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*Associated Professor Zoran Jovanovski, LL.D.*

Military Academy „General Mihailo Apostolski", Skopje
Ministry of Defense, Republic of North Macedonia

# THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW – HISTORICAL PERSPECTIVES

*The name of international law is derived from the Latin term jus gentium, and it means the right of the nation or international law. International law also includes the term public international law or private international law. Public international law regulates relations, first of all between states, while private international law regulates the relations between persons with different citizenship in cases of dilemma in which in fact national law should be applied in a specific case, and thus its jurisdiction would be competent, etc. Universal international law actually applies to the entire international community, while regional international law applies only to states belonging to one region or area. International law has two structures, a vertical and horizontal. All states that are sovereign and independent represent the horizontal structure. This structure indicates that a given state is not subordinated to another state or an international organization, i.e. when a state must first agree to any restrictions. The vertical structure is slightly different, for example states can be merged to create certain international organizations that are capable of creating a binding effect on their members.*

**Key words:** International law; States; Structures.

## 1. GENERAL CONSIDERATIONS

Self-determination of a nation is a phenomenon that refers mainly to international law.

That process refers toall matters related to proper maintenance of peace, a matter directly related to self-determination dating since the United Nations Charter, as well as the application that includes the norm stating the

Zoran Jovanovski, *zoranjovanovski43@gmail.com.*

obligations or erga omnes – the activation of which can be invoked by the entire international community. In fact, due to the displayed international character, the principle extends beyond all limits of internal jurisdiction, and it does not belong to the domestic jurisdiction of a state.[1]

We can say that if this principle is somehow breachedby the affected state, then, a series of guarantees provided by international law will come into force and they will bein favor of the affected minority / group / community. The main and basic guarantee is the one that primarily refers to other countries of the international community, namely release from the obligation to prohibit interference in internal affairs. Thus, the states themselves – and before the international community – can raise the issue of self-determination of a nation that is subordinated to foreign sovereignty, or discuss it directly with the concerned state.

## 2. DEVELOPMENT OF THE RIGHT TO SELF-DETERMINATION

The right of the people to self-determination is a cardinal principle in modern international law (often considered a jus cogens rule), binding, as such, forthe United Nations as an authoritative interpretation of the Charter'norms. It states that people, on the basis of respect for the principle of equal rights and equal opportunities, have the right to freely choose their sovereignty and international political status without interference.

The concept was first expressed in the 1860s, and then began to spread rapidly. During and after World War I, the principle was encouraged by both Vladimir Lenin and the United States President Woodrow Wilson. After announcing his fourteen points on January 8, 1918, on February 11, 1918, Wilson declared: "National aspirations must be respected, people can now be dominated and governed only by their own consent." Self-determination "is not a simple phrase, but it is an imperative – a principle of action".

During World War II, the principle was included in the Atlantic Charter, proclaimed on August 14, 1941, by Franklin D. Roosevelt, President of the United States, and Winston Churchill, Prime Minister of the United Kingdom, who pledged the Eight Main Points of the Charter. It was recognized as an international legal right after it was explicitly stated as a right in the UN Charter.The principle does not specify how the decision should be made, nor what the outcome should be, whether it is independence, federation, protection, some form of autonomy or full assimilationnor is it stated what the distinction between nations should be – nor what the people represent. There are conflicting definitions and legal criteria for determining which groups can legitimately claim the right to self-determination. The term self-deter-

[1] C, Antonio, *I diritti umani nel mondo contemporaneo*, Editori Laterza, Bari 1994.

mination actually means the free choice of one's own acts without external coercion. The whole principle of self-determination of nations in the 20s of the last century actually turned into one of the main cornerstones on which the new map of international relations was based, which was elaborated by the then President of America Woodrow Wilson.

