

## **DEVELOPMENT AND CONTEMPORARY UNDERSTANDING OF THE PRINCIPLE OF SELF-DETERMINATION OF PEOPLES**

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The occurrence and reinforcement of the principle of nations and peoples in international law is usually linked with the period of the First World War, though in our opinion there are some grounds to believe that the ideology and practice of national self-determination have deeper and older roots.

Yet, in the Enlightenment period of Europe some thinkers, such as Locke, Grotius, de Vattel, Rousseau, in their works created the prerequisites of justifying the idea of national self-determination.

In addition, the concept of “Sovereignty of peoples” which was put forward during the Great French Revolution made serious foundations for the formation of the principle of national self-determination.

In that process the irredentist movements of the 19<sup>th</sup> century in Europe (Germany, Italy) — acting with the term “national principle” and establishing the right of people’s uniting in their united national state — also played a significant role.

Moreover, it was not only about the ideological justification of people’s right to decide their fate on their own, but also about some practice of interstate relations. In particular, in the 19<sup>th</sup> century referendums were hold for the first time, and the decisions of representative bodies relating to some territories’ status were recognized, which also needs to be considered as an important step forward, in the context of formation and recognition of self-determination principle.

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The term “self-determination of peoples” itself first appeared in 1878 in the Congress of Berlin after which the idea soon became famous and was strengthened in a range of liberal and socialist party programs of Europe. Thus, “the right of nation’s self-determination” was recognized by 2<sup>nd</sup> London International Assembly.

The issue of nation’s self-determination got worse during the First World War, when the ideology of self-determination or “the principle of national identity” was being used in the war against the opponents — the multinational monarchies.

With this respect, “the 14 points”<sup>2</sup> of the American President Woodrow Wilson got a special fame, where, in essence, he declared peoples’ self-determination as a fundamental principle of postwar settlements.

For the sake of justice, it should be mentioned that if the ideas concerning self-determination were afterwards applied selectively, basically towards the opponents who were defeated in the World War, then the Bolsheviks who came to power, applied the principle towards their united monarchical heritage providing Finland and Poland with independence. Later the right to self-determination was fixed in Soviet constitutions.

The next important period for setting forth the self-determination principle in international law was the end of the Second World War and the establishment of the United Nations Organization.

Yet during the war, the USA and Great Britain were the initiators of Atlantic Charter (August 14, 1941) the goal of which was to determine the war issues and the main principles of postwar structure for the allies.

In the document<sup>3</sup> it was declared that the countries which signed it didn’t tend to territorial or other acquisitions: it is compulsory that the territorial changes in the world be “relevant to the free expressed will of interested/concerned peoples” which is, in essence, the

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<sup>2</sup> President Woodrow Wilson, Address before the League to Enforce Peace (May 27, 1916), *reprinted in* 53 CONG. REC. 8854 (May 29, 1916).

<sup>3</sup> ‘The Atlantic Charter’, Declaration of Principles issued by the President of the United States and the Prime Minister of the United Kingdom. [http://www.nato.int/cps/en/natolive/official\\_texts\\_16912.htm](http://www.nato.int/cps/en/natolive/official_texts_16912.htm)

recognition of the prevailing role of self-determination principle in the postwar world.

By adopting the UN charter, finally the reinforcement of self-determination was formed in a new modern principle of international law. It is noteworthy that the principle of jurisdiction and peoples' self-determination is fixed in Article 1, paragraph 2 of the UN Charter ("to develop friendly relations among nations based on respect for the principle of self-determination of peoples") in the general context of the universal organization which indicates the high legal and political state given to the principle.

Afterwards, the status was confirmed by the UN International Court which in its range of decision stated that the principle of self-determination "... is one of the fundamental principles of modern international law" (for instance, UN Court's decision in the case of East Timor)<sup>4</sup>.

After adopting the UN Charter, the principle of legal equality and peoples' self-determination gets its confirmation and further development in other documents:

- in the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960)
- in 1966 Covenants on human rights 1966
- in 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (briefly 1970 Declaration on Principles of International Law)
- In Helsinki Final Act

The significance of mentioned documents for revealing the normative contents of the principle of peoples' self-determination is conditioned by the fact that the UN Charter, by fixing it as well as the other principles of international law, does not give its obvious definition.

