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PRINCIPLE OF SELF-DETERMINATION OF PEOPLES IN INTERNATIONAL LAW AND THE BORDERS OF IMPLEMENTATION

Master thesis

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CONTENT

INTRODUCTION

The relevance of the topic. Self-determination as a principle was once very "popular". It has been one of the most discussed issues in International Law since it's first manifestations in the inter-war period. Also, in the end of XIX and till the mid/late XX century it was helping to shape a new international community in the light of decolonization process. So is the principle of self-determination of peoples solely a principle of colonial character? One should answer no. Recent events show us that the principle is still relevant. For example the situation in Kosovo again brought everybody's attention with the new focus and strength to self-determination. The case of East Timor is not so recent but it again brought some light over the principle. Till now there is a number of legal documents adopted which establishes one or other aspect of the principle of self-determination of peoples. But do they reveal the essence; do they give a clear understanding of the principle and the implementation of it? Do the documents help us to make a clear decision on the evaluation of recent events; do they help us finally and for a certainty to answer the question: is there self-determination in one case or other?

Before all the evaluations one has to know the essence of the principle. It is important to know how the legal acts address the issue or are they silent on it. Even when the principle of self-determination of peoples is stated on the paper there still remains a question, what it really means, is the wording clear, does it give us a clear understanding of implementation and so on. Here one can see the **first problem –** the purport of the principle of self-determination of peoples is not clearly defined, this causes the uncertainty in application and evaluation. We face substantial questions: who can implement the principle, how it can be implemented and of course, what the principle means.

Not to forget, the principle of self-determination of peoples touches a very sensitive area. It concurrent a number of important principles of the international law and especially the one's which concern the rights of States. Moreover the principle of self-determination of peoples professes to direct the actions of the States. It is not enough to know that the principle can not solely be applied in the international field; there is a need of knowing its borders of implementation. This shows us the **second problem** – the borders of implementation of the principle of self-determination of peoples are not clearly defined. There also exists a question of how does the principle co-operate with other one's.

Therefore, there is a need of a study on the subject. It should be said that there are only a small number of surveys which are exclusively concerned with the principle of self-determination of peoples itself. As such Prof A. Cassese should be mentioned, who in his book

"Self-determination of peoples: a legal reappraisal" made an in-depth study of self-determination. Prof J. Castellino in a number of his publications was talking about the principle of self-determination of peoples, sadly only a unite of them gives us a wide understanding on the matter. Rosalyn Higgins' publications are amounting to an in-depth study, especially on the question of evolution of the principle of self-determination of peoples. Dr. A.Rigo Sureda in his publications represented a comprehensive research on the United Nations practise on self-determination in decolonization cases till 1970. However, the majority of the scholars do not seek to analyze the principle itself. As such Prof Malcolm N. Shaw should be mentioned, he talks about the statehood mainly and refers to the principle of self-determination of peoples only as to one of the factors of statehood. He also brings his attention to the question of co-operation between the principles, mainly the principle of self-determination of peoples and the use of force. Dr. Musgrave analyzes the principle only as deep as it is needed for the topic – the minority rights. The same can be said about Prof J.Crawford, who discuss about self-determination only in the light of the creation of the States, still he gives a deeper examination on the modes of the implementation of the principle. Dr. Thomas D. Grant addresses self-determination only as one of the criteria for statehood. Prof Max Sørensen also refers to self-determination in the light of other topics of international law. In this way writers provide us only with a superficial research on the aspects of the principle of self-determination of peoples. Sadly, Lithuanian researches can not boast of a comprehensive research on the principle of self-determination of peoples, even though we have a mark in our history, which reflect the principle. Furthermore, as it was mentioned, a number of international legal documents do not give a clear understanding of the principle. This shows **the novelty of the topic.**

The object of the master thesis – the regulation of the principle of self-determination of peoples in international law.

The subject of the master thesis – the principle of self-determination of peoples in international law and the borders of implementation.

The aim of the master thesis is to analyze and to reveal the purport of the principle of self-determination of peoples. In order to reach the aim the following tasks must be met.

The tasks of the master thesis:

To show and to study the evolution of the principle of self-determination of peoples;

To define the essence, the beneficiaries, the ways and modes of the implementation of the principle of self-determination of peoples;

To determine the borders of the implementation of the principle of self-determination of peoples.

The hypothesis. The principle of self-determination of peoples is not defined clearly enough in international law and the application of it does give a rise for additional questions, as well the borders of the implementation are clear.

Methods. In order to make a comprehensive research and to meet the tasks a number of methods both theoretical and empiric were used.

Comparative method, was a way to compare a number of international documents and writers' publications. Furthermore, comparative historical method was used to compare the documents from different time's, as well as, ideas expressed by scholars, who where living and analyzing the principle in a light of different time. Also the method of systemic analysis was used to ascertain the co-operation of the principle of self-determination of peoples with other principles of international law. Surely, the generalization method was used for colligation of the results of the research and to settle the conclusions. Then, the empiric method of document analysis was used for the study of international documents, which helped to reveal the essence, the right holders, the ways and modes of the implementation of the principle of self-determination of peoples.

The structure of the master thesis. It consists of introduction, 3 substantiating parts, conclusion, bibliography and summary.

In order fully to understand the phenomenon, there exists a need to know the background which is conditioned by history. Therefore, in the first chapter "Principle of Self-Determination of Peoples – Historical Perspective" we will discuss about the evolution of the principle of self-determination of peoples: events that gave rise to the idea of self-determination, the course which led to the principle of self-determination of peoples, and finally the evolution and manifestation of the principle in interwar period and after the Second World War.

It is important to know the history, the development that one could start talking about the essence. In the second chapter "The Content of the Principle of Self-Determination of Peoples in Contemporary International Law" we will show the essence and the scope of the principle, as well as, the forms how the principle of self-determination of peoples can be implemented and who can use it. In order to show the mentioned relevant international documents will be analyzed.

In the third chapter "Limiting the Principle of Self-Determination of Peoples" we will show that the principle cannot be solely applied that there exists some restrictions to the implementation, which lead to the borders of implementation. Also it will be showed how the principle of self-determination of peoples must co-operate with other applicable principles.

1. PRINCIPLE OF SELF-DETERMINATION OF PEOPLES – HISTORICAL PERSPECTIVE

How could one understand the way the law is today if one does not study its evolution into its current state?[1]

The majority of the writers, talking about the evolution of the principle of self-determination of peoples, use a common partition based on historical events. The most common classification is of 3-4 periods: the genesis of self-determination, World War I, the interwar and World War II together with post-war period. Of course the exact classification differs from scholar to scholar but the pivot remains the same. Surely such a classification based on the substantial events helps to understand and to see the evolution more clearly.

Our classification will also reflect these different historical events as we are not going to question the stream of history. This chapter is divided into two sections: '**1.1. Principle of Self-Determination of Peoples – Shaping the Idea'** where we will address the issue of the formation of the idea of self-determination, and '**1.2. Principle of Self-Determination of Peoples after the Second World War**' where we will discuss the evolution of the principle of self-determination in the post-war period of the Second World War.

1.1. Principle of Self-Determination of Peoples – Shaping the Idea

1.1.1. The Origins of the Concept of Self-Determination

Some commentators say that the germ of self-determination lies somewhere deep in the history. Though as Dr. J. Castellino writes "it is generally accepted fact that the concept of self-determination traces its roots to the American Declaration of Independence, the Enlightenment period and Jacobean followers of the late eighteenth and nineteenth century"[2].

The American War of Independence

The American War of Independence broke out in 1775. The idea of the armed conflict was to obtain the representation within the British Empire for the American settlers. But as the War of Independence dragged on, the loss and suffering made the colonists accept the idea that

[1] Cassese A. Self-determination of peoples: a legal reappraisal. Cambridge: Cambridge University Press, 1995. P.3.
[2] Castellino J. International law and self-determination: the interplay of the politics of territorial possession with formulations of post-colonial National identity. Cambridge: Kluwer law international, 2000. P.8.

they had to look outside the British Empire to secure their rights.[3] The outcome was the independence of a new nation and the signing of the Declaration of Independence.

The War of Independence already shows the will of peoples to be between the ones who decide their future. What is more, the text of the Declaration of Independence stated new ideas. The Government was entitled with the duty to 'secure unalienable rights' of their citizens. Furthermore, it entrenched the idea that Government derive 'their just powers from the consent of the governed'. Then, 'it is the right of the people' whenever the government 'becomes destructive' 'to alert or to abolish it, and to institute new Government'. Moreover, a new entity has a duty to respect 'the opinion of mankind' to 'declare the causes which impel them to the separation'. Thus we see that the right to self-determination enunciated by the American Declaration had both an internal (in the form of legitimate government) as well as external element (legitimacy in the society of sovereign states).[4]

As there exists a common understanding that the idea of self-determination comes from the American Declaration of Independence, one can see that the idea has already a quite clear content at the time. Of course a stronger manifestation can be seen in France, when the French Revolution took place in 1789.

The French Revolution

The break out of the French Revolution in 1789 was caused by a number of different reasons. But only one is important for us, the one which was inspired by the principles of Enlightenment. Moreover, not the Revolution itself but the outcomes are of the main importance.

The Declaration of the Rights of Man and of the Citizen adopted by the National Assembly of France in 1789 in Article 3 states "The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation"[5] embodying the idea that the government rises from the will of the peoples. From that time the point of view and having in mind the thoughts expressed by Dr. J. Castellino, Article 3 lies down the internal aspect of self-determination.

Furthermore, "French National Assembly declared on 17th November 1792, that: In the name of the French people, the National Assembly declares that it will give help and support to

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[3] Smis S. A Western approach to the international law of self-determination theory and practice: Diss. doct. Law. Brussel: s.n., 2001. P.16.
[4] Castellino, supra note 2, P. 11.
[5] Declaration of the Rights of Man and of the Citizen 1789 France// http://www.hrcr.org/docs/frenchdec.html ; connection time: 12/02/2008

all peoples wanting to recall their freedom."[6]. It follows, that peoples are free to determine their faith, they can choose with whom they want to be associated. It should also be stressed that this norm gave rise to the usage of plebiscites. However, as a number of writers point out, the Declaration did not meet the reality. Of course, only the plebiscites were valid for legitimizing peoples' choice. But as S. Shah stressed "only pro-French plebiscites were valid in areas annexed subsequent to the French Revolution and colonial peoples, ethnic and cultural groups were all held not to possess this right of self-determination"[7]. Furthermore, as A. Cassese phrased the principle was not the true example of the peoples' right freely to choose their own rulers, what we today call the right to 'internal' self-determination.

The American and the French Revolutions and the outcomes of them started to shape the idea of self-determination. Of course, the expressed ideas were not named as self-determination, the practical application failed to meet the Declarations by hundred percent. Yet, the idea was already shaped in peoples' minds and the process moved forward. And as Prof Cassese stressed: "the modern-day right of peoples to external self-determination has its origins in this early principle"[8] not to forget the internal aspect. The next step in the evolution of self-determination was only in 1884 when the national movements took place and then there is a disagreement between the scholars when again self-determination got the right to appear on the scene. But one should agree that the influence of the 28th President of United States Thomas Woodrow Wilson and of the head of Russian Soviet Socialist Republic Vladimir Ilyich Lenin are of a great importance.

Lenin

A. Cassese calls Lenin the first forceful proponent of the concept in international law. Lenin puts his thoughts on self-determination in a number of his works. Some points can be made on his works on the principle of self-determination of peoples. "First, it could be invoked by ethnic or national groups intent on deciding their own destiny freely. Second, it was a principle to be applied during the aftermath of military conflicts between sovereign States, for the allocation of territories to one or another Power. Third, it was an anti-colonial postulate designed to lead to the liberation of all colonial countries."[9]. It can be seen that the bigger part of

[6] Castellino, supra note 2, P. 11.
[7] Shah S. An in-depth analysis of evolution of self-determination under international law and the ensuing impact on the Kashmiri freedom struggle, past and present// Northern Kentucky Law Review, 2007.
[8] Cassese, supra note 1, P. 13.
[9] Cassese, supra note 1, P. 16.

his thoughts can be called new. However, Lenin was the believer in socialist ideas, therefore he was mostly interested in the right of self-determination for the working class in the State. So, self-determination was to be exercised for the good of socialism. Besides, "Lenin had explicitly stated in his writings that the socialist cause enjoyed higher priority than the right of self-determination and if ever a conflict between these two concepts arose, socialism was to pre-empt the right of self-determination"[10]. It could practically be seen in the October Revolution of 1917th and the sequent annexations made by the Soviet Union.

Wilson

The President of the United States at the beginning of XX century had his own thoughts about self-determination. They were based on a popular sovereignty doctrine, which could be seen from the spirit of the American War of Independence that declared – the government can be legitimate only on the consent of governed. Nevertheless, he is called the father of the modern norm of self-determination.

The scholars agree that President Wilson's position towards the principle can be seen from two of his speeches given to the Congress: the one of 8th January 1918 "Fourteen Points" speech and of the 11th February 1918 "Four Principles" speech. Before revealing what was 'self-determination' for President Wilson, one should keep in mind, that in his so called "Fourteen Points" speech given to Congress he did not use the term 'self-determination'. As Dr. J. Castellino expressed himself, President Wilson deliberately omitted the phrase 'self-determination'.

The international commentators agree that there can be seen four variants of self-determination in Wilson's rhetoric. "First, all people should have the right to choose the form of government under which they live (Point 6 of the Fourteen Points program). Second, Wilson advocated the restructuring of Central Europe in accordance with national desires (Points 9, 10, 11, 12 and 13 of the Fourteen Points). Third, Wilson considered that self-determination should be a criterion dictating territorial changes (Third principle of his speech 'The four principles' of 11 February 1918). Fourth, in order to settle colonial claims, self-determination should be applied. Yet the outcome should be consistent with the interest of the colonial Power (Point 5 of the Speech of 8 January 1918)."[11]

Wilson's idea of self-determination was very benevolent in the internal aspect of self-determination (peoples can be governed only by their own consent), which was first advocated

[10] Shah, supra note 7.
[11] Smis, supra note 3, P. 40.

by the President but actually did not change much from the one introduced by the American Declaration of Independence. Then, the external aspect of self-determination (peoples are free to choose their own form of government), which he picked up in the view of World War I and which was quite different from the one introduced by the American Declaration of Independence. Wilson also talked about the limitations of the application of the principle.