After World War I, self-determination in that era was a principle without a normative value due to its marginal role in all peace treaties in the League of Nations, as well as the omission in the Charter of the League of Nations, which immediately included the principle of territorial integrity under Article 106. The political nature of the principle was immediately confirmed by the controversy over the Icelandic islands that is, both legal commissions rejected the possibility of treating self-determination as a real norm in the positive law; however, they rejected the idea of the existence of that right whichseparates all individual national groups from the very composition of their states, from the moment when that right was the exclusive attribute of state sovereignty. However, not only was the principle of self-determination – which also has a political character – insufficientto legitimize any right to secession, but secession itself was an issue devoid of international significance.[2]

Secession, above all, refers to domestic jurisdiction of states, to the very sphere of issues that are protected from any external intervention based on the principle of non-interference in internal affairs. It can also be notedthat recognizing the right of minorities to secede would actually mean destroying order and stability within states, which in turn could lead to the spread of anarchy in the larger international community.

## 3. CONSTITUTIONAL LAW

Most sovereign states do not recognize the right to self-determination through secession in their constitutions. Many explicitly forbid it. However, there are several existing models of self-determination through greater autonomy and through secession.

In liberal constitutional democracies, the principle of majority was dictated by whether the minority could be divided. In the United States, Abraham Lincoln acknowledged that secession could be achieved by amending the United States Constitution. The British Parliament in 1933 considered that Western Australia could only secede from Australia by a majority vote of the country as a whole; the previous two-thirds majority in secession in a referendum in Western Australia was insufficient.

The Chinese Communist Party followed the Soviet Union in including the right to secede in the constitution in 1931, in order to include ethnic

[2] V. Ortakovski, *Malcins na Balkanot*, Skopje 1998, 116–118.

nationalities and Tibet in accession. However, the Party eliminated the right to secede in later years and had an anti-secession clause written in the Constitution before and after the founding of the People's Republic of China. The 1947 constitution of the Union of Burma contains express state law to secede from the union under a number of procedural conditions. It was eliminated in the 1974 constitution of the Socialist Republic of the Union of Burma (officially the "Union of Myanmar"). Burma, however, allows for "local autonomy under central leadership".

The 1996 Constitution of Austria, Ethiopia, France, and St. Kitts and Nevis expresses or implies secession rights. Switzerland allows secession and the creation of new cantons.In the case of the proposed separation of Quebec from Canada, the Supreme Court of Canada ruled in 1998 that only a clear majority in the state and a constitutional amendment approved by all participants in the Canadian Federation could allow secession.

The 2003 draft of the European Union Constitution allowed voluntary withdrawal of member states from the union, although the country wishing to leave could not be included in the vote, deciding whether or not they could leave the Union. There was much discussion about this self-determination by minorities before the final document went through the failed ratification process in 2005.

As a result of the successful constitutional referendum held in 2003, each municipality in the Liechtenstein principality has the right to secede from the principality by a majority vote of the citizens living in this municipality.

## 4. DRAWING NEW BOUNDARIES

In defining international borders between sovereign states, self-determination has turned into a number of other principles. As soon as the groups achieve self-determination through secession, the question of proposed boundaries may prove more controversial than the fact of secession. The bloody Yugoslav wars of the 1990s were mainly related to border issues because the international community applied a version of the utipossidetisjur in transforming the existing internal borders of the Yugoslav republics into international borders, despite ethnic group conflicts within those borders. Inthe 1990s, indigenous people from two-thirds of the Quebec province opposed the inclusion of the Quebec nation and expressed their determination to oppose it by force.

The border between Northern Ireland and the Irish Free State was based on the boundaries of existing counties. A border commission was set up to reconsider. All the proposals, which referred toa small transfer to the network in Northern Ireland, were revealed in the press. In December 1925, the

governments of the Free State of Ireland, Northern Ireland and Great Britain agreed to accept the existing border.

## 5. THE UN CHARTER

First of all, I would like to say that we know very well that the United Nations Charter is the first multilateral agreement that mentions in certain parts the principle of self-determination (Article 1 paragraph 2 and Article 55).

