



A Report of the
Human Rights Advisory Group of the

Panjabis In Britain All Party Parliamentary Group

**Self-Determination as a Human Right and
its applicability to the Sikhs**

March 2005

Importance of Self-Determination; its inter-relationship with ‘individual’ Human Rights

Self-Determination as a Human Right and its application to the Sikhs

This paper identifies that self-determination claims are not just founded in international law but that self-determination is in fact a basic human right on which other human rights depend and whose implementation is a duty of the international community.

Despite becoming a cornerstone of international law, some commentators contend that self-determination claims are something purely within the realms of politics. In addition, there is the vilification of proponents of self-determination, often perpetrated by states like India, which results in self-determination activists being labelled extremists or even terrorists.

Furthermore, this paper aims to provide the reasoned basis for the international community recognising and defending the application of self-determination to the Sikhs. By doing that the international community is not committing itself to any particular outcome – that is something for the Sikhs and the process of international law to determine – but it will take a principled stand based on the rule of law and that, in itself, will be a substantial contribution to resolving the Punjab conflict in a peaceful, just and lawful manner.

Self-Determination is key to world peace

The global reality of our times is that most of the armed conflicts at the moment are between groups in a state or between a group and the state - not between states themselves. Most of these conflicts involve both a “*collective*” struggle for freedom/liberation/autonomy but also systematic violations of “*individual*” human rights such as genocide and other crimes against humanity, such as extra-judicial killings, disappearances, torture, rape and illegal detention.

Thus resolutions of these armed conflicts - and of those which are not yet armed conflicts - WILL depend on decisions concerning the right of self-determination; **the nexus between the exercise of self-determination and respect for individual human rights should therefore be apparent to all** (In India alone there are such conflicts in Kashmir, Panjab, Nagaland, Manipur, Assam and other regions).

The importance of self-determination in the geo-political global landscape is especially crucial in South Asia which hosts the greatest concentration of self-determination based claims and the greatest risk of the use of weapons of mass destruction amid a nuclear weapons race in the region. The possibility of a humanitarian catastrophe has been widely recognised:

- In March 2000 US President Bill Clinton referred to this region as “**the most dangerous place in the world**”. There followed a year long “eyeball to eyeball” military standoff on the Indo-Pak border in 2002/3 and despite recent attempts at normalisation, the risk of a disastrous conflict is still unacceptably high.

- In September 2003, while addressing the UN General Assembly, Pakistan's President, General Pervez Musharraf, referred to the dispute over Kashmir, a dispute which the UN has recognised as essentially a matter of self-determination when it called for a plebiscite back in 1948. The President called it the “**world's most dangerous dispute**” - a reference to the nuclear weapons both countries possess.

The future of world peace will depend on a proper treatment of these claims for collective rights. This paper will, inter alia, show how the international law of self-determination provides the essential key to peaceful conflict resolution. A UNESCO sponsored conference of legal experts held in Barcelona in 1998 concluded that self-determination, as a right that is exercised by democratic means would be a major contribution to the prevention and resolution of conflicts. It made clear that link with individual human rights and called upon the international community to act: “Peace cannot exist in states that lack legitimacy or whose governments threaten the lives or well being of a section of the population. The international community, its members and institutions have an obligation to act where international law, including human rights and especially the right to self-determination is violated” [<http://www.unescoat.org>].

Legal Obligations

It is important to recognise that self-determination is now an established legal right and that all states are obliged to respect that right. **Art.(3) of both the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)** provides that every State has

- The obligation to “promote the realization of the right of self-determination” and
- “the duty to respect this right in accordance with the provisions of the [United Nations] Charter”

This paper will describe how self-determination has, especially since the establishment of the UN, been central to the development of international law.

What are Human Rights?

This paper will demonstrate how self-determination has become recognised as the basis for all other human rights. Before dealing with specific human rights we need to consider the nature and origin of the concept of human rights generally as this informs us about the broader purpose of humanitarian law. Historical events which helped frame the current thinking on human rights include the American Revolution and the French Revolution in the 18th century, both of which show that the essence of particular rights is the underpinning foundation of freedom and government by the consent of the governed. In these two Declarations human rights are deemed universal rights shared by the whole of mankind. Sovereignty resides in the people, not in artificial constructs.

