to self-determination and territory that must be impartially and equitably addressed.

10. The right to self-determination is not absolute. It does not automatically include the right to secede from the Canadian federation. In each specific case, there may be various other international principles that must be taken into account. Although the world situation is changing, most jurists or publicists do not currently recognize an unlimited right to secede under international law in all cases.

...

31. The ongoing colonized treatment of indigenous peoples by Canada and Quebec serves to significantly strengthen the claim of indigenous peoples to external self-determination under international law. Colonialism in all of its manifestation has been unanimously condemned by the United Nations and all its Member States. The internationally recognized remedy to achieve decolonization is self-determination."¹⁰⁶

Consequently, to the indigenous peoples, there would not be necessary conflict between self-determination and territorial integrity. With a few exceptions, indigenous peoples also rejected secession or independence. They emphasized on the self-government, and manage their affairs and life by themselves. It is crucial to understand that the measures to realize the right of self-determination should depend on different situation. There are obviously more choices except the independence. To indigenous peoples, the demand of self-determination was not for secession, however, it is also understandable that States do not yield an inch in this issue, considering so many examples of realization of self-determination finally lead to independence during the process of decolonialization. Although the anxiety of States about

¹⁰⁶ See Elsa Stamatopoulou, *Indigenous Peoples and United Nations: Human Rights as Develop Dynamic*, Vol. 16 Human Rights Quarterly(1994), page 79.

self-determination is evident, the indigenous people still insisted on this right. Because compared to the self-government and autonomy, the self-determination is universally accepted in the international law. In the international law, the right to self-government and right to autonomy have not been recognized as international principles. But the right of self-determination is recognized as a basic principle by international conventions, resolutions and cases, although there are still lots of arguments about the content, application and other aspects of this right. Exactly, the right of self-determination is the best tool for indigenous peoples to negotiate with States and get more benefits on their political, economic, social and cultural fields in the contemporary context.

Clauses which concerned the right of self-determination in the Declaration are Article 3 and Article 4. Article 3 is used like the skeletal foundation which stated the right of self-determination of indigenous peoples in the similar terms of Common Article 1 of the Covenants. And Article 4 is the most important article about the indigenous peoples' right of self-determination as some scholars insisted. Because this article claimed clearly that the right to self-government and autonomy are the measures to realize this right. However, "as a matter of pure logic, nothing in Article 4 necessarily limits the right of self-determination to 'autonomy or self-government'; rather, these arrangements are presented as examples of the legitimate exercise of internal self-determination".¹⁰⁷

Although, as stated above, internal self-determination hasn't been recognized by international law, the term "internal self-determination" is the most appropriate concept to describe the self-determination of indigenous peoples in the Declaration. The right to self-government and autonomy is obviously the basic content of internal self-determination. Furthermore, it is not a limitation to the indigenous peoples' right of self-determination, but the Declaration supplied more clues about the internal

¹⁰⁷ Christopher J. Fromherz, *Indigenous Peoples' Court: Egalitarian Juridical Pluralism, Self-determination, and the United Nations Declaration on the Rights of Indigenous Peoples*, University of Pennsylvania Law Review, May, 2008, page 10.

self-determination. For example, Article 35 in the Declaration described: "indigenous peoples have the right to determine the responsibilities of individuals to their communities", which is a kind of the social aspect of internal self-determination. Article 18 stated: "indigenous peoples have the right to participate in decision-making in matter which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions" and Article 23 said "indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions" which is a kind of the democratic aspect of internal self-determination in accordance with aforesaid Casses's theory. Article 46 paragraph 1 emphasized that "nothing in the Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States" which exclude any possibility of claim for external self-determination, especially the independence or secession. No matter what content is, the self-determination shall only restrict to the internal self-determination.

In a conclusion, the right to self-determination of indigenous peoples shall be the widest range of internal self-determination including but not limited to the right to self-government or autonomy which can be deduced from the context of the Declaration, the opinions of scholars and the practices of the indigenous peoples. Although the Declaration suggest the aforesaid standpoint, it hasn't express that in the text. Therefore, many states equate the self-determination of indigenous peoples simply with right of self-government or autonomy. For another aspect, indigenous peoples also use the term of "self-determination" without any restrictive words and

expressions which would possibly lead to the anxiety of states. The distinguishing between internal self-determination and external self-determination is lack of legal practice and unrecognized by the international, and is only be used in the academic field. But from the current situation, to resolve the problem of the indigenous peoples, "internal self-determination" is a suitable and valuable concept to describe the self-determination of indigenous peoples.

IV. The Right to Self-determination of Indigenous Peoples in the Arctic Region

The Arctic Region is an area where indigenous peoples settled abundantly, such as Inuit peoples and Sámi peoples. Nowadays, problems of indigenous peoples are also emerged sharply and underlined through the logging industry, megaproject and, especially, the climate change. Some indigenous peoples in this area enjoy a good degree of political representation, but this does not always guarantee that their right of self-determination are recognized and respected in practice.

The Sámi people mainly spread in the Nordic area - Sweden, Norway, Finland and Northern Russia, with a population of 100,000. In 2000, the Sámi Parliament of Norway, Sweden and Norway established a council of representatives among them, called the Sámi Parliamentary Council. The Sámi is officially recognized as indigenous peoples by the Norwegian Constitution. And the population of Sámi in Finland is approximately 7,000 and considered as a linguistic minority rather than an indigenous people. Furthermore, Russian government claimed officially that there are only 50,000 indigenous persons in Russia. Actually, it is estimated that there are almost 44 indigenous peoples, from large groups such as the Evenk and Nenets to small groups such as the Enets and Oroch, with around 250,000 individuals live in Russia now. Approximately half of the 42,000 indigenous people live in Canada's Northwest Territories (NWT), mainly Inuit and First Nation, and their indigenous peoples' rights have been recognized partly through the land negotiation and land claim agreement. In 1999, the territory of Nunavut was carved out of the NWT, following a land claim by the Inuit.¹⁰⁸

Although the Greenland was granted more power in self-government, this section would not focus on it. Because Greenland is a overseas territories and in keeping with other standards of Non-Self-Governing Territories as stated above, just as Gudmundur Alfredsson insisted, the Greenlanders should be considered as peoples but not

¹⁰⁸ More information about the indigenous peoples in the Arctic, see Fact sheet 2, Indigenous Peoples in the Arctic Region, United Nations Permanent Forum on Indigenous Issues, 2009.

indigenous peoples. This section would select Nunavut and Finnmark as two examples to study, considering they are representative samples of Inuit and Sámi peoples who were most typical indigenous peoples in the Arctic area. This section tries to analyze the political, economic, cultural and social status of indigenous peoples in these two regions, and the degree of enjoying the right to self-determination by indigenous peoples. Through this analysis, it would be more clearly to conclude the content of self-determination of indigenous peoples in practice, and previous, current or future situation of enjoying the right to self-determination by indigenous peoples, give some advices about this issue in the future.

1. The Right of Self-determination of Indigenous Peoples in Nunavut

The indigenous peoples of Canada are collectively referred to as "Aboriginal people". The Constitution Act, 1982 of Canada recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. "The Inuit number 50,480 people, living in 53 Arctic communities in four Land Claims regions: Nunatsiavut (Labrador); Nunavik (Quebec); Nunavut; and the Inuvialuit Settlement Region of the Northwest Territories."¹⁰⁹ On April 8, 2008, the House of Commons adopted a resolution calling on Parliament and the government of Canada to "fully implement" the standards contained in the UN Declaration.¹¹⁰ However, the government of Canada has continued "an aggressive strategy to undermine the Declaration and prevent its application in Canada".¹¹¹ As the youngest territory, Nunavut whose main population is Inuit would be a good object to review for concluding the situation of self-determination of indigenous peoples in Canada.

(a) Introduction and history of Nunavut

More than 1000 years ago, people migrated from northern Alaska to North American

¹⁰⁹ The International Work Group for Indigenous Affairs, the Indigenous World, 2009, page 58.

¹¹⁰ The vote was 148-113 in favour of the Motion: see House of Commons Debates, No.074, (8 April 2008) 4656. The text of the Motion is contained in House of Commons, Status of Women Standing Committee, "Third Report of the Committee (United Nations Draft Declaration on the Rights of Indigenous Peoples)" Sessional Paper No. 8510-392-55 (13 February 2008).

