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## **DOES THE PRINCIPLE OF SELF-DETERMINATION PREVAIL OVER THE PRINCIPLE OF TERRITORIAL INTEGRITY?**

### **INTRODUCTION**

Self-determination of peoples versus territorial integrity of a state is a very complex, delicate and particularly controversial international issue. Territory is one of fundamental attributes of a state, but the right to choose his/her own destiny inherently belongs to every human. Many armed conflicts in the whole world nowadays are based on the claims for self-determination. But do all claims are grounded by the current international law? The principle of territorial integrity is considered as one of the primary importance in achieving and maintaining international security and stability in the world. The principle to self-determination of peoples is one of the fundamental human rights firmly established in the international law. The fulfillment of the right of self-determination is impossible without the expression of free will. Both these principles and other related international law should be interpreted keeping in mind the overall international law objective to maintain peace and security. However, preserving peace among states is not enough, achievement of peace inside the states is no less important. It is impossible to do without recognition of the equal and inalienable rights of all people.

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As the principle of self-determination is a very broad concept, for the theoretical purposes it is usually divided into internal and external self-determination. The main difference between them is that the internal self-determination as participatory democracy is implemented inside the boundaries of the existing state; therefore it does not affect the territorial integrity of the state. However, all history prior to the emergence of self-determination as a legal principle and later use of this principle in the resolutions of the United Nations reveal that this principle very often appears in connection with territorial claims, secession and claims for independence.

The purpose of this article is to compare the legal power of the principle of self-determination and the principle of territorial integrity where they both appear in the international law, therefore only the external self-determination is considered. For the purpose of this article, the external self-determination is:

*the right to decide on the political status of a people and its place in the international community in relation to other states, including the right to separate [secede] from the existing state of which the group concerned is a part, and to set up a new independent state<sup>1</sup>.*

The hypothesis of this article is that the principle of self-determination of peoples prevails over the principle of territorial integrity in the present international law. To reach the conclusions, the following sources are used: the Charter of United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations General Assembly resolutions and declarations, other international law treaties and declarations, judicial decisions and theoretical works of publicists.

The article proceeds in two parts. In Part One general analysis of both principles and of their interrelation is given. In Part Two the principle of self-determination of peoples and the principle of territorial integrity are comparatively analyzed according to the areas of their application in the international law.

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<sup>1</sup> *The implementation of the right to self-determination as a contribution to conflict prevention*, Report of the international conference of experts organized by the UNESCO Division of Human Rights, Democracy and Peace and the UNESCO Centre of Catalonia (21-27 11 1998, Barcelona) <[http://www.unpo.org/print.php? arg=01&par=446](http://www.unpo.org/print.php?arg=01&par=446)>, visited 06 04 2005.

## 1. GENERAL ANALYSIS OF BOTH PRINCIPLES

### 1.1. The scope of the principle of territorial integrity

The principle of territorial integrity is considered as one of the primary importance in achieving international security and preserving stability in the world. To maintain international peace and security is the purpose of the United Nations stated the first among others in the Article 1 of the UN Charter<sup>2</sup>. The principle of territorial integrity is based on the principle of non-interference in the internal affairs of states, and by establishing *status quo* serves for maintenance of stability and peace in the relations among states. "It is one of the most fundamental and well-established principles of international law"<sup>3</sup>. The principle of territorial integrity was enshrined in the Covenant of the League of Nations<sup>4</sup>, and again in the Charter of United Nations. Article 2 of the UN Charter provides that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state"<sup>5</sup>. Threat or use of force infringes the territorial integrity of state but general diplomatic and political declarations do not violate the principle. However, this international legal rule applies only between states because "members" under the UN Charter are only states<sup>6</sup>.

This leads to the conclusion that the principle of territorial integrity is the principle applied in relations between states and not inside a single state. Respecting the territorial unity/ integrity of a state by its own population is a domestic affair and does not fall within the international law jurisdiction.

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<sup>2</sup> Charter of the United Nations (26 06 1945, San Francisco), 59 Stat. 1031, T.S. No.993, entered into force 24 10 1945.

<sup>3</sup> Thomas D. Musgrave, *Self-determination and National Minorities*, (Oxford: Clarendon Press, 1997), p.181.

<sup>4</sup> "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity ...of all Members of the League" (Covenant of the League of Nations (1919), article 10).

<sup>5</sup> See note 2: Charter of the United Nations, article 2, paragraph 4.

<sup>6</sup> "The original Members of the United Nations shall be the states" (see note 2: Charter of the United Nations, article 3); "Membership in the United Nations is open to all other peace-loving states"( see note 2: Charter of the United Nations, article 4).

## 1.2. The scope of the principle of self-determination of peoples

The principle to self-determination of peoples<sup>7</sup> is one of the fundamental human rights firmly established in the international law. It is very much a matter of international concern and "must be applied equally and universally".<sup>8</sup> The right to self-determination is conferred on peoples by international law itself and not by states.<sup>9</sup> As it is a legal principle, not a precise rule, it embraces a high degree of generality and abstraction<sup>10</sup>.

International legal instruments relating to self-determination invariably refer to the "peoples" as being entitled to the right of self-determination. Thus, self-determination is a collective right. The exercise of this right requires the expression of the free will of people. The Charter of United Nations declares that one of the purposes of the United Nations is: "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples<sup>11</sup>, and to take other appropriate measures to strengthen universal peace"<sup>12</sup>. Therefore, respect to this principle is a purpose of the United Nations and a measure for strengthening peace. However, the UN Charter neither defines self-determination precisely, nor imposes direct legal obligations on member states in this area<sup>13</sup>. The provisions on the right to self-determination, both totally identical in language and both under Article 1, appeared in the International Covenant on Civil and Political Rights<sup>14</sup>(ICCPR) and the International

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<sup>7</sup> First formulated around the second half of the 18<sup>th</sup> century, self-determination remained a political principle until adoption of the Charter of United Nations (Antonio Cassese, *Self-determination of peoples: A legal reappraisal* (Cambridge University Press, 1995), p.32).

<sup>8</sup> See note 1: *The implementation of the right to self-determination as a contribution to conflict prevention*.

<sup>9</sup> Ibid.

<sup>10</sup> Antonio Cassese, *Self-determination of peoples: A legal reappraisal* (Cambridge University Press, 1995), p.129.