Hence, President Wilson shaping his ideas on self-determination formed a new aspect of it that gave the source for a modern external aspect of self-determination. Sadly, Wilson's self-determination was not entitled for all peoples. Wilson himself agreed that not all minorities, stressing that there can be no thoughts of application of this principle in America, are equal and can benefit from the principle. The ideas expressed in his speeches were universal and innovative. Still, when the time came for considering the application the restrictions and exceptions came into arena. However, Wilson followed his ideas and introduced them in the international scene, when it came time for Paris Peace Conference.

The head of the Russian Soviet Socialist Republic and the 28th President of the United States brought self-determination into another level. It was not a mere idea, it was now a shaped political concept, which was seen as one of the ways how to settle the relationships in the post-war period.

1.1.2. Principle of Self-Determination Manifestation in Practise – Interwar Period

Paris Peace Conference

In the Palace of Versailles on 18 January 1919 the victors of World War I and the vanquished met to decide the future of Europe. The Allies attempted to decide on the new order of Europe which would guarantee the lasting peace in it.

It is said that in the Paris Peace Conference the principle of self-determination of peoples was first applied in the international arena. Here Wilson chose his concept of self-determination to be the guiding principle in his position of drawing a new order in Europe. Sadly, the victors were defining what a new order is. Also, how peace must be vouched. So, the situation occurred that not all nationalities could benefit from the principle of self-determination and the lucky ones were to decide for the victors in the light of their interests. Accordingly, Germans and Hungarians were separated from their country (no plebiscites organised), and the countries lost some parts of their territory. Even if plebiscites were organised, they would have been organised only for a part of the territory, as in the case with Austria and Italy.

Hence, the principle of self-determination was applied for the creation of a new order in Europe. Sadly, Allies failed to commit themselves to full self-determination. The Paris Peace Conference showed that self-determination "was not yet accepted as a general principle"[12].

League of Nations

The League of Nations is an outcome of the Paris Peace Conference as the League was established under the Treaty of Versailles. The Covenant of the League of Nations was drafted at the time of the Paris Peace Conference, so the ideas and views which were dominant at that time had their reflections in the new organization too. It should be mentioned that Wilson was offering an article to be included in the Covenant of the League of Nations which would refer to self-determination. However, he did not get support even from his own delegation, not to mention other countries which opposed the idea of the application of such a principle to their peoples and territories. The outcome was that all the references to self-determination were deleted from the draft article and it "emphasized respect for the territorial integrity and existing political independence of the Members of the League"[13]. However, as Dr. Musgrave and Dr. Sureda pointed out the reflections on self-determination could be found in the mandate system introduced by the Art.22 of the Covenant.

Hence, self-determination again failed to be represented as a legal concept. As Prof Cassese pointed out, the failure to include the principle of self-determination of peoples into the Covenant was a major setback for development of the significance of the principle. One should admit that the principle of self-determination was still a political concept at that time.

The Åland Islands Case

The Åland Islands Case "is of considerable importance because it demonstrated the attitude of the League towards self-determination, as well as testing its status in international law"[14].

The Åland Islands form an archipelago in the Baltic Sea. It is situated at the entrance to the Gulf of Bothnia, which separates Sweden and Finland. Till 1809 the Islands formed a part of Sweden. Finland, together with the Åland Islands, had been ceded by Sweden to Russia by the Treaty of Fredrikshamn in 1809. In 1917 Finland proclaimed itself independent and the islanders expressed their wish to join Sweden and asked Sweden to back their claim. Sweden tried to persuade Finland to hold a plebiscite in the Islands, but Finland refused to undertake such an

[12] Brownlie I.The Rights of Peoples in Modern International Law// Crawford J.(ed.) The rights of people. Oxford: Clarendon press, 1992. P.1-16.
[13] Musgrave Thomas D. Self-Determination and national minorities. Oxford: Clarendon Press, 1997.P.30.
[14] Musgrave, supra note 13, P.32.

action. The situation grew tense when Finland sent troops to the islands and arrested on charges of treason the leaders of the Åland Islands. The United Kingdom fearing that the situation could threaten the peace in the Baltic region brought the Åland Islands' question before the Council of the League.

The Council of the League appointed a Commission of Jurist and a Commission of Inquiry (established later) to decide on the question.

First of all the question of jurisdiction was discussed. The Commissions presented two different views. The Commission of Jurist held that the question is within the jurisdiction of the League of Nations. They stated that Finland was not yet a formed State "since the 'state was not fully formed or undergoing transformation or dissolution' the Council could look into the matter"[15]. While the Commission of Inquiry stressed that the question is of the domestic nature. It should be said that the Council recognized the Finnish sovereignty over the Islands and recommended to apply the guarantees to a certain minority. However, one should look a little bit deeper in the sayings of the Commissions.

The Commission of Inquiry stated that that the minority cannot cessed from the State which integral part it forms together with that the State must guarantee the rights of this minority. And the decision to organise the plebiscite for this minority lies in the hands of that State. However, as Dr. Sureda expressed himself, "this is true unless a state treats a group in a discriminatory manner, or the claim of domestic jurisdiction is put forward by a new state, itself being the result of the exercise of the right of self-determination, against a group within it that also claims self-determination"[16]. With such an interpretation Dr. Sureda claims that the Commission of Inquiry did not deny that self-determination could be applied in the formation of a state or in a politically unsettled situation; what they did deny was that this was the case of Finland.

The Commission of Jurists held an opinion that peoples forming an integral part of the State are not free to secede. Only in the case when the rights of a minority cannot be safeguarded one can talk about the question of the international jurisdiction. But it did not refer to self-determination.

However, the Commission of Jurists and the Commission of Inquiry exclusively stated that the principle of self-determination of peoples is not included into the Covenant of the

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[15] Castellino, supra note 2, P.19.
[16] Sureda Rigo A. The evolution of the right of self-determination: a study of United Nations practice. Leiden: Sijthoff, 1973. P. 33-34.

League of Nations. It is an important political thought but it does not form a part of a positive international law. Of course, one cannot deny that the Commissions had their thoughts on self-determination while giving their considerations, especially while putting focus on the minority rights and the possible rise of self-determination when these rights are violated. Yet once again self-determination was defined as a mere political concept.

At the end of the XVIII century, with the American War of Independence and the French Revolution the idea of self-determination was expressed. Though there was no clear mentioning of self-determination, the ideas introduced reflected the genesis of self-determination as we understand it today. Then, in the XX century two leaders took up the idea of self-determination as expressed by the historical events and shaped it as their political posture, each giving it a new feature. Furthermore, it was introduced as a principal for drawing a new order in Europe which would guarantee peace. However, as we could see, it stayed a political concept not aiming at a legal recognition. So, self-determination from the vague idea which emerged in the XVIII century had undergone the evolution and in the XX century was acknowledge as a political principle. Again self-determination was recalled only after the World War II.

1.2. Principle of Self-Determination of Peoples after the Second World War

Number of scholars stress that the Second World War was a turning-point in the evolution of the principle of self-determination of peoples. As Dr. Sureda stresses the concept did not have a standing legal point till the Second World War. Only after World War II texts of legal significance were adopted that reflected the principle. These texts were first adopted within a new organization, which overtook the aims that were not reached by the League of Nations. Other entities, outside United Nations system, also introduced their views on principle of self-determination of peoples. We will not focus on a detail examination of the documents. Here the legal documents are important only as a source of the course of the evolution of the principle of self-determination of peoples.

Charter of the United Nations

The Second World War showed that the League of Nations was not able to guarantee one of the major aims – to avoid the war. Already in the wartime Conferences the idea of a new organization, which should be an effective successor of the League of Nations, was considered. On 24th October 1945 the United Nations came into existence after the ratification of the Charter of the United Nations. The Charter is the first document which explicitly embodied the principle of self-determination into its text, but one should first look back at the drafting of the document.

During the Second World War there were already talks of self-determination as "one of the objectives to be attained and put into practise at the end of the conflict"[17]. One should keep in mind that it was meant to apply only to the European Continent. However, when the discussions started at the Dumbarton Oaks Conference self-determination was not taken into considerations. The USSR was the one that proposed 'self-determination of peoples' to be reflected in the text of the Charter. The biggest fear of the States was that the adoption of a provision on self-determination would lead to instability and tensions inside the Sate, and could give rise to secession claims. The possibility to misuse the principle was also considered. As an Egyptian delegate pointed out "politicians could easily invoke the principle – as did Hitler – to justify military invasions and annexations"[18]. "Despite initial misgivings, the Soviet proposal was eventually accepted by the United States, the United Kingdom, and France"[19]. As a result Articles 1(2) and 55 of the Charter of the United Nations hold the phrase 'based on respect for the principle of equal rights and self-determination of peoples'[20], which explicitly mentions self-determination.

The Charter of the United Nations embodied the principle of self-determination of peoples as one of the purposes of the United Nations. However, one can clearly see from the wording of the articles on self-determination[21] that self-determination of peoples is the way through which the development of friendly relations among the States and strengthening of the peace must be reached. Such thoughts give us an extreme idea that, if self-determination would have threat to maintaining friendly relations and peace it should be given up.

Furthermore, in the Charter self-determination goes together with equal rights as sounds "the principle of equal rights and self-determination of peoples". According to R. Higgins this shows that "it was equal rights of states that was being provided for, not of individuals"[22]. R. Higgins brings a different opinion from other writers. Lady Higgins also stresses that in Chapter XI (Declaration Regarding Non-Self-Governing Territories) and XII (International Trusteeship System) one cannot find any mentioning of self-determination. And all the interpretations we

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[17] Cassese, supra note 1, P.37.
[18] Cassese, supra note 1, P.40.
[19] Musgrave, supra note 13, P.63.
[20] Art. 1(2) and 55 of the Charter of the United Nations
[21] "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" (Art. 1(2) of the Charter of the United Nations)
"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" (Art. 55 of the Charter of United Nations)
[22] Higgins R. Problems and process: international law and how we use it. Oxford: Clarendon press, 1994.P.112.

give on the question about self-determination in the Charter nowadays is not provided by the text of the Charter. Nonetheless, the majority of commentators state that even if these Chapters do not provide us with any explicit mentioning of self-determination, they actually reflected it through the obligation of the States having the administration over the territories to help these people to achieve self-government.

Hence, self-determination embodied in the Charter of the United Nations, "is principle suggesting that states should grant self-government as much as possible to the communities over which they exercise jurisdiction"[23]. Furthermore, like I.Brownlie explained the fact of the principle of self-determination of peoples being included into the Charter gives him the position of the principle. From this time we can talk of a legal principle of self-determination of peoples.

The foregoing development can be seen from the documents adopted by the United Nations and outside the frame of United Nations. Each of these documents reveals the different aspects of the evolution of the principle of self-determination of peoples.

Universal Declaration of Human Rights. The Declaration is the first step towards bringing some of the Charter of the United Nations provisions into legally binding treaty rules. Dr. Musgrave represents the view of the scholars, who state that the Declaration does not refer to self-determination, while others hold a different opinion. One should look at the Article 22[24] of the Universal Declaration of Human Rights. We think that from nowadays point of view it refers to the internal aspect of self-determination as the consent of the governed.

Declaration on the Granting of Independence to Colonial Countries and Peoples. As it can already be seen from the title of the Declaration and what was embodied further in the text, this Declaration aims at ending the colonialism. In conformity with that it states that "all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory"[25]. Furthermore, it declared that any subjection of peoples is inconsistent with the norms of international law and even constitutes a denial of fundamental human rights. And what is of the biggest importance it explicitly declared that peoples who have not yet attained independence hold the right to self-determination. Moreover, it attempted at

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[23] Cassese, supra note 1, P.42.

[24] (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. (Art.22 of the Universal Declaration of Human Rights adopted by General Assembly Resolution 217 A (III))

[25] Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by General Assembly resolution 1514 (XV) of 14 December 1960

explaining what is meant by saying the right to self-determination "they freely determine their political status and freely pursue their economic, social and cultural development"[26]. Besides, General Assembly added a new twist to self-determination it introduced the economical aspect, sadly this idea was not amplified in the articles of the Declaration. Also, for the first time it was expressed under what conditions this right can be exercised - it must be exercised peacefully, freely and even more, it must reflect the freely expressed desire of the peoples to be independent. Any action which could restrict or deny peoples of such an exercise should cease. Moreover, peoples cannot be subjected in any event to racial, creed or colour discrimination which would result interference to the exercise of their right. However, the right of the peoples to self-determination cannot cause threat to the national unity and territorial integrity of the State together with the principle of non-interference in the internal affairs of all the States. As Dr. Castellino expressed himself, the States were still fearing that decolonization could burst the international peace and stability.

So, for the first time the Declaration explicitly stated that peoples under the colonial power have the right of self-determination, pointing that self-determination is not solely a principle, but also a right. Also, what this right means and how it must be exercised. Moreover, it expressed the limits of this right. Dr. Castellino attributed to the Declaration one more merit "it included self-determination as a fundamental human right, bringing it within the scope of the Universal Declaration of Human Rights 1948, by linking it to issues of discrimination"[27].

Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter. In a day later adopted Resolution the General Assembly introduced a concept of 'full measures of self-government', what is a reaching aim. Reading together with the views living at the time the concept would be an aspect of self-determination for peoples under the colonial power. Here as well were introduced the elements which would help to determine the relations between two entities and to decide whether one is Non-Self-Governing Territory while other Administrating Power. The biggest significance of this Resolution lies in the Principle VI "A Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or

[26] Ibid. Art.2.
[27] Castellino, supra note 2, P.23.

(c) Integration with an independent State."[28]. This principle introduces us with a wider range of the modes of the implementation of self-determination. The Resolution also mentions the way how the right of self-determination should be exercised, stressing a free and voluntary choice and democratic means.

So, for the first time the General Assembly expressed its view what modes, other than independence, of the implementation of the right of self-determination could be, bearing in mind the colonial context. However, the United Nations General Assembly Resolution 1541 (XV) "is one of the last documents that clearly defines the terms it uses"[29].