- The **American Declaration of Independence of 1776** states:

“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.”

- In the midst of the French Revolution, the French constitutional convention adopted in 1789 the “**Declaration of Human and Citizens’ Rights**,” which states:

“Men are born and exist free and with equal rights. The purpose of all political unions is to preserve men’s inalienable natural rights. These rights are freedom, ownership, security and opposition to repression. All principles of sovereignty reside in the citizens. Liberty means the ability essentially to take any actions without hurting others.”

Despite the ideals espoused in these two declarations, human rights continued of course to be mercilessly violated in various regions of the world due to oppressive regimes, the evil of colonialism and wars (including the two World Wars). It was only after World War II that the notion of ‘universal human rights’ became widespread. The **Universal Declaration of Human Rights** was adopted by the UN General Assembly in 1948. The preamble of this Declaration states:

“...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”

It was declared that the affirmation of human rights as universal rights common to all mankind, regardless of any differences in race, national origin, religion and class, is the foundation of freedom, justice and peace in the world.

The **International Covenant on Civil and Political Rights** adopted by the UN General Assembly in 1966 achieved three important outcomes in the development of human rights. It:-

- defined in detail the substance of human rights
- laid down obligations on each signatory state to promote the observance of human rights.
- placed the right of self-determination at the start of the document – in Article 1- giving it PRIMACY amongst human rights.

What is Self-Determination and how is it a ‘human right’?

The legal basis, substance and application of self-determination will be analysed in this section. In order to consider the right of self-determination and its application in more detail, this paper will illustrate matters by considering the case of the Sikhs in what is today Indian controlled East Punjab.

For the Sikhs, it is crucial that the issue of self-determination is now properly considered in relation to their situation for, whilst it is obvious to any serious observer that it is linked inextricably with the gross violations of (individual) Sikh human rights by the Indian state, they are disturbed by what has been a worrying tendency amongst the outside world to avoid the underlying causes of the conflict. It is no coincidence for them that no resolution to the conflict has emerged.

Self-Determination as a concept

The concept of self-determination is conveyed by the following words of a judge of the International Court of Justice which he used in a leading case involving self-determination:

***“It is for the people to determine the destiny of the territory
and not the territory the destiny of the people.”***

**Judge Dillard, International Court of Justice
Western Sahara case I.C.J. Rep. 1975,12,121**

Furthermore, self-determination is a process, not an outcome. The international community’s application of self-determination to the Sikhs does not require an endorsement of any particular outcome – it is the process itself that will produce an outcome.

Sikh scripture: Within Sikh scriptures self-determination is an inherent article of the Sikh faith, enshrined in the instruction:

Now, the Merciful Lord has issued His Command.

Let no one chase after and attack anyone else.

Let all abide in peace, under this Benevolent Rule [13]

page74 Siri Guru Granth Sahib

Self-Determination as a Human Right in International Humanitarian Law

The UN Charter. The UN Charter was signed on 26th June 1945 and put the self-determination of peoples at the heart of its purposes.

- **Article 1 - UN Charter** - The Purposes of the United Nations are:

“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.

- **Article 55**

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- higher standards of living, full employment, and conditions of economic and social progress and development;
- solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

- **Article 56**

“All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”.

The International Covenant on Civil and Political Rights 1966. This was adopted and opened for signature, ratification and accession by UN General Assembly resolution 2200A (XXI) of 16 December 1966. The Covenant entered *in to force* on 23 March 1976.

It provides that the States Parties to the Covenant,

- Considering , in accordance with the principles proclaimed in the Charter of the United Nations,
- Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,
- Agree upon the following articles:

- 1. 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.*
- 2. 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.*
- 3. 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.*

The right has been declared in other international treaties and instruments and has now for a long time been generally accepted as a norm of current international law. **The 1970 Declaration on Principles of International Law (adopted by the UN General Assembly)**, which stated the internationally agreed basic principles of international law, clarified the contents of this right when it stated:

“that subjection of people to alien subjugation, domination and exploitation constitutes a violation of the principles [of equal rights and self-determination of peoples], as well as a denial of fundamental human rights, and is contrary to the Charter of the United Nations.”