<sup>11</sup> There could be an argument that the preamble of the UN Charter starting with the words "we the peoples of the United Nations" indicates to peoples as member states. But a term "peoples" further appears only in the context to self-determination. The *travaux préparatoires* to the UN Charter reveal that drafters of Article 1(2) did not intent the word "peoples" to signify "states" (see note 3: Thomas D. Musgrave, p.149).

<sup>12</sup> See note 2: Charter of the United Nations, article 1, paragraph 2.

<sup>13</sup> See note 10: Antonio Cassese, p.43.

<sup>14</sup> International Covenant on Civil and Political Rights (ICCPR) (declared open for signature and ratification 19 12 1966, entered into force 23 03 1976), 999 UNTS 171.

Covenant on Economic, Social and Cultural Rights <sup>15</sup>(ICESCR): "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". The right shall be promoted "in conformity with the provisions of the Charter of the United Nations"<sup>16</sup>.

The meaning of the term "peoples" determines who are the holders of the rights of self-determination and has a primary effect on the establishment of the harmony between the principle of self-determination and the principle of territorial integrity. It is recognized that the principle of self-determination has a universal realization<sup>17</sup> and the obligations rising from the principle of self-determination are *erga omnes*<sup>18</sup>, therefore it applies to the whole international community. All states are entitled to demand that a state depriving people of the right to self-determination comply with the principle, according to internationally recognized interpretation of self-determination. "The accused state must fulfil its duty"<sup>19</sup>. The duty to assure the right of self-determination depends on the interpretation what the principle means under the international treaties and international customary law, therefore the interpretation of "all peoples" is so important. However, there is no the only recognized definition to any of terms, which could be admitted as meaning "peoples" (for example, nation, minority, indigenous peoples and etc.), and for the term "peoples" itself in the international law<sup>20</sup>.

As a fundamental human right the right to self-determination can not be the right only of some special categories of peoples because it would mean the strait way to discrimination on the racial, ethnic, cultural, religious or other

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<sup>15</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) (declared open for signature and ratification 19 12 1966, entered into force 03 01 1976), 993 UNTS 3.

<sup>16</sup> See notes 14, 15: The ICCPR and the ICESCR, article 1, paragraph 3.

<sup>17</sup> See, for example, the UN General Assembly Resolution 51/84 (adopted 28 02 1997), which reaffirms "universal realization of the right of peoples to self-determination".

<sup>18</sup> The International Court of Justice has affirmed *erga omnes* in the East Timor Case; the newest: Advisory opinion of the ICJ on "Legal consequences of the construction of a wall in the occupied Palestinian territory" (09 07 2004, No.131).

<sup>19</sup> See note 10: Antonio Cassese, p.152.

grounds, for which that particular group identifies itself among others. According to the report of the international conference organized by the UNESCO Division of Human Rights, Democracy and Peace:

*The plain meaning of the term "all peoples" includes peoples under colonial or alien subjugation or domination, those under occupation, indigenous peoples<sup>21</sup> and other communities who satisfy the criteria generally accepted for determining the existence of a people<sup>22</sup>.*

On the other hand, the international community while removing arbitrary restrictions from which the current law suffers, has to consider that today virtually every existing state includes more than one "people" (under broad interpretation of the term) and sometimes several "peoples" claim the same territory, and there are no international mechanisms for sorting out these conflicting claims<sup>23</sup>.

The main international legal sources do not suggest any limits by the plain/ordinary meaning<sup>24</sup> of the words "all peoples". However, it is highly doubtful whether it was the purpose of the states. The greatest fear of the states while adopting the Covenants was that the provision might be interpreted as conferring right to self-determination on national minorities<sup>25</sup>, thus, the true intent of states apparent from *travaux préparatoires* clearly limits the meaning of the provision by excluding minorities from the "all peoples".

For interpreting the principle of self-determination under these circumstances, the only way to prevent discrimination between different groups of peoples is to define "a people" as a whole population of a particular territorial unit.

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<sup>20</sup> The UNESCO International Meeting of Experts for the Elucidation of the Concepts of Rights of Peoples (held in 1989) developed the definition of "a people" as "a group of individual human beings who enjoy some or all of the following common features: a) a common historical tradition; b) racial or ethnic identity; c) cultural homogeneity; d) linguistic unity; e) religious or ideological affinity; f) territorial connection; g) common economic life" (see note 1). But objective characteristics are not sufficient. The subjective factor of self-consciousness and the will to maintain distinctiveness on the basis of objective characteristics are also necessary.

<sup>21</sup> A term "indigenous peoples" is "just a technical term, which allows a number of peoples to participate, albeit in a limited way, in international discussions affecting their situation"(see note 1: *The implementation of the right to self-determination as a contribution to conflict prevention*).

<sup>22</sup> Ibid.

<sup>23</sup> *Secession*, Stanford Encyclopedia of Philosophy, < <http://plato.stanford.edu/entries/secession/>>, visited 25 05 2005.

<sup>24</sup> "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Vienna Convention on the Law of Treaties (23 05 1969, Vienna; UN Doc. A/CONF. 39/27; entered into force 27 01 1980), article 31, paragraph 1).

Then, under the present international law “a people” means: a) entire population of an independent state, governed in a way representing the whole population; b) entire population of non-self-governing territory; c) entire population of a particular occupied territorial unit living under foreign military occupation; d) entire unrepresented/ oppressed part of population of a particular territorial unit (each case will be thoroughly examined in Part Two of this article). This interpretation shows the primary connection between peoples and territory.

### **1.3. Interrelation of both principles**

The main interrelation between the principle of self-determination of peoples and the principle of territorial integrity is that a claim to external self-determination covers a claim to territory. The question of secession is the most closely related to the principle of territorial integrity. Secession is a territorial change, which occurs when part of an independent state or non-self-governing territory separates itself for becoming a new independent state<sup>26</sup>. The principle of self-determination is usually invoked in connection to *unilateral* secession that is the secession undertaken without the consent of the existing state and without constitutional sanction<sup>27</sup>. Since all land area is claimed by some state and use of force is prohibited, according to P. Treanor, “secession is the only real method of new state formation, and a prohibition of secession is equivalent to a veto on new states”<sup>28</sup>. But the possibility to merge also should not be forgotten.