International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights of 16 December 1966 These two international documents on human rights have a common article 1 that talks about self-determination. It is embodied that all peoples have the right of self-determination. Moreover, it is explained that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"[30]. Furthermore, it again expressed the economic aspect of self-determination which entitles peoples to free disposition of their natural wealth and resources for their own needs. Therewith, the third paragraph of the Common Article1 introduced the concept that the States "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"[31] too. International Covenants on Human Rights are not limited to the colonial context like the previous documents. The notion 'all peoples' really refer to all peoples, keeping in mind that it is agreed that the concept does not include various minority groups living within the State.

Actually, the significance of the documents for the development of the principle of self-determination of peoples is that self-determination unquestionably became a human right. Moreover, self-determination of peoples was presented as a right of all peoples, both of sovereign states and the dependent ones.

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The Declaration clearly embodied the view that all peoples have the right "freely to determine,

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[28] Principle VI of the United Nations General Assembly Resolution 1541 (XV) Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter

[29] Castellino, supra note 2, P.30.

[30] Common Art.1 of International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights of 16 December 1966

[31] Ibid.

without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter"[32]. Nevertheless, the States were faced with the duty for the peoples who want to determine their status, however, only seeking the implementation of the principle in order to promote friendly relations and co-operation among States and to bring a speedy end to colonialism. Such an outcome could already be seen from the Preamble of the Declaration. This again shows that the principle of self-determination of peoples was a secondary, only the way at reaching friendly relations among States. Nevertheless, it was showed for the first time a clear link between self-determination and subjection of peoples to alien subjugation, domination and exploitation, such subjection constitutes a violation of the principle. Moreover, the modes of the implementation of the right of self-determination were named as establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status. Furthermore, the ways how the outcomes must be reached was once more stressed as being exercised freely without external interference, but not going into details. The States were introduced with the duty not to impede the usage of the principle too. Moreover, peoples were introduced with the right to seek and receive support in their struggle for self-determination. Then it was clearly stated that the territories of a colony or other Non-Self-Governing Territory and the one of Administrating State are separate and distinct. The Declaration also addressed the question of implementation of self-determination and safeguarding of the national unity and territorial integrity of the State

Hence, the Declaration embeds the principle of equal rights and self-determination of peoples as a principle of international law, still subjected to the reach of other ends. Nevertheless, the Declaration was the first document which expanded the beneficiaries of the right, "it came further to be accepted that the right of self-determination was applicable not only to peoples under colonial rule, but also to peoples subject to foreign or alien domination"[33] and notably stressed the duties that States have towards the respect and promotion of self-determination. Moreover, it showed a growing consensus concerning the extension of self-determination to other areas. Furthermore, this Declaration was adopted by the way of a wide consensus and it can be argued that it "reflects 'international custom' or 'state practise' two

[32] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by United Nations General Assembly Resolution 2625 (XXV) 24 October 1970

[33] Higgins, supra note 22, P.115.

sources of international law that are higher up in the hierarchy of sources of international law" [34]. So the Declaration holds a binding legal force and reflects the custom.

Helsinki Final Act. The Conference on Security and Co-operation in Europe, now developed into Organization for Security and Co-operation in Europe, met in Helsinki in 1973 to discuss the European security. The result of these discussions was Helsinki Final Act adopted in 1975. It should be stressed that not only European States were the signatories of the document. All the States were sovereign and independent. As a question relating to the security of Europe Declaration on Principles Guiding Relations between Participating States were introduced. Principle VIII presented the equal rights and self-determination of peoples. The wording of the principle gives the understanding that States take certain duties upon them. Moreover, both internal and external aspect of self-determination was embodied into the document "all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development"[35]. However, States once again showed that self-determination is important for the development of friendly relations among the States. As well, the exercise of the right of self-determination has to be "in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States"[36], that it is of a limited application. Yet, States agreed upon non tolerance of the violations of the principle.

So, Helsinki Final act was the first document after International Covenants on Human Rights which explicitly turned back to the internal aspect of self-determination. The beneficiaries of the right were extended. Now self-determination was also the right of the population of independent and sovereign States and there is no links to "sovereign States which have racist regimes or discriminate against religious groups by denying them access to the political decision-making process"[37]. Moreover, the continuity of self-determination is stressed. Helsinki Final Act presented both aspects, internal and external, of self-determination in one single document. Of course, this document is not of a high legally binding nature and constitutes political opinion, however the governments undertook the position to comply with this document which "can be of relevance with regard to the possible formation of a new general norm on self-determination"[38].

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[34] Castellino, supra note 2, P.35.
[35] Principle VIII of Conference on Security and Co-operation in Europe Final Act of 1st August 1975
[36] Ibid.
[37] Cassese, supra note 1, P.285.
[38] Cassese, supra note 1, P.278.

Universal Declaration of the Rights of Peoples. Reflections of self-determination can be found as well in other Continents, like the one of Africa were in 1976 the Universal Declaration of the Rights of Peoples (The Algiers Declaration) was adopted. The Declaration refers to political self-determination and gives an "imprescriptible and unalienable right to self-determination"[39] to every peoples. Moreover, every peoples have the right to democratic government which is representing them all, without any discrimination, properly and which is ensuring "effective respect for the human rights and fundamental freedoms for all"[40]. Quite a hard condition for the government to meet for that it could be a legitimate one and quite an opportune expression for the internal aspect of self-determination for peoples. Furthermore, the Declaration gives peoples the right to use force when it is the last resort, and lay the duty upon all members of international community when peoples' fundamental rights are seriously disregarded.

So, the Declaration expanded the internal self-determination, which is not limited only to self-government and which is continuous. Furthermore, the document puts no limits for the application of self-determination. Also, peoples are granted the right to use force under certain circumstances. Moreover, a duty is lay on the international community. However one should keep in mind that this Declaration was adopted by non-governmental entities, it did not reflect the views of the Governments and. Yet, it reflects a part of the public opinion and as it is not adopted under the light of political affairs it is very sharp and innovative.

African Charter on Human and Peoples' Rights. In the Charter adopted on 27th June 1981 by the African States members of the Organization of African Unity self-determination is a not limited to political aspect. All peoples "shall pursue their economic and social development according to the policy they have freely chosen"[41]. Moreover, self-determination is not limited only to the peoples who are under the colonial power or foreign domination. Furthermore, peoples have the right to the assistance in their "liberation struggle against foreign domination"[42].

So, the African Charter embodied the opinion of the African governments on self-determination. Also, it represents self-determination as not being tied to the colonialism.

Vienna Declaration and Programme of Action 1993. On 25th June 1993 the Vienna Declaration and Programme of Action as an outcome of the Vienna conference was signed by

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[39] Art.5 of Universal Declaration of the Rights of Peoples, Algiers 1976// http://www.algerie-tpp.org/tpp/en/declaration_algiers.htm ; connection time: 21/01/2008
[40] Ibid. Art.7.
[41] Art.20 of African Charter on Human and Peoples' Rights June 27, 1981// http://www.hrcr.org/docs/Banjul/afrhr4.html; connection time: 21/01/2008
[42] Ibid.

171 State. The Declaration presented to the international community a common plan for the strengthening of human rights work around the world. The Declaration embodied the approach what one could already see in a number of documents "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"[43]. Actually the document referred to self-determination only in cases of peoples under colonial rule, domination and to the one when the Government does not represent the "whole people belonging to the territory without distinction of any kind"[44]. However, the latter can be seen as extension in the frames of the United Nations system. Nevertheless, the Declaration reaffirmed the limitations put on the implementation of self-determination, the territorial integrity and political unity.

So, the Vienna Declaration expanded the right of self-determination to peoples, whose Governments do not represent them properly, but it still reaffirmed the limits. However, the Declaration, which was then passed as a Resolution of General Assembly, again tide self-determination to a smaller application than the documents of Conference on Security and Co-operation in Europe or the ones from the Africa Continent.

Liechtenstein Draft Convention on Self-Determination through Self-Administration. The States of Liechtenstein in 1993 presented a Draft Convention on Self-Determination through Self-Administration for the considerations of the United Nations General Assembly. The Draft Convention links self-determination with self-administration, which in a certain degree is consistent with self-determination. Also, stress that such possession of self-administration is not inconsistent with a territorial integrity or political unity, as it helps to avoid the risk of a conflict in the State. Then, democratic procedures is linked with self-determination. Independence also remains an outcome of self-determination. Moreover, the Draft Convention explicitly does not limit self-determination to the colonial context. Also it offers a solution for an absence of an effective international body, which would decide on claims for self-determination and would guarantee the peaceful implementation of self-determination. Furthermore, the document introduces us with the definition of beneficiaries and the right of self-determination.

The Draft Convention introduced a regime which could lead to less tension that surrounds self-determination in act. However, the fact that the proposal did not get the support

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[43] Part I para 2 of Vienna Declaration and Programme of Action// http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument ; connection time 21/01/2008

[44] Ibid.

from the Members of the United Nations, show us that the States are not ready to accept self-determination as it was introduced in the Draft Convention and this reduce its significance.

United Nations Declaration on the Rights of Indigenous Peoples. On 13th September 2007, after more than 20 years of discussions, the United Nations General Assembly in favour of 143 votes, 4 negative and 11 abstentions, adopted the Declaration on the Rights of Indigenous Peoples. Here it was affirmed that indigenous peoples are entitled to all human rights like all the peoples. Moreover, for the first time it is clearly stated that "indigenous peoples have the right to self-determination"[45]. This is very important as it includes indigenous people between the beneficiaries of the right of self-determination. Also, the modes of the realization of the right of self-determination by indigenous peoples are listed. That is "the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions"[46]. Moreover, the integration of indigenous people into the society of the State they live in is stressed. Yet, the realization of the right of self-determination does not outline the need for integration.

The principle of self-determination of peoples has undergone a telling development as seen in section 1.1 - from the vague idea it became a political principle. But with the help of the legal documents it was shaping its state. First, with the principle of self-determination of peoples being introduced into the Charter of United Nations, it got the position of a legal principle. With the inclusion into the International Covenants on Human Rights – of a human right, also it developed as a clear principle of international law and finally aspects of it emerged into a customary rule. Not to forget, it was introduced as a principle applicable only in the colonial context, then as a human right, which in no way is limited to the colonialism and finally as a principle which can also be implemented by the peoples of independent and sovereign States, even by indigenous peoples. Moreover, the documents introduced the continuity of the principle of self-determination of peoples. Furthermore, States were introduced with the duties for the peoples' implementing the principle. So, it can be seen that the principle of self-determination of peoples raise its significance through the centuries, but still the question of the purport of the principle of self-determination of peoples is not thoroughly revealed.

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[45] Art.3 of the United Nations Declaration on the Rights of Indigenous Peoples adopted by General Assembly Resolution A/RES/61/295

[46] Ibid. Art.4.

2. THE CONTENT OF THE PRINCIPLE OF SELF-DETERMINATION OF PEOPLES IN CONTEMPORARY INTERNATIONAL LAW

It is clear that the right of peoples to self-determination is recognized, however "there is still a great deal of disagreement among states, and among international scholars, as to the scope and parameters of the right to self-determination, as well as who, exactly, is entitled to such a right."[47] For this reason, this chapter is divided into three sections, reflecting each of the mentioned uncertainties: **'2.1. The Beneficiaries of the Principle of Self-Determination of Peoples'** were we will discuss the question of the right holders of the principle, then '**2.2. The Scope of the Principle of Self-Determination of Peoples'** where we will consider the aspects of external and internal self-determinations, then, and '**2.3. The Implementation of the Principle of Self-Determination of Peoples**' here the ways and modes of the implementation of the principle will be discussed.

2.1. The Beneficiaries of the Principle of Self-Determination of Peoples

It is difficult to reveal the exact content of the principle of self-determination of peoples. However commentators hold that from all the questions "the more difficult and controversial question is how to determine when a group qualifies as 'a people' under international law"[48]. The legal documents are usually silent on different aspects of self-determination, even if they provide us with some information it is very uncharitable. And when it comes to question of the right holders, most of the documents, just name 'all peoples' and are silent on who is these 'peoples'. Actually, the concept of peoples can be discussed as a decolonization concept, ethnic definition, as representative definition or others. We choose to show the beneficiaries of the principle of self-determination of peoples, through analyzing 'peoples' as a territorially defined concept, and 'peoples' as a concept defined by subjective elements.

'peoples' – territorially defined concept

It is obvious that the first time question of beneficiaries was raised when drafting the Charter of the United Nations. Such scholars as Kelsen stated that 'peoples' meant States. That

[47] Moris H. Self-determination: an affirmative right or mere rhetoric? // ILSA Journal of International and Comparative Law, 1997.
[48] Clark P. A. Taking Self-Determination Seriously: When Can Cultural and Political Minorities Control Their Own Fate? // Chicago Journal of International Law, 2005.

actually the principle of self-determination, as it is embodied in the Article 1(2) of the Charter of the United Nations, was intended to be applicable only to States. However, *travaux preparatoires* does not let us to favour such an interpretation. "The Secretariat's memorandum thus gave the word 'peoples' the widest meaning. It could cover states, nations and any groups of human beings that could be organized in a state, or form a nation or just be a group. Therefore self-determination applied to peoples as well as to nations and states."[49] One should bear in mind that such an explanation by Dr. Sureda was given having in mind non-self-governing territories and peoples under colonial rule. Withal, scholars emphasis that it is unquestionable that first of all 'peoples' and 'states' are two distinct concepts and Article 1(2) of the Charter refers to 'peoples' and not 'states'. This also can be seen from the other documents adopted within United Nations, which distinguish between 'peoples' rights and 'state' duties. The General Assembly Resolution 1514 (XV) gives us a clear view that colonial peoples and countries are the beneficiaries of self-determination, but who are these peoples and countries stays unrevealed. Here the General Assembly Resolution 1541 (XV) is of more help. Colonial peoples are the ones that inhabit the non-self-governing territory. This Resolution also gave the features to determine non-self-governing territory: 1) prima facie element "a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it"[50], 2) secondary elements "administrative, political, juridical, economic or historical nature"[51], especially if it shows the subordination of the territory to the administrating power. So, non-self-governing territory is constituted of peoples, who are living in the territory that together with the peoples holds territorial, cultural and ethnical differences and form a distinct unit from the administrating power. It follows thence that peoples under colonial rule were territorially defined. At the time trusteeship system was in function and peoples not only under colonial rule held the right to self-determination, also peoples under domination, even if at the time the colonial rule usually comprise domination. 1970 Declaration on Principles of International Law is a step from colonial context, 'all peoples' means peoples belonging to a certain territory also in a non-colonial situation. It also made a clear link between self-determination and peoples subjected to alien domination. So under the Declaration also peoples inhabiting sovereign and independent State or being under domination hold the right to self-determination. International Covenants on Human Rights were the first documents which really intended to award all peoples the right of

[49] Sureda, supra note 16, P.100-101.
[50] Supra note 28, Principle IV.
[51] Supra note 28, Principle V.

self-determination, including all territories no matter of their status. *Travaux preparatoires* favours such statement "Article 1 is not restricted to peoples living under colonial domination but applies, in principle at least, to all peoples"[52]. In addition, like a number of writers stress, States agreed that 'all peoples' does not include minorities. So, Common Article 1 applies to the whole peoples inhabiting non-self-governing and trust territory, the population of peoples under domination and the entire population of peoples inhabiting sovereign and independent State. In the case of Rhodesia the question who constitutes the holders of the right of self-determination was also raised. It was agreed that it is peoples of Rhodesia, but who are these peoples, are they represented by the white minority, or by the vast majority. United Nations General Assembly denied the possibility of the ruling white minority to decide on the destiny of the peoples of Rhodesia, showing that definitely they do not constitute 'peoples'. One can male conclusion, peoples of Rhodesia are all the inhabitants of the colony with no distinction of race, creed or colour.