¹¹¹ The International Work Group for Indigenous Affairs, the Indigenous World, 2009, page 61.

Arctic and Greenland who is the direct ancestors of Canadian Inuit nowadays. Also in that time, the ancestors of the Inuit reached the Nunavut region. "Here they are thought to have absorbed, or displaced, a previously established hunting people with a similar culture who had occupied the region for at least 1,500 years prior to their arrival."¹¹²

Nunavut, "our land" in Inuktitut, covers 1,932,255 square kilometers of land and 160,935 square kilometers of water in Northern Canada including part of the mainland, most of the Arctic Archipelago, and all of the islands in Hudson Bay, James Bay, and Ungava Bay (including the Belcher Islands) which belonged to the Northwest Territories of Canada. The region now known as Nunavut has supported a continuous indigenous population for approximately 4,000 years. Statistics Canada estimated Nunavut's population to be 32,435 as of October 1, 2009. This figure represents an increase of 0.78% or 252 people from July 1, 2009.¹¹³ As of the 2006 Census, "24,640 people identifying themselves as Inuit (83.6% of the total population), 100 as First Nations (0.34%), 130 Métis (0.44%) and 4,410 as non-aboriginal (14.96%)".¹¹⁴ The main languages in this territory included Inuktitut, Inuinnaqtun, English and French. Nunavut's 26 communities are spread across nearly two million square kilometers - almost one-fifth of Canada-including Iqaluit, Rankin Inlet, Arviat, Baker Lake, Igloolik, Cambridge Bay and so on.¹¹⁵

Prior to colonization, the Inuit of Nunavut lived in numerous, dispersed clusters of small hunting camp, and individual camps within each group leaned to constitute of affiliated and related extended family. The extended family coordinated its members

¹¹² Rigby, Bruce, John MacDonald and Leah Otak: *The Inuit of Nunavut, Canada*, in *Endangered Peoples of the Arctic*. Milton M. R. Freeman, ed. Greenwood Press. Page 93.

¹¹³ See Nunavut Bureau of Statistics , available at <http://www.gov.nu.ca/eia/stats/Popest/Population/Nunavut%20and%20Canada%20%20Population%20Estimates%20StatsUpdate.%20Third%20Quarter%202009.pdf> visit at 2010-01-13.

¹¹⁴ See Statistics Canada available at <http://www12.statcan.ca/census-recensement/2006/dp-pd/prof/92-594/details/page.cfm?Lang=E&Geo1=PR&Code1=62&Geo2=PR&Code2=01&Data=Count&SearchText=Nunavut&SearchType=Begin&SearchPR=01&BI=Population&Custom=>, visit at 2010-01-13.

¹¹⁵ See *Nunavut Communities*, available at <http://www.gov.nu.ca/english/about/Nunavut%20Communities%20Jan%2008.pdf>, visited at 2010-01-14.

and made decisions, and the overall leadership of each group rested with the oldest male¹¹⁶, this kind of extended family structure and informal self-regulation existed for long period before contact with European. In 1976, the Inuit Tapiriit Kanatami (then called the Inuit Tapirisat of Canada) and the federal government held a negotiation and began to discuss the possibility of division of the Northwest Territories. In 1973, the Inuit Tapirisat of Canada (hereinafter referred to as "ITC") launched a research on the Inuit land utilization, which constitutes the geographic basis of the Nunavut Territory. On April 14, 1982, a referendum on separation was held all over the Northwest Territories. The voting in favors counts the majority of all residents. And seven months later, the federal government adopted a conditional agreement.¹¹⁷ In September 1992, the land claims agreement was decided and ratified by nearly 85% of the voters in Nunavut. On July 9, 1993, the Canadian Parliament passed the Nunavut Act and Nunavut Land Claims Agreement Act. On April 1, 1999, The Nunavut Territory was eventually established and the geographical and political map of Canada changed. In this day, a new jurisdiction-Nunavut was established in Canada and the government of Nunavut comes into existence completely. Nunavut was formed from the eastern part of the Northwest Territories and was officially named Canada's third territory.

The establishment of Nunavut is the result of negotiations and planning by the Inuit of the Canadian Eastern and Central Arctic for more than 20 years. The 1993 Nunavut Land Claims Agreement titled about 356,000 square kilometers of land (about 18% of Nunavut), of which nearly 38,000 square kilometers include title to subsurface (mineral) rights to the Inuit. The Nunavut Land Claims Agreement also gave Inuit the right to self-government and self-determination. "While Inuit represent 85% of the population of Nunavut, they have chosen to pursue their aspirations of self-determination through a public government system rather than through an

¹¹⁶ Natalia Loukacheva: *The Inuit of Greenland and Nunavut: From Subjugation to Self-Government? In The Arctic Promise - Legal and Political Autonomy of Greenland and Nunavut*. Page 17

¹¹⁷ More details about the history of establishing Nunavut, see Peter Jull. "Building Nunavut: A Story of Inuit SelfGovernment". *The Northern Review* (Summer 1988). Yukon College. page 59–72.

Inuit-specific self-government arrangement. Nunavut is governed through a public government framework that represents all residents".¹¹⁸

Nunavut's economy is based on the harvesting traditions of its Inuit majority, which continues to maintain strong ties to the land. The harvesting economy is worth at least \$40 million annually and provides many families with an affordable and important source of nutritious food. Additionally, some new opportunities are rapidly transforming the economy of Nunavut. For examples, in 2007, mineral exploration expenditures reached \$234 million and have created additional employment and investment opportunities for Nunavut residents and Canadians; diamond, gold, base metal and uranium deposits are being explored in every region of Nunavut; the potential discovery of oil and gas resources has been estimated at up to 20% of Canada's future resource. Furthermore, some industries which connected the traditional Inuit life style and the modern commerce have been established, such as turbot, shrimp, and char fisheries; the fur and sealing industry; eco-tourism and so on.¹¹⁹

Nunavut's Chief Executive is a Commissioner appointed by the federal Minister of Indian Affairs and Northern Development. Similar to the other territories, the Commissioner's role is symbolic and approximately analogous to representing. Under the principles of Canadian parliamentary democracy, there is a public government in Nunavut. All residents of Nunavut are entitled to work for the governmental office and elect Members of the Legislative Assembly (MLA) on an individual rather than a party basis. Conduct of the government and its members should comply with the "*Pinasuaqtavut*" which is the statement of values and priorities. And the government is also committed to *Inuit Qaujimajatuqangit* as a guiding principle of public government. *Inuit Qaujimajatuqangit* embodies Inuit traditional knowledge and

¹¹⁸ See *Nunavut, a New Government, a New Version*, available at <http://www.gov.nu.ca/english/about/newvision%20Jan%2008.pdf>, visit at 2010-01-13.

¹¹⁹ More details about the economy in Nunavut, see *The Economy*, Government of Nunavut.

values, and guides the government in framing decisions, policies and laws that reflect the key philosophies, attitudes and practices of Nunavut's Inuit majority.¹²⁰

The flag of Nunavut which is consisted of blue, gold and red colors, inuksuk and star symbolize the riches of the land, sea and sky. Red color implied Canada, while the inuksuk means stone monuments which guide people on the land and mark sacred and other special places. The star is the Niqirtsuituq - the North Star which is the traditional guide for navigation. The North Star also symbolizes the leadership of elders in the community. On the coat of arms of Nunavut, the dominant colors, the inuksuk and the star also have the similar symbolism with the flag. In the base of the shield, the qulliq, or Inuit stone lamp, represents light and the warm of family and the community. The concave arc of the five gold circles refers to the life-giving properties of the sun arching above and below the horizon. In the crest, the iglu represents the traditional life of the people and the means of survival. The Royal Crown symbolizes public government for all people of Nunavut and establishes Nunavut as a partner in Confederation. The tuktu (caribou) and qilalugaq tugaalik (narwhal) refer to land and sea animals which are part of the natural heritage of Nunavut. The base of the crest is composed of land and sea and features three species of Arctic wild flowers. The motto in Inuktitut – Nunavut Sanginivut – means "Nunavut, our strength."¹²¹

(b) The political status of indigenous peoples in Nunavut

As stated in the Declaration, the right of self-determination surely should include "freely determine their political status". This part would review the political status of Inuit and other indigenous peoples in Nunavut from the legal and practical perspective, and conclude the situation of self-determination in political fields, especially "the right to autonomy or self-government in matters relating to their internal and local affairs".