Although the principle of territorial integrity is applied in the relations between states and, by contrast, the principle of self-determination is the right of peoples, the international community (states) while interpreting and applying the principle of self-determination is bound to the principle of territorial integrity. The principle of territorial integrity was straightforwardly connected to the principle of self-determination in the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples (1960); the Declaration of

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<sup>25</sup> See note 10 : Antonio Cassese, p.50.

<sup>26</sup> See note 3: Thomas D. Musgrave, p.181.

<sup>27</sup> Constitutionally sanctioned secession is achieved either by the exercise of an explicit constitutional right to secede, if the particular constitution contains it, or by constitutional amendment (see note 23: *Secession*).

Principles of International Law Concerning Friendly Relations and Cooperation Among States (1970); the Helsinki Final Act adopted by the Conference on Security and Cooperation in Europe (1975) and the Vienna Declaration and Programme of Action (1993). However, it must be admitted that resolutions and declarations are not generally binding on states. First, resolutions are not enumerated as a formal source of law in the Statute of the International Court of Justice<sup>29</sup>. Second, under the UN Charter the General Assembly does not have the legal power to make law or to adopt binding decisions except for organizational matters<sup>30</sup>. But many commentators regard resolutions adopted by the UN General Assembly as evidence of customary international law<sup>31</sup>, especially when a resolution was adopted unanimously. Then the declaration purports to express the *opinio juris communis*, not a recommendation<sup>32</sup>, and if it relates to state practice (*usus*), that norm qualifies as a customary law. But according to A. Cassese, "strictly speaking, these resolutions are neither *opinio juris* nor *usus*"<sup>33</sup> in themselves. Although the *travaux préparatoires* of the UN Charter do not clarify whether external self-determination is a part of self-determination of peoples<sup>34</sup>, the consistent state practice in conformity with the UN resolutions formed the international customary rules on the external self-determination of colonial peoples and peoples under foreign military occupation. The United Nations Millennium Declaration<sup>35</sup> upholds the right to self-determination of peoples under colonial domination and foreign occupation.

As the principle of self-determination usually appears together with the principle of territorial integrity in the texts of international law, the latter is viewed as limiting the scope for the interpretation and application of self-determination. Is

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<sup>28</sup> Paul Treanor, *The ethics of secession*// <<http://web.inter.nl.net/users/Paul.Treanor/secession.html>>, visited 25 05 2005.

<sup>29</sup> "The Court ... shall apply: a) international conventions...; b) international custom ...; c) the general principles ...; d) ... judicial decisions and the teachings of the most highly qualified publicists...as subsidiary means..."(Statute of the International Court of Justice (26 06 1945, 59 Stat. 1055, TS No.993), article 38).

<sup>30</sup> Schachter, "International Law in Theory and Practice", quotation in: Barry E. Carter, Phillip R. Trimble, *International Law*, Third Edition (New York: Aspen Law & Business, 1999), p.139.

<sup>31</sup> Id: Barry E. Carter, Phillip R. Trimble, p.138.

<sup>32</sup> See note 30: Schachter, p.140.

<sup>33</sup> See note 10: Antonio Cassese, p.69.

<sup>34</sup> See note 3: Thomas D. Musgrave, p.181.



it really true? In Part Two the principle of self-determination of peoples and the principle of territorial integrity are comparatively analyzed according to the areas of their application in the international law and the legal power of each is estimated.

## **2. COMPARATIVE ANALYSIS OF BOTH PRINCIPLES ACCORDING TO THE AREAS OF THEIR APPLICATION**

### **2.1. Non-self-governing territories**

The most specified rules are concerning the right of self-determination of colonial peoples, including the means for implementation of this right. The decolonization is now largely complete, but still more than forty years after the adoption of the relevant declarations, granting the independence to colonial peoples, a number of non-self-governing territories remain<sup>36</sup>. According to the UN General Assembly Resolution 59/134, "in the process of decolonization, there is no alternative to the principle of self-determination"<sup>37</sup>.

Resolution 1514(XV) entitled "The Declaration on the Granting of Independence to Colonial Countries and Peoples"<sup>38</sup> and Resolution 2625(XXV) entitled "The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United States"<sup>39</sup> proclaimed a speedy and unconditional end of colonialism in all its forms. Under Resolution 1514(XV) the change from colonial status to an independent state status was not to include any territorial change: "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the

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<sup>35</sup> United Nations Millennium Declaration, adopted by the UN General Assembly Resolution 55/2 (08 09 2000), paragraph 4.

<sup>36</sup> UN General Assembly Resolution 59/134 (adopted 25 01 2005), name such non-self-governing territories remaining: American Samoa, Anguilla, Bermuda, the British Virgin Islands, The Cayman Islands, Guam, Montserrat, Pitcairn, Saint Helena, the Turks and Caicos Islands, the US Virgin Islands.

<sup>37</sup> Ibid., part A, paragraph 2.

<sup>38</sup> The UN General Assembly Resolution 1514(XV), adopted in 1960.

<sup>39</sup> The UN GA Resolution 2625 (XXV), adopted in 1970.

United Nations<sup>40</sup>. "A country" under the resolution is considered not only a sovereign state, but also non-self-governing territory, which by virtue of the exercised principle of self-determination of its people will become independent. Paragraph 1 of Resolution 2625(XXV) provides that "by virtue of the principle of equal rights and self-determination ... all peoples have the right freely to determine, without external interference, their political status". However, under Resolution 2625(XXV) as under Resolution 1514 (XV), "a people" can be defined as the entire population of a territorial unit. Thus, both resolutions preclude *ethnic groups* within non-self-governing territories from being considered as "peoples". "Such groups, being unable to secede, cannot freely determine their own political status and therefore cannot be "peoples". Thus, the term "people", insofar as it relates to non-self-governing territories, can only refer to the entire population of that territory"<sup>41</sup>.