The **UN Human Rights Committee** (the UN body established to monitor the implementation of the 1966 International Covenants) has stressed that the right of self-determination is absolutely fundamental to the protection of individual rights because:

“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 for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants [the ICCPR and the ICESCR] and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.”

The right of self-determination is therefore considered, at the very highest levels of international law and affairs, as an essential condition in the protection of individual rights. The rationale for this is clear; if peoples (as a collective) are being subjected to oppression they are not in a position to have any of their individual rights protected.

Who has the right of Self-Determination?

Who are the 'peoples' to whom the right applies? Experts in international law have generally agreed (in 1989 UNESCO developed a definition specifically for the purpose of identifying the holders of the right to self-determination) that the following factors apply in defining a "people" or a "nation":-

- **common historical tradition;**
- **racial or ethnic identity;**
- **cultural homogeneity;**
- **linguistic unity;**
- **religious or ideological affinity;**
- **territorial connection;**
- **self-identification:** the element of self-identification by a group as a "people" (a subjective process) was recognised as a "fundamental criterion" of the definition of "peoples" in the ILO Convention concerning Indigenous and Tribal People in Independent Countries 1989 and is the main reason that no permanent and universal objective definition of "peoples" can be discerned. Indeed, the drafters of Article 1 of the two International Human Rights Covenants substituted "peoples" (a plural word) for "nations" because "peoples" was considered to be the more comprehensive term: "the word 'peoples' was understood to mean peoples in all countries and territories, whether independent, trust or non-self-governing. It was thought that the term 'peoples' should be understood in its most general sense and that no definition was necessary."

Sikhism, the youngest and fifth largest of the major world faiths was born in Punjab in 1469. The Sikhs, with a unique spiritual and temporal philosophy (the *miri piri* principle), together with a distinct linguistic and cultural tradition, developed in to an indigenous, freedom loving sovereign nation that first secured political power in the form of an independent state in 1710, after suffering centuries of foreign invasions and alien domination. The larger sovereign Sikh state established in 1799 was recognised by all the world powers as a subject of international law and was party to several Treaties with the British. That the Sikhs satisfy the definition of a people or a nation is beyond doubt and no sensible commentator has ever attempted to suggest otherwise. As well as being recognised as a people or a nation by others the Sikhs, crucially in the context of the criterion of self identification, see themselves as such. This self-identification as a nation is fundamental to the current analysis.

A powerful expression of this self-identification is also apparent from the preamble of the historic 'Anandpur Sahib Resolution' of 1973 which became the basis of Sikh demands for autonomy in India until the escalation of Sikh demands following India's military assault on the Golden Temple in Amritsar in June 1984. The Resolution was passed on 17 October 1973 by the Working Committee of the Shiromani Akali Dal (which was then recognized as the political voice of the Sikhs).

Anandpur Sahib Resolution "Whereas the Sikhs of India are a historically recognised political nation ever since the inauguration of the Order of the Khalsa in the concluding year of the 17th century, and Whereas, this status of the Sikh nation has been internationally recognised and accepted by major powers of Europe and Asia, France, to wit, England, Italy, Russia, China, Tibet, Persia, Afghanistan, Nepal and the Company Bahadur, Fort William, Calcutta, till the middle of the 19th century, and again by the outgoing British and the Hindu Congress and the Muslim League of India in the middle of the 20th century,"

It is useful to note the following in the context of how Sikhs not only see themselves as a nation but how they are also seen as such by independent observers:

- The British House of Lords in 1983 (**Mandla v Dowell Lee**) recognised, in the context of establishing whether the Sikhs were an ethnic group for the purposes of the UK Race Relations Act, that the Sikhs as separate ethnic group, religion and a Nation after making an assessment of their history, language, culture and sense of nationhood.
- The Jathedar of the Akal Takht (Joginder Singh Vedanti), in a conference held at the British House of Commons in November 2002, gave an unequivocal affirmation of Sikh nationhood . The Jathedar of the Akal Takht has a significant role in Sikhism and his role is to protect the sovereignty of the Akal Takht (the home of temporal authority in Sikhism). The Sikh Times - November 2002 reported the statement as follows:

"AKAL TAKHT JATHEDAR IN UK PARLIAMENT: REAFFIRMS SIKH NATIONHOOD"
Historic Declaration made at Westminster Conference.

