

decolonization movements has evolved since the end of the Second World War, specifically as a result of the widespread decolonization movement of the 1960s.²⁰ The legality of the use of force by decolonization movements was not initially accepted by much of the international community, with specific opposition from western (colonial) powers. As a result of this controversy, early UNGA resolutions recognized the validity of anti-colonial movements, but only with reference to the legitimacy (versus legality) of their 'struggle' (which was not intended to equate to an acceptance of a right to use force).²¹ Nonetheless, support for the use of force by decolonization movements has now grown to the point of general, though not universal, international acceptance (at least in part as a result of the relative absence of current colonies). For example, UNGA resolutions have increasingly recognized the legitimacy of using "all available means including *armed struggle*" by self-determination movements acting against colonial domination or alien occupation.²²

2.6. Use of Force Against Self-Determination Movements

A state cannot use force against a people legally exercising its right of self-determination, whether 'internal' or 'external' in nature. The *Friendly Relations Declaration* provides that:

Every state has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of that right to self-determination and freedom and independence.

Unlike the legal ambiguity surrounding use of force by or in support of self-determination movements, this principle is not controversial and has achieved general international support.²³

2.7. Arms Transfers in Support of Self-Determination Movements

A strong case can be made that states may provide significant support to decolonization movements in other states, when the exercise of the right of self-determination is being suppressed by the colonizing power. For example, the *Friendly Relations Declaration* provides that, in response to forcible state acts in violation of the above-mentioned 'duty' to refrain from such acts:

In their actions against, and resistance to, such forcible action in pursuit of the exercise of the right of self-determination, such people [i.e. peoples entitled to] are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The *Friendly Relations Declaration* does not, however, directly address or condone arms transfers to, or other armed support of, opposition self-determination movements. This ambiguity was deliberately maintained in order to achieve international consensus in support of this and other UNGA resolutions on this subject.²⁴

The ICJ decision in *Nicaragua* does not expressly preclude the provision of arms to opposition groups in the context of decolonization. In fact, the decision in *Nicaragua* specifically held that "[t]he Court is not here concerned with the process of decolonization; this question is not in issue in the present case."²⁵ This was criticized by Justice Schwebel in a dissenting judgment, on the grounds that it might be viewed as an implicit acceptance by the Court of providing support to armed opposition groups in the decolonization context. Although international law does not generally support intervention in civil disturbances on behalf of opposition forces, a conflict waged against colonial or alien domination cannot necessarily be viewed as a purely internal matter and as such may not fall within this prohibition. Article

²⁰ See, e.g., Malcolm Shaw, *International Law*, 4th ed. (Cambridge University Press, 1997): 795-7; Christine Gray, *International Law and the Use of Force* (Oxford University Press, 2000): 45-50.

²¹ Gray, *ibid.* at 46.

²² See, e.g., resolutions 3070(XXVIII), 3103 (XXVIII), 3328(XXIX), 3481 (XXX), 31/91, 31/92, 32/42, and 32/154. Though this is now often limited to 'all available means.' See, e.g., Shaw and Gray.

²³ See, e.g., Gray.

²⁴ *Ibid.*

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