This principle is set within the UN Charter only as a principle of self-determination of nations without implying the right to secession and, among other things, is interpreted in terms of other provisions of the Charter (primarily in terms of the norm of peace, but also that of protection of the territorial integrity and sovereignty of states).[3]

An important act that contributes greatly to affirming the above principle is the Declaration of Independence of the Colonial Countries and Peoples adopted by the United Nations General Assembly on 14 December 1960. The Declaration itself rejected the idea of patronage of all territories previously considered incapable of self-government, and set the goal of achieving their independence, calling on the principle of self-determination to play a legal role in the decolonization processwithin the principle of territorial integrity of states. The solution, which includes granting independence to colonized countries, relies on two assumptions: the first, on the basis of which the status of colonized territories has been recognized as different and above all separate from that of the colonizing country, and the second, on the basis of which, the principle of self-determination – stated in the process of decolonization – was carried out within the principle of utipossidetisjuris, according towhich, the newly independent states undertook to inherit the old borders from the colonial powers. All this was achieved without compromising the principle of protection of the territorial integrity of states. With the information presented so far, I can say that the whole process of decolonization was completely configured as a simple restoration of the illegally taken sovereignty of the peoples by all colonial powers, which in other words did not imply secession of the peoples from the administrator state, whereby the whole so-called principle of self-determination with its main and basic rules has been successfully and compatibly connected in international law. No secessionist event gained strength or opportunity to justify itself, and on that basis the principle of territorial integrity did not result in a reduction in terms of its content and scope of application.[4] The not entirely finished process of decolonization primarily caused the spread of secessionist phenomena in the newly formed states, the so-called second generation demands.

[3] Charter of the United Nations of 24 October 1945.

[4] Charter of the United Nations of 24 October 1945.

These demands were a direct consequence of the application of the principle of utipossidetisjuris in the creation of states, which – although serving as the legal basis for the decolonization process itself, on the other hand - contributed to most ethnic groups remaining only subjects of sovereignty whose validity they themselves did not recognize.[5]

A full or partial static response to all requests was confirmed by the two 1966 Human Rights Pactsadopted by the General Assembly of the United Nations. Article 1, common to both Covenants, definitively adopted the universal notion of self-determination, recognized the right to self-determination of all peoples, and concluded that it itself is expressed through the right of the people to freely choose their own political status. Article 27 of the Covenant on Civil and Political Rights recognizes only the right of ethnic, religious and all linguistic minorities to accept, enjoy, express and nurture their own culture and religion and to use their own language without the right to self-determination or the right to their complete secessionbeing recognized. This means that a distinction is immediately made between the rights of peoples (including the right to self-determination) and the rights of minorities.

The final answer to all the questions was offered bythe adoption of the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation between States, adopted by the UN General Assembly on 24 October 1970.

The declaration primarily offers a more complete and credible reconstruction of the normative principle of self-determination (open to – in addition to the classic examples of submission under foreign power - the internal hypothesis of a certain kind of discriminated group with a racist or religious basis in full access to the political decision-making process. Most of the Declaration which his of special interest is the so-called safeguard clause. The significance of the clause is that for the first time within the UN, a theoretical possibility of legitimate secession is being recognized.

The clause first starts by calling for the protection of the territorial integrity of states, but at the same time conditioning it on respect and application of the principle of self-determination expressed through representative government of the entire population regardless of religion, race or skin color. It can be pointed out that if a certain state does not respect the above – mentioned principle of internal self-determination (for example: it excludes a certain minority group from the decision-making process), then the whole action acquires such a degree of illegality, which, according to the Declaration , will be the basis for the discriminated group to make a legal request for secession, where in this case it will prevail entirely over the principle of

[5] See: Chapter I – *Purposes and Principles of Charter of the United Nations*.

territorial integrity – also called the protector of the state and state borders. Amongall the documents mentioned and presented, the Vienna Declaration of Human Rights of 1993 should also be mentioned. It is very important and was adopted within the framework of the United Nations World Conference on Human Rights. This international document, as with the previous Declaration of Friendly Relations, gave priority to the protection of the principle of territorial integrity only to those governments which in their composition reflect the entire population of their territory without any distinction on the basis of religion, race or skin color.

## 6. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

The Conference on European Security and Co-operation (now renamed the Organization for Security and Co-operation in Europe) also dealt with the controversial relationship between secession and self-determination.