"In a pivotal moment for the treatment of Sikhs in international affairs Singh Sahib Joginder Singh Vedanti, Jathedar Sri Akal Takht Sahib, told a packed Conference hosted by MPs of the UK parliament that Sikhs are a distinct Nation. He went on to state that it is time the world recognised this and accorded the Sikhs their rightful status and full national rights. According to the Jathedar, this was the only way that the Sikh Nation could take up its rightful place in the community of nations."

Whilst the Sikhs are clear about their nationhood, they find that it is denied by the Indian State and the Indian political class which are not prepared to allow the Sikhs anything akin to national rights. The Indian constitution even denies Sikhism separate recognition as a religion for legal purposes – an affront that is widely seen as a deliberate act of suppression of the Sikhs. Article 25 Indian Constitution reads as follows:

“Article 25 Freedom of conscience and free profession, practice and propagation of religion

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. **Explanation II: In sub-Clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly”**

There is also a refusal to recognize Sikh nationhood in the Indian media. It is enlightening to see how the Akal Takht Jathedar’s comments in the UK House of Commons (see above) were reported in the Tribune – the report refers to “identity” and makes no mention of “nationhood”:

Amritsar, December 7. Addressing the House of Commons in England, Giani Joginder Singh Vedanti, Jathedar Akal Takht declared that Sikhs had distinct, separate identity. Talking to the Press, at his official residence here today, Jathedar Vedanti said that this statement was made by him in reply to the question whether Sikhs were part of Hinduism or enjoyed separate identity.”

To what situations does Self -Determination apply?

Colonial Situations

The right of self-determination applies to all peoples in colonial situations. This position was upheld by the International Court of Justice in the *Namibia* case and there is nearly uniform State practice consistent with its application to colonial territory.

Non-Colonial Situations

There have been transparently expedient efforts on the part of those who fear self-determination (unitary states made up of reluctant peoples who never consented to their current political status) as to whether self-determination can be applied to non-colonial situations. Certainly the focus of the right in the Declaration on Granting of Independence to Colonial Countries and Peoples 1960 was on “*the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations*”. This restrictive interpretation has however become rightly discredited both by subsequent international law and by state practice:

International Law

Since 1960 not one of the major international instruments which have dealt with the right of self-determination has limited the application of the right to the colonial situations. For example,

- as we have already, seen common **Article 1 of the two International Human Rights Covenants of 1966** applies the right to “**all peoples**” without any restriction as to their status and the obligation is on all States, “*including* those having responsibility for the administration of [colonial] Territories”
- **Article 20(2) of the African Charter** refers to both “**colonised or oppressed people**” as having the right.
- In its General Comment on Article 1 of the International Covenant on Civil and Political Rights the **Human Rights Committee** also makes evident that:

“the obligations [under Article 1] exist irrespective of whether a people entitled to self-determination depends on a State party to the Covenant [i.e. are in colonial territories]. 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.”

State practice. This also supports a broader application of the right of self-determination beyond strictly colonial confines.

- There has been widespread acceptance that the right applies to the Palestinians, to the blacks in South Africa, to the blacks in former Southern

- Rhodesia; and to other territories such as Tibet.
- In the **Treaty on the Final Settlement With Respect to Germany 1990**, which was signed by four of the five Permanent Members of the Security Council, it was expressly mentioned that the “**German people, freely exercising their right of self-determination, have expressed their will to bring about the unity of Germany as a State**”, despite the fact that neither East nor West Germany was a colony.
 - It has also been applied by States in the context of the break-up of the former **Soviet Union** and the former **Yugoslavia**, with the **European Community's Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union of 16 December 1991** referring expressly to self-determination.
 - East Timor seceded from Indonesia in a UN led exercise in self-determination

In fact, the substantial increase in membership of the United Nations in the 1991-1992 period is a reflection of this broader application of the right of self-determination to non-colonial situations.