Here the principle of territorial integrity was conferred on the territories prior to their becoming the "states" under the international law and played an overriding role. Secession for colonies means their separation from colonial empires without territorial changes inside a particular territory, thus no right to secede inside the territory is granted. The principle was formulated in other words as a principle of *uti possidetis* and "ensured that the frontiers of non-self-governing territory remained constant when that territory became an independent state"<sup>42</sup>. Under paragraph 4 of Resolution 2625(XXV) "[t]he establishment of sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by people constitute modes of implementing the right of self-determination by that people". This language clearly covers merger and secession but the right to decide belongs to the whole population of a particular territorial unit. However, it is a very pragmatic view of the international community for preventing disorder because under a "speedy decolonization" it is almost impossible to consider every opinion of every ethnic group: who wants to unite with whom and who wants to secede. Historically, dividing the world big colonial

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<sup>40</sup> See note 38: Resolution 1514(XV), paragraph 6.

<sup>41</sup> See note 3: Thomas D. Musgrave, p.209.

<sup>42</sup> *Id.*, p.233.

empires never considered ethnic groups and their territories of living and as the outcome of that indifference to people there are many divided nations, whose reunification is not a speedy process. However, future secession in non-self-governing territories after they become independent states is not precluded.

Thus, in matters of territorial changes for non-self-governing territories the international community recognizes limited scope of external self-determination. The principle of self-determination prevails only under the condition that the term "a people" means the entire population of non-self-governing territory.

## **2.2. Peoples under foreign military occupation**

The recognition of the right to self-determination of peoples under foreign military occupation is at the same time the condemnation of threat and use of force against territorial integrity of the occupied territorial unit. "Threat and use of force against territorial integrity or political independence of any state"<sup>43</sup> are contrary to the purposes and principles of the UN Charter. However, the UN Charter does not emphasize the link between the principle of self-determination and the people under foreign occupation. This connection reveals in the Declaration on Friendly Relations and Cooperation among States (Resolution 2625(XXV)): "...subjection of peoples to alien subjugation, domination<sup>44</sup> and exploitation constitutes a violation of the principle [of self-determination], as well as a denial of fundamental human rights, and is contrary to the Charter"<sup>45</sup>. The withdrawal of the foreign power from the territory *ipso facto* realizes the right of self-determination<sup>46</sup>. The simple withdrawal of alien authority is not sufficient if a territory and the population are under authority of foreign power for some period of time. In this case, the internal self-determination has to be exercised by free choice of new representing governors. The requirement for the states to fulfill their obligations in good faith<sup>47</sup>, in case the states hold plebiscites or referendums, embraces the requirement to determine the free choice of peoples concerned, not

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<sup>43</sup> See note 2: Charter of the United Nations, article 2, paragraph 4.

<sup>44</sup> According to A. Cassese, in practice states have agreed to limit the concept of "alien domination" to intervention by use of force and military occupation (see note 10: Antonio Cassese, p.93).

<sup>45</sup> See note 39: Resolution 2625 (XXV), paragraph 2.

<sup>46</sup> See note 10: Antonio Cassese, p.130.

<sup>47</sup> See note 2: Charter of the United Nations, article 2, paragraph 2.

the artificial one. According to A. Cassese, states must refrain from altering the structure of the concerned "people" by moving populations in or out the relevant territory<sup>48</sup>.

Even if "a people" is generally defined as an entire population of a territorial unit, an occupied territory cannot be considered a part of one territorial unit with the foreign occupying state because military occupation as a threat and use of force is illegal. Therefore, in this case "a people" is an entire population of the occupied territorial unit without distinction to the fact that prior to occupation this territorial unit constituted the whole territory of another state or a part of it. There are many relevant resolutions adopted by the UN General Assembly and the Commission on Human Rights regarding the violation of the right of peoples to self-determination and other human rights as a result of foreign military intervention, aggression and occupation<sup>49</sup>. State practice in condemning occupation covers such situations as the occupation of the Baltic States in 1940, the Chinese occupation of Tibet in 1959, the Soviet invasion to Afghanistan in 1979, the Israeli occupation of the Arab territories in 1967, the Turkish occupation of Northern Cyprus in 1974, the Iraqi invasion to Kuwait in 1990 and others. In recent years the UN General Assembly adopted many resolutions concerning the occupied Palestinian territories affirming "the right of the Palestinian people to self-determination, including the right to their independent State of Palestine"<sup>50</sup>. Therefore, the UN resolutions, the UN Covenants and the state practice make it clear that peoples subject to foreign occupation have the right to external self-determination. There are no any contradictions with the principle of territorial integrity because there cannot be disintegration of territory unless it was legally integrated.

Thus, for the peoples under foreign military occupation the principle of self-determination is recognized as unlimited and the occupying state can not claim the application of the principle of territorial integrity. On the other hand, the state under foreign military occupation can claim the broad application of both principles

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<sup>48</sup> See note 10: Antonio Cassese, p.337.

<sup>49</sup> See, for example, UN General Assembly Resolution 51/84 (adopted 28 02 1997), which refers to over thirty other resolutions adopted by the General Assembly and the Commission on Human Rights.

as in this case they can supplement each other: a) foreign military occupation infringes territorial integrity of the occupied state; and b) people of a particular occupied territorial unit living under foreign military occupation are entitled to wide scope of external self-determination.

Here the case of Lithuania and all the Baltic States is a very good example. The first time when Lithuania declared its independence in 1918, the right of self-determination was invoked in the Declaration of Independence but at that time it was only the political concept widely used by Western states. The second time when Lithuania declared its independence in 1990, the Lithuanian legislature declared independence from the Soviet Union and restoration of the pre-1940 independent Lithuanian State emphasizing not the self-determination of Lithuanian peoples as the highest authority, but illegality of the secret Molotov-Ribbentrop Pact of 1939 (the occupation occurred prior to the ban of threat and use of force under the UN Charter). Thus, even if the right of self-determination already existed as a legal concept, the illegality of the acts of the occupying power was considered a stronger argument.

However, there are many peoples living in the territories occupied by some foreign state "without this occupation being contrary to the international ban on the use of force"<sup>51</sup>. It is obvious that in today's world military occupation or conquest cannot confer title of a territory, but in the past it could. P. Malanczuk analyzes a problem of "intertemporal law": which century's law should be applied to determine the validity of title to territory?<sup>52</sup> The general rule is that "the validity of an acquisition of territory depends on the law in force at the moment of the alleged acquisition" (based on the general principle that laws should not be applied retroactively)<sup>53</sup>. As the UN Charter entered into force in 1945 and the previous attempts to outlaw the war renounced only the right to go to war, but not the threat and use of force, there is much space left for injustice.