As far as we know, the Act adopted at the Helsinki Conference in 1975 contained a Declaration on the Principles for the Regulation of Relations between the participating states, which, although not envisaging any final effect, had as its main purpose the acceptanceby the states of the two blocs in the name of common security. The 8th principle of the Helsinki Final and very important document contains a great definition of self-determination which will say that all nations have the right to always determine their own internal-external political status. However, relying on the general clauses, i.e. interpreting the principle in light of the other provisions of the Declaration, in fact the provision on self-determination is preceded by the obligation to respect the inviolability of borders (principle – III), as well as not to violate territorial integrity between states (principle – IV), then, the obligation to fully respect the principle of non – interference in internal affairs (principle VI), as well as the stated task of respecting human rights (principle VII).

Then, with the documents from Vienna (1989) and the documents from Paris (1990), all these interpretations are further clarified. Everything related to the Vienna document, the IV principle of the Declaration (dedicated to self-determination) reformulates the VIII principle of the Helsinki Final Document in a general context, and which V – Typing gives a greater binding force to the territorial integrity of states.[6] In fact, all those subsequent documents of the Helsinki Document mitigate the breadth of the original VIII principle, thereby reinforcing respect for territorial integrity.[7] From the

[6] Lj. D. Frckoski, V. Tupurkovski, V. Ortakovski, *International Public Law*, Tabernacle, Skopje 1995.

[7] See: Chapter I – Purposes and Principles of Charter of the United Nations.

above, as the only accurate data it can be said that the states continuously, but not exclusively, strive to fully recognize the advantage of the principle of territorial integrity (which is closely related to the content of state sovereignty) over the principle of self-determination, especially if the latter is supported by secessionist content. But still, above all, modern international law and those different tendencies established in different periods lead to think the opposite.[8]

## 7. THE RIGHT TO SECESSION AS THE LAST INSTANCE OF THE RIGHT TO SELF-DETERMINATION

Considering all the various ways of interpretation individually, we have mentioned that the right to self-determination takesa different direction in international law. Namely, while traditional international law treats secession as an internal matter of states, modern international law in exceptional cases configures secession as the last resort or ultimate solution to the right of peoples to self-determination. In other words, a particular group / community / minority could be called a secession in two cases: first, if serious violations of the internal aspect of the right to self-determination are verified, which would legitimize the practice of doing so in its external aspect. And second, if some gross human rights violations are verified at the expense of the separatist group.

In both cases, as soon as their right to internal self-determination becomes inaccessible, the internal and external aspects of that very principle are linked with the minority being able to raise a legitimate demand for secession.

Proponents of the first hypothesis of secessionist self-determination have a major claim that the group whose right to internal self-determination has been violated, precisely because of that whole injury, matures and reshapes it into a right to external self-determination. All this will be possible if international law recognizes the community / group / minority right to internal self-determination and if it is denied to the extent that it prevents its further realization within the state, then it evolves in the right to external self-determination.[9]

While the proponents of the second hypothesis claim that in absolutely exceptional cases the primacy of territorial integrity can be omitted, in order to protect the rights of different ethnic groups, at the given moment when they will be subjected to more serious injuries, and there is no other possibility for reparation except the realization of a secession fromthe state

[8] Lj. D. Frckoski, V. Tupurkovski, V. Ortakovski.

[9] A. Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law*, Oxford University Press, Oxford 2004.

responsible for those injuries.This whole configuration will be a certain kind of balance between the opposing institutes in international law, a balance between state prerogatives on the one hand and international benefits recognized on all ethnic groups on the other.[10]

Based on all these secessionist hypotheses and their normative foundations in self-determination, it is considered that all groups, communities, and minorities have the right to internal self-determination, and if severe violations occur, that right will no longer be enforceable within the state (a condition that is approached in any way until the domestic remedies are exhausted). That right will evolve into a right of external self-determination, which can be further directly exercised only through secession, so in this case the secession is configured as subject to a kind of remedial secession that actually completes the system of protection of minority rights.[11]

## 8. ARTICLE 1 OF THE INTERNATIONAL COVENANT ON HUMAN RIGHTS

During the preparation of the drafts of the International Covenant on Human Rights, the Commission on Human Rights considered the issue of the right to self-determination at its eighth session in 1952 (252nd and 266th meetings).[12]

During the discussion, different opinions were expressed regarding the definition of the right to self-determination, its economic aspects and certain problems on which the law is created.