India's position on the scope of Self-Determination

On ratifying the 1966 Covenants India made a **Reservation** [UN Doc. ST/HR/5, 1987,9.] to the effect that the right of self determination pertains only to “peoples under foreign domination”; it is **not relevant** with regard to “**sovereign independent States or to a section of a people or nation - which is the essence of national integrity**”.

India only made that Reservation on the basis that it was acknowledging that its position was at variance with the generally accepted view that self-determination in fact applies to ALL peoples. **France, Germany and the Netherlands objected to the Reservation** on the ground that self-determination applies to ALL peoples but India insisted on making that Reservation.

Subsequently, the **Human Rights Committee** (the UN monitoring body in respect of the 1966 Covenants) stated in its 1997 review of India's compliance [CCPR/C/79/ Add.81. 04/08/97] with Article 1 which deals with self-determination that it “**invites the State party [India] to review these reservations and declarations with a view to withdrawing them, so as to ensure progress in the implementation of the rights ...**” India has not made any such withdrawal.

As can be seen from the forgoing analysis, India's position is contrary to the law of self-determination. Whilst India may have an expedient interpretation of the law to suit its own needs, it is nevertheless bound by international law and the international community must insist that the law is upheld.

Territorial Integrity – A bar on Self-Determination?

A part of the general limitation on the right of self-determination is the specific limitation of territorial integrity. The **1970 Declaration of Principles of International Law** provides that the right of self-determination shall not “be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States”. This limitation is an extension of the desire in most societies to create a social and legal system which is relatively stable. In the international community, dominated at it is by States, the stability desired primarily concerns territorial boundaries.

However, the territorial integrity limitation cannot be asserted in all situations:

- The Declaration of Principles of International Law provides that only **“States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ... and this possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour”** can rely on this limitation.
- After the recognition by the international community of the disintegration as unitary States of the Soviet Union and Yugoslavia, it is now the case that any government which is oppressive to peoples within its territory may no longer be able to rely on the ground of ‘territorial integrity’ as a limitation on the right of self-determination. So for example India in relation to Punjab, Kashmir, Nagaland etc - cannot succeed in limiting the right of self-determination on the basis that it would infringe that State's territorial integrity as it has, in relation to those situations, clearly oppressed the subject peoples.

The level of oppression of the Sikhs in Punjab and elsewhere in India (especially during the period 1984 to 1995) has been severe and has left Sikhs in India and the Diaspora Sikhs traumatised. A detailed analysis of the abuses does not fall within the scope of this paper but the fact that state policy led to the following atrocities and the fact that no one is being held accountable for them is key to the question of “oppression” for the purposes of this point:

- The Indian army’s full scale assault on the Golden Temple complex (including the destruction of the Akal Takht – the centre of Sikh sovereignty) and the killing of thousands of devotees in a notorious act of genocide and desecration which extended to 38 other major Sikh shrines in June 1984 (the media were banned from Punjab which was sealed off during the operation). The Sikh Reference Library housing irreplaceable items from Sikh heritage was deliberately torched by the army.
- The butchering of over 20,000 Sikhs across India in November 1984 in pogroms activated after the assassination of Indira Gandhi.
- The ‘dirty war’ waged by security forces in Punjab since 1984 which has seen leaders of the Sikh freedom movement, their supporters and families killed off (or ‘disappeared’) in the tens of thousands, with their bodies being secretly cremated in order to hide evidence. The central government set up a massive fund to enable ‘rewards’ to be given to those who, by whatever means, eliminated
- The widespread use of torture and rape to terrorise Sikhs into political submission.
- The enactment of ‘black laws’ ostensibly to deal with a terrorist threat but which were used to give the security forces complete impunity for their abuses – at one stage these measures included the suspension of the right to life.
- The elimination of many human rights protectors, including lawyers, who dared to speak out against the atrocities.

Respected international human rights organisations such as Amnesty International and Human Rights Watch, as well as the UN Special Rapporteur on Torture, have been banned from Punjab (and still are). Nevertheless witness testimony has allowed these groups to document the atrocities; even to this day their calls for appropriate legal action to be taken against the perpetrators of the atrocities are ignored by the Indian state and, as a result, the terror is maintained.