¹²⁰ More details about the governance system in Nunavut, see *Consensus Government*, Government of Nunavut.

¹²¹ More details about the flag and coat of arms of Nunavut, see *About the Flag and Coat of Arms*, Government of Nunavut, available at <http://www.gov.nu.ca/english/about/symbols.shtml>, visited at 2010-01-18.

Canada's three territories - the Northwest Territories, the Yukon and Nunavut - are primarily north of 60° latitude. As one of three territories of Canada, Nunavut is clearly distinct from provinces in the constitutional status. While provinces exercised constitutional powers in their own rights from the Constitution Act (1867), the territories exercised delegated powers under the authority of the Parliament of Canada. So Nunavut territory also derived its mandates and powers from the Parliament of Canada through Nunavut Act and Nunavut Land Claims Agreement Act. Historically, this authority has meant that the North was largely governed by federal officials. "However, over the past 40 years, major changes have occurred in the governance of the territories. Federal statutes have established a legislative assembly and executive council for each territory and province-like powers are increasingly being transferred or "devolved" to territorial governments by the Government of Canada. This process, known as "devolution", provides greater local decision-making and accountability".¹²² Although territories got more power and authorities on decision-making and accountability through devolution, it did not mean territories are autonomous regions of Canada. As the source of authorities, clauses in Nunavut Act and Nunavut Land Claims Agreement Act should be reviewed further to judge the political status of indigenous peoples in Nunavut.

The Nunavut established through acts by Parliament of Canada instead of a referendum of whole local people. However, the Inuit communities and the Inuit organizations, especially COPE, the Inuvialuit regional body, and Inuit Tapirisat of Canada (ITC), the national Canadian Inuit body promoted a lot in every step of this process. Such as ITC which has changed its name to Inuit Tapiriit Kanatami now promoted, lobbied and negotiated changes in government policy and program delivery that would put control back into the hands of Inuit communities. So the establishment of Nunavut, to a great extent, depends on the determination, effort and promotion of Inuit people in Nunavut. This is the result of their own decision. As it is said in the

¹²² See *Difference between Canadian Provinces and Territories*, available at <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=provterr&sub=difference&doc=difference-eng.htm>, visited at 2010-1-19.

preamble of Nunavut Land Claim Agreement Act, the Agreement negotiated between Canada and the Inuit of the Nunavut Settlement Area was based on the objective "to provide for certainty and clarity of rights to ownership and use of lands and resources and of rights for Inuit to participate in decision-making concerning the use, management and conservation of land, water and resources, including the offshore". It is obviously that as one of the legal foundation of the Nunavut, this Act put the right for Inuit to participate in decision-making in some affairs as its basis. And the Nunavut Act stated in Article 23 and 24 that:

"23. (3) Subject to any other Act of Parliament, nothing in subsection (2) shall be construed as preventing the Legislature from making laws of general application that apply to or in respect of Indians and Inuit.

24. The Legislature may not make laws under section 23 that restrict or prohibit Indians or Inuit from hunting, on unoccupied Crown lands, for food game other than game declared by order of the Governor in Council to be game in danger of becoming extinct."¹²³

Although these clauses do not regulation any rights about autonomy directly, they prevent any laws which restrict some related rights of indigenous peoples. Consequently, the Nunavut Act and Nunavut Land Claim Agreement Act deal with some aspects of protection of indigenous peoples' rights, they actually do not state any terms related to the autonomy or self-government of indigenous peoples directly. So it hard to conclude that the Inuit and other indigenous peoples enjoy the right of self-determination definitely in the political field *de jure*.

"Nunavut, which has a public government established through an act of Parliament and safeguarded by the Canadian constitution, will reflect, to a greater degree than any previous administration, the culture, values and aspirations of the majority of its population, the Inuit".¹²⁴ *De facto*, the Inuit and other indigenous peoples could enjoy more rights to participate the decision-making and determine their own affairs

¹²³ Nunavut Act, Article 23 and 24.

¹²⁴ Rigby, Bruce, John MacDonald and Leah Otak: *The Inuit of Nunavut, Canada*, in *Endangered Peoples of the Arctic*. Milton M. R. Freeman, ed. Greenwood Press. Page 103.

because of the demographic composition of Nunavut then it is regulated on law. The Constituencies of Nunavut is divided based on the Inuit communities. And most of the Members of Legislative Assembly were belonging to Inuit or other indigenous peoples. Furthermore, the Pinasuaqtavut: 2004-2009, which is values and priorities guided government, consisted of four components:

- "1. Healthy Communities identifies the need to ensure the overall health of Nunavut, encompassing all aspects of a community and its relationship to the land and its residents.
2. Simplicity and Unity represents a commitment to ensuring processes are kept accessible to the public, and encourages public participation in the government process.
3. Self-Reliance recognizes the responsibility of individuals to themselves, to their family, and to their community.
4. Continuing Learning emphasizes the importance of a lifelong commitment to learning and development, and commits the Government to support such learning at the individual, community and territorial levels."¹²⁵

It reflects the desire of the government to respond to the priorities and needs of its residents in a manner that is open and encourages active public participation. And according to the Article 23 of the Nunavut Land Claim Agreement, the Government of Nunavut must have a workforce through all level and agencies which could represent the demographic component in Nunavut. In practical terms, this means that "Inuit are expected to fill about 85 percent of all jobs within the Government of Nunavut by 2020. All departments are implementing Inuit Employment Plans designed to reach the interim target for 2010 of 56% Inuit employment and the overall goal of 85 percent".¹²⁶ And the Inuit Qaujimajatuqangit which is traditional Inuit knowledge also play an important role in the decision-making process of the Government of

¹²⁵ See Consensus Government, Government of Nunavut, available at <http://www.gov.nu.ca/english/about/cg.pdf>, visited at 2010-01-21.

¹²⁶ See Human Resource, Government of Nunavut, available at <http://www.gov.nu.ca/english/about/hr.pdf>, visited at 2010-01-21.

Nunavut.

And in the level of local communities, all communities have elected mayors and town council and Inuit were more inclined to participate the decision-making process which related to their own interests. Additionally, depend on the size of the community, various committees, societies, and associations review local affairs and activities in their own ways. For example, some communities established hunters' and trappers' organizations, health advisory committees, district education institutions and so on. "While Nunavut has a capital where many of its executive functions will be located, most government departments will be located in several regional centers at a distance from the capital. This is intended to ensure that the government reflects all parts of Nunavut and would be benefit to residents to participate the decision of local affairs"¹²⁷.

Consequently, all these facts could imply that, although the Acts of foundation do not state autonomy or self-government of Inuit clearly, however, the future of Nunavut is that a territory will be based on Inuit values, spirit and be participated by Inuit people in all local affairs. It might take quite a long time to achieve this aim. "However, when implemented, the result will change how Nunavut residents live and will ensure that success and failures will be "home grown", not imported from elsewhere".¹²⁸ Although Nunavut is governed through a public government framework that represents all residents *de jure*, while Inuit represent 85% of the population of Nunavut, they have chosen to pursue their aspirations of self-determination through a public government system rather than through an Inuit-specific self-government arrangement.

(c) Economic, social and cultural development of indigenous peoples in Nunavut

¹²⁷ Rigby, Bruce, John MacDonald and Leah Otak: *The Inuit of Nunavut, Canada*, in Endangered Peoples of the Arctic. Milton M. R. Freeman, ed. Greenwood Press. Page 102.

¹²⁸ Rigby, Bruce, John MacDonald and Leah Otak: *The Inuit of Nunavut, Canada*, in Endangered Peoples of the Arctic. Milton M. R. Freeman, ed. Greenwood Press. Page 105.

The right of self-determination also include indigenous peoples could freely pursue their economic, social and cultural development. Comparing to the political status, the indigenous peoples enjoy more definite rights to determine economic, social and cultural affairs in the Nunavut.