UN "*Declaration on the Granting of Independence to Colonial Countries and Peoples*" (December 14, 1960) is one of the most

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<sup>4</sup> East Timor (Portugal v Australia) [1995] ICJ Reports, 90.

important documents which reveals the essence of peoples' self-determination. Article 2 reads as follows: "[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." According to Article 4: "[a]ll armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence and the integrity of their national territory shall be respected."

International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966) have set forth the self-determination in the context of human rights and in their first articles they state that "[a]ll peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Then it is mentioned that all the State Parties to the present Covenant "...shall promote the realization of the right to self-determination, and shall respect that right".

The Declaration on Principles of International Law (1970) confirming the states' obligation to encourage the right of self-determination, defines the states' obligation "... to refrain from any forcible action which deprives above mentioned peoples from the right to self-determination, freedom and independence". The Declaration envisages some self-determination ways, such as "... the free association or integration with an independent State or the emergence into any other political status freely determined by a people".

The generalization of the main provision of the above-mentioned documents allows to reveal the modern perception of peoples' legal equality and the content of the self-determination principle. S. V. Chernenko has made this kind of attempt, who believes that peoples' self-determination principle includes the following elements:

- "[a]ll peoples and nations have the right to self-determination;

- all members of the international community are obliged to respect that right;
- it is being realized by the free will expression of the people or the nation;
- its realization excludes any external pressure, force or interference;
- it presupposes the people's or nations' choice opportunity of separating from a state or in other conditions integrate in another state, that is to say, it is the free choice of political status;
- it presupposes also the choice opportunity of state's kind (kinds of government, state's structure, political mode);
- finally, it presupposes the choice opportunity<sup>5</sup> of social-economic structure and its own development routes.

At present, the right to self-determination has finally been set forth as a fundamental principle of international law. And if we can notice certainty in legal acts and doctrinal sources concerning the general content of this principle, the same cannot be said about the narrower issue regarding the subject of the right to self-determination.

Neither in the UN Charter, nor in the Declaration on Principles of International Law (1970) and in the Final act ( August 1, 1975) of the Organization for Security and Co-operation in Europe, nor in other documents where the right to self-determination is indicated, there is no definition of “a people” conception under which the right is set forth. Moreover, as one of the authors mentioned, who had quite suspicious approach towards the right to self-determination, it appears to be natural from the first view: let the peoples decide. However, in fact it is absurd, as the people cannot decide until another one does not decide who the people are.<sup>6</sup> Therefore, the answer to the question what the term “a people” means in

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<sup>5</sup> Chernichenko S.V. Principle of Self-Determination of Peoples (Contemporary interpretation). Moscow Journal of Interantioanl Law. #4, 1996, P. 5. [Черниченко С.В. Принцип самоопределения народов (современная интерпретация), Московский журнал международного права, № 4, 1996, ст.5].

<sup>6</sup> Jennings I.W. The Approach to Self-Government. London, 1956, C.55-56.

international law has significant importance to decide whether minorities have the right to self-determination.

First, it should be mentioned that today consent has been acquired in doctrinal sources concerning the question whether both nations and peoples have the right to self-determination. Thornberry P., mentioning that the right to self-determination is fixed in the UN Charter in the part of “peoples”, indicates that the meaning of the term “peoples” was a subject of discussion in San-Francisco Congress and regarding that question it leads to Secretary’s clarification “... “peoples” mean groups of people which can compose (or not compose) a state or a nation”<sup>7</sup>.

“The Secretary’s clarification to the term “peoples” gives to it a broader meaning”: notes another author: A. Rigo Sureda. It may include states, nations and any group of people who can establish a state, be a nation and just compose a strong public. That is why the self-determination is aimed both the peoples and the nations and states<sup>8</sup>. “That is to say, the concept of “peoples” is broad insomuch that it includes the concept of “nation”: notes another observer G. B. Starushenko and comes to the conclusion that “[t]he issue of deciding the subject of the right to self-determination leads to deciding<sup>9</sup> the concept of “people”.

While commenting the concept of “a people” given during the UN Charter drafting, a characterization is being invoked which was suggested by Gros Espiell according to whom a people is “... any human community which is united in the consciousness and wish of forming community and which is able to act in favor of public future”<sup>10</sup>.

Some earlier attempts of characterizing the subject of self-

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<sup>7</sup> Thornberry P. *International Law and the Rights of Minorities*. Oxford, 1992. C.15.