The ‘territorial integrity’ objection to groups seeking to exercise self-determination by means of secession is only arguable if a State has not oppressed the peoples living within it and where those peoples have had their political and human rights respected in the constitutional set-up in that State. Observers of the recent history of the Sikhs will be aware that the ‘territorial integrity’ objection cannot be afforded to India and that must be a factor in any process of applying the process of self-determination to the Punjab conflict.

Internal and External Self-Determination

The right of self-determination is often divided into two aspects: 'external' and 'internal' self-determination. In a world order based on state entities, the international community has naturally preferred self-determination to be, where possible, exercised within existing states (internal self-determination) but it has recognised that, where there is a deliberate denial of such arrangements to claimants, there must be scope to exercise the right by other means (external self-determination).

External self-determination concerns directly the territory of a State -- its division, enlargement or change -- and the State's consequent international ("external") relations with other States. The application of external self-determination is seen in the three main methods for exercising the right of self-determination mentioned in **General Assembly Resolution 1541(XV)**:

- emergence as a sovereign independent State ;
- free association with an independent State ; or
- integration with an independent State.

Importantly, it can be seen in this Resolution that the right of self-determination does not imply that independence, or secession from an independent State, is the only, or even the necessary and appropriate, means of exercising the right. There may be other structures or arrangements that satisfy the demands of those who exercise the right of self-determination.

Internal self-determination. The "internal" aspect of the right concerns the right of peoples within a state to choose their political status, the extent of their political participation and the form of their government, i.e. a state's "internal" relations are affected. The potential for the wide application of internal self-determination was stated in the 1970 Declaration on Principles of International Law, as it is provided that only "a government representing the whole people belonging to the territory without distinction as to race, creed or colour" can be considered to be complying with the right of self-determination. The exercise of this right can take a variety of forms, from autonomy over most policies and laws in a region or part of a state (such as the canton system in Switzerland); to a people having exclusive control over only certain aspects of policy ; such as education, social and/or cultural matters. The type of arrangements applicable to any given situation will usually depend on the constitutional order of the state concerned and may challenge the present centralised structure of most states.

The Sikhs have, since 1947, made substantial efforts aimed at securing 'internal self-determination' within India. That is a matter which has been recorded in a great deal of literature about the Punjab problem. Although it is beyond the scope of this paper to analyse those efforts in detail, some of the most well known circumstances of those efforts are:

- 1947 and India's **broken promises** to the Sikhs. India's founding fathers had given numerous solemn promises that their freedom and dignity would be safeguarded. Jawahar Lal Nehru had said that **"...the brave Sikhs of Punjab are entitled to special consideration. I see nothing wrong in an area set up in the north of India wherein the Sikhs can also experience the glow of freedom"** (Lahore Bulletin, 9th January 1930). These promises were conveniently forgotten after the British left and the Sikhs were dismissively told by the same Nehru that the **"circumstances had now changed"**.

- **Rejection of India's centralised Constitution by the Sikhs.** S. Kapur Singh MP speaking in the Indian Parliament on **6th September, 1966** described how the Sikhs had never accepted in the Indian Constitution. He told of how Mahatma Gandhi and Pandit Jawaharlal Nehru gave the Sikhs a solemn assurance that after India achieves political freedom no Constitution shall be framed by the majority community unless it is freely acceptable to the Sikhs. This promise was then reduced into a formal Policy Resolution of the All India Congress Committee. Afterwards, this Policy Resolution was repeatedly reiterated, officially and semi-officially, throughout the period up to August 1947. When in 1950, the Constitution Act of India was enacted and the Constitution failed to deliver any safeguards or political rights for the Sikhs as a people or nation, the accredited representatives of the Sikhs the Shiromani Akali Dal declared vehemently and unambiguously in the Constituent Assembly that: **“The Sikhs do not accept this Constitution: the Sikhs reject this Constitution Act”**. The spokesmen declined to append their signatures to the Constitution Act as a token of this clear and irrevocable rejection. The Sikhs as a people have never accepted that constitution.
- **The Anandpur Sahib Resolution.** Passed by the Working Committee of the Shiromani Akali Dal, Ludhiana, Punjab, October 17, 1973 set out the basis on which the Sikhs were prepared to accept a political union within India, as a federal state:

“The Central Government should confine its authority only to defense, foreign affairs, general communications and currency and rest of the subjects should be handed over to the States and in this case particularly to Punjab”.