The Nunavut Land Claim Agreement recognized and reflected the principles that

- "(a) Inuit are traditional and current users of wildlife;
- (b) the legal rights of Inuit to harvest wildlife flow from their traditional and current use;
- (c) the Inuit population is steadily increasing;
- (d) a long-term, healthy, renewable resource economy is both viable and desirable;
- (e) there is a need for an effective system of wildlife management that complements Inuit harvesting rights and priorities, and recognizes Inuit systems of wildlife management that contribute to the conservation of wildlife and protection of wildlife habitat;
- (f) there is a need for systems of wildlife management and land management that provide optimum protection to the renewable resource economy;
- (g) the wildlife management system and the exercise of Inuit harvesting rights are governed by and subject to the principles of conservation;
- (h) there is a need for an effective role for Inuit in all aspects of wildlife management, including research; and
- (i) Government retains the ultimate responsibility for wildlife management."¹²⁹

These principles recognized rights of Inuit to harvest wildlife and to keep their traditional economic style, and insisted on that the Inuit should play an effective role in management of wildlife. Based on these principles, the Agreement later regulated the establishment of Nunavut Wildlife Management Board which "is not an agent of

¹²⁹ Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen of Canada, Article 5.1.2.

Her Majesty in right of Canada"¹³⁰ and "whose members was appointed by the Designated Inuit Organization".¹³¹ And according to the Nunavut Act, the Legislative Assembly of Nunavut who is the legislature of Nunavut and, as stated above, whose members are mostly Inuit, have the power to make laws related to subjects that:

- "(i) the management and sale of the lands the right to the beneficial use or to the proceeds of which is appropriated to the Commissioner by section 49, and of the timber and wood on those lands;
- (j) direct taxation within Nunavut in order to raise revenue for territorial, municipal or local purposes;
- (k) licensing in order to raise revenue for territorial, municipal or local purposes;
- (n) the preservation, use and promotion of the Inuktitut language, to the extent that the laws do not diminish the legal status of, or any rights in respect of, the English and French languages;
- (r) agriculture in Nunavut;
- (s) the preservation of game in Nunavut;"¹³²

The Government of Nunavut also, in close consultation with Nunavut Tunngavik Inc. (NTI), developed the Nunavummi Nangminiaqtunik Ikajuuti (NNI Policy) which came into effect at April 1, 2000. The NNI Policy is one of the Government of Nunavut's main tools for economic development, attempting to leverage change to the structure of the Nunavut economy through government contracting. The central goal of the Policy is to maximize the participation of Nunavut, Inuit, and community-based (Local) businesses in Government of Nunavut contracting. And it is stated in this policy, the NNI policy is aimed to "build the economy of Nunavut and its communities by strengthening business sector capacity and increasing employment" and "to bring about a level of Inuit participation in the provision of goods and services to the Government of Nunavut that reflects the Inuit proportion of the Nunavut population"¹³³.

¹³⁰ Nunavut Land Claim Agreement Act, Article 10(2).

¹³¹ Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen of Canada, Article 5.2.1.

¹³² Nunavut Act, Article 23(1).

¹³³ See *Nunavummi Nangminiaqtunik Ikajuuti*, The GN / NTI NNI Review Committee, April 20, 2006, section 7.

These laws and policies above have recognized and could guarantee the right to determine the economic development by Inuit themselves. And in fact, although some new opportunities have been increasing quickly in Nunavut, the harvesting traditions is still the basis of the economy of Nunavut and continues to maintain strong ties to the land. The harvesting economy is worth at least \$40 million annually and provides many families with an affordable and important source of nutritious food. The Nunavut Economic Development Strategy lays the foundation for the development of the Nunavut economy over the next several years and sets out achievable goals and objectives. This strategy brings together government, Inuit organizations and the private sector in Nunavut to pursue economic growth together and it is the best evidence to show the economic status of the Inuit to develop their own economy.

In the cultural aspect, "before the establishment of Nunavut, the pre-Nunavut regional boards of education and the government of the Northwest Territories began to undertake and promote programs to present traditional knowledge and culture within the school curriculum, such as 'Inuuqatigiit'(the school curriculum from an Inuit perspective)".¹³⁴ Then, for promoting the culture, language and heritage activity of Nunavummiut, the government created the Department of Culture, Language, Elders and Youth. It is the leadership in the development and implementation of policies, programs and services. This department has made several policies to preserve and develop the traditional culture and heritage. For example, the Grants and Contributions Policy, through the grants to the non-profit community-based organizations, individuals, and municipal corporations who direct their efforts to the promotion, protection and preservation of the traditional Inuit culture, language and heritage of Nunavut, aimed at supporting and promoting the cultural and artistic endeavors of Nunavummiut; preserving, protecting and promoting the heritage of Nunavummiut for the benefit of all Nunavummiut; supporting the Inuktitut and so

¹³⁴ Rigby, Bruce, John MacDonald and Leah Otak: *The Inuit of Nunavut, Canada*, in *Endangered Peoples of the Arctic*. Milton M. R. Freeman, ed. Greenwood Press. Page 106.

on.¹³⁵ The Human Remains Policy respected and protected the spiritual and cultural interests and views of Inuit.¹³⁶ And considering the historical and enduring relationship between Inuit and the land; and the relationship between Inuit and the land forms the foundation for a traditional system of place names, the Department of Culture, Language, Elders and Youth also adopted the Geographic Names Policy to protect the Inuit culture and heritage through official recognition, the preservation and use of these traditional names for geographic features.¹³⁷ "The Department of Culture, Language, Elders and Youth is also devoted to the promotion and integration of Inuit Societal Values at all levels of its operations".¹³⁸ Almost all of policies launched by the department embodied the Inuit Societal Values in different ways. One major project is the coordination of the Inuit Qaujimajatuqangit Katimajit and Tuttarviit. The Katimajit is constituted of non-governmental members who have abundant experience in Inuit Qaujimajatuqangit and the implementation of it in practice. Tuttarviit is an interdepartmental group consisting of Inuit Qaujimajatuqangit coordinators from each Government of Nunavut department. These bodies are supported by the department's Director of Inuit Qaujimajatuqangit. Tuttarviit draws on the Katimajit as a resource and develops Inuit Qaujimajatuqangit related initiatives for the Government of Nunavut.¹³⁹

Besides the effort of the Department of Culture, Language, Elders and Youth, the Department of Education also try some measures to protect and promote the language of Inuit. Although most of Inuit Children speak Inuktitut or Inuinnaqtun before they go to school, most of elementary school or higher educations teach in English but not in Inuktitut or Inuinnaqtun. The Department of Education launched a research on the language of introduction and published a report called "Aajiqatigiingniq". This report

¹³⁵ Grants and Contributions Policy, Department of Culture, Language, Elders and Youth, Government of Nunavut.

¹³⁶ See Human Remains Policy, Culture and Heritage Program, Department of Culture, Language, Elders and Youth, Government of Nunavut.

¹³⁷ See Geographic Names Policy, Department of Culture, Language, Elders and Youth, Government of Nunavut.

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See the website of Department of Culture, Language, Elders and Youth, available at <http://www.gov.nu.ca/cley/english/iqintro.html>, visited at 2010-01-24.

¹³⁹ See the website of Department of Culture, Language, Elders and Youth, available at <http://www.gov.nu.ca/cley/english/iqintro.html>, visited at 2010-01-24.

recognized that there are parts of Nunavut where the Inuit language is seriously endangered. And this Discussion Paper has been commissioned to offer Education Nunavut a number of options for discussion on the topic of language of instruction (LOI) in Nunavut schools. "The main option which the paper advocates is a major twenty-year effort to develop a strong bilingual (Inuktitut/Inuinnaqtun - English) education system for the territory".¹⁴⁰

As an important role in the communities in the traditional social structure of Inuit, elders continuously participate in lots of social activities in Nunavut at present. Apart from their contribution to the learning programs associated with the schools, conscious efforts are being made to ensure that the elders are a significant part of everyday life in Nunavut. Individual elders and elders' groups participate in community justice committees, provide advice and direction to non-school based youth programs, and recognize the achievements of Nunavut residents. "As such, elders continue to play a crucial role in the transmission of values and knowledge to all Inuit".¹⁴¹

(d) Summary

The modernization has deeply impacted on the every aspect of Inuit communities in Nunavut irreversibly. The communities of Nunavut established the modern local government and lots of Inuit hunter are used to using modern hunting equipments such as snowmobiles, outboard motors, boats and rifles. At the same time, the Inuit generally agreed that the culture of Inuit is seriously endangered at the present time, as a result of the rapidity of change caused by global cultural, economic and environmental pressures. How would this process impact on the future of the destiny of Inuit and how to balance the modernization and the traditional knowledge? This pressure is external, but the measure to suit for such pressure should determined by

¹⁴⁰ See AAJIQATIGINGNIQ: A REPORT TO THE GOVERNMENT OF NUNAVUT, DECEMBER 2000, available at <http://www.gov.nu.ca/education/eng/pubdoc/ENG%20LOI%20Report.pdf>, visited at 2010-01-24.