Nevertheless, even if there remain non-self-governing territories, colonial context should be put aside. So, bearing in mind that 'colonial peoples' is territorially defined concept, from a nowadays point of view, one can state that 'peoples' still is a territorially defined concept and constitutes peoples under domination living in a certain territory, as well as, the inhabitants of the sovereign and independent State. Thus 'peoples' as a territorially defined concept means the entire population of a certain territorial unit. Apart from International Covenants on Human Rights, Helsinki Final Act is an example of such a determination. However, such a definition when 'peoples' constitute a unit gives us the view that there is no linguistic, cultural, racial, or religion aspects, as well as, differences in territorial status within the State territory. Nonetheless the population of the State can be comprised of different peoples and these peoples can hold a total different opinion from the other part of the society.

'peoples' – concept defined by subjective elements

We saw that 'peoples' is definitely a concept described by objective factor-territory. However, peoples in this certain territory can be distinct by such features as common history, language, culture, race or religion. The example could be Cyprus. Turkish and Greek Cypriots hold themselves separate. Even the plebiscite to ascertain the wishes of peoples as to their status was organized only among Greek Cypriots stressing their distinct status. So, already in the colonial context there were situations when the 'peoples' of a distinct territory were looked at

[52] Rosas A. Internal Self-Determination// Tomuschat C. (ed.) Modern law of self-determination. Dordrecht: Nijhoff, 1993. P.225-252.

separately as for the organization of plebiscites. Still, territorial aspect keeps its importance. The saving clause[53] of the 1970 Declaration on Principles of International Law brought a lot of discussions on the question, especially that peoples might be defined and by subjective elements. The reading of the clause gives us the view that actually racial or religious[54] groups, which are denied the equal right to a representative government, hold the right to self-determination. Here it has to be stressed that We talk of race and religion as subjective elements, nowhere ethnic or linguistic elements are mentioned. So, favouring the views presented by a number of scholars, racial or religious group in an independent and sovereign State hold a right to self-determination together with the whole population and a separate right when they are not represented by the government on the grounds of discrimination. Yet, like Prof Cassese states such right of peoples, who are living under racist regimes, for example in the case of Rhodesia, already constitutes a customary right, while religious groups does not hold a right of customary nature.

The question of minorities is also relevant here. The vast majority of commentators stress that 'peoples' and 'minorities' are two distinct concepts. Such view is favoured not only by the *travaux preparatoires* of International Covenants on Human Rights also by the wording of the documents. Article 1 of the Covenants refers to the whole peoples inhabiting a certain territory as holding a right to self-determination. It is obvious that minorities which live within that territory also enjoy this right together with other inhabitants as a unit. Therefore minorities, as a separate group does not constitute peoples. Furthermore, like documents illustrates, minority rights are individual rights while self-determination is a collective right. Also some scholars point on the fact that minority rights in the documents are referred to separately from the self-determination and minority groups already have a regulation reserved exclusively for them. However, "confronted with the question whether the inhabitants of East Pakistan constitute a distinct people from the inhabitants of West Pakistan, the International Commission of Jurists proposed that the following criteria should be used to determine the existence of a people: (1) a

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[53] Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by United Nations General Assembly Resolution 2625 (XXV) 24 October 1970)

[54] The saving clause talks of discrimination on the grounds of race, creed or colour. However "the international community understands creed to be inclusive of groups who have particular religious beliefs, but not political beliefs" (Shah S. An in-depth analysis of evolution of self-determination under international law and the ensuing impact on the Kashmiri freedom struggle, past and present // Northern Kentucky Law Review, 2007.) For this reason one talks of discrimination of religious and racial groups.

common history; (2) racial and ethnic ties; (3) cultural and linguistic ties; (4) religious and ideological ties; (5) a common geographical location; (6) a common economic base; and (7) a sufficient number of people. In this same philosophy of accepting peoples are ethnically or culturally defined and that, consequently, states may be compose of various peoples, a 1989 UNESCO meeting of international experts convened in Paris discussed characteristics inherent in a description of 'people'."[55] As Dr. Smis stressed the characteristics were of the same nature like the one of International Commission of Jurists. So it gets confusing, when one can see that similar criteria are chosen to define 'minorities' and 'peoples'. Keeping in mind what was said already the opinion of Special Rapporteur of the Sub Commission on Prevention of Discrimination and Protection of Minorities as well as the Human Rights Committee opinion[56] helps to make distinction. So it is clear that the two concepts are interrelated, but they talk of two distinct subjects with distinct rights.

Returning to the question of subjectively described 'peoples' or otherwise distinct peoples Quebec case should be remembered. Quebec is exclusively French-speaking province in Canada, with the English-speaking minority. Since 1980 the claims for a greater autonomy and self-rule was raised by Quebecois politicians. Even referendums where organized on sovereignty of Quebec. The ideas grew and in 1996 the claim of a hypothetical secession of Quebec was raised in front of the Supreme Court of Canada. What is important here, the Court came up with the conclusion that "'"a people" may include only a portion of the population of an existing state."[57]. However, the Court did not ruled whether the population of Quebec constitute peoples. As well it stressed that peoples exercising self-determination must take a due regard to the territorial integrity of the state they are living in. The Court also pointed out three groups of beneficiaries of the right of self-determination, who can seek secession as the mode of the implementation of self-determination; the colonial peoples, peoples under domination, and the peoples who are denied any meaningful exercise of their right to self-determination within the State they inhabit. However, Court stressed that it is questionable does the third group holds such right under international law. Withal, the Quebec case shows us that we can consider 'peoples', who are distinct from the entire population as beneficiaries of the right to self-determination. Also the United Nations Declaration on the Rights of Indigenous Peoples, favour the idea. Here,

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[55] Smis, supra note 3, P.338.
[56] Smis conveyed their opinion; 'peoples' and 'minorities' are two distinct concepts, the former marks the social entity which has ties with a territory and holds a collective right to self-determination, while the latter posses individual minority rights on the basis that they have cultural, linguistic or other character.
[57] Supreme Court of Canada judgement of August 20 1998 Reference re Secession of Quebec, para 124.

also other criteria than the geographical one apply for determining who are indigenous peoples. Self-determination for indigenous peoples is a collective right, when they identify themselves as such, belonging to and indigenous group, which has national and regional particularities and various historical and cultural backgrounds. However, determination of 'peoples' by subjective elements is still an emerging rule, which emphasises self-identification and the fact of living in a geographically determined area.

The case of Kosovo would be one of the examples of a State, which is comprised from different peoples. Kosovo lies in southern Serbia and has a mixed population of which the majority are ethnic Albanians. Serbs and Albanians had both long regarded Kosovo as their own historical space. Tensions between the two communities had been simmering throughout the 20th century and had occasionally erupted into major violence. Kosovo itself until 1989 enjoyed a high degree of autonomy within the former Yugoslavia. But Serbian leader Slobodan Milosevic altered the status of the region removing its autonomy and bringing it under the direct control of Belgrade, the Serbian capital, in 1989. The Kosovar Albanians strenuously opposed the move. In 1998 first serious actions of the war had begun between Serbian military and police forces and Kosovo Liberation Army". There were some offers for diplomatic discussions but they did not took place. The international community became gravely concerned about the escalating conflict, its humanitarian consequences and the risk of it spreading to other countries. However, the fist attempt to independence by Kosovo Albanians in 1991 after a clandestine referendum was not uphold. With various missions residing in Kosovo and repeated claims for independence now we see a different attitude of international community. Yet, we face a question of 'peoples' in this situation. It is hard to judge do Kosovo Albanians constitute 'peoples' under international law, as equally they could be regarded as a minority living in Serbia. First of all, Kosovo Albanians hold themselves a distinct group not only from Serbs but also from the rest of Yugoslavians, even earlier than the times when Kosovo was a part of Federal Republic of Yugoslavia. Also, the fact that Kosovo Albanians, holding distinct features, inhabited and still inhabit a certain territory is relevant. Furthermore, their attempts to independence still within the Federal Republic of Yugoslavia have to be taken into account. As Dr. Smis explained, Kosovo Albanians were seeking a status of republic within the Federation, as it would be easier to brake away from it. Then, the autonomous status of Kosovo, under the considerations of a number of commentators, was actually amounting to the status of republic *de facto*. Even more, Prof. Valerie Epps points that Kosovo Albanians are 'peoples' because they are a distinct group, on the basis of ethnicity, religion, and culture, from Serbs. Not to forget that they inhabit a distinct area of territory. Furthermore, Kosovo Albanians are not properly

represented by the government and surely, they faced oppression by the Milosevic's regime, they faced a severe denial of internal self-determination. Yet, with all said, the international community is very careful and does not provide us with a clear accepts of the right of Kosovo Albanians to independence, which they declared in 2008.

So it can be seen that even if legal documents and scholars provide us with the clarification of 'peoples', in practice it is very difficult to state that certain population definitely constitutes 'peoples'. Yet, we can aim at defining 'peoples' as a unit inhabiting a certain territory and holding common historical, cultural, linguistic or religious ties that are distinct from the others and identifies themselves as belonging to such group.

2.2. The Scope of the Principle of Self-Determination of Peoples

Commentators when analyzing the principle of self-determination of peoples question a number of aspects of it, pointing that this principle includes not only political aspect, but also, economic, cultural and social. Of course, when one looks at self-determination through different aspects it is easier to unclose its content. For this reason, we will link our study first of all, with political and economic, then, with the generally accepted external and internal aspects of self-determination. Here, one should keep in mind, that such a classification of the aspects of self-determination is very conditional as the aspects, usually are interrelated.

2.2.1. Political and Economical self-determination

Most international scholars and legal documents refer to self-determination not only as political concept but also develop economic aspect. Actually political self-determination exists since the beginning of the idea of self-determination while the economic aspect of self-determination was revealed only later.

The first document of legal significance which explicitly embodies the principle of self-determination, the Charter of the United Nations, can hardly provide one with the clearness on the aspects. The Declaration on the Granting of Independence to Colonial Countries and Peoples revealed what hides under the textual expression 'self-determination'. Of course, in the period peoples right was limited to colonial context, that is the attainment of 'full measures of self-government'. The 1970 Declaration on Principles of International Law is the document that shows the universal character of self-determination. The 1970 Declaration refers to the principle of self-determination of peoples as to a principle which is applicable in colonial situations, also, when peoples are under domination and even to the population of sovereign and independent State under certain circumstances. The Common Article 1 of the International Covenants is

aimed to apply also to the peoples of sovereign and independent States not linking to non-representation on discriminating grounds. Furthermore, Helsinki Act strengthens the position that the principle of self-determination of peoples also applies to the inhabitants of independent and sovereign States. The United Nations Declaration on the Rights of Indigenous Peoples brought the question of the scope of the principle of self-determination of peoples to other level while including the specific group of peoples within the beneficiaries of self-determination. It is clear that the principle of self-determination of peoples is no longer applicable exclusively in the colonial context.

Furthermore, with the inclusion of the notion 'self-determination' to the International Covenants it was explicitly showed that self-determination is a right of peoples. Moreover, it is a collective right of peoples. The Human Rights Committee refers to self-determination as a collective right of peoples, while stressing that individual petition procedure can not be invoked for the right entrenched in Common Article 1. Furthermore, the Covenants introduced the continuing aspect of self-determination. The outgivings of the Human Rights Committee favour this idea. The Committee links the right of self-determination with the effective guarantee and observance of individual human rights and with the constitutional and political processes promoting and strengthening those rights. It is obvious that these processes are not one time acts. A number of scholars also hold such an opinion and as Special Rapporteur Espiell expressed himself "the right of peoples to self-determination has lasting force, does not lapse upon first having been exercised to secure political self-determination"[58]. Then the drafters of the Helsinki Final Act were precise with textual references on continuity of self-determination "all peoples always have the right"[59] to self-determination. Now the continuity of the principle of self-determination of peoples, the collective aspect, the position that self-determination constitutes a right of peoples and that it is not solely applied in colonial situations are recognized by the international community.

As to the aspect that the principle of self-determination of peoples creates some duties to the States, some primarily references can be seen in the Article 73 b of the Charter of the United Nations, as the development of self-government. However, at that time international community was more interested with decolonization process than the internal matters of the States. So only the 1970 Declaration on Principles of International Law, which recede from

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[58] Espiell H. Gros The Right of Self-Determination: Implementation of United Nations Resolutions//http://www.tamilnation.org/selfdetermination/80grosespiell.htm; connection time: 11/02/2008.
[59] Supra note 35.

purely colonial context, oblige States: a) to respect and promote realization of the principle of equal rights and self-determination; b) to promote respect for and observance of human rights and fundamental freedoms; c) to refrain from any forcible action which could deprive peoples from the enjoyment of the principle of equal rights and self-determination. Equally, the International Covenants on Human Rights introduce States with the duty to promote realization of the principle of self-determination of peoples and "States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination"[60]. Helsinki Final Act in its wording also shows that contracting parties took up duties as to respect the peoples' right to self-determination. However, these duties are very general and actually a small part of international community pays a significant attention to them.