This demand for internal self-determination was pursued through decades of peaceful protest and attempts at negotiation with the central government. The demands were never seriously considered and appear now, given the recent history of the conflict between the Sikhs and India, to be too little too late in any event.

- **Natural resources.** Over 70% of Punjab’s precious water resources are being appropriated by other states within India, without any payment or other consideration. As an overwhelmingly agrarian state which is suffering from acute water shortages (experts predict Punjab will become a desert within 20 years if current utilisation continues), the region and its people are being denied their own crucial natural resources. The appropriation is contrary not only to established riparian laws (the recipient states are non-riparian) but also a violation of the law of self-determination which provides that no people should be denied their natural resources. Recently, the Punjab state government passed the **Punjab Termination of Agreements Bill 2004** in an unprecedented move to cancel all water ‘sharing’ arrangements imposed by the central government. It is likely that the Indian Supreme court will set aside that move at the behest of the central government. The economic future of the Sikh homeland is being destroyed but their protests have not been heeded.
- **Declaration of Khalistan issued from the Akal Takht Sahib on 29th April 1986.** The Sarbat Khalsa (national gathering of the Sikh nation) held at the Akal Takht Sahib in Amritsar on 26 January 1986 freely resolved that the establishment of an independent sovereign Sikh state was the only means of protecting Sikh national rights. This was the basis on which the leaders of the Sikh freedom movement declared independence by way of the Declaration of Khalistan issued from the Akal Takht Sahib on 29th April 1986. The Sikh leadership involved in making of the Declaration have been killed in fake encounters and the freedom movement has been suppressed by the use of force in a blatantly illegal manner. Senior Indian security officials openly defend that approach on the basis that the ‘niceties’ of international legal norms will not be allowed to get in the way of an overwhelming political imperative of crushing the separatists and their sympathisers.

The scale of the state terror in Panjab has left a traumatised population and a political void where not only is there no settlement of the conflict but no official recognition of it. The absence of large-scale political activism today is not a sign of normality – it is a circumstance that a leading human rights defender in Panjab has described as the “**peace of the graveyard**” (Ret’d Justice Ajit Singh Bains, Chair of the Punjab Human Rights Organisation, addressing British MPs in the House of Commons on 5th November 2003).

The Sikh demands for autonomy or internal self-determination were not only rejected by the Indian State; Indian politicians responded by criminalising Sikh aspirations and trying to neutralise them by the use of force (state terrorism), eventually on a massive scale. Estimates as to the number of Sikhs killed since 1984 range from between **150,000 to 200,000**.

Experts on self-determination aver, unsurprisingly, that when INTERNAL self-determination is violently rejected and crushed with state terror, the oppressed peoples or nations have little option but to seek remedy via EXTERNAL self-determination. As we have seen, the international law formulation on self-determination underpins that view. That is the basis on which the Sikhs themselves have raised the demand for an independent state.

How is the right to Self-Determination exercised?

Given that the right of a ‘people’ or ‘nation’ is based on their “freely determined” wishes, it is no surprise that the classic mechanism for implementing that right is the use of a plebiscite. This was seen in the original UN resolutions on Kashmir in 1948 and the more recent UN led independence process for East Timor. The Sikhs have not of course been offered the opportunity but it is interesting to note that the former UK Indian High Commissioner, Kuldeep Nayar has admitted that if, after the horrors of 1984, the Sikhs were given a plebiscite they would have gone for Khalistan.

The question moves to how such a plebiscite may be brought about in Panjab and it is here that the international legal system is flawed as there is not available to claimants of collective human rights a forum to bring their claim for adjudication. The Human Rights Committee has been limited in its ability to consider claims brought by peoples alleging violations of their right of self-determination because the Optional Protocol to the ICCPR allows only ‘individuals’ to bring claims. In fact, none of the major international human rights tribunals has had to consider directly a claim alleging the abuse of the right of self-determination.