¹⁴¹ See Rigby, Bruce, John MacDonald and Leah Otak: *The Inuit of Nunavut, Canada*, in *Endangered Peoples of the Arctic*. Milton M. R. Freeman, ed. Greenwood Press. Page 107.

Inuit themselves.

In legislative level, there is no express provision to stipulated that the Inuit enjoy the right of self-determination, but *de facto*, Inuit is the largest population in Nunavut and constituting the majority in the government, to say noting of the members in legislative assembly are almost the Inuit, therefore, the Inuit would be involved in the process of decision making in local affairs effectively. In economic level, laws and Land Claim Agreement grant certain relevant rights, such as the ownership of land and natural resources, to the Inuit so they would make decision of how to utilize the land and resource in Nunavut. In cultural aspects, many cultural protection policies have been brought into effect.

The Inuit in the Nunavut were not only negotiating land and sea claims, a political identity and self-government for their huge region but they were also negotiating national indigenous policy, in effect, with the Government of Canada. Their persistence and frequent mulishness resulted in Canada adopting various new policies, as well as politico-administrative concepts and structures.¹⁴² These sections reviewed the situation of Inuit in Nunavut on law and facts and conclude that the Inuit in Nunavut actually could determine most of their local affairs in political and economic, cultural and social aspects, although most of these powers are not stated clearly by law. However, as very universal principles of human rights law, the right of equality and non-discrimination are fundamental rights to all people which also include all indigenous peoples under the sovereignty of Canada. When the Inuit of Nunavut have already enjoy the right of internal self-determination in some extent through the establishment of Nunavut and the Land Claim Agreement, these various breakthroughs in Nunavut should also spread out in other indigenous groups in Canada.

2. The Right of Self-determination of Indigenous Peoples in Finnmark

¹⁴² Nunavut: The Still Small Voice of Indigenous Governance, Peter Jull, in *Indigenous Affairs*, 2001, page 46.

The Sami people, also spelled S ámi, or Saami, one of the great indigenous peoples of the Arctic, are among the largest indigenous ethnic groups in Europe. The Sami people have been divided between four nations: Finland, Norway and Sweden as well as of the Kola Peninsula in the Russian Federation. "The territory in which the S ámi live is called Sapmi by them, and since 1986 has had a common S ámi flag."¹⁴³ It is difficult to calculate the population of Sami people, because the Sami go through a long history of assimilation and mixing with the colonists. "Some figures presented statistic tells that there are 25,000 Sami in Norway, 17,000 in Sweden, 4000 in Finland and 2,000 in Russia. Yet another statistic which only counts people who speak Sami languages as their mother tongue says: 10,000 in Norway, 5,000 in Sweden, 3,000 in Finland and 1,000 in Russia".¹⁴⁴ A scholar, who has worked at the Ministry of Local Government and Labor's section for Sami issues as well as the Ministry of Agriculture's office on reindeer-herding, and was secretary for a committee which issued an official plan for health and social services for the Sami population in Norway said: "The Sami societies were formerly organized in siidas, which were a form of practical cooperation between several family groups. This is mainly focus on management and sharing of natural resources and game. The individual siida had a collective right to hunting and fishing within its area. The siida's head, the siida-isit, led the siida council. Among other duties, he oversaw the siida's regulations for use of natural resources, ensuring that hunting and distribution followed rules and traditions. The expenditure of labor and the sharing of economic burdens were distributed among the siida's members"¹⁴⁵. Traditionally, the Sami have plied a variety of livelihoods, including coastal fishing, fur trapping, and sheep herding, however, the best known Sami livelihood is semi-nomadic reindeer grazing. "Approximately 2,800 people are engaged in reindeer husbandry in Norway."¹⁴⁶

¹⁴³ About the Sami, available at <http://www.finnmark2007.com/about-the-sami.html>, Visit at 2010-01-22.

¹⁴⁴ Antti Lahelma and Johan Olofsson: The Nordic countries FAQ available at <http://stason.org/TULARC/travel/nordic-scandinavia/2-3-6-The-Sami-as-citizens.html>, Visit at 2010-01-22.

¹⁴⁵ Wenke Brenna: The Sami of Norway, available at http://explorenorth.com/culture-sami_of_norway.html, Visit at 2010-02-01.

¹⁴⁶ Reindeer husbandry-an exclusive sami livelihood in Norway available at http://www.galdu.org/govat/doc/eng_reindeer.pdf Visit at 2010-02-31.

The Sami was seeking for their human rights actively in the international community these years through the transnational organizations or promotion of new treaties, such as the Saami Council and the drafting of Nordic Saami Convention and so on. Due to the impact of the ILO Convention 169 and Norwegian political development, the Norwegian constitution was changed in 1988 to include a new Article 110(a): "it is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life". And the Sami Parliament of Norway also promotes the protection of human rights of Sami. For example, in August, 2009, the Sami parliament (Samediggi) governing the indigenous Sami people in Norway, decided not to approve the new mining law which Norwegian legislators passed earlier this year in Finnmark. As the core area of Sami in Norway, the study of Finnmark through the political, economic, cultural and social aspects could reflect the situation of self-determination of Sami people in Nordic area.

(a) Introduction and history of Sami in Finnmark

Finnmark is situated in the extreme North East of the country. Of all the counties, it has the largest area and the fewest inhabitants. Its mainland stretches as far North as to the peninsula Kinnarodden and as Far East as to the island of Hornøya i Vardø municipality. Finnmark borders on the Arctic Ocean, The Barent Sea, Finland, Russia and Troms County. The surface area is 48,637 km² and the population summing up to 72,519 until 1st July 2007.¹⁴⁷ The Norse form of its name was Finnmörk, The first element is finn(ar), the Norse name for the Sámi people, The last element is mörk which means "woodland" or "borderland". In Norse times the name was referring to any places where Sámi people were living. The Sámi form of the name was Finnmárku. Since 2002, it has two official names: Finnmark (Norwegian) and Finnmárku (Sámi language). People have lived in Finnmark for at least 10,000 years. The destiny of these early cultures is unknown. Three ethnic groups have a long history in Finnmark: the Sámi people, the Norwegians and the Kven people. Of these

¹⁴⁷ Fact about Finnmark- Norwegian Lapland, available at <http://www.finnmark.com/default.aspx?pageid=157>. Visit at 2010-02-21.

the Sámi were the first people to settle in Finnmark. Later Norwegian and Finnish people (ancestors to the Kvens) colonized the areas.

When the last Ice Age peaked about 20,000 years ago the first inhabitants settled in the Arctic, and by the end of the ice age, 10,000 years ago, the area the Sámi call Sapmi today began to be inhabited. The first settlements were in coastal areas. Later, people moved inland. In early 350 A.D., Norwegians had begun to settle on the Norwegian coast, as the Coastal Sámi lived so far away from each other and from the colonists, there was little disturbance in their own cycle. Not until the 13th century is there evidence of a permanent Norwegian settlement in Finnmark. The early settlers of Norwegian fishermen lived in larger groups than the Sámi, crowded together, on the outer coast and on the islands, but never in the interior.¹⁴⁸ In the 1600's and 1700's, settlers are concentrating mostly on agriculture in the Northern coastal areas, which is much different from the traditional Sámi livelihood until the 18th and 19th century, Finnmark became a major subject of colonization, all in all, the Sami have been treated as "children who don't know what's best for them".¹⁴⁹ Such colonization is embodied in many spheres especially in language field, for the purpose of establishing Norwegian as Sami's school language; a number of regulations were made from around 1850 to encourage the teaching of Norwegian to Sami. What is worse, the Land Act of 1902 stipulated that property could only be transferred to Norwegian citizens and furthermore only to those who could speak, read and write Norwegian. It was not until the 1930s that Sami was again allowed as a secondary language in some school districts to augment teaching. In practice, the Sami language was banned in many Norwegian schools until well into the 1950s.¹⁵⁰ The "Kvens", immigrants from Finland and Sweden during the eighteenth and nineteenth centuries evolved into Finnish communities of which we find traces to this very day, particularly in the

¹⁴⁸ The costal sami of Norway, available at <http://www.utexas.edu/courses/sami/dieda/hist/nor-sami.htm>, Visit at 2010-01-21.