The principle of self-determination of peoples reflects not only the right to determine political status it also includes economic aspect. An extensive reference to this aspect can be already found in the General Assembly Resolution 1514 (XV)[61]. One can also make links with the General Assembly Declaration 1803 (XVII) on Permanent sovereignty over natural resources, which repeats the right of peoples and nations to possess their natural wealth and resources. The latter Declaration proposes that it is in the hands of peoples to decide on the disposal of these resources. The Declaration leaves for the internal legislature to deal with the implementation of this aspect. International Covenants on Human Rights also cannot boast of a comprehensive textual reference to economic aspect of the principle. Still, according to the comment of the Human Rights Committee the economic aspect of self-determination constitutes not only a mere right of peoples living in a certain territory freely dispose their natural wealth and resources, also a right to demand that these resources would be exploited in the best interest of them. And the government, which is chose by these peoples, has a corresponding duty, as stated by Human Rights Committee, to dispose these resources only in a manner which reflect the interests of the whole population. Furthermore, the economic self-determination includes the right of peoples "to choose its economic system and exploit its natural wealth and resources

[60] CCPR General Comment No. 12 The right to self-determination of peoples (Art. 1) // http://www.unhchr.ch/tbs/doc.nsf/0/f3c99406d528f37fc12563ed004960b4?Opendocument ; connection time: 12/02/2008.

[61] General Assembly affirm that "that 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" (Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by General Assembly resolution 1514 (XV) of 14 December 1960)

without outside interference"[62]. Here it can be seen that partition of economical and political self-determinations is very provisory.

Indigenous peoples also hold all the rights under economic self-determination as the part of the population of the State. Though, they have additional "right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired"[63]. As the indigenous peoples, in order to preserve their cultural integrity, to save their traditions, need a place were to exercise these activities.

So one can clearly see that nowadays the principle of self-determination of peoples constitutes a continuing and collective right of peoples which give rise to corresponding duties of States. Furthermore, the implementation of the principle is not exclusively limited to colonial situations. Also, one can talk of political and economic self-determination, bearing in mind that two aspects are interrelated. Not to forget, that economic aspect is still gaining its importance.

2.2.2. External and Internal self-determination

The external and internal aspects of the principle of self-determination of peoples comes together with the evolution of the principle itself. Generally, the external self-determination means that peoples can decide on their international status and they are free from any foreign interference which could affect their international status (status of the State). The internal self-determination means that peoples can participate effectively in the decision making process of the State they are living in, and that their participation result their political, cultural and economic life. However there is more to these aspects.

The aspects of self-determination had undergone a long development, like the principle itself. However, the external self-determination was the first to gain more importance. In the Charter of the United Nations self-determination was seen as the reach of self-government for non-self-governing and trust territories. The following resolution adopted by the General Assembly as well stressed on the colonial context. So external self-determination, in the colonial context, meant that peoples of non-self-governing territories had the right to decide freely and without external interference, the international status of the territory in which it resides. The free determination of the political status is attained when all powers have been transferred to the

[62] Smis, supra note 3, P.410.
[63] Supra note 45, Art.26.

inhabitants of trust and non-self-governing territories and these territories continue their existence as sovereign and independent states. According to the rules established in the documents of the United Nations adopted in the mid XX century a number of territories decided on their internationals status. For example West Irian constitutes a part of Indonesia after the inhabitants of West Irian choice to remain with Indonesia and not to serve their ties with it. However, now when there is no trust territories and only 16 non-self-governing territories left, one cannot limit the principle of self-determination of peoples to colonial context exclusively. It has to be clear that any foreign domination as well causes outside interference. For this reason such peoples who are under foreign domination also holds the right of external self-determination. East Timor, as well other cases show that peoples who are under foreign domination that is of military nature, actually hold the right of external self-determination. Some scholars also stress that domination can be exercised and by other means, such as economic, social, etc. Today, foreign domination can be seen militaristically (such as when troops of one country are stationed in another country), economically (when one country or group of countries economically dominates another), and culturally (a concept known to social scientists as cultural imperialism), where one country's culture is imposed on another.[64] However international practice and majority of writers does not give us any support for such interpretation. So, one should agree that self-determination is violated only "whenever there is a military invasion or belligerent occupation of a foreign territory"[65]. Of course, exceptions are made for the situations when the unlawful occupation is exercised under the conditions of Art.51 of the Charter of the United Nations.

In the International Covenants on Human Rights external self-determination was looked at from the other perspective. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation.[66] Furthermore, peoples of an existing State hold the right to determine and protect their status without outside interference. As Prof Cassese explained Helsinki Final Act added more to that stating that any changes, whether of territorial nature or other, cannot be exercised

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[64] Moris, supra note 47.
[65] Cassese, supra note 1, P.99.
[66] CERD General Recommendation No. 21: Right to self-determination // http://www.unhchr.ch/tbs/doc.nsf/0/dc598941c9e68a1a8025651e004d31d0?Opendocument; conncetion time: 12/02/2008

by the authority of the State if it is inconsistent with the will of the peoples of that State. So, peoples under colonial rule and under domination hold the right to free themselves from colonial or any other domination. As well as, peoples of independent and sovereign State hold the right to make their decisions without outside interference and to state their opinion on any possible change of the international status of their State. The latter aspect should be called an emerging one, as it cannot be clearly stated that under international law there exists a right and a corresponding duty.

The secession[67] also should be looked at. Some commentators include it to the above mentioned feature of the external self-determination, as the question does self-government include secession, while others distinguish it to a separate feature. Of course only in the theoretical level it is possible to make such clear distinctions, although, even here it interlaces. The first legal reference to self-determination is in its textual shape silent on the question of secession, however from the *travaux preparatoires* one can form a view on the question. One is clear that States held the fear that the principle of self-determination of peoples can condition various disorders. Most of the scholars agree that the provisions on self-determination, that is self-government, in the Charter does not give the right to secession "if a national, linguistic or regional minority, a fraction of a people or even that of a nation is willing to secede from the mother state, it could not base its claims on Article 1(2) of the Charter of the United Nations"[68]. Nevertheless, one should as well bear in mind that 1950 and 1960 mark a number of new independent states which broke out and became the members of the United Nations. However, at the time the question of secession was a political question. Even more, "the transition from colonial status to independence is not regarded as secession, whether or not it is achieved by force of arms"[69]. More discussions were focused on the so called saving clause of the General Assembly Resolution 2625(XXV). Majority of the scholars interpreter this clause as the one allowing secession as the last possibility if government is denying the rights of peoples to internal self-determination. In such a case the State also loses the benefit from the saving clause (the shield of territorial integrity). So, when government is constantly denying for peoples the right of internal self-determination (discriminating on the grounds of race, creed or colour and denying equal rights to be represented, not a general disappointment with the politics of the

[67] "Secession is … used to denote the separation of part of the state territory carried out by a resident population group with the aim of creating a new independent state. While a new state is created, the old state retains its legal personality on a diminished territory." (Smis S. A Western approach to the international law of self-determination theory and practice: Diss. doct. Law. Brussel: s.n., 2001.P.202.)
[68] Smis, supra note 3, P.110.
[69] Emerson R. Self-determination // American Journal of International Law, 1971.

government), they can turn to the exercise of the right to external self-determination, that is the extreme outcome – secession. Still for this certain conditions should be met. Like an unremitting denial for racial or religious group of their participatory rights also gross and continual denial of their fundamental rights, and the breaches of fundamental rights, as well as, no possibility to reach any peaceful settlement in the State itself. H.Moris adds, that the group has to be self-defined and it must compactly inhabit a certain territory, which supports their wishes for secession, furthermore, the peaceful settlement must be seen to reach between the new state (which seceded) and the old one. Southern Rhodesia case would be example of such situations. Also the question of secession was raise with the view at International Covenants on Human Rights[70]. Still writers stress that countries do not welcome secession. Even if before XX century most of the states were created on the secession basis, for example Belgium, Greece. However, during the Cold War states afforded assistance to both secessionist movements as well as governments threatened by them. Yet, the fear of secessionist movements cannot lead to the refusal of the right to external self-determination of peoples. As it has to be clear that there exists situations which include gross violations of human rights, when external self-determination, not definitely implicating secession, is the only possible way out.

Hence, external self-determination means that peoples under colonial rule, peoples under military domination and peoples whose government grossly and constantly violates human rights, on the base of creed, religion or race, can decide on their international status, however the decision taken does not necessarily result as independence. Also the peoples of sovereign and independent States hold the right to external self-determination, as to be free from external interference to their decision making and to decide on any change of the international status of the State. However, as it was mentioned, the latter is only emerging as an aspect of external self-determination.

The internal aspect in the evolution of the principle of self-determination of peoples got the secondary role. But since the International Covenants were adopted commentators pay more attention to this question. Returning to the origins of the principle of self-determination of peoples, one should remember that the concept of internal self-determination was connected with

[70] "In the view of the Committee, international law has not recognized a general right of peoples unilaterally to declare secession from a State. In this respect, the Committee follows the views expressed in An Agenda for Peace (paras. 17 and following), namely, that a fragmentation of States may be detrimental to the protection of human rights, as well as to the preservation of peace and security. This does not, however, exclude the possibility of arrangements reached by free agreements of all parties concerned." (CERD General Recommendation No. 21: Right to self-determination // http://www.unhchr.ch/tbs/doc.nsf/0/dc598941c9e68a1a8025651e004d31d0?Opendocument; conncetion time: 12/02/2008)

the one of popular sovereignty. Popular sovereignty, internal self-determination or self-government, as it is referred to in the Charter, is the right to govern oneself on the basis of a free and genuine expression of the will of the governed.[71] So, peoples can be governed only by their own consent and they hold the right to choose their rulers and their own rules. Of course, States have a lot of discretion in the area of determining and organizing the political, economic, social and cultural life as a matter of the exclusive sovereignty of the State. We would like to stress that not like in the case of external self-determination the internal one can be usually implemented within the boundaries of the State. Nevertheless, internal self-determination remains "a remainder of the ultimate accountability of every State and every political system to the peoples who live under its legal jurisdiction"[72]. Some writers stress that internal aspect of self-determination was also embodied in the Charter of the United Nations as self-government. We do not deny this thinking, as internal self-determination means the right of peoples freely to choose their rulers this would lead to the reaching of self-government in non-self-governing territories. However, at the time international community was more concerned with the determination of international status of such territories. Therefore, a reflection in international documents of a germ of internal self-determination can be found only in 1970 Declaration on Principles of International Law. The Declaration still keeps internal self-determination as the question of a secondary importance. Yet, one can interpreter the 'saving clause' of the document as entrenching the internal self-determination. That is the right of peoples, inhabiting a Sate, to be represented without any distinction as to the race, creed or colour. So the government have to treat and represent its population with no exceptions as to the ones who form a racial or religious group. However, A.Cassese holds the opinion that saving clause was meant to apply only to peoples living under racist regimes, that is as discussed above, the possibility to disturb territorial integrity of the State. So, commentators raise the question of secession (the question of racial or religious group to exercise external self-determination, when they are being discriminated). Adding to what was said on the matter, the internal self-determination can not be defined too loose that peoples could claim it whenever they feel disappointed with their government. So it can be said clearly that racial and religious group has the internal right to self-determination in a mode of taking part in the national decision making process together with the whole population. Also one looking at the practical cases can say that autonomy can be also a mode for racial or religious groups.

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[71] Smis, supra note 3, P.110.
[72] op. cit.: Smis, supra note 3, P.263.

So, 1970 was the first step to embody the right of peoples to have a representative that is democratic government. The second and firm step was the Common Article1 of the International Covenants on Human Rights. The documents, introducing the right of peoples freely to determine their political status and freely pursue their economic, social and cultural development, gave the inhabitants of a State "an unstinted entitlement to take part in the decision-making processes of the state in a completely democratic fashion"[73]. So, all peoples, who are inhabitants of a certain State, hold the right to participate in the political, economic, social and cultural life of that State. Even more, through choosing government peoples hold the right to determine the policies of the political, economic, social and cultural life of that State. Of course, peoples are free in their choice that is no interference. International commentators hold that the internal right embodied in the International Covenants on Human Rights is "a manifestation of the totality of rights embodied in the Covenant"[74]. So it can be said that internal self-determination is being implemented if all the peoples living in a State can enjoy such rights as freedom of expression (Art.19 ICCPR), the right to peaceful assembly (Art.21 ICCPR), freedom of association (Art.22 ICCPR), the right to take part in the conduct of public affairs, directly or through freely chosen representatives (Art.25a ICCPR), and the right to vote (Art 25b ICCPR). These rights are the conditions for the enjoyment of internal self-determination. However, "the right to self-determination is a *condition sine qua non* for the enjoyment of all rights and freedoms of the individual"[75]. So, Covenants introducing the connection between the internal aspect of self-determination and the realization by individuals of civil and political rights related internal self-determination with democratic governance. For the first time a legal document vested in the whole population of a State the right of internal self-determination which is being implemented through representative democracy. Later adopted documents reaffirmed the novelties introduced by the International Covenants. While, section VIII of Helsinki Final Act is "the first explicit reference to internal self-determination"[76] it mainly support the interpretations made on the Common Article 1. It only puts stronger emphases on the internal self-determination of the population of sovereign and independent States and reaffirms the necessity of freedom of expression, association and other individual rights for a proper exercise of internal self-determination. Furthermore, any limitations on the expression are disproved, for

[73] Shah, supra note 7.
[74] Cassese, supra note 1, P.53.
[75] Smis, supra note 3, P.408.
[76] Salmon J. Internal Aspects of the Right to Self-Determination: Towards a Democratic Legitimacy Principle?// Tomuschat C.(ed.) Modern law of self-determination. Dordrecht: Nijhoff, 1993. P.253-282.

this reason peoples are free not only from outside interference but also from any internal interference in the exercise of their right. Vienna Declaration also reaffirms that States should be possessed of governments that represent their peoples without any distinction. However international practice fails to give us examples when States, trample on non-interference to the domestic affairs of sovereign state and take action to help peoples under authoritarian or any other undemocratic rule to exercise their right of internal self-determination. Yet, when such concept was invoked it was a mere political assentation. As example here East Timor could be mentioned. East Timor was a Portuguese colony, however peoples did not get the chance to implement their right of self-determination. Before colonial power could organize a plebiscite a civil war broke out and quickly after in 1975 East Timor was annexed by Indonesia, claiming that it formed an integral part of its territory. In this situation Portugal as a colonial power did not fulfilled its duties, to lead peoples to the exercise of self-determination. From the other point of view, peoples of East Timor were also denied the exercise of internal self-determination. As Indonesia was actually a government for peoples of East Timor, despite the fact it became as such after illegal annexation, it failed to represent them on equal grounds with no distinction. United Nations rejected the annexation and continued to consider Portugal as responsible for East Timor, however Australia was the State which took actions. Australia started negations with Indonesia on delimitation of East Timor, also on exploitation of the natural resources of the territory by both States. These actions by Portugal were considered as interference and Portugal brought Australia before the International Court of Justice. In addition, as Prof Cassese explained even the views adopted on the question by European Community, shows, that States tend to dissociate from such situations, if their own interests are not threatened.