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<sup>50</sup> See, for example, UN General Assembly Resolution 59/179 (adopted 03 03 2005).

<sup>51</sup> See note 10: Antonio Cassese, p.150.

<sup>52</sup> Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, Seventh Revised Edition (Routledge, 1997), p.155.

<sup>53</sup> Id.

### 2.3. Unrepresented peoples

There is an exception permitting territorial changes even inside the sovereign and independent states if government does not represent a part of a state's population. In case of non-representation, unrepresented part of "a people" becomes separate and gets the right to choose secession as a remedy. The purpose of the United Nations – maintenance of peace and security – cannot be achieved if the state government threatens the lives and does not consider well being of a part of population living in the territory of that state because the conflict sooner or later is inevitable. The Declaration on Friendly Relations and Cooperation among States (Resolution 2625(XXV)) provides that:

*[n]othing ... shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples ... and thus possessed of the government representing the whole people belonging to the territory without distinction as to race, creed or colour<sup>54</sup>[emphasis added].*

According to the statement, the territorial integrity and political unity of a sovereign state is sacred, except for the circumstance when: a state does not conduct itself in compliance with the principle of equal rights and self-determination of peoples<sup>55</sup> because its government does not represent the whole population without distinction. This link makes attempts to claim secession dependable upon the representation of people. Such wholly representing government is possible only in a democratic society, where people can freely decide (elect) who should represent them. It must be also admitted that making a democratic political decision by majority vote is not considered non-representation if everybody has an equal vote. In a state governed under non-democratic regime secession would be permissible. However, the Resolution 2625(XXV) mentions

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<sup>54</sup> See note 39: Resolution 2625 (XXV), paragraph 7.

<sup>55</sup> Generally for the Resolution 2625 (XXV), "a people" means a whole population of a territorial unit, but not for this exception.

only two grounds for distinction: race<sup>56</sup> and religious beliefs<sup>57</sup> (“race, creed or colour”), and if interpreting it strictly, ethnic groups living in a sovereign state are denied self-determination even if they are not represented. The Vienna Declaration and Programme of Action<sup>58</sup> applied a very similar language as the Declaration on Friendly Relations among States. It almost repeats the paragraph 7 of the Resolution 2625(XXV) but clearly erases limited grounds for distinction (“...government representing the whole people belonging to the territory *without distinction of any kind*”<sup>59</sup>). Ethnic, linguistic and religious minorities can also be discriminated by government, but the Vienna Declaration does not distinguish them as minorities. The Vienna Declaration emphasizes all not represented or oppressed people notwithstanding to which particular minority they belong.

However, the non-representation does not *per se* mean the right to secede because the first remedy is to claim internal self-determination and to achieve representation inside the state. There must be “gross breaches of fundamental human rights” and the exclusion of any possible peaceful solution within the existing state<sup>60</sup>. Secession from the state under these circumstances should be regarded as a right of last resort<sup>61</sup>. According to A. Buchanan, from the standpoint of international law, the unilateral right to secede—the right to secede without agreement of the whole population or without constitutional authorization—should be understood as a remedial right only, a last-resort response to serious injustices (the Remedial Right Only Theory)<sup>62</sup>. States that at least do not persist in serious injustices are immune to secession under this clause and entitled to international support in maintaining their territorial integrity<sup>63</sup>. According to M. van Walt van

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<sup>56</sup> According to A. Cassese, “race” and “colour” express an identical concept – race (see note 10: Antonio Cassese, p.112).

<sup>57</sup> According to A. Cassese, “creed” should be interpreted strictly, as covering only religious beliefs; if “creed” also embraced “political opinions”, any political group (a political party) not “represented” by government would claim the right to self-determination (Id, p.113).

<sup>58</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights (25 06 1993, Vienna), A/CONF 157/23.

<sup>59</sup> Ibid., part I, paragraph 2.

<sup>60</sup> See note 10: Antonio Cassese, p.120.

<sup>61</sup> See note 1: *The implementation of the right to self-determination as a contribution to conflict prevention*.

<sup>62</sup> Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford Scholarship Online, 2003)// <<http://www.oxfordscholarship.com/oso/public/content/politicalscience/0198295359/toc.html> >, visited 23 05 2005.

<sup>63</sup> See note 23: *Secession*.

Praag, "a state that oppresses, destroys or unduly exploits a people or community instead of protecting it or representing its interests has no legitimate right to invoke the principle of territorial integrity against that people or community"<sup>64</sup>. Just if invoked, this principle has to be invoked against other sovereign states, which support secessionary movement and secession as an exclusive remedy for unrepresented part of population, by that recognizing them as a separate people.

Also, it is obvious that even under provision for non-representation occupying a territory and imputing on that territory and its population a foreign state's government is the clear breach of the right of self-determination of peoples because there can not be any democratic representation and free will.

However, granting the external self-determination to unrepresented people (except to occupied) has not yet become international customary law, hence it is only declaratory. According to A. Cassese, "state practice in the UN from the 1970s ... evidences that ... granting *internal* self-determination to *racial groups* persecuted by the central government has become ... customary international law" (for example, the UN General Assembly resolutions on Southern Rhodesia and South Africa), but "the possibility for racial groups to *secede* ... has *not* become customary law"<sup>65</sup>. But it should be admitted that the rule is emerging. The UN General Assembly Resolution 45/130 reaffirmed "the legitimacy of the struggle of peoples for independence ...and liberation from...apartheid...by all available means"<sup>66</sup>. The Supreme Court of Canada in its advisory opinion on secession of Quebec<sup>67</sup> based its opinion on the right of external self-determination of unrepresented peoples, recognizing the broad scope for non-representation as it was declared in the Vienna Declaration and Programme of Action. The Court marked out colonies, oppressed people as under foreign military occupation and the situation "where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development"<sup>68</sup>. The Court

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<sup>64</sup> See note 1: *The implementation of the right to self-determination as a contribution to conflict prevention*.

<sup>65</sup> See note 10: Antonio Cassese, p.120-121.

<sup>66</sup> UN General Assembly Resolution 45/130 (adopted 14 12 1990), paragraph 2.

<sup>67</sup> Supreme Court of Canada: Reference re Secession of Quebec, 2 S.C.R 217 (1998).