¹⁴⁹ The Sami of Norway, available at http://www.reisenett.no/facts/culture_science/Sami.html#2, Visit at 2010-01-21.

¹⁵⁰ Wenke Brenna: The Samiof Norway, available at http://explorenorth.com/culture-sami_of_norway.html, Visit at 2010-02-01.

eastern part of the county where the Finnish language can still be heard and where there are several Finnish surnames.

During the World War II (1939-45), Finnmark was destroyed seriously by the war, such as large parts of Kirkenes, Vadsø and Vardø were bombed by the Aliens. "Towards the end of the war, much of the county was razed to the ground. When the Germans were driven out by Soviet troops during the autumn of 1944, they applied the "Scorched Earth" approach. More than ten thousand dwellings, schools, hospitals and churches were destroyed, in addition to much of the fishing fleet. About two thirds of the population was evacuated to southern Norway by force".¹⁵¹

After World War II, the policy to Sami has been changed, there are three major event to illustrate this point. Firstly in 1948, the Coordinating Commission for the School System in Norway adopts a policy named "Proposals for Sami School and Educational Affairs". Secondly in 1963, the Norwegian parliament discussed the recommendations of the Sami Committee of 1956. The Parliamentary Records for 1962-1963 expressly not: "The policy of the national state must be to give the Sami-speaking population the opportunity to preserve its language and other cultural customs on terms that accord with the expressed wishes of the Sami themselves."¹⁵² Thirdly, in 1987, Norway passed The Cultural Heritage Act passed in 1978 in Norway, states that everything which is more than 100 years old and related to the cultural heritage of the Sami, is automatically protected by law- this is to protect historic sites and monuments.¹⁵³

The fishery industry is the cornerstone of economy of Finnmark and reindeer herding is intrinsic to Sami culture and identity. In Finnmark, there are more than 2000 people are related to reindeer husbandry, including a number that has been stable for a while.

¹⁵¹ See <http://www.ffk.no/English/1704.aspx>, visited at 2010-02-04.

¹⁵² Colin Baker, Sylvia Prys Jones: Language Arts & Disciplines, 1998, page 758.

¹⁵³ Antti Lahelma and Johan Olofsson: The Nordic countries FAQ available at <http://stason.org/TULARC/travel/nordic-scandinavia/2-3-7-The-Sami-Today.html>, Visit at 2010-02-01.

Pasture and the quality of grazing land are the most basic form of capital in this type of business. Furthermore, the county's unique nature and culture are a challenge as well as an opportunity for the travel industry. Among strategic aims for Finnmark's travel industry in 2000-2005 it is envisaged that "Finnmark should be an attractive destination all year round, that it should have a clear cut and unambiguous image based on arctic food and culture".¹⁵⁴ Developing a basis for winter tourism is just as important as increasing the flow of tourists to Finnmark during the summer season. And "the exploitation of petroleum and gas also generated economic development and boosting employment in this area".¹⁵⁵

Finnmark is a county of Norway and is divided into 19 municipalities, six of which are towns. "The County Governor is the central authority and holds the overall responsibility for state-run activity in the county."¹⁵⁶ It should publish and implement the policies from the State government and parliament and supervise municipal economy and administration. "Finnmark County Municipality looks after social development in the county, in collaboration with the municipalities, state-run institutions and trade and business"¹⁵⁷. The county authority is the leading regional political body and provides continuing education, cultural services and dental services for all county residents, whereas child and family welfare services were nationalized in 2004. The Sami Act was ratified in 1987, and the first Sami Parliament was elected in 1989. There is a separate electoral register for the Sami Parliament, in which all Sami over the age of eighteen can be registered and thus be entitled to vote. These elections are held simultaneously with elections to the national parliament. The Sami parliament is a political instrument, and its aim is to promote Sami standing and to contribute to the fair treatment of Sami people. Being indigenous they have a very special standing in the Norwegian society and hold more privileges than other minority groups. The county authority has entered into a co-operation agreement with

¹⁵⁴ See <http://www.ffk.no/English/1705.aspx>, visited at 2010-02-05.

¹⁵⁵ See <http://www.ffk.no/English/1705.aspx>, visited at 2010-02-05.

¹⁵⁶ Public Administration, Finnmark, available at <http://www.ffk.no/English/1707.aspx>, visited at 2010-02-05.

¹⁵⁷ Ibid.

the Sámi Parliament.¹⁵⁸

(b) The political status of Sami people in Finnmark

The direct way for the Sami people to participate the political decision in Finnmark or even in the whole state is elections to the Storting (Norwegian Parliament). "The first Sami member in the Storting was Isak Saba in 1906 who is represented the socialist party for Eastern Finnmark and was elected based on two programs, of which one was a Saami policy platform".¹⁵⁹ But the candidate must be nominated by a political party then could be on the list where candidates are listed in ranked order. It is very difficult for Sami people to be nominated on the list in that time. In 1921, the Saami movement in Finnmark County claimed for separate lists in the parliamentary election. But the result was that "any representatives in the Storting with a Sami background during this period up to the 1990s, were not elected based on a Sami policy platform and did not promote any significant Saami policy initiatives".¹⁶⁰

After 1945, The conflict between the Saami and the State concerning the development of the Alta/Kautokeino watercourse created a political legitimacy crisis for Norwegian authorities. Lots of new Sami movement in that time made it possible once again to present Saami lists which happened for the first time after 1945 during the parliamentary election in Finnmark in 1969. After then during municipal, county and parliamentary elections, there were separated candidates lists for Sami in Finnmark. Sami representatives have also been elected to municipal councils, county councils and the Storting via Norwegian party lists, and have worked actively on Saami policy issues.

In that time, some people thought "the time is now right for amending the

¹⁵⁸ See Public Administration, Finnmark, available at <http://www.ffk.no/English/1707.aspx>, visited at 2010-02-05.

¹⁵⁹ Eva Josefsen: *The Saami and the National Parliaments - Channels for Political Influence*, in Journal of Indigenous Peoples Rights No. 2/2007, page 16.

¹⁶⁰ Minde, Henry: *The International Movement of Indigenous Peoples. An Historical Perspective*, in Brantenberg Hansen og Minde (ed.): *Becoming Visible, Indigenous Politics and Self-Government*, Centre for Sámi Studies, Tromsø, 1995.

Constitution of Norway to provide a legal basis for the Saami's right to representation in the Norwegian Storting"¹⁶¹. However, this proposal never applied by the Norwegian Storting. Although the Constitution of Norway stated that the State has the obligation to "create conditions enabling the Sami people to preserve and develop its language, culture and way of life", it did not deal with the issue of political participation or other aspect of internal self-determination in political field. The dispute about the hydroelectric development of the Alta-Kautokeino river system in 1980 highlighted the need to clarify the legal position of the Sami people. Some cases in the domestic courts of Norway, such as Erik Andersen (et al. a total of 146 parties) v. The Norwegian State¹⁶², and in the Human Rights Committee such as Jarle Jonassen and members of the Riast/Hylling reindeer herding district v. Norway¹⁶³, also reflected the dispute between the culture of herding and the economic plan of the State.