Regarding the definition of the right to self-determination, some articles, inter alia, argued that:

(a) The reference to that right in Articles 1 and 55 of the Charter appears to be a recognition of the sovereignty of States and their obligation to respect the sovereignty of other States;

(b) the right to self-determination meant the right of the people to decide on their international status (access to independence, association, secession, union, etc.);

(c) the law belonged to the peoples fighting for their independence;

(d) the law belonged to peoples who had already formed independent nation-states whose independence had been threatened;

(e) the right of peoples to self-determination meant their right to freely determine their political, economic, social and cultural status;

[10] Rolling Stones, "You Can't Always Get What You Want, on let it bleed" (DeccaRecords 1969).

[11] President Wilson's Address to Congress, Analyzing German and Austrian Peace Utterances (Delivered to Congress in Joint Session on February 11, 1918), gwpda.org. February 11, 1918.

[12] *Ibid*.

(f) it was unnecessary to try to define self-determination, which should be proclaimed for all peoples, with a special emphasis on the peoples in the territory of the self-governing territories. The view was expressed that the right to self-determination should be considered not only from a political but also from an economic point of view, as political independence was based on economic independence, and the right of peoples to freely dispose of their natural resources should be recognized.

At the end of the discussion, the Human Rights Committee adopted the following resolution:

The Commission on Human Rights has decided to include in the draft human rights treaties the following article on the right of peoples and nations to self-determination:

"1. All peoplesand all nations have the right to self-determination, namely, the right to freely determine their political, economic, social and cultural status.

2. All States, including those responsible for the administration of the territory of the State of Self-Government, and those exercising control over the exercise of that right by any other people, shall promote the exercise of that right in all their territories, and shall respect the observance of that right in other States, in accordance with the provisions of the Charter of the United Nations.

3. The right of peoples to self-determination includes permanent sovereignty over their natural wealth and resources. In no case may the people be deprived of their own means of subsistence, on the basis of any rights which other States may claim."

In 1955, at the tenth session of the General Assembly, Article 1 of the draft agreements adopted by the Commission on Human Rights was considered by the Third Committee.

The general debate included a discussion on whether draft agreements should contain an article on the right to self-determination. Those who opposed the inclusion of an article on self-determination affirmed, inter alia, that the Charter referred to the "principle" and not to the "right" to self-determination. In principle, it had a very strong moral force, but it was too complex to translate into a legally binding instrument.

It was added that the principle of self-determination was interpreted in different ways in different places and created sensitive issues, such as minorities and the right to secede. Finally, self-determination is said to be a collective right and therefore inappropriate for inclusion in an instrument that sought to establish the rights of individuals. Those who advocated the

inclusion of an article on self-determination in the draft agreements insisted that the right to self-determination was essential to the enjoyment of all other human rights.[13]

Although the right to self-determination was a collective right, it still affected each individual. To be deprived of the right to self-determination entailed the loss of individual human rights. The text prepared by the Working Group reads as follows:

1. All nations have the right to self-determination. On the basis of this right, they freely determine their political status and freely follow their economic, social and cultural development.

2. Peoples may, for their own purposes, freely dispose of their natural wealth and resources, without regard to any obligations arising from international economic cooperation, based on the principle of mutual benefit and international law. In no case can one be deprived of his own means of subsistence.

3. States Parties to the present Covenant with responsibility for the management of the territory of the State of self-government and confidence shall promote the exercise of the right to self-determination in such territories in accordance with the provisions of the Charter of the United Nations.

Regarding paragraph 1 of the text, it was pointed out that the word "nations" was deleted because "nations" was considered a more comprehensive term and was used in the Preamble to the Charter. The second sentence of the paragraph was repeated to fulfill the objection that a nation can determine its political status, but not its economic, social and cultural status. With regard to paragraph 2 (paragraph 3 of the Commission text), it was explained that the Working Group deleted the reference to "permanent sovereignty" and revised the paragraph to meet the objection that it could be invoked to justify expropriation without adequate compensation. The fact that the text of the Working Group referred to international law and international economic cooperation should allay all fears about foreign investment in a country, while the words "based on the principle of mutual benefit" will provide certain safeguards.