<sup>8</sup> Rigo Sureda A. *The Evolution of the Right of Self-Determination. A Study of United Nations Practice*. Leiden, 1967. C. 100

<sup>9</sup> Starushenko G.B. *Nation and State in Countries Struggling for Freedom*. Moscow, 1967, pp. 105-106. [Старушенко Г.Б. *Нация и государство в освобождающихся странах*. М., 1967. С. 105-106].

<sup>10</sup> Gros Espiell. *The Right to Self-Determination. - Implementation of United Nations Resolutions*. N. UN Pub. 1980 ( UN Sales E.79.XIX.5).

determination right have been made. So, in the work of L. Oppenheim where we meet the term “principle of national identity” relevant to those times, there it is mentioned that “the own state which could live according to its own ideals and create a national civilization” is authorized to have a “society which is composed of lots of persons, which are linked with each other on the common<sup>11</sup> basis of origin, language and interests”.

It should be mentioned that along with quite common formations, there are some attempts of characterizing the concept of “a people” in literature, which are based on some features. Like, according to O. Jureca’s opinion “[e]ven more attention is to be drawn at the characterization suggested by the international commission of jurists regarding the events which happened in Eastern Pakistan: common history, racial and ethnic, cultural, linguistic and ideological ties, common geographical location, common number of the formation.”<sup>12</sup>

A similar attempt of characterizing the concept of “a people” is the special report made in the framework of UNESCO, which is dedicated to the question and where it is said that “a people” is:

a. “[a] group of individual human beings who enjoy some or all the following common features: (i) a common historical tradition, (ii) racial or ethnic identity; (iii) cultural homogeneity; (iv) linguistic unity; (v) religious or ideological affinity; (vi) territorial connection; (vii) common economic life.

b. The group must be of a certain number who need not be large (e.g. the people of micro states) but must be more than mere association of individuals within a state.

c. The group as a whole must have the will to be identified as a people or the consciousness of being a people - allowing that groups or some members of such groups, though sharing the foregoing

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<sup>11</sup> Oppenheim L. Internatioanl Law. Part 1. Moscow, 1948, P. 99. [Оппенгейм Л. Международное право, т.1, полутом 1. М., 1948. С. 99]

<sup>12</sup> Zhurek O.N. Self-determination of Peoples in Iternational Law// Soviet State and Law, #10, 1990, P. 99. [Журек О.Н. Самоопределение народов в международном праве // Советское государство и право, N10, 1990, С. 99].

characteristics, may not have the will or consciousness.

d. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity.”<sup>13</sup>

From the mentioned features we could in particular single out the existence of “territorial connection”. Perhaps the essential component of the concept of a people is the territorial aspect of the issue. That is to say, from one side for the group it is important the existence of a common territory, from another side it is the affiliation itself to the historical community. “It is impossible<sup>14</sup> without a common territory’s self-determination” and it is obvious.

Another important thing in the perception of the term “a people” which is closely linked with the territorial issue is that under the subject of self-determination it is supposed not a number of individuals or a number on some territory, but their stable generality with joint features. R. A. Mullerson writes about it “[i]n case of self-determination we talk about a people not about a population”. Even if, for example, there are more inhabitants in the region Oktyabrsky of the city Moscow, than in Nagorno-Karabakh, the right to self-determination belongs to the people of Nagorno-Karabakh but not the persons who have registration in the region of the capital. The nation or the ethnic community is more often the basis of the people as the subject of self-determination, with which the territory<sup>15</sup> is identified”.

The link among the mentioned aspects of the concept “a people” is quite clearly expressed by A. E. Kozlov who wrote that “the perception of the subject of self-determination as an ethnic community is perhaps the only approach in case of which the right to

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<sup>13</sup> United Nations Economic and Social Council, International Meeting of Experts on Further Study of the Concept of the Rights of Peoples: Final Report and Recommendations, 1990. UN Doc SHS-89/CONF. 602/7, Paris, 22.2.1990.

<sup>14</sup> Starushenko G.B. Nation and State in Countries Struggling for Freedom. Moscow, 1967, pp. 105-106. [Старушенко Г.Б. Нация и государство в освобождающихся странах. М., 1967. С. 105-106].

<sup>15</sup> Mullerson R.A. Human Rights: Ideas, Norms, Reality. Moscow, 1991, P. 41. [Мюллерсон Р.А. Права человека: идеи, нормы, реальность. М., 1991. С. 41].



self-determination is even replenished with a real content: “[c]ause no matter how conventional are the ethnic boundaries, nevertheless they have a more objective (stable) nature than, for examples, the administrative boundaries”<sup>16</sup>.