On this background, the Finnmark Act was passed by the Norwegian parliament, the Storting, on 8 June 2005. The Finnmark Act is a landmark event for Finnmark. From July 2006 the people of Finnmark began to own and manage the land in Finnmark. Previously, the state owned 96 per cent of the land in Finnmark. On the basis of the rights of the Sami people, all this land will now be transferred to the people of Finnmark, who will own the land jointly through the so-called "Finnmark Estate". As it is said in its full name - "Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark", the purpose of Finnmark Act "is to facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sami culture, reindeer

¹⁶¹ NOU 1984:18 Om sameenes rettsstilling (On the Saami's Legal Status), page 479.

¹⁶² This case concerns the question of whether the State owns a piece of unenclosed land with an area of 116 km² at the upper end of Manndalen in the Municipal Authority Area of Kåfjord in the county of Troms, and it raises inter alia questions concerning the conditions for the acquisition of the right of ownership through use from time immemorial. Judgment of 5 October 2001 Serial No. 5B/2001, No. 340/1999.

¹⁶³ The authors of the communication, are the herdsmen of the Riast/Hylling reindeer herding district, Norwegian citizens, of Sami ethnic origin. They claim to be victims of a violation by Norway of article 27 in conjunction with article 2, article 26, and article 2 of the International Covenant on Civil and Political Rights. 942/2000 - Jarle Jonassen and members of the Riast/Hylling reindeer herding district v. Norway.

husbandry, use of non-cultivated areas, commercial activity and social life"¹⁶⁴. So naturally this Act was related to economic, cultural and social aspects of the Sami people in Finnmark.

However, through the mandate of Sami Parliament, the Finnmark Act set some approaches for Sami people to participate the decision-making process which deal with some relevant affairs. The Section 4 of the Finnmark Act stated that:

"The Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines shall be approved by the Ministry. The Ministry shall examine whether the guidelines lie within the framework laid down in the first sentence and whether they have been drawn up in an appropriate manner.

In matters concerning changes in the use of uncultivated land, state, county and municipal authorities shall assess the significance such changes will have for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life. The guidelines of the Sami Parliament shall be followed in the assessment of Sami interests pursuant to the first sentence."

Consequently, in the matter of the guidelines which should be followed in the assessment regarding changes in the use of uncultivated land, the Sami Parliament has the power to issue guidelines. And the mandate of Ministry was examining and approving the guidelines. The Sami people could participate in the process of making the guidelines through the Sami Parliament, but they do not have the right to make the final decision.

Finnmarkseiendommen ("the Finnmark Estate") is an independent legal entity established by Finnmark Act which shall administer the land and natural resources,

¹⁶⁴ Act of 17 June 2005 No. 85 relating to legal relations and management of land and natural resources in the county of Finnmark (Finnmark Act), Section 1.

etc. that it owns in compliance with the purpose and other provisions of this Act.¹⁶⁵ When the Act entered into force in July 2006, around twenty employees have transferred from the Norwegian State Forest and Land Corporation (Statskog) Finnmark to the new Finnmark Estate. Forty-five thousand square kilometres of land was transferred to the Estate from the same date.¹⁶⁶ According to the Finnmark Act, the Finnmark Estate "shall be governed by a board consisting of six persons. Finnmark County Council and the Sami Parliament shall each elect three members, each with a personal deputy. The members and deputies shall be resident in Finnmark. Among the members elected by the Sami Parliament at least one board member and that person's deputy shall be representatives for reindeer husbandry. Both as members and as deputies, both bodies shall elect both women and men"¹⁶⁷. This section emphasized on the local residents and made a balance between the Sami people and other Finnmark people, especially considered the representative of reindeer husbandry which also meant the representative of traditional life style of Sami.

It is clearly that the Sami Parliament (S ámediggi) was crucial for the Sami people in Finnmark to participate the decision-making process. In fact, the establishment of the Saami Parliament in Norway can be read as "one attempt to, and a method of, political inclusion of Sami people as clearly indigenous peoples within the framework of a nation state".¹⁶⁸ The first election of S ámediggi was held in 1989 and is elected by the S ámi every four years in conjunction with Norway general election. The S ámediggi consists of 43 representatives elected by direct vote. The administrative duties, powers of initiative and authority of the S ámediggi, are stated in the Sami Act:

"The business of the S ámediggi is any matter that, in the view of the S ámediggi, particularly concerns the Sami people. On its own initiative, the S ámediggi may raise, and pronounce upon, any matter coming within the scope of its business. It may also on its own initiative bring a matter before public authorities and private

¹⁶⁵ Finnmark Act, Chapter 2, Section 6.

¹⁶⁶ See <http://finnmarksloven.web4.acos.no/artikkel.aspx?AId=146&back=1&MIId=123>, visited at 2010-02-08.

¹⁶⁷ Finnmark Act, Chapter 2, Section 7.

¹⁶⁸ NILS OSKAL: *Political Inclusion of the Saami as Indigenous People in Norway*, on International Journal on Minority and Group Rights 8: 235-261, 2001, page 254.

institutions. The Sámediggi has the power of decision when this follows from other provisions of the Sami Act, or is otherwise laid down."¹⁶⁹

From this starting point it is natural to divide the work of the Sámediggi into two separate areas: one is the Sámediggi as a Sami-political instrument; and another is the Sámediggi as an administrative organization. The first function encompasses the Sámediggi's own powers of political initiative and the second covers various administrative tasks delegated to the Sámediggi. How the Saami Parliament relates to other public political bodies is expressed in Section 2 (2) of the Saami Act:

"Other public agencies and bodies should give the Saami Parliament the opportunity to submit a statement before they make decisions in cases that concern the jurisdiction of the Saami Parliament".

Consequently, the Sami Parliament commonly played as an advisory role in the political process. Especially to the other agencies and body, it is the obligation for them to give Sami Parliament the opportunity to submit statement, as the Saami Act used the terms of "should". "As to self-government, the Sami Parliaments are good examples of non-territorial or personal autonomies, but they do not fulfill the expectations generally attached to the term in international law because of their advisory or consultative roles without real legislative and executive powers over internal [affair]".¹⁷⁰

(c) The economic, cultural and social status of Sami people in Finnmark

In its nature, the Finnmark Act is focusing on the economic interests of Finnmark local people. The intention behind the Act has always been to ensure that those who live in Finnmark have a bigger say in how land in Finnmark is utilised. The objective is to ensure that the land and natural resources in Finnmark are managed in the best interests of the inhabitants of the county and as the basis for the Sami culture and the

¹⁶⁹ The Act of 12 June No. 56, 1987 relating to the Saami Parliament and other Saami legal issues (the Saami Act), Article 2.1.

¹⁷⁰ Gudmundur Alfredsson: 'The rights of indigenous peoples with a focus on the national performance and foreign politics of the nordic counties,' *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 59, Nr.2, 1999.

Sami economy.¹⁷¹

The Section 5 not only realizes the individual rights but also expressly proclaimed the Sami have collectively acquired rights to land in Finnmark. It said:

“Through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark. This Act does not interfere with collective and individual rights acquired by Sami and other people through prescription or immemorial usage. This also applies to the rights held by reindeer herders on such a basis or pursuant to the Reindeer Herding Act. In order to establish the scope and content of the rights held by Sami and other people on the basis of prescription or immemorial usage or on some other basis, a commission shall be established to investigate rights to land and water in Finnmark and a special court to settle disputes concerning such rights, cf. chapter 5.”

Indigenous peoples are dependent on their own traditional lands and natural resources, as these constitute the material basis for their culture, economy and way of life. People’s right to administer and make use of their own natural resources has been recognized as an important part of their right to self-determination.¹⁷² As the individually rights to land, it is easier to realize such rights through some direct approached such as the special court which is regulated in Section 5. But as a right of the whole Sami people and a collective sphere, the right to determine the economic development obviously should based on the collective right to the land which is also stated in the Section 5.

Finnmarkseiendommen- an independent legal entity with its seat in Finnmark to be established to administer the land and natural resources, etc., shall abide by the main principle of management in accordance with Section 21:

“Manage the renewable resources on its land in compliance with the purpose of

¹⁷¹ See *About the Finnmark Act*, <http://finnmarksloven.web4.acos.no/artikkel.aspx?AId=146&back=1&Mid1=123>, visited at 2010-02-10.