According to paragraph 3 of the text of the Working Group, the obligations that the governing bodies would undertake according to the advice were explained, and itrelated them to the obligations already undertaken according to the Charter. It was also pointed out that the words "in accordance with the provisions of the United Nationsthe Charter of the Nations" did not refer only to the provisions of Chapters XI and XII and Article 1, but also to the Charter as a whole, and that the obligation of governing

[13] Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 – 1, document A/3077, paras. 27–77.

bodies to promote self-determination in the territory of self-government and trust was implicit in the spirit and letter of the Charter. Furthermore, it was explained that the position referred only to trust and self-governing territories, as achieving independence from the peoples living in those territories was the most urgent problem. In any event, paragraph 1 asserted the right to self-determination as a universal right. However, it is noted that the text deviates from the General Assembly resolution 545 (VI), M because that resolution referred to "all states, including those responsible for the administration of non-self-governing territories".

However, the text of Article 1 of the two International Covenants on Human Rights, adopted by the Third Committee and subsequently by the General Assembly (Resolution 2200 (XXI) of 16 December 1966 by which the General Assembly adopted and opened for signature and ratification of theInternational Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights) state:[14]

1. All nations have the right to self-determination. Based on that right, they freely determine their political status and freely follow their economic, social and cultural development.

2. All nations may, for their own purposes, freely dispose of their natural wealth and resources, without regard to any obligations arising from international economic cooperation, based on the principle of mutual benefit and international law. In no case can one be deprived of his own means of subsistence.

3. The States Parties to the present Covenant, including those responsible for the administration of the territory of the self-governing and confidential Parties, shall promote and exercise the right to self-determination in accordance with the provisions of the Charter of the United Nations.

### 8.1. Right to self-determination and anti-colonial struggle

Resolutions on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Nations and the Elimination of Colonialism, adopted by the General Assembly from its twenty-first session in 1966 to its twenty-ninth session in 1974.40 recognize the legitimacy of the struggle of colonial peoples, and peoples under foreign domination to exercise their right to self-determination and independence with all the necessary means at their disposal.

In Resolution 2621 (XXV) of 12 October 1970, entitled "Action Plan for the Full Implementation of the Declaration of Independence of Colonial

[14] Official Records of the General Assembly, Tenth Session, Annexes, agenda item 28 – 1, document A/3077, paras. 27–77.

Countries and Peoples", the General Assembly developed the United Nations anti-colonial thesis in the following order:[15]

(a) The continuation of colonialism in any of its forms or manifestations is a criminal offense which constitutes a violation of the Charter of the United Nations, the Declaration of Independence of Colonial States and Nations and the Principles of International Law;

(b) Colonial peoples have an inherent right to fight with all necessary means at their disposal against colonial powers which suppress their aspirations for freedom and independence;

c) Member States should provide all necessary moral and material assistance to the peoples of the colonial territories in their struggle for freedom and independence;[16]

(d) All freedom fighters in detention shall be treated in accordance with the relevant provisions of the Eugene Convention relating to the Treatment of Prisoners of War of 12 August 1949.

In the Declaration of the Twenty-fifth Anniversary of the United Nations, adopted by the General Assembly in Resolution 2627 (XXV) of 24 October 1970, the Member States have declared:

We reaffirm the inalienable right of all colonial peoples to self-determination, freedom and independence and condemn all activities that deprive every people of these rights. In recognizing the legitimacy of the struggle of the colonial peoples for their freedom by all appropriate means at their disposal, we call on all Governments to comply in this respect with the provisions of the Charter, taking into account the Declaration of Independence of the Colonial Countries and Peoples adopted by the United Nations in 1960. We reiterate that these countries and peoples have the right, in their just struggle, to seek and obtain all necessary moral and material assistance in accordance with the purposes and principles of the Charter.

The principles analogous to those set out above were reaffirmed in Resolution VIII of the International Conference on Human Rights, adopted on 11 May 1968.41, and in General Assembly resolutions entitled "The importance of the universal realization of the right of peoples to self-determination and rapid award" independence of colonial countries and peoples for effective guarantee and respect for human rights.