Overall, all the existing formulations of subject’s self-determination give us some general but not a clear apprehension of what is understood while using the notion “a people” in relevant international-legal acts.

It is known that the right to self-determination has two sides: external, by virtue of which the people is free to decide its status and the forms of relations with other peoples, which presupposes its right to create its own state, the right to unite or merge with other state, and an internal side which presupposes the right to freely decide its own political and social-economic ways of development. The unity of these two aspects composes the content of the right to self-determination and the essence of national sovereignty.

The external side of the right to self-determination presupposes the right of a people to unite or merge with an independent sovereign state. And if this unification or merger happens it can lead to the formation of a national minority in the state. That is to say, in the consequences of this kind of self-determination may often be the formation of a national minority, the transformation of “the people” into a national minority.

The following question is natural. “Does the people who has become a national minority lose the right of self-determination?” In our opinion, they do not. It is necessary to mention that this kind of position arises from the content and essence of the right to self-determination and there is a range of authors who support it. “Despite the way of how the people have appeared at the state’s power; with force or willingly, it continues to be a subject of self-

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<sup>16</sup> Kozlov A.E. Right to Self-Determination as Principle of Internatioanl Law and Constitutional Human Right// Human Rights and International Relations. Moscow, 1994, pp. 70-71. [Козлов А.Е. Право на самоопределение как принцип международного права и конституционное право человека // Права человека и межнациональные отношения. М., 1994. С. 70-71].

determination”, writes Yu. G. Barsheghov, “[t]he inalienability and indivisibility of the right to self-determination are linked with its essence, nature, content and the legal nature. The subject of that right and its final user is the people. It exists along with the people and, therefore, is independent of this or that state’s existence. The latter can appear and disappear, but the people are the permanent bearer<sup>17</sup> of the right of self-determination.”

That approach finds its direct expression in relevant international legal acts. For example, the Declaration on Principles of International Law (1970) definitely characterizes the self-determination as an “inalienable” right of a people, and the Final Act of the Helsinki Conference shows that the right belongs to the people “forever”. Furthermore, the truthfulness of the conclusion that the right to self-determination is inalienable and indivisible is also confirmed by viewing its internal aspect. Regarding this, it would be an absurd to state that a people or a nation which once decides its political status or social-economic class do not have the right to change it.

There is another argument in favor of the above mentioned point of view according to which the right to self-determination is set forth for “all” the peoples. Moreover, as the majority of the authors mention, it belongs to the peoples that both have statehood and do not have it. Its denial will mean leading the self-determination to colonial situation at the time when the recent international practice is full of “non-colonial self-determinations”. The international law recognizes the right to self-determination just for all the peoples. As good description of that argument may serve the story related to the Indian reservation regarding Article 1 of International covenants on human rights where the self-determination of all peoples and the response of international community to that reservation is set forth.

While ratifying the Covenants the Indian Government announced that: “... in Article 1 the words “right of self-

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<sup>17</sup> Barseghov Yu.G. Self-determination and Territorial Integrity. Moscow, 1993, P. 24. [Барсегов Ю.Г. Самоопределение и территориальная целостность. М., 1993. С. 24].

determination” concern only the peoples which are under a foreign domination and ... those words do not concern the sovereign independent states or to a part of a people or a nation which composes the essence of the integrity”. While this kind of interpretation of the right to self-determination was not admitted and did not have any supporters, moreover, some serious objections against that kind of approach were heard.

For instance, the Netherlands announced that “[t]he right to self-determination was expressed in the Covenants as a right which concerns all the peoples. It arises not only from the text of Article 1 of the Covenants, but also from a more authoritative interpretation of that right which is contained in the Declaration on international law principles.... There is no attempt provided by international documents which tend to limit or make that right conventional and it can itself harm the idea of self-determination and weaken its universal significance”.

France made quite decisive objections against Indian position. In particular, it announced that the Indian reservation was unacceptable as it provided a condition which was not provided in the UN Charter for implementing the right to self-determination”.