<sup>68</sup> *Ibid.*, paragraph 138.



emphasized that “in all three situations the people in question are entitled to a right to external self-determination”<sup>69</sup>.

Thus, under the present international law for unrepresented people the principle of territorial integrity prevails over the principle of self-determination. Even after recognition of the right to secede for unrepresented peoples by state practice, the principle of territorial integrity will still generally prevail if the right to external self-determination is only a remedy of last resort.

#### **2.4. Independent states**

If “a people” is interpreted as the entire population of a particular territorial unit, the principle of self-determination of peoples and the principle of territorial integrity equally apply for each independent state, and both help to preserve its sovereignty and territorial integrity. The principle of self-determination applies to the entire population of the state and thus, any attempt for territorial change requires the decision of the population. The principle of territorial integrity applies to relations between states and requires respect from other states to the sovereign state’s territorial integrity and its opposite respect to other states.

If a part of population inside one state claims territorial changes on the grounds of self-determination, the international recognition of this right to them may diminish the importance of the principle of territorial integrity. Any discussions about the right of self-determination for the populations (minorities, indigenous populations) inside sovereign states raise the fear on the part of states that any action in this field would lead to interference in the domestic affairs of sovereign states and, thus, violate the principle of non-interference. In many cases the UN remained silent in response to claims for self-determination of ethnic and religious minorities or indigenous peoples. According to A. Cassese, “in various instances where, rightly or wrongly,” ethnic groups living within sovereign states invoked self-determination, the UN practice was “at its most ineffectual”<sup>70</sup>. But here the existing exceptions must be repeated: a) peoples under military occupation have the right to self-determination as separate peoples recognized by the international law; and b) unrepresented/ oppressed peoples are considered as

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<sup>69</sup> Ibid.

separate peoples under the UN General Assembly resolutions, but only for racial non-representation has formed binding international customary law.

The principle 8 of the Helsinki Declaration, particularly affecting the European states and adopted while having the special political purpose of reuniting two Germanys, declared that:

*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*<sup>71</sup> [emphasis added].

However, there is one condition limiting the scope of this provision: "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"<sup>72</sup>. The Helsinki Declaration applies primarily to the peoples of sovereign states, but according to A. Cassese, no right to self-determination is granted to minorities and "no right to secession is recognized, because territorial integrity is given paramount importance"<sup>73</sup>. However, it is highly arguable because only states are under the obligation to respect territorial integrity of other states, but not people. For people the Helsinki Declaration declares the right to determine their political status "when and as they wish". Still, there is one limitation left as the principle 8 emphasizes the conformity with the Charter of the United Nations, which, according to its *travaux préparatoires*, does not include minorities as having the right of external self-determination. Thus, only all people living in the state can decide upon territorial changes: to merge (as for two Germanys), to secede or to change in any other way through plebiscites or referendums. But when full freedom in decision-making under equal conditions, respect to all without emphasis to the size of the territory or power and preservation of each unique identity are realized, nations tend to unite (for example, the European Union), not separate.

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<sup>70</sup> See note 10 : Antonio Cassese, p.108.

<sup>71</sup> Helsinki Declaration (Helsinki Final Act) adopted by the Conference on Security and Co-operation in Europe (CSCE) (01 08 1975), 14 ILM 1292, principle VIII.

<sup>72</sup> Ibid., principle VIII.

Thus, generally for independent states the principle of self-determination of peoples prevails over the principle of territorial integrity but only under the condition that the term "a people" means the entire population of a state.

## **2.5. Secession as a domestic affair**

Secession happening within a single state<sup>74</sup> can be analyzed as a domestic matter, and therefore, outside the international law. According to this approach, there are no limitations for who could constitute a seceding people. T. Musgrave defines secession as a territorial change, which occurs when part of an independent state or non-self-governing territory separates itself for becoming an independent state<sup>75</sup>. According to T. Musgrave, secession is a domestic matter and does not generally fall within the jurisdiction of international law therefore, attempts to secede do not constitute acts of self-determination in the legal sense<sup>76</sup>. If the term "a people" under the UN Charter and under the Covenants is interpreted as a whole population of one territorial unit, a part of "a people" doesn't have the right to self-determination under the international law. However, it is a fact of self-determination of a part of population even if not covered by the international legal principle of self-determination of peoples. As the principle of territorial integrity under the UN Charter applies only between states and not inside a single state, respect to territorial integrity of a state by its own population is also a domestic affair and does not fall within the jurisdiction of Article 2 of the UN Charter.

Thus, if secession is a domestic matter, the international law does not affect attempts of ethnic, linguistic, religious or other group in one state to separate and form a new state. According to P. Malanczuk, "there is no rule of international law, which forbids secession from an existing state, nor is there any rule, which forbids the mother-state from crushing the secessionary movement"<sup>77</sup>. However, it must be admitted that it is hard to find means for "crushing the secessionary movement" and changing the decision of determined people without

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<sup>73</sup> See note 10 : Antonio Cassese, p.287.

<sup>74</sup> This is not a case of non-representation.

<sup>75</sup> See note 3: Thomas D. Musgrave, p.181.

<sup>76</sup> Id., p.210.

<sup>77</sup> See note 52: Peter Malanczuk, p.78.

human rights violations, war crimes, genocide and etc. According to P. Malanczuk, "the principle of the self-determination has a limited scope" and secession is the "outcome of the struggle"<sup>78</sup>. This position should be considered much more dangerous for the stability and peace in the world than the recognition of the wider application of the principle of self-determination (embracing secession) by the international community. It is unlikely that a part of state's population, which is usually struggling against a superior force, will be able to secede without help from outside. On the other hand, there are many ways for peaceful settlement of disputes even if they are treated as a domestic affair.

Although under this approach secession within one existing state may be considered domestic in nature, the emergence of a new state nevertheless produces international legal consequences. The Montevideo Convention on Rights and Duties of States provides a definition for a state: "The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states"<sup>79</sup>.