In the absence of an effective standing tribunal to adjudicate these claims it falls on the political will of the international community to deal with claims in the UN and this is where claimants must focus their energies. The subjugation of a universal human right, enshrined in international law, to a political process as imperfect as the UN is a tragedy which explains why many self-determination claimants have sadly felt it necessary to resort to other means to pursue their goals. It cannot be right that such a flawed system be allowed to remain and international lawyers are exploring the establishment of a permanent tribunal that would adjudicate claims. Until that happens it will probably be a political process that will lead to any successful pursuit of the legal right of self-determination and it is therefore crucial for the international community to assess claims in a principled and neutral manner.

Conclusions

Self-determination is now recognised as the bedrock of all human rights in international law; without self-determination all individual human rights can be breached with impunity. Furthermore, self-determination is a key to the resolution (and prevention) of scores of violent conflicts which invariably have a massive cost in terms of human life and development. The purposes of the UN (maintenance of international peace and security) will be served directly if the law of self-determination is universally implemented and South Asia is a region that seems particularly in need of conflict resolution by that means.

Notwithstanding the (deeply unimpressive) arguments of India that self-determination cannot apply to peoples in independent States, the international community must move beyond passive acceptance of the use of force to crush lawful claims to exercise the right of self-determination. The Sikhs today look to international intervention to secure their lawful rights. In words of Marino Busdachin, General Secretary of the Unrepresented Nations and Peoples Organisation, in a speech to MPs and Sikh representatives in the British Parliament in May 2004: *“The international community, its members and institutions have an obligation to act where international law, including human rights and the right to self-determination is violated as seems to be the case in relation to the Sikhs in their homeland. The time to act is now”*

This paper has demonstrated how the Sikhs, as a nation, have a lawful right to self-determination. It will simply not do for those who claim to operate within international law to deny this. It is hoped that the international community will recognise this in order to take forward the cause of peace and justice and the rule of law in South Asia.

A NOTE ABOUT THIS PAPER FROM THE HUMAN RIGHTS ADVISORY GROUP (HRAG) OF THE PANJABIS IN BRITAIN ALL PARTY PARLIAMENTARY GROUP, WESTMINSTER, UK.

HRAG has produced this paper in order to assess the causes of the Punjab conflict and to establish a credible solution based on human rights and international law. The implementation of self-determination to this conflict appears to be the key to resolving this conflict and indeed many others around the world. It is the only means by which the international community can deliver a process by which a peaceful and just outcome can be secured. HRAG has conducted extensive research in to the back ground issues, deliberated them at public meetings held at the Houses of Parliament in Westminster and received valuable input and assistance from concerned organisations and individuals alike, all of whom to which we are sincerely grateful.

Sikh, Human Rights and other organisations contributing to this position paper:

**British Sikh Consultative Forum
British Sikh Federation
Council of Khalistan
Dal Khalsa
International Human Rights Organisation (Chairman, D.S.Gill)
Khalsa Raj Party
Khalsa Human Rights
Punjab Human Rights Organisation (Chairman, Ret'd Justice Ajit Singh Bains)
Shiromani Akali Dal, UK
Sikh Secretariat, UK
Sikh Community and Youth Service, UK
Sikh Education and Welfare Association, UK
Sikh Federation, UK
National Council of Gurdwaras, UK
UNPO Unrepresented Nations and Peoples Organisation (General Secretary, Marino Busdachin)**

ACKNOWLEDGEMENTS:

The costs of producing this publication have been funded by the Sarbat Khalsa Foundation, U.K.

OTHER HRAG PUBLICATIONS: ‘The November 1984 Anti-Sikh Pogroms – Twenty years on ’. Nov 2004



The shattered ruins of the Akal Takht Sahib in Amritsar (the centre of Sikh sovereignty) following the full scale Indian army assault in June 1984. Thousands of Sikhs were killed in the army operation which marked the beginning of a Sikh freedom movement in the Sikh homeland of Punjab.



The Sarbat Khalsa (national gathering of the Sikhs) in front of the Akal Takht Sahib (not pictured) in Amritsar on 26th January 1986. It resolved to establish an independent sovereign Sikh state of Khalistan in exercise of the Sikh right to self-determination