In a number of resolutions concerning activities of foreign economic and other interests that hindered the implementation of the Declaration of

[15] Resolutions 2189 (XXI) of 13 December 1966, 2326 (XXII) of 16 December 1967, 2465 (XXIII) of 20 December 1968, 2548 (XXIV) of 11 December 1969, 2708 (XXV) of 14 December 1970, 2878 (XXVI) of 20 December 1971, 2908 (XXVII) of 2 November 1972, 3163 (XXVIII) of 14 December 1973 and 3328 (XXIX) of 16 December 1974.

[16] *Ibid.*, 57.

Independence of the Colonial Countries and Peoples of Southern Rhodesia, Namibia and the Portuguese-dominated territories, and all other territories under colonial domination and in an effort to eliminate colonialism, apartheid and racial discrimination in South Africa, the General Assembly reaffirmed the inalienable right of peoples from dependent territories to self-determination and independence and to enjoy the natural resources of their territories, as well as their right to dispose of them.

The General Assembly further expressed the following ideas:

(a) Colonial powers which deprive colonial peoples of the exercise and full enjoyment of these rights or which place the economic or financial interests of their nationals or nationals of other countries before those of the indigenous peoples are in breach of their obligations under the United Nations Charter; and (b) any practice which leads to the exploitation of the natural resources of territories under colonial domination contrary to the interests of the indigenous population, or which results in the violation of its economic and social rights and the exercise of colonial regimes, is contrary to the principles of the Charter and prevents the full and rapid implementation of the Declaration in those territories.

In Resolution 3103 (XXVIII), "Basic Principles on the Legal Status of Fighters Fighting against Colonial and Foreign Domination and Racist Regimes", adopted on 12 December 1973, the General Assembly solemnly proclaimed the following principles:

1.The struggle of peoples under colonial and foreign domination and racist regimes to exercise their right to self-determination and independence are legitimate and in full compliance with the principles of international law.

2. Any attempt to suppress the struggle against colonialism and the dominance of foreign and racist regimes is incompatible with the Charter of the United Nations, the Declaration of Principles of International Law on Friendly Relations and Cooperation between States in Accordance with the Charter of the United Nations, the Universal Declaration of Huma and the Declaration of Independence of Colonial Countries and Peoples and poses a threat to international peace and security.

3. Armed conflicts involving the struggle of peoples against which colonial and foreign domination and racist religions should be considered as international armed conflicts.

The conventions and legal status are intended to apply to fighters in the 1949 Geneva Conventions and other international instruments applied to persons involved in the armed struggle against colonial and foreign domination and racist regimes.

4. The use of mercenaries by colonial and racist regimes against national liberation movements fighting for their freedom and independence from the yoke of colonialism and foreign domination is considered a crime and therefore mercenaries should be punished as criminals.[17]

5. Violation of the legal status of fighters fighting against colonial and foreign domination and racist draws during armed conflicts implies full responsibility in accordance with the norms of international law.

*Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation between States in Accordance with the Charter of the United Nations*

The Declaration of the Principles of International Law on Friendly Relations and Cooperation between States in Accordance with the Charter of the United Nations, adopted by the General Assembly in Resolution 2625 (XXV) of 24 October 1970, on the occasion of the twenty-fifth anniversary of the United Nations is of utmost importance in the progressive development and codification of the principle of equal rights and self-determination of peoples. In this annex, the general part of the Declaration states that:

In their interpretation and application, the above principles are interrelated and each principle should be interpreted in the context of the other principles.

Nothing in this Declaration shall be construed as prejudice to the provisions of the Charter or the rights and obligations of the Member States under the Charter or the rights of the peoples under the Charter, taking into account the elaboration of these rights in this Declaration.[18]

The General Assembly further stated that:

The principles of the Charter contained in this Declaration constitute the fundamental principles of international law and, consequently, call on all States to be guided by these principles in their international conduct and to further develop their relations on the basis of strict adherence to these principles.

The view was expressed that the right to self-determination is a legal right, the existence of which was generally recognized. Various international instruments, including the United Nations Charter and many General Assembly resolutions, have established the fact that the principle is a legal right. Some officials favored the term "principle" used in the Charter, arguing that there was still doubt as to how the term "right" should be interpreted in relation to the concept of self-determination.