A seceding entity becomes a state by satisfying established international law criteria for statehood. "The concept of territory is defined by geographical areas separated by borderlines from other areas and united under a common legal system"<sup>80</sup>, including the air space above the land, the earth beneath with all natural resources and the territorial sea (for marine states). The third requirement for the state is "government", but according to P. Malanczuk, the mere existence of a government does not suffice if it does not have effective control over territory and population<sup>81</sup>. T. Musgrave defines the requirement of control as exclusive control over territory<sup>82</sup>. However, the requirement of control over territory is not strictly applied in the sense that "a state does not cease to exist when it is temporarily deprived of an effective government" (for example, because of a civil

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<sup>78</sup> Id.

<sup>79</sup> Montevideo Convention on the Rights and Duties of States (1933, Montevideo), entered into force in 1934, article 1.

<sup>80</sup> See note 52: Peter Malanczuk, p.76.

<sup>81</sup> Id., p.77.

<sup>82</sup> See note 3: Thomas D. Musgrave, p.180.

war)<sup>83</sup>. The determined decision (through the elections or referenda) by the permanent population of the defined territory to reject control of particular government and the way of governing can not be considered as temporary. Therefore, the requirement of control is strictly applied when a part of population of a state decides to form a new state. The fourth requirement for a state in the article 1 of the Montevideo Convention is connected with the legal concept of recognition by other states, and therefore, sometimes ignored<sup>84</sup> because "the political existence of the state is independent of recognition by the other states"<sup>85</sup>. Thus, if "the existence of the state is independent of recognition", a new state comes into existence before it is recognized, and recognition simply means a willingness to deal with it as an equal member of the international community. Also, it is the declaration of the fact that the entity has satisfied these legal criteria. Thus, "granting formal recognition to another state is a *unilateral* act ... left to the *political* discretion of states"<sup>86</sup> [emphasis added].

However, recognition or non-recognition by other states may have a decisive effect in such cases when a new state grounds its formation under the external form of self-determination (claiming that the international principle of self-determination covers secession within one state). Such recognition of a new state can be interpreted as the recognition of the wide scope of the principle of self-determination itself (state practice). The UN Charter prohibits the United Nations from intervening "in matters which are essentially within the domestic jurisdiction of any state"<sup>87</sup>. Therefore, recognition of a new seceding state can be viewed as intervention into the domestic jurisdiction of the existing state. However, if recognition is not a requirement for the formation of a new state and a new state emerges prior to recognition, the mother-state can not claim intervention any more.

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<sup>83</sup> See note 52: Peter Malanczuk, p.77.

<sup>84</sup> Id.,p.79.

<sup>85</sup> See note 79: Montevideo Convention, article 3.

<sup>86</sup> See note 52: Peter Malanczuk, p.85.

<sup>87</sup> See note 2: the UN Charter, article 2, paragraph 7.

## 2.6. Irredentism

Secession cannot be a domestic matter if it involves peoples, who live more than in one state. This phenomenon is called irredentism and governed by the international law<sup>88</sup>. The most usually happening example is that of ethnic groups inhabiting more than one state and seeking to secede from one state and to join another neighbor state or to form a new state together<sup>89</sup>.

The principle of territorial integrity clearly prevents one state from making territorial claims against another. However, the principle of self-determination of peoples prevails if peoples as the whole populations of territorial units, which claim irredentism, express their agreement (for example, the unification of two Germanys). Also, the principle of self-determination of peoples clearly prevails for peoples under foreign military occupation, as territorial change by use of force is void *ab initio*. But the ethnic minorities constituting the main claimers for irredentism are prevented from invoking the principle of self-determination of peoples, as they are not considered "peoples" in the international law.

Thus, in cases of irredentism the principle of self-determination prevails over principle of territorial integrity but only under two conditions: first, that the term "a people" means the entire population of a particular territorial unit; and second, that the will to merge or join is expressed by populations of all territorial units involved.

## 2.7. Minorities

States have consistently opposed the formation of international law granting the self-determination to linguistic, religious, ethnic minorities (with some exception to non-represented racial groups denied equal participation in decision-making). Because of great diversity of groups who can constitute a minority in a state, the only way to define "a minority" is to characterize these groups and to admit that other types of groups are also possible.

The language of the Article 1 of the Covenants literally would not preclude the right of self-determination for minorities if those minorities constituted

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<sup>88</sup> See note 3: Thomas D. Musgrave, p.211.

<sup>89</sup> The problem of irredentism very severely appeared in the process of decolonization.

“peoples”. However, drafters of the Covenants did not intend to include minorities under understanding of “peoples”. According to T. Musgrave, a minority cannot determine its own political status, unlike a people under Article 1, because the rights of minorities are protected by Article 27 of the ICCPR<sup>90</sup>, and under Article 27 a minority is not entitled to any right of self-determination<sup>91</sup>. But Article 27 is devoted only for cultural, religious and linguistic rights of minorities; thus the clear intent of this article is respect and protection of cultural religious and linguistic diversity. The suggested narrow interpretation of the minority rights would lead to the clearly erroneous conclusion, that people from the minority group do not have any rights except a few ones mentioned in Article 27 (for example, the right to life is also not mentioned in Article 27). On the contrary, an examination of text of the Covenants leads to the conclusion that minorities are entitled to more rights than those enumerated in Article 27. If interpreted by the ordinary meaning alone “all peoples” and Article 27 of the ICCPR give unlimited scope for the principle of self-determination because of great diversity of groups who can constitute a minority (under that interpretation, a people) in a state. Not the Article 27, but the objectives and purposes of the contracting states prevent this interpretation. The *travaux préparatoires* reveals the intention of drafters not to treat minorities as separate peoples in the state.

The unconditional international recognition of minorities as separate “peoples” in the existing state would lead to unconditional right to secede, that is the straight way to fragmentation of territories and creation of conflicting mini-states. Today’s worldwide “discussions are often polarized between those who argue that every ethnic group has the right to unilaterally secede and form a new state and those who defend the *status quo* and the territorial integrity of states at all costs”.<sup>92</sup> State’s refusal to apply the right of self-determination to its minorities often causes armed conflicts.

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<sup>90</sup> “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right ... to enjoy their own culture, profess and practice their own religion, or use their own language” (See note 14: the ICCPR, article 27).

<sup>91</sup> See note 3: Thomas D. Musgrave, p.168.

<sup>92</sup> See note 1: *The implementation of the right to self-determination as a contribution to conflict prevention*.