Here also an emerging aspect of internal self-determination should be mentioned. Already the 1970 Declaration on Principles of International Law gives the view that States can be composed of a various peoples that is peoples holding different beliefs or belonging to different race. As it was discussed, scholars today introduce a new concept ‘distinct people’, they as well constitute a population, yet they hold a different characterization from the population as a whole. It can be said that now we are witnesses of a new emerging feature of internal self-determination that is the right of distinct group of the inhabitants of the State to have a different-additional treatment from the whole. Recently adopted United Nations Declaration on the Rights of Indigenous Peoples gives us a right to talk of such a rule. Considering their specific characteristics additional rights and freedoms are given. As for indigenous peoples “the right to a

homeland, the right to cultural integrity, and the right to self-governance on a land base"[77]. As all these rights are interrelated, people cannot enjoy one without having the other.

So the internal self-determination comprise of: 1) the right of the whole inhabitants of the independent and sovereign State to choose the government, to determine political, economic, social and cultural system of the State, to participate in political, economic, social and cultural life of the State - to hold a representative democratic government; 2) the right of religious and racial groups living in State to a representative democratic government, which does not discriminate them on the grounds of race, creed or colour; and 3) the right of distinct group of the inhabitants of the State to additional rights and freedoms due to their specific characterization.

2.3. The Implementation of the Principle of Self-Determination of Peoples

Scholars do not put a big emphasis on the clearness of how peoples should exercise their right to self-determination or to what outcomes this exercise could lead. Writers usually lose these questions in a general research on the principle itself. However, it can not be stated, that they deny the importance of these questions, or totally ignore them, as the question of the way and the modes are equal features of the principle of self-determination of peoples.

2.3.1. The Way of the Implementation of the Principle of Self-Determination of Peoples

Already the drafters of the Charter of the United Nations raised the question of the implementation of the principle of self-determination of peoples. Drafters held the fear that principle of self-determination of peoples is open for misuse and manipulation, even more, authoritarian or totalitarian leaders can use it to justify military interventions or even annexations. This led the Syrian delegate to point out that the principle of self-determination contemplates free expression; if a people is unable to express its genuine will, self-determination cannot be considered to have been achieved.[78] So, the idea of the drafters was that principle requires free and genuine expression of the will of peoples and that expression has to satisfy this requirement practically and not to be declared only as such. However, no reflection of such feature can be found in the text of the Charter. Yet, the General Assembly Resolution 1514 (XV)

[77] Dussias A. M. Does the right of self-determination include a right to homeland? // Syracuse Journal of International Law and Commerce, 2004.
[78] Cassese, supra note 1, P.40.

provides us with the textual references on the idea of the drafters, peoples freely determine their status and freely pursue their development. Even more, in order to exercise self-determination peoples freely express their will and desire. The Resolution 1541(XV) stress that free and voluntary choice of peoples should be expressed "through informed and democratic processes"[79], "impartially conducted and based on universal adult suffrage"[80] taking into account the specificities of the territory and the peoples in question. Of course peoples in such choice should be free from outside interference. Still, consultations and the supervision of the process by United Nations is welcome. It should be pointed out that here it was given a general description without making distinction to the modes, like it is made in the text of the Resolution. Already in the case of Western Sahara the International Court of Justice stressed "the validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples"[81]. The Court also stressed that if in practice this rule was not followed, only two exceptions can validate such practice. First, when peoples in question did not constitute 'peoples' entitled to self-determination, second, there is a strong conviction that such consultations due to certain circumstances are not needed. Still the main point is that peoples in their choice must be free from any external interference. That is, free expression of the will of the peoples is linked solely to the decision on the international status of the territory and peoples, and no one is concerned with the internal exercise of the right to self-determination, i.e. the right to select freely one's rulers. J.Salmon rightly expressed the views of the majority of writers, that the decolonization process was interested only in the determination of external status of the territory and peoples in question, there were no thoughts of the right of the inhabitants of a territory freely to choose their rulers at the time of independence. However, one has to understand a basic rule that can be seen already in the decolonization period, if we are talking of a proper realization of the principle of self-determination of peoples the wishes of peoples in question must be ascertained. This can be illustrated with the case of Eritrea, when the wishes of peoples were not considered in the first place and it led to tensions. Peoples in Eritrea were consulted, but the decision to make a plebiscite was not taken and they were not awarded any choice, the result was that Eritrea was associated with Ethiopia with an autonomous status in 1952. However, Ethiopia already in 1962 intended to integrate Eritrea rejecting its autonomous status. Peoples of Eritrea started the fights against such a denial of their rights. Finally in 1993 a United Nations monitored

[79] Supra note 28, Principle VII.
[80] Supra note 28, Principle IX
[81] Wester Sahara case ICJ report 1975 P.25.para 59.

referendum was held were a vast majority favoured the independence of Eritrea. The International Court of Justice in the opinion given in the Western Sahara case stated that to whatever mode the realization of self-determination would lead to, the freely expressed will of peoples must exist and be taken into account. At least a vague understanding what peoples want must be. Furthermore, it is not enough to declare that peoples can freely express their will, through plebiscites, elections or other ways, what is as well important, is that peoples must be given, like Lady Higgins stressed, a proper range of options to choose from. Of course, in the context of decolonization the choice was pointed to independence, association, integration or other post-colonial status. Even then the alternatives given to peoples had to offer them a real and extensive choice possibility. Not like in West Irian case when peoples were given very limited alternatives, or remaining with Indonesia or severing ties with it, but no explicit references was given what possible alternatives is when the decision is to sever ties with Indonesia. As to the decision on, what questions peoples should be given to choose from for the implementation of self-determination, peoples were not consulted too. This gives considerations, who should formulate the alternatives given to peoples. One is clear that the alternatives should actually reflect the wishes of peoples, and like some scholars offer "the alternatives offered in the plebiscite should be those proposed by the peoples' leaders"[82]. We would like to stress that it can be not enough only to give two alternative choices which supposedly reflect the true wishes of peoples. For example, United Kingdom under whose authority the Gibraltar is, held a referendum in 1967, were inhabitants of Gibraltar had two alternatives to choose from: "(1) 'to pass under Spanish sovereignty' or (2) 'voluntarily to retain their link with Britain, with democratic local institutions and with Britain retaining its present responsibilities'. An overwhelming majority of inhabitants of Gibraltar voted to retain their links with Britain"[83]. The results of the referendum were rejected by Spain and also United Nations. The referendum in Gibraltar is the example what "is not necessarily considered by the UN General Assembly as the most adequate form to ascertain the wishes of the people involved"[84]. Some scholars stress that in the case of Gibraltar United Nations turn away from their common attitude towards self-determination claims of pre-colonial sovereignty (Western Sahara case - the right of population of Spanish Sahara to right of self-determination was recognized.) Some scholars try to clarify the situation stressing that United Nations holds the view that there exists victims and beneficiaries

[82] Sureda, supra note 16, P.305.
[83] Smis, supra note 3, P.194-195
[84] Smis, supra note 3, P.198.

of colonization, while Gibraltarians would be the latter. And the beneficiaries of colonization cannot benefit from the right of self-determination. While others, like Dr. Sureda, points that actually inhabitants of Gibraltar are included in Spain and this clarify the rejection of referendum. Whatever cause led United Nations to reject the referendum, this affirm the thin line between two aspects.

International Covenants on Human Rights and the comments on them bring more light on the question, especially the internal self-determination. The textual expression of the Common Article 1 is very general: peoples freely determine, freely pursue and freely dispose. However, commentators point that there is something more hidden under this concept than the already mentioned understanding. First of all, as to the internal aspect of self-determination, peoples are free from internal interference. First, there must be "free and fair elections which would enable the people, especially minorities, to elect a representative government"[85], as well, to determine their political, economic, social and cultural system. Here Article 25(b)[86] of the ICCPR describes the process, how peoples can participate in the life of conducting their State. It is obvious that it is for the State to decide in what periods the election will take place, but the periods should not be too long from each other and the election must be at regular intervals. Then, the elections should be free, so peoples in choosing their representatives or determining the political, economic or other system of their life must be free from any influence or as few as possible influence should be put on them. That is no pressure can be put on the peoples as to their choice. Furthermore, the variety of choices must be ensured to the peoples. Not to forget, that 'free' reflect the possibility to exercise individual human rights embedded in the International Covenants. The second aspect, reflects 'without external interference', the right of every State to conduct its internal affairs without interference of other States, as well as to be free from any military occupation or intervention, except cases justified by Art.51 of the Charter of the United Nations. Furthermore, Principle VII of Helsinki Final Act strongly reaffirms that the guarantee for all the peoples to exercise individual rights is essential part of proper implementation of self-determination and that outside interference is not acceptable.

Hence, the requirement of free and genuine expression of the will and wishes of peoples in question is applied to any aspect of self-determination. Moreover, peoples must be awarded

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[85] Moris, supra note 47.

[86] To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (Art.25 (b) of International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights of 16 December 1966)

comprehensive alternatives, which would show them all the possible choices. Nevertheless, these alternatives must be related to the actual wishes of the peoples concerned. Then, peoples will must be ascertain through a democratic and peaceful process, bearing in mind internal rules for organizing such a process, which do not discriminate peoples on any ground.

2.3.2. The Modes of the Implementation of the Principle of Self-Determination of Peoples

Already in the Charter of the United Nations one can find a reference to the possible outcome of self-determination that is self-government. However, the General Assembly Resolution 1514 (XV) shows us that the members of the United Nations saw the only outcome of the implementation of the principle that would be independence. So, peoples under colonial domination could attain self-government, which meant independence. Yet, a day later adopted General Assembly Resolution 1541 (XV) supplemented the list of the modes. It was not only independence what peoples could attain in the decolonization process, it was also, association or integration with an independent State. We would like to stress that international community favoured independence as the outcome of the implementation of the principle. For instance, the General Assembly Resolution 1541 (XV) insisted upon additional requirements on the expression of the will of peoples and on the status of the peoples after the choice is made, when peoples choice would be other than independence. So, if peoples would choose to integrate into a sovereign and independent State, the integration must be on the basis of complete equality and as a result of the freely expressed wishes of the peoples in question. Furthermore, peoples of non-self-governing territory should be politically educated to make such choice. That is "the integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes"[87]. Here it should be added, that peoples are free to choose, whether to be incorporated into third Sate or the State under whose administration they were. The only disadvantage would be that in the latter situation more suspicions would exist. Moreover, peoples, who chose the integration, should be granted the full citizenship of the State they integrated with and they should be treated on equal grounds and without any distinction or discrimination together with the peoples of the independent State they integrated with. Then, "both should have equal rights and opportunities for representation and effective participation at

[87] Supra note 28, Principle IX.

all levels in the executive, legislative and judicial organs of government"[88]. Additional requirements were also lay down for the association. Association "is a form of self-government developed in United Nations practice under which the associated entity has a special status short of independence, with certain functions (including international representation and defence) carried out by another State, usually the former colonial power"[89]. Free association should be a result of a free and voluntary choice of peoples in question. Then, it should respect the individuality and the cultural characteristics of the territory and its peoples. Also, the peoples who associated should have the right to determine its internal laws without outside interference. Furthermore Crawford points on more requirements, for example, under the Association agreement, which holds equal force and rights upon both of the parties, the procedure for termination of the association should be designed. The 1970 Declaration on Principles of International Law introduced one more mode, any other political status. This fourth option with no exceptions can be chose if it is determined freely by the peoples in question. It can be seen from the documents adopted after World War II, especially the 1970 Declaration, that "self-determination is not limited to a simple alternative between independence or dependence"[90]. So, peoples can reach external self-determination in a number of modes. Yet in the decolonization of Africa mainly the mode - independence - was in question while in the case of Gibraltar, peoples' choice was the possibility to remain a part of the state administering them, as well in the case of West Irian peoples chose to remain with Indonesia that is to become an integral part of it.