In this regard, German Federal Republic expressed unambiguously, announcing that “the right to self-determination as it is expressed in the UN Charter and in Covenants concerns all the peoples and not only to the ones who are under a foreign domination. That is why all the peoples have the inalienable right to freely decide their own political status and the right to freely decide their own economic, social and cultural development. Federal Government cannot consider any interpretation of the right of self-determination in force which is in contradiction with the text of the relevant article. Moreover, it believes that any limit which concerns its belonging to all the peoples does not correspond to the subject and the goals of the Covenants on Human rights.”<sup>18</sup>

If the right to self-determination concerns not only “colonial

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<sup>18</sup> Crawford J. *Outside the colonial context // Self-determination in Commonwealth*. Aberdeen, 1988. C. 18.

situations”, not only the peoples who are “under a foreign domination”, but also all the peoples without any “limits and conditions”, including the peoples which are in the structure of “independent sovereign states”, it would be necessary to admit that the right may concern also the peoples which consist a minority in the structure of a separate state.

Another important fact, which contributes to the understanding of the correlation of the right to self-determination with peoples, which are in the position of a minority, is that the international law recognizes that right just for peoples. The recent attempts which aim to ascribe that right only to peoples which have a “constitutionally recognized status”, or to the so-called “component units” that is to say, to some state or autonomous formations<sup>19</sup> inside the state, considering the above mentioned, are presented like they do not have any legal basis. There is no legal act where it is possible to find an approval of this kind of statement, on the contrary, everywhere it is spoken about peoples and not about something else.

If we admit the option according to which the “constitutional units”, being the unique subjects of self-determination within the state, comprise an attempt of a gradual development, we cannot consider it to be good enough as the first and the most incredible consequence of that kind of innovation will be states’ tendency to liquidate those “units” as the current international contractual law does not include any provision which may hinder it.

The question, which is being discussed, has also other aspects that are closely linked with the protection of peoples’ rights in the light of which the theory of “constitutional units” is not only just non-justified but it is also harmful and dangerous as it bears the danger menacing the international peace and security. In our opinion, the conflicts that took place in the territories of the former Yugoslavia and USSR are the results of expressing such kind of

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<sup>19</sup> Commission on Human Rights. Sub-commission on Prevention of Discrimination and Protection of Minorities. Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities. Second progress report submit by Mr. Asbjorn Eide - E/CN 4/Sub 2/1992/37.

approach towards self-determination, when the unique subjects were only the former Soviet Republics within the federative states. The latter were self-determined within the boundaries which were until that administrative and often arbitrary and did not take into account the peoples' opinion, who lived in their historical territories, within those boundaries. Maybe we can state that it was an application of the principle *uti possidentis*, which was being admitted as a basis during the process of decolonization of Southern America and Africa, where "the nations were the result of state's existence and not the contrary"<sup>20</sup> but which was being considered outdated and obviously unfair in Europe at the end of the 20<sup>th</sup> century.

As once, one of the members of International Tribunal expressed in an impressive way: "[i]t is the people who has to decide the fate of the territory and not the territory — the fate of the people"<sup>21</sup>, that is why both from the moral and legal perspectives the statement, according to which the right to self-determination has to be recognized for only, so-called "nominal" people as an "integral unit", and the right should be denied for the other indigenous which constitute a minority within the framework of that "unit", is not that clear. That kind of approach creates an impression of "a dual standard", when reformulating Owrel's idea, one can say that all the peoples are equal, but some are more equal.

Well, the special committee created by the European Union for processing standards of recognition of re-formed states, formulated the conclusion which concerns the self-determination of Serbian population of Bosnia and Herzegovina, where it is indicated: "1) the right to self-determination of Serbians out of Serbia is limited by internationally recognized human rights including the rights of minorities' members and 2) the former administrative boundaries must be protected by international law and can be changed only by reciprocal accordance"<sup>22</sup>. One can think that there is no need to refer

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<sup>20</sup> Rigo Sureda A. Ibid, C. 220.

<sup>21</sup> I.C.J. Reports, 1975, C. 122. Арчага Э.Х. Современное международное право, М., 1983, С. 167

<sup>22</sup> Hannum H. Documents on Autonomy and Minority Rights, Dordrecht/Boston/London, 1993. C. 84.

to the former Yugoslavia's tragic consequences, moreover the ones which are linked with such approach for all the peoples. They are well-known. In our opinion, the real principal approach which is based on the existing right, is that if in case of solution of some situation the right to self-determination is chosen as a basis, along with it, it's necessary to be consistent and know the right to decide the own fate on its own for all the peoples which this situation concerns.