However, prevention of conflicts should not be aimed at the maintenance of the *status quo* but at “changes occurring peacefully”<sup>93</sup>. First of all, recognition of the right to secede as a legal remedy of last resort to peoples unrepresented and oppressed by the state government should become evidenced by state practice (*usus*) on the international level, and it would bring the real base to solve many present conflicts inside states. Many claims to secede are based on the natural wish to separate from the past oppressor, which is often still the oppressor for today. It must be admitted that the international prohibition for threat and use of force, discrimination, recognition of genocide as crime against humanity is the great achievement of the 20<sup>th</sup> century. However, history of the world left very much injustice, which in many cases has become part of the identity for particular groups of people (is a part their history, influenced their culture, attitudes etc.), therefore, this injustice will never be forgotten.

Often the problem is how far back in history people may go in making the case that they are entitled to their own state because they previously had one<sup>94</sup>, especially, in cases where there would be no difficulties to prove military occupation if the threat and use of force had been prohibited earlier. Historically, a title to a territory has been obtained by states through the transfer of land from one owner to another (derivative title) or through the acquisition of land not belonging to any other state (original title)<sup>95</sup>. Usually territories not belonging to other states were not empty. They were inhabited or even controlled by indigenous populations or constituted territories with permanent population, defined territory and effective government (for example, the Aztec Empire). Also historically, “it was inevitable that international law should allow states to acquire territory by conquest, because at that time customary international law imposed no limits on ... go[ing] to war”<sup>96</sup>. But after the threat and use of force were declared illegal in the 20<sup>th</sup> century, acquisition of territory by an aggressor is now null and void (for example, in Resolution 662/1990 the UN Security Council declared the annexation of Kuwait by Iraq null and void).

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<sup>93</sup> Ibid.

<sup>94</sup> See note 23: *Secession*.

<sup>95</sup> Gerhard von Glahn, *Law Among Nations: an Introduction to Public International Law*, Sixth Revised Edition (New York: Macmillan Publishing Company, 1992), p.367.



As there are many peoples living in the territories occupied by some foreign state prior to the international ban on the use of force, and under the general principle laws should not be applied retroactively, there still should be a recognized remedy of last resort (as for unrepresented people), which could be applied in cases when the severe historical and cultural heritage of the past prevents the existing states and their minorities from peaceful cohabitation. Generally, mere the fact, that some act did not constitute a crime under the law at the time it was committed, does not prevent from giving a remedy to the injured party. As the purpose of existence of the state first of all should be the security and well-being of its people, well-being inside one state sometimes unachievable, if interpreted broader than economical or physical condition of people. Also, according to A. Buchanan, international legal order should encourage alternatives to secession, particularly by working for greater compliance with existing international human rights norms prohibiting ethno-national and religious discrimination and, in some cases, by supporting intrastate autonomy regimes<sup>97</sup>.

It can be argued that ethnic minorities are often granted with the right to self-determination as peoples in the UN resolutions (for example, resolutions on Tibet all referred either to the "people of Tibet" or the "Tibetan people", also resolutions on the "Palestinian people"). It shows the recognition of self-determination of Tibetan and Palestinian people but it is not the case of minorities. It is the case of peoples under military occupation.

Therefore, the present international law does not recognize minorities as separate peoples and hence precludes from invoking the principle of self-determination. The principle of territorial integrity prevails. But this general rule does not apply for peoples under foreign military occupation and (according to the UN resolutions) to unrepresented peoples.

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<sup>96</sup> See note 52: Peter Malanczuk p.152.

<sup>97</sup> See note 62: Allen Buchanan.

## CONCLUSIONS

Although the principle of territorial integrity is applied in the relations among states and, by contrast, the principle of self-determination is the right of peoples, the international community (states) while interpreting and applying the principle of self-determination is bound to the principle of territorial integrity.

International legal instruments relating to self-determination invariably refer to the "peoples" as being entitled to the right of self-determination. The meaning of the term "peoples" determines who are the holders of the rights of self-determination and has a primary effect on the establishment of the harmony between the principle of self-determination and the principle of territorial integrity.

In matters of territorial changes for non-self-governing territories the principle of self-determination prevails over the principle of territorial integrity only under the condition that the term "a people" means the entire population of non-self-governing territory.

For cases of foreign military occupation "a people" is the entire population of the occupied territorial unit without distinction to the fact that prior to occupation this territorial unit constituted the whole territory of another state or a part of it. The principle of self-determination is recognized as unlimited to the occupied people and the occupying state cannot claim the application of the principle of territorial integrity. On the other hand, the peoples under foreign military occupation can claim the broad application of both principles.

In case of non-representation by state's government, unrepresented part of the state's population becomes a separate people. Granting the external self-determination to unrepresented people (except to occupied) has not yet become international customary law, hence it is only declaratory. Under the present international law for unrepresented people the principle of territorial integrity prevails over the principle of self-determination. Even after recognition of the right to secede for unrepresented peoples by state practice, the principle of territorial integrity will still generally prevail if the right to external self-determination is only a remedy of last resort.

If "a people" constitutes the entire population of a particular independent state, the principle of self-determination of peoples and the principle of territorial integrity both help to preserve its sovereignty and territorial unity. Generally for independent states the principle of self-determination of peoples prevails over the principle of territorial integrity only under the condition that the term "a people" means the entire population of a state.

Secession happening within a single state can be analyzed as a domestic matter, and therefore, outside the international law. According to this approach, there are no limitations for who could constitute a seceding people. Secession cannot be a domestic matter if it involves peoples who live more than in one state. In cases of irredentism, the principle of self-determination prevails over principle of territorial integrity only if the term "a people" means the entire population of a particular territorial unit and the will to merge or join is expressed by populations of all territorial units involved.

The present international law does not recognize minorities as separate peoples and hence precludes from invoking the principle of self-determination. The principle of territorial integrity prevails. But this general rule does not apply for peoples under foreign military occupation and (according to the UN resolutions) to unrepresented peoples. As there are many peoples living in the territories occupied by some foreign state prior to the international ban on the use of force, there still should be a recognized remedy of last resort, which could be applied in cases when the severe historical and cultural heritage of the past prevents the existing states and their minorities from peaceful cohabitation.

Therefore, the author of this article concludes that under the present international law the principle of self-determination generally prevails over the principle of territorial integrity under the condition that the term "a people" means the entire population of the internationally recognized as separate territorial unit.