It was noted that the principle encompassed two terms, that of equal rights and that of self-determination; they were complementary and insep-

[17] United Nations, Treaty Series, vol. 75, p. 135.

[18] Resolutions 2288 (XXII), 3117 (XXVIII) and 3299 (XXIX).

arable. Equal rights meant that all peoples had equal and inalienable rights to full freedom, to the exercise of full sovereignty, to the integrity of their national territory, to peace and security, to civilization and to progress. Similarly, all nations had the right to determine their political status and to monitor their economic, social and cultural development. It was noted that the naming of the principle should define the obligations of the governing bodies, and in particular their obligation to grant independence without delay. It also states that under international law, colonial territory cannot be considered an integral part of the territory of colonial power; relations between the administrative body and the territories which are international relations, based on the Charter and not on the national constitution.[19]

Emphasis was placed on the close link between the principle of equal rights and the self-determination of peoples on the one hand and human rights on the other.[20]

## 9. CONCLUSION

Based on the above, we could conclude that the principles of territorial integrity as well as the self-determination of peoples, presented in their dual normative content, have the most applicable actions in public international law, depending on the period. Public international law regulates relations, first of all between states, while private international law regulates the relations between those persons with different citizenship in those cases of dilemma for which in fact national law should be applied in a specific case, the jurisdiction of which would be competent as well, etc. Universal international law actually applies to the entire international community, while regional international law applies only to states that belong to one region or area. Self-determination of a nation is a phenomenon that concerns mainly international law. That process includes all matters relating to the proper maintenance of peace, matters relating directly to self-determination since the time of the Charter of the United Nations, which activation can be invoked by the entire international community.

The right of the people to self-determination is a cardinal principle in contemporary international law (commonly considered the jus cogens rule), binding, as such, to the United Nations as an authoritative interpretation of the Charter. It states that people, based on respect for the principle of equal rights and equitable equality of opportunity, have the right to freely choose their sovereignty and international political status without any interference.

[19] Proceedings of the United Nations Conference on Trade and Development, Vol. I, Final Act and Report (United Nations publication, Sales No. 64.II.B.11), 18–21.

[20] Proceedings of the United Nations Conference on Trade and Development, Third Session, Vol. I, Report and Annexes (United Nations publications, Sales No. E.73.II.D.4), 59–60.

From the above, as the only accurate data it can be said that the states continuously but not exclusively strive to fully recognize the advantage of the principle of territorial integrity (which is closely related to the content of state sovereignty) over the principle of self-determination, especially if the latter is supported by secessionist content. But still, above all, modern international law and those different tendencies established in different periods lead to think the opposite.[21]

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*Проф. др Зоран Јовановски*

Војна академија „Генерал Михаило Апостолски", Скопље
Министарство одбране Републике Сјеверне Македоније

## ПРАВО НА САМООПРЕДЕЉЕЊЕ У МЕЂУНАРОДНОМ ПРАВУ – ИСТОРИЈСКЕ ПЕРСПЕКТИВЕ

*Сажетак*

Назив међународног права потиче од латинског израза *ius gentium* (*ius* – право и генерација), односно овај назив значи право нације или међународно право. Међународно право такође укључује термин међународно јавно право или међународно приватно право. Међународно јавно право регулише односе, пре свега међу државама, док међународно приватно право уређује односе између лица са различитим држављанством у оним случајевима када постоји дилема које национално право би требало применити у конкретном случају, односно питањ надлежности итд. Универзално међународно право примењује се у читавој међународној заједници, док се међународно регионално право примењује само на државе које припадају једном региону или подручју. Међународно право има две структуре, вертикалну и хоризонталну, а све суверене и независне државе представљају хоризонталну структуру. Оваквом структуром можемо рећи да ниједна држава није подређена другој држави или међународној организацији, тј. држава мора прво пристати на било какво ограничење. Вертикална структура је мало другачија, на пример, државе се могу ујединити како би створиле одређене међународне организације способне за стварање закона са обавезујућим дејством за своје чланице.

**Кључне речи:** *Међународно право: Државе; Структуре*.