¹⁷² John B Henriksen(Ed), *Sami Self-Determination-Scope and Implementation*, on *Journal of Indigenous Peoples Rights* No.2/2008, page 31

this Act and within the frameworks provided by the Wildlife Act, the Act relating to salmonids and fresh-water fish and other legislation. The diversity and productivity of nature shall be preserved.”

Under the guideline of such main principle, from Section 22 to Section 27, the Finnmark Act described rights of the persons resident in municipalities; rights of the persons resident in Finnmark; special rights to local utilization; access for other persons; local management of hunting and fishing; and further conditions for utilization of renewable resources and restrictions on such utilization.

In subparagraph 2 Section 22, it emphasize that "Reindeer herders have the same right as the persons resident in the municipality for the period during which reindeer husbandry takes place there." In fact, there are lots of Sami reindeer herders are living in a nomadic or semi-nomadic life, those people living in different area in a country or even migrate transnational in different seasons. The aforesaid regulation renders those people the same right as the people resident in the municipality which protect the culture and living style of Sami.

In Section 23, it mainly focuses on persons residing in the county of Finnmark has on Finnmarkseiendommen's land the right to:

- "a) hunt big game,
- b) hunt and trap small game,
- c) fish in watercourses with a rod and line,
- d) pick cloudberries and
- e) remove timber for home crafts.

Agricultural holdings shall have grazing rights for as large a herd as can be winter-fed on the holding."¹⁷³

In some cases¹⁷⁴ in Human Rights Committee, it express the same opinion: it is undisputed that reindeer husbandry is an essential element of their culture and that

¹⁷³ Finnmark Act, Section 23.

¹⁷⁴ Views on case no. 197/1985 (*Kitok v. Sweden*), Views adopted 27 July 1988, para. 9.2; on case No. 511/1992 (*Länsman et al. v. Finland*), adopted 26 October 1994, para. 9.2.

economic activities may come within the ambit of article 27 of ICCPR, if they are an essential element of the culture of an ethnic community.¹⁷⁵ The single right to land could not guarantee the free determination of economic and cultural development without the protection of traditional economic and life style. In this Section, hunting, fishing and other livelihood are protected by the Act, which is not only a symbol of protection of the traditional economy, but also the symbol of protection of the Sami culture. Controlling of their own traditional economic measure and life style could be the basis for Sami people's right to determine their own economic, cultural and social development.

(d) Summary

As following the statement of the United Nations Declaration on the Rights of Indigenous Peoples, the Expert Group of the Nordic Sami Convention declared that the Sami people's right to self-determination must be recognized by the Sami Convention. It is fair to say that the self-determination issue dominated the early period of the Expert Group's work.¹⁷⁶ At last the draft Nordic Saami Convention stated in the Article 3 that:

"As a people, the Saami has the right of self-determination in accordance with the rules and provisions of international law and of this Convention. In so far as it follows from these rules and provisions, the Saami people has the right to determine its own economic, social and cultural development and to dispose, to its own benefit, of its own natural resources."¹⁷⁷

This article defined Saami as a "people" which could enjoy the right to self-determination in the international law in the first sentence. But in the second sentence, it especially mentioned that the right to "determine its economic, social and cultural development and to dispose, to its own benefit, of its own natural resources". It implied that, although this article recognized Sami as a "people", actually it

¹⁷⁵ Jouni Läsman, Eino Läsman and the Muotkatunturi Herdsmen's Committee v. Finland, 1021/2001, Human Rights Committee views of 17 March 2005.

¹⁷⁶ Mattias Åhrén: *The Saami Convention*, on the The Nordic Sami Convention: International Human Rights, Self-determination and other Central Provisions, Journal of Indigenous Peoples Rights No. 3/2007.

¹⁷⁷ The draft of Nordic Sami Convention, Article 3.

emphasized on the economic, social and cultural aspect of the self-determination which essentially distinguish the right to self-determination of Sami from this right of peoples.

In the practical level, the case in the Finnmark, Norway could reflect that the Sami Parliament, as a national representative organization and was authorized by law, play a crucial role in the realization of right to self-determination of Sami people in Norway. The Sami Parliament could give its own statement to the public bodies in their decision-making which constitute a measure for the Sami people to participate the decision-making process. In the economic, cultural and social aspect, the Sami Parliament also plays a role of administration which impact on the economic and cultural development through the management of land and natural resources. Consequently, also the Constitution of Norway and the Finnmark Act do not use terms of "self-determination" or "self-governance", the Norwegian Government, to a large extent, recognized the internal self-determination of indigenous peoples. And in the Nordic area, the Sami Parliament could be a new and viable approach to realize the right of self-determination of indigenous peoples.

V. Conclusion

This research make a distinguishing between the "indigenous peoples", "minorities" and "peoples" for the purpose of further study, although it found there are not universal acceptable definitions of these three concepts. Afterwards, it looked back the historical development of self-determination in the international in different stages. Then, importantly, although there is not a official definition of "peoples" which is the beneficiary of the right of Self-determination in the international law, this dissertation limit the "peoples" to the peoples on the colony or other non-self-governing territories which is geographically separate and is distinct ethnically and/or culturally from the country administering it based on the analysis of international treaties, instruments and other cases.

The issues of indigenous peoples related to the colonialism but the indigenous peoples could not be equivalent to the "peoples" in the international law. The theory of internal self-determination was emerged in 1980s and 1990s, and universally circulated in the academic fields. It included the right to autonomy in some degree and the participation of decision-making process. But it was not supported by the international law except the Helsinki Final Act. Considering the Declaration on the Rights of Indigenous Peoples made a balance between the right to self-determination of indigenous peoples and the principle of sovereignty and territorial integrity, the theory of internal self-determination might be developed further in the future to preferably describe the indigenous peoples' right to determination and settle problems about this issue.

The Inuit and the Sami are two typical indigenous peoples in the Arctic area. This research selected Nunavut in Canada and Finnmark in Norway as samples to review the political, economic, cultural and social situation of indigenous peoples in these two places. Nunavut, as a new territory in Canada with its 80% population of Inuit, was established based on the Nunavut Act and Land Claim Agreement. These two instruments do not mention the terms of "self-determination". But in the practice,

Inuit actually participate widely in the Legislative Assembly and the department of local government depend on their advantage of the population in Nunavut. The problem is that, considering the right of equality is the basic principle of human rights, all of Inuit people and First Nations under the jurisdiction of Canada should equally enjoy the same rights and protection as the people in Nunavut. The Finnmark is another model in attempting the realization of self-determination by indigenous peoples. In Finnmark, the Sami people could not count so large proportion of population as the Inuit in Nunavut. But domestic laws authorized Sami Parliament as the representation of the Sami people in Norway to participate all decision-making process in the parliament and any public agencies or bodies. The Norwegian government and law also do not recognize the right to self-determination of Sami people, although they already ratified ILO Convention 169, and added Article 110(a) into the Constitution. And the political aspects which the Sami people participated also focus on decisions of economic, cultural and social affairs.

Consequently, this research conclude four advices for the further development of the right to self-determination of indigenous peoples:

1. The indigenous peoples should enjoy the right to self-determination for their relationship to the colonialism and their historical connection with the land they resident. States should recognized the right to self-determination of indigenous peoples in the policies and laws clearly and promote the realization of this right.
2. The right to self-determination of indigenous peoples is different from the right to self-determination in the international law which should be enjoyed by peoples. The right to self-determination of indigenous peoples is a totally *sui generis* right and new development in the human rights system. Considering the terms of "the right to self-determination of indigenous peoples" could lead to and indeed lead to debate and confusion among States and indigenous peoples, the international community should use a new term which could distinguish from "the right of self-determination" clearly to stead of the terms of "the right to self-determination of indigenous peoples" as soon as possible.

3. The final aim of the right to self-determination of indigenous peoples should be the freely determination of all affairs related to their interests by themselves without any intervention. But at present, the approaches could be different varying States and indigenous peoples and should focus on the promoting indigenous peoples to participate the process of decision-making as wide as possible.

4. Except the right to self-determination, the Declaration on the Rights of Indigenous Peoples claimed lots of other rights which related to the realization of the right to self-determination, such as the right to land, natural resources. While States do not recognize the right to self-determination of indigenous peoples, it could not obstruct the respect, promotion and protection of other indigenous peoples' rights.

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