Regrettably, the documents do not provide us with information on the possible modes of the implementation of the internal self-determination. We hold the opinion that the modes of internal self-determination are a representative aspect and autonomy. The representative aspect, in addition to what was said, would mean taking part in the conduct of public affairs of the State, directly or through freely chosen representatives. If person satisfies certain conditions, he can vote or can be elected to be a representative. Then, person has an equal access to public service in his State. Furthermore, the democratic aspect is entwined here: right to assembly, freedom of expression, freedom of association - peoples must have these rights without any distinction or discrimination. Here we talk of the whole population of a State, however, like we showed already the population of a State can be constituted of various peoples and these peoples may ask for a different treatment. Some international scholars talk of autonomy in such a situation. Even

[88] Supra note 28, Principle VIII.
[89] Crawford J. The creation of states in international law. Oxford: Clarendon Press, 2006. P.625.
[90] Clark, supra note 48.

more, they are offering autonomy as a way to escape secession claims, the solution of powers in order to safeguard state unity (including the claims by racial and religious groups, which are discriminated). As it is an emerging norm, one can talk that the question of establishment of autonomy from a traditional belonging to constitutional law of the State is turning to international regulation. However, the autonomy is a flexible concept subject to the context in which it operates and it can take various forms. In general, autonomy can be territorial and personal. Territorial autonomy "is a mechanism by which one or more territorially defined population groups enjoy a specific status externalized through the competence to exercise certain state functions independently from the central state authorities"[91]. Territorial autonomy can be granted only if a distinct population group lives in a well defined area of a state and it constitutes a majority there. Furthermore, peoples can benefit from this type of autonomy only if they live in this area. The Faroe Islands (are islands between the Norwegian Sea and the North Atlantic Ocean) autonomy is an example of a territorial autonomy. Since 1948 the Faroe Islands constitutes an autonomous province of the Kingdom of Denmark. Faroe Islands has their own institutions which "exercise legislative and administrative powers over so-called 'special Faroese matters'"[92]. However the institutions are solely based on territorial aspect, the powers exercised by the Faroe institutions do not depend on the Faroe nationality of the inhabitants. In turn, personal autonomy is a right of autonomy recognized for members of an ethnic or cultural group independently from their residence.[93] Of course, there also exists autonomy when the two features are mixed. The Sami autonomy in Finland (Sami peoples are indigenous people of North Europe) is an example of a mixed autonomy. Sami peoples have a Sami Parliament which "has authority restricted to Sami Homeland"[94] So while Parliament may be formed exclusively from and by Sami peoples (not limited to residing in Sami Homeland), Parliament holds the authority only on the limited territory-Sami Homeland. The mentioned examples show as well that the inner aspects of autonomy, that is who, what kind of and to what extent powers hold, differs a lot and is decided usually by the agreements between two entities. Mostly autonomous entities do not have any voice for foreign affairs, while Åland Islands holds some aspects of this right. The United Nations Declaration on the Rights of Indigenous Peoples also talks of autonomy. Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or

[91] Smis, supra note 3, P.335.
[92] Smis, supra note 3, P.362.
[93] Smis, supra note 3, P.336.
[94] Smis, supra note 3, P.365.

self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.[95]

Hence, the realization of self-determination of peoples can end in: 1) independence; 2) association with an independent State; 3) integration with an independent State; any other political status; 4) representative aspect; 5) autonomy. Still as it was showed, the wishes of the peoples must be ascertained and how it is ascertained holds a great importance as to the proper implementation of the principle of self-determination of peoples.

3. LIMITING THE PRINCIPLE OF SELF-DETERMINATION OF PEOPLES

The principles of international law are interrelated and they might influence each other. The application of the principle of self-determination of peoples can interfere into the regulation sphere of the other principle and vice versa. Sometimes the principles interact, while in other cases there is a low opportunity for a harmonized application, as the principles present different values. Therefore, this chapter is divided into two sections: **'3.1. Principle of Self-Determination of Peoples and Territorial Sovereignty of State'** where we will discuss the impact of territorial integrity and the doctrine of *uti possidetis* on the implementation of the principle of self-determination of peoples, and **'3.2. Principle of Self-Determination of Peoples and the Use of Force'** here we will show how the prohibition to threat and use force is applicable when the question of the implementation of principle of self-determination of people rise.

3.1. Principle of Self-Determination of Peoples and Territorial Sovereignty of State

Territorial sovereignty of the State and the principle of self-determination of peoples present different aspects. The former encompasses the right to preserve the territorial status quo, while is the latter threaten to introduce changes here. The two is the case were harmonization can not be reached easily. In addition, the principle of self-determination of peoples affects not only territorial aspect of the State sovereignty. The 1970 Declaration on Principles of International Law imposes a duty upon the States to represent the whole population without any distinction.

[95] United Nations Declaration on the Rights of Indigenous Peoples 13 September 2007 General Assembly Resolution A/RES/61/295

Here, the principle of self-determination of peoples limits the sovereignty of the State to conduct its internal affairs as it wishes. However, when the territorial questions arise, possible limitations on the implementation of self-determination must be considered.

Already the Charter of the United Nations emphasizes the importance to safeguard territorial integrity of the States. The General Assembly Resolution 1514 (XV) confirms the respect for territorial integrity of the peoples who are entitled to self-determination. This is important as "a claim to self-determination is usually not only a claim by a people to determine their own political status, but also represents a claim to territory"[96]. Before the adoption of the Resolutions 1514 (XV) and 1541 (XV) there were thoughts that claims for self-determination in colonial context threatens territorial integrity of the colonial power. However, from the text of the Article 2(4) of the Charter it is obvious that the prohibition to disturb territorial integrity and national unity of the State is addressed only to States, and not to peoples. Even more, similar obligation is laid down for States to respect the territorial integrity of colonial countries and peoples. Yet, like lady Higgins points out, first it must be determined where territorial sovereignty of the territory, which is inhabited by the peoples, who seek self-determination, lies. She grounds her statement on the case of Western Sahara, where first the territorial sovereignty was ascertained. According to Higgins if the territory is under the territorial sovereignty of a particular State it is impossible to talk about external self-determination. So, the territorial integrity of this State must be safeguarded, and the territory must be returned to that particular State. However, we can not state that all the claims for self-determination in colonial context infringed on territorial integrity. Principle IV[97] of the General Assembly Resolution 1541 (XV) already shows us, that the territories of colony and the one of colonial power are distinct. Furthermore, the 1970 Declaration on Principles of International Law explicitly states that these territories are separate and distinct. So, the "emancipation of a distinctly colonial people does not affect territorial integrity of the colonial power"[98]. Thus in the decolonization period territorial integrity was affecting the implementation of self-determination only with the view to the territorial integrity of the self-determination unit. The *ratio* to invoke the protection of the territorial integrity in the context of decolonization was not, as several scholars have defended, to protect the international status once independence had been achieved but rather to make sure that

[96] Musgrave, supra note 13, P.180.
[97] *Prima facie* there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it. (Principle IV of the United Nations General Assembly Resolution 1541 (XV) Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter)
[98] Castellino, supra note 2, P.26.

the colonial territory as a whole could determine its international status.[99] Nevertheless, the principle of self-determination of peoples here introduced some corrections too. It is important to remember that the wishes of peoples are a core of self-determination. The peoples of British Cameroons and Rwanda-Burundi held themselves separate and distinct, even the territories inhabited by the different populations were distinct in a number of aspects. Furthermore, peoples expressed their wishes for different outcomes of the exercise of the right to self-determination. The two cases are the examples, when territorial integrity was put aside because the keeping of it would be contrary to the wishes of peoples. Also, writers point that the partition of the territory may be justified when the keeping of territorial integrity would threaten international peace and security. Not to forget that the units which already exercised external self-determination might by mutual agreement interfere with the principle of territorial integrity. Like Prof Cassese stated two States by mutual agreement can agree on changes of territory or boundaries between them. However, the wishes of populations in question must be ascertain.

The situation is different when claims for self-determination are raised in a non-colonial context against the sovereign State. If we change the wording of the saving clause of the Resolution 2625 (XXV), we get a different provision that authorize actions which could dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States. The State will lose the argument of territorial integrity if it does not conduct itself in compliance with the principle of equal rights and self-determination of peoples and is possessed of a government, which does not represent the whole peoples of that State without distinction as to race, creed or colour. So, as majority of the writers stress, the saving clause "linking territorial integrity to representative government, appears to allow part of a state's population to secede if that part of population is not represented in the government of the state"[100]. Scholars that do not agree with such considerations, point to the subsequent paragraph, which stress that States should refrain from any actions which could disturb territorial integrity of the other. Here, one has to see that the prohibition is for the States and not for the peoples, who hold the right of self-determination. So, when peoples are not represented for the reasons of creed, colour or race and if this non-representation amounts to extreme cases of oppression, the saving clause gives for these peoples the possibility to interfere with the territorial integrity of a State. Furthermore, peoples can exercise the right of external self-determination, which in extreme cases can lead to secession. Actually similar wording as the one of the saving clause can

[99] Smis, supra note 3, P.131.
[100] Musgrave, supra note 13, P.182.

also be found in Vienna Declaration, this shows that international community agree, that in certain situations territorial integrity of the State can not be an argument against self-determination.

Hence, when there were colonial type claims for self-determination territorial integrity limited the application of the former only to the extant that the whole territorial unit should be awarded possibility to determine its political status, without territory being dismembered. In a post-colonial context territorial integrity can be put aside only in extreme cases of oppression and of course when peoples are under domination.

The other territorial aspect, which goes together with territorial integrity, is the doctrine of *uti possidetis.* The doctrine trace back to Roman law. In the first manifestation the doctrine signify "that while retreating from a territory, the boundaries left behind were sacrosanct and could not be alerted under any circumstances"[101]. In colonial context the rule was reaffirmed. In general it meant that new State, which emerged after peoples' exercise of their right to self-determination in decolonization process, holds the same boundaries as it was designed by the colonial ruler. In the *Burkina Faso/Mali* case, the International Court of Justice emphasized that *uti possidetis* constituted a general principle, whose purpose was to prevent the independence and stability of new States from being endangered by fratricidal struggles provoked by the challenging of frontiers. So, when self-determination was in question peoples had to limit their choice to the colonial boundaries. As a number of scholars points out for the reason of stability the doctrine of *uti possidetis* was preempting the exercise of self-determination, stressing on the words of Judge ad hoc Abi Saab in *Burkina Faso/Mali* case that without the stability the exercise of self-determination would be doubtful. So, in decolonization process *uti possidetis* meant that the boundaries had to be left the same as they were drawn by the colonial power. Actually any re-negotiation of boundaries was doubtful possibility the territorial aspect was overruling any historical, cultural or other aspects. As Lady Higgins stress self-determination is limited by *uti possidetis* in such a way that the same tribe, group, or people living on opposite sides of a colonial boundary, can not exercise their right to self-determination, as adjusting these boundaries. Higgins also points out that newly emerged States can redraw the boundaries by the mutual agreement, taking into account cultural, historical and other aspects, because the doctrine of *uti possidetis* does not freeze the boundaries for ever. Furthermore, as *uti possidetis* is being advocated to be a general rule in international law applicable in all cases when new states are created, it is applicable also in post-colonial context. So in the cases when external self-

[101] Castellino, supra note 2, P.41.

determination is allowable *uti possidetis* seeks to prevent civil unrest, ethnic strife and disintegration of the newly independent states, by demanding not to interfere with the existing boundaries at the time of independence. As Dr. Smis conveyed the opinion of the Arbitration Commission of the European Conference on Yugoslavia, under no circumstances self-determination could involve changes to existing frontiers at the time of independence, still States in question can agree otherwise. So, here exists the possibility of a mutual agreement. In addition to that, some scholars stress that when long-term instability could be a consequence of following *uti possidetis*, it is possible for the reason of stability, security and peace not to follow the rule. Yet, the latter is still a very unclear and questionable possibility.

Hence, the doctrine of *uti possidetis* limits the implementation of self-determination to the extent that the latter cannot affect the established colonial or international boundaries. However, States in question by mutual agreement can agree otherwise.

3.2. Principle of Self-Determination of Peoples and the Use of Force

The United Nations Charter entrench the prohibition of the threat or use of force as one of the principle, which should guide Member States in pursuit of the purposes of United Nations. It is clear, that this prohibition is laid down for States not to act in particular way against the other States. However, there is no reference as to the prohibition of threat or use of force by peoples. Here we should divide the question into three aspects: 1) can State use force against the peoples who are seeking self-determination; 2) can peoples use force in their struggle for self-determination; 3) can third States use force, as assistance for one of the parties.

To answer the first question, it is important at first to see that the Article 2(4) of the Charter prohibits to threat or use force against the States. We may come up with the conclusion that in colonial context colonial power could take any actions, even the one's constituting use of force, in the territory and against the peoples there without thinking of possible breach of the Article 2(4) of the Charter. Also, how sovereign State treats its citizens, is purely internal matter. However such considerations would be unreasonable, as already the General Assembly Resolution 1514 (XV) talks that colonial power cannot treat dependent peoples as it wishes, it must cease all the armed actions or repressive measures against the peoples in order to enable them to exercise their right to independence. The 1970 Declaration on Principles of International Law goes even further, in the section on the prohibition of threat and use of force it impose a duty upon every State to refrain from any forcible action which deprives peoples of their right to self-determination. The same is repeated in the section on the principle of equal rights and self-determination. This statement covers such a use of force in a purely colonial context as well as

actions in contiguous nominally independent states or against populations of the acting state itself, subject to certain limitations set forth in the self-determination principle.[102] In addition, the saving clause of the Declaration demand States in a post-colonial context to act in a certain manner with their population. Furthermore, with the adoption of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts it became finally clear that peoples struggle for self-determination is not purely an internal matter[103]. Scholars state that even if the use of force by a metropolitan power against a self-determination unit is not a use of force against the territorial integrity and political independence of a State, though it will be in another manner inconsistent with the purposes of the United Nations. For example, any colonial rule or domination over peoples is unlawful *per se* and should be ended as soon as possible. As A. Cassese states now international law bans not only the use of military force by State for the purpose of maintaining or enforcing its denial of self-determination to a colonial or foreign peoples or a racial group but also other forms of forcible action[104] designed to pursue the same goal. So both the use of military force and of forcible action constitutes a violation of the international rule. Thus, under international law there is a ban for States to use force against the peoples for the purposes of depriving them of their right to external self-determination and the ban to resort to force as a mean to deny equal access to the representative government. Here the two principles seek the same goals and are harmonized.

As to the aspect can peoples resort to force in their struggle for self-determination, one has to start with that in international law exists a general ban on the use of force, however like a number of scholars point out the use of force by the peoples in exercise of a right of self-determination is not regulated by international law, that is legally neutral. The 1970 Declaration on Principles of International Law gave peoples the right to resist forcible actions taken by a State to deny them the right of self-determination. However, nobody talks here what actions peoples can take. Yet, the Programme of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly Resolution 2621 (XXV) reaffirms the inherent right of colonial peoples to struggle by

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[102] Rosenstock R. The Declaration of principles of international law concerning friendly relations: a survey // American Journal of International Law, 1971.

[103] Article 1 paragraph 4 of the I Additional Protocol states that armed conflicts in which peoples are fighting against colonial domination, alien occupation or against racist regimes in the exercise of their right of self-determination constitutes international armed conflicts.

[104] 'Forcible action' ('toute mesure de coercition', in Frrench) means the establishment of a repressive regime which does not allow the oppressed people to determine its future status by free means. (Cassese A. Self-determination of peoples: a legal reappraisal. Cambridge: Cambridge University Press, 1995.P.182.)

all necessary means. This shows us that colonial peoples in their struggle for freedom and independence, when the State is trying to deprive them of their right can resort, if it is necessary, to force. Still the question is not clear whether the use of force by colonial peoples is legitimate as the fight against colonial rule, or as a response to the denial of their right to self-determination. As H. Gros Espiell stressed, the article 7[105] of the Definition of Aggression recognizes that the use of force by peoples in their struggle against colonial or alien domination is legitimate, as it is not considered to be an act of aggression. Espiell adds that peoples can exercise their right to struggle by any means available as a last mean, when there is no possibility to obtain the recognition of their right to self-determination by peaceful means, or these means are already exhausted. Then, "State which forcibly subjugates a people to colonial or alien domination is committing an unlawful act expressly so defined by international law, and the subject people, in the exercise of its inherent right of self-defence, may fight to defend and attain its right to self-determination"[106]. So, it is clear that when peoples are subjugated to a colonial or alien domination they can resort to force in their struggle for self-determination and this does not constitute the violation of the United Nations Charter or the 1970 Declaration on Principles of International Law. According to the wording of the Additional Protocol I to Geneva Conventions peoples under colonial or alien domination in their struggle for self-determination are protected by the widest scope of international humanitarian law. I.e. the rules of international humanitarian law apply to both sides of the conflict, and they must act in conformity with it.

Here writers, such as J. Castellino, introduce the concept of liberation movements. First of all it has to be emphasized that they must be the 'real representatives' of the peoples who are entitled to self-determination. What is more, these liberation movements, in the specific cases where they are operating against colonial and alien domination, have rights and obligations which contemporary international law has been conferring upon them on an increasing scale.[107] Furthermore as a number of scholars point out, liberation movements which can be classified among those fighting for freedom from colonialism, foreign occupation, or racism are entitled to international status. Prof Cassese adds that bodies representing peoples living in a sovereign

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[105] Nothing in this Definition, and in particular article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration. (Art. 7 of United Nations General Assembly Resolution 3314 (XXIX) Definition of Aggression)

[106] Espiell, supra note 58.

[107] Espiell, supra note 58.

State under authoritarian government or dominated by despotic elites that use military or economic support from a third party are not entitled to international status they also cannot resort to force, even if they must be afforded the right of internal self-determination. Not going into arguments of scholars as to the nature of the right or license to resort to force by peoples in there fight for self-determination, it is clear that peoples can resort to force only under certain circumstances.

The third aspect turns our views to the actions of third States in the situations of peoples struggle for self-determination. It should be mentioned that this aspect also includes the question of non-interference. Already the 1970 Declaration on Principles of International Law talks that peoples "in their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter"[108]. Even more, as Dr. Sureda points out the General Assembly and the Security Council, since 1965 started to call upon States to help dependent peoples to achieve self-determination, third States were called to grant moral and material assistance. Furthermore, this led to the situations that third States could intervene in the conflict, yet, on the side which the U.N. has determined to be entitled to exercise self-determination. A number of United Nations Resolutions called for active response by third States to the conflicts arising because of the exercise of self-determination. States were not only encouraged to support peoples in their struggles for self-determination, but were also discouraged from acting in any way which would inhabit the attainment of self determination.[109] Then, the Additional Protocol I to Geneva Conventions, in the words of Espiell reaffirmed the legitimacy of the support and assistance provided by third States for the peoples in their struggle to exercise self-determination. So, third State can afford assistance (technical, economical, political, etc) to peoples in their struggle to self-determination. However, third States assistance is also limited, as it can provide military equipment, financial, technical and political assistance but there can be no thoughts as to the sending of its armed troops. Also, third States would act in a breach of international law if it would provide assistance to the State which is depriving peoples of their right to self-determination. As A.Cassese expressed himself, States also hold the right to demand that State depriving peoples their right to self-determination would cease such actions. He also adds that this demand and assistance for peoples in their struggle does not constitute a violation of non-intervention into the domestic matters of the State. Also the

[108] Supra note 32.
[109] Musgrave, supra note 13, P.74.

possibility of countermeasures has to be considered. However, countermeasures can be taken first of all, only if "a multilateral forum (e.g. the UN General Assembly) has declared that a certain Sate has grossly infringed the principle or a rule on self-determination and has possibly called upon the Member States of the international community to take action against the delinquent State"[110]. In addition, all possible procedures for dispute settlement must be exhausted. Also the State against which countermeasures will be employed must be informed in a appropriate manner and time. Furthermore, the third State which is going to take countermeasures must agree to arbitration or other procedure for dispute settlement, if the target State would complain the use of countermeasures. And the most important, countermeasures can not constitute the use of force. So, all States have a positive legal duty to respect, promote and assist the exercise of the right of peoples to self-determination, even to take countermeasures under certain conditions and a negative duty to refrain from any measures which deprive peoples of that right.

Hence, the prohibition to threat or use force limits the implementation of self-determination to the extent that peoples in their struggle for self-determination against colonial, foreign or racial domination can resort to force as the last mean. Furthermore, peoples have the opportunity to resort to force, when they are being deprived of their right to self-determination. Also, peoples' right under self-determination to get assistance does not amount to a military help from a third State.

[110] Cassese, supra note 1, P.156.

CONCLUSIONS

1. The origins of external and internal self-determination lies in the ideas expressed at the time of American War of Independence and the French Revolution. In XX century Thomas Woodrow Wilson and Vladimir Ilyich Lenin shaped self-determination as a political concept and goal. The political principle of self-determination of peoples was chosen by Wilson to be his guiding principle in Paris Peace Conference for drawing the new order in Europe. The interwar period events reaffirmed that the principle of self-determination of peoples constituted a political concept not a general principle at the time. Only after the Second World War texts of legal significance were adopted that reflected the principle. The Charter of the United Nations included the principle of equal rights and self-determination of peoples as one of the principles of United Nations aimed at maintaining friendly relations and peace. Despite the situation that the Charter does not reveal the aspects of self-determination, its incorporation into the Charter shows that from this time we can consider a legal principle of self-determination of peoples.

2. The Resolutions of the General Assembly on self-determination of peoples revealed the different aspects of the principle and played an important role in establishing the standards on self-determination and in crystallization of customary law on the matter. The documents of the General Assembly mainly entrenched the right of colonial peoples and peoples under domination to self-determination and explained how this right can be implemented.

3. The 1966 International Covenants on Human Rights entrenched self-determination of peoples as one of the human rights that belong to all peoples, both of sovereign States and the dependent one's. And the 1970 Declaration on Principles of International Law entrenched self-determination as a principle of international law. The 1975 Conference on Security and Co-operation in Europe Final Act reaffirmed a continuing right of all peoples in full freedom to determine their internal and external political status and to pursue their political, economic, social and cultural development. And the United Nations Declaration on the Rights of Indigenous Peoples showed the right of 'distinct peoples' to self-determination. Consequently, the principle of self-determination of peoples is non-static concept, a dynamic one.

4. 'Peoples' can be described as territorially defined concept, which means the entire population of a certain territorial unit. Colonial peoples (whole peoples that inhabit the non-self-governing territory) and countries, peoples under domination and peoples of a sovereign and independent States (whole peoples that inhabit the State without distinction as to race, creed or colour) hold the right to self-determination. 'Peoples' can be described as a concept determined by subjective elements, because peoples in certain territory can be distinct by such features as

common history, language, culture, race or religion. However, determination of 'peoples' by subjective elements is an emerging rule, which emphasises self-identification and the fact of living in a geographically determined area.

5. Principle of self-determination of peoples constitutes a continuing and collective political and economic right of peoples which give rise to corresponding duties of States and which is not limited to colonial context.

6. External self-determination means that peoples under colonial rule, peoples under military domination and peoples whose government grossly and constantly violates human rights on the base of creed, religion or race, can decide on their international status. Also peoples of sovereign and independent States are free from external interference to their decision making, and free to decide on any change of the international status of the State. However, the latter is only emerging as an aspect of external self-determination. Then, peoples under international law cannot unilaterally decide to secede from a State they are forming an integral part. Yet, the fear of secession when there exist situations that include gross violations of human rights, should not lead to denial or limitation of external self-determination.

7. The internal self-determination comprise the right of the whole inhabitants of the independent and sovereign State to choose the government, to determine political, economic, social and cultural system of the State, to participate in political, economic, social and cultural life of the State - to hold a representative democratic government. Also, the right of religious and racial groups living in State to a representative democratic government, which does not discriminate them on the grounds of race, creed or colour. And the right of distinct group of the inhabitants of the State to additional rights and freedoms due to their specific characterization. The latter is the emerging aspect of internal self-determination.

8. The principle of self-determinations of peoples must be implemented by the free and genuine expression of the will and wishes of peoples. The will of the peoples must be ascertained through a democratic and peaceful process, bearing in mind internal rules for organizing such a process, which do not discriminate peoples on any ground. Peoples must be awarded comprehensive alternatives, which would show them all the possible choices. These alternatives should be related to the actual wishes of the peoples concerned.

9. The realization of self-determination of peoples can lead to independence; association with an independent State; integration with an independent State; any other political status (as modes of implementation of external self-determination); representative aspect and territorial, personal or mixed autonomy (as modes of implementation of internal self-determination).

10. Principle of self-determination of peoples interrelates with territorial sovereignty of the State and prohibition of use or threat of force. In the colonial context territorial integrity limited the application of self-determination only to the extent that the whole territorial unit should be awarded possibility to determine its political status without territory being dismembered. In a post-colonial context territorial integrity can be put aside only in extreme cases of oppression and of course when peoples are under domination. The doctrine of *uti possidetis* limits the implementation of self-determination to the extent that the latter cannot affect the established colonial or international boundaries. However, States in question can come up with the agreements, which would lead to a change of frontiers. The prohibition to threat or use force is a fundamental principle that limits the implementation of self-determination to the extent that peoples in their struggle for self-determination against colonial, foreign or racial domination can resort to force only as the last mean and such a struggle holds an international nature. Principle of self-determination of peoples prevails over prohibition to threat or use force when peoples are being deprived of their right to self-determination. Peoples in their struggle for self-determination can get assistance from Third States, however, it can not amount to a military help.

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SUMMARY

Principle of self-determination of peoples is one of the issues of international law, which is complicated. International commentators agree that the content of the principle is unclear. The same should be said about the borders of implementation of the principle. There are a number of legal acts on the question, however the two problems remain. This master thesis was aimed to analyze and to reveal the purport of the principle of self-determination of peoples.

In the first chapter we addressed the question of evolution of the principle of self-determination of peoples. It was showed how the principle from a vague idea expressed by peoples' movements in the American War of Independence and the French Revolution was shaped by two leaders of XX century as a political principle. That was taken up by one of them to be the guiding principle for drawing a new order in Europe after the Second World War. And how the political principle was taken up by United Nations and introduced into its legal system that shaped the principle as a legal principle of international law. The review of the documents gives us the right to talk of principle of self-determination of peoples not only as a legal principle of international law, but also as a human right and even a customary rule.

In the second chapter we addressed the question of the content of the principle. We showed the beneficiaries of the principle of self-determination of peoples through analyzing the concept 'peoples' as a territorially defined concept and as a concept defined by subjective elements. Also we disclosed the political, economic, as well as external and internal aspects of self-determination. Furthermore, we showed how it is important to ascertain the wishes of peoples in order to implement the principle of self-determination of peoples properly. We also analyzed the outcomes of this implementation.

In the third chapter we were concerned with the relations between the implementation of the principle of self-determination of peoples and other principles of international law. We showed how the implementation of the principle can interfere with the territorial integrity of the State, with the doctrine of *uti possidetis* and with the prohibition of threat or use of force. Also we talked how these principles interact.

SANTRAUKA

Laisvas tautų apsisprendimo principas tarptautinėje teisėje yra priskiriamas sudėtingesniems klausimams. Mokslininkai analizavę principą pabrėžia, kad sunku yra atskleisti principo esmę, nes ji yra labai neapibrėžta. Sunku apibrėžti ir aiškias principo taikymo ribas. Nors yra priimta daug teisinių dokumentų, kurie reglamentuoja laisvo tautų apsisprendimo principo taikymą, jie neatskleidžia principo esmės bei mažai prisideda prie ribų nustatymo. Šio darbo tikslas buvo išanalizuoti ir atskleisti laisvo tautų apsisprendimo principo esmę.

Pirmame darbo skyriuje Mes aptarėme laisvo tautų apsisprendimo principo vystymąsi. Principo šaknys siekia Amerikos Nepriklausomybės karą bei Prancūzų revoliuciją, kur principas pradėjo formuotis kaip neapibrėžta žmonių, kurie siekė būti tarp sprendžiančių jų ateitį, idėja. Mes parodėme kaip principas tapo dviejų XX amžiaus lyderių politine idėja, kaip vienas iš jų pasirinko laisvo tautų apsisprendimo principą būti vienu iš principų formuojančių naująją Europą po Antrojo Pasaulinio Karo. Jungtinės Tautos įtvirtindamos principą Chartijoje suteikė jam teisinę reikšmę. Dokumentų apžvalga Mums leidžia teigti, kad laisvo tautų apsisprendimo principas tarptautinėje teisėje turi teisinio principo poziciją bei yra pripažįstamas kaip viena iš žmogaus teisių, kai kurie jo aspektai netgi atspindi paprotinę normą.

Antrame darbo skyriuje Mes siekėme atskleisti principo esmę. Mes apibrėžėme teisės turėtojus per du aspektus, kalbėdami apie ‚tautą' kaip teritoriškai ir subjektyviai apibrėžiamą sąvoką. Taip pat Mes atskleidėme politinį, ekonominį, išorinį bei vidinį laisvo tautų apsisprendimo principo aspektus. Bet to, Mes aptarėme tautos valios išraiškos svarbą tinkamam principo įgyvendinimui bei išnagrinėjome principo įgyvendinimo būdus.

Trečiame darbo skyriuje mes analizavome laisvo tautų apsisprendimo principo ryšį su kitais tarptautinės teisės principais. Mes nustatėme, kad įgyvendinant principą susiduriama su Valstybės teritorinio vientisumo principu, *uti possidetis* doktrina bei su jėgos nenaudojimo principu. Mes parodėme kaip jie vienas kitą riboja, varžydami taikymą, ir kaip sąveikauja tarpusavyje.