As an example of tending to such consistency Law of the USSR "On the order for the solution of questions concerning the Soviet Republic's exit from the USSR"<sup>23</sup> can serve as a basis, which despite all disadvantages contained a quite fair and democratic provision which tells that in case of a self-determination which leads to Soviet Republic's separation, this kind of right have also the peoples of autonomous formations and even the foreign population "in the places of living gathered".

Though the political motives of importing that kind of norm are known, it does not depreciate its principal nature and the correspondence to the principle of self-determination in any way. Maybe, the implementation of that state would allow in practice to avoid from the occurrence of an armed conflict in Nagorno-Karabakh and in other regions of the former USSR. The right of Armenian people must not depend on its number, and the peoples within the boundaries of self-determining territory who are in minority, are not just the demographic remnants but they have the right to decide their own fate like it does another great neighbor community.

In our opinion, this kind of approach contains the fair and the only possible mechanism of consistently realizing the right to self-determination, which provides with a real, in the language of the UN Charter: "... the equal rights of men and women and of *nations large and small*" and which eliminates the factor of uncertainty which

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<sup>23</sup> Bulletin of Session of Peoples Deputies of USSR and of Supreme Council of USSR, 1990, #15, P. 252. [Ведомости Съезда народных депутатов СССР и Верховного Совета СССР, 1990, № 15. с. 252].

gives birth to a conflict arising in case of separation or new state's formation.

Another, a non-corresponding to law interpretation of the principle of self-determination is presented to us also in the statement where the subject can be only the whole population of the state. While, as it is being presented to us, that kind of opinion can be true only in case when the state is nationally homogeneous, ethnically uniform. In other cases, that kind of opinion cannot correspond to the spirit and letter of the law. In order to be convinced regarding it, it is enough to indicate that if that kind of approach had corresponded to the law, then in all the international legal tools, anyway in English versions, the right to self-determination would have been set forth for the nations under which by western traditions it is understood as "the whole population of the state" and not for the peoples, which we consider in all documents.

If we consider the self-determination by a historical view, then we can say that it arose and developed as separate people, just national communities' right, who were living in the territories of the existing states. Well, K. Partsch mentions that at the time the term "right of self-determination" concerned the following cases:

- the "peoples" on the whole which consisted a minority within the state (or even a majority), which was governed by another "people" (like, for example, Irishmen before 1919 and Mongolians before 1911/1921),
- the "peoples" which were a minority in more than one state, but they considered themselves as a part of the peoples of the neighbor state (like, for example, Mexicans in California or Hungarians in Romania),
- the "peoples" or "nations" which were separated into several states as a result of external interference (like, for example, Germans living in several states in the 19th century),
- the "peoples" which were considered as a majority (or a minority) in a territory, which had a special status under a foreign

state (the main example: colonies).”<sup>24</sup>

As we see, the right to self-determination historically arose and was perceived first of all as the right of national communities: populations of the existing state in the light of which, the approval that the right’s subject can be only the whole population of the state, seems to be absolutely indisputable.

○ The modern international legal practice also proves it. In particular, we can bring the example of Anglo-Irish agreement (1985) which concerns the settlement of *Olster* issue. In Article 1 of the document, it is said that “[t]he two Governments:

○ (a) affirm that any change in the status of Northern Ireland would only come about with the consent of a majority of the people of Northern Ireland;

○ (b) recognize that the present wish of a majority of the people of Northern Ireland is for no change in the status of Northern Ireland;

○ (c) declare that, if in the future a majority of the people of Northern Ireland clearly wish for and formally consent to the establishment of a united Ireland, they will introduce and support in the respective Parliaments legislation to give effect to that wish.”<sup>25</sup>

Thus, “two governments” agreed that neither the whole “Irish people” nor “the people of Ireland” and nor “the people of Britain”, but just “the people of Northern Ireland” are the subject of self-determination and the future of that territory depends on the will of Northern Ireland’s people. That is to say, in that international legal act find their confirmation all our above-mentioned conclusions about the fact that:

1) the subject of the right to self-determination is the very people;

2) the subject of the right to self-determination can be realized

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<sup>24</sup> Partsch K.J. *Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination // International Dimensions of Human Rights*, Paris, 1982. C. 64.

<sup>25</sup> Anglo-Irish Agreement 1985 between the Government of Ireland and the Government of the United Kingdom, <http://cain.ulst.ac.uk/events/aia/aiadoc.htm>



not only with the basis of territory but also the subject, that is to say, via the community which is a minority in an even broader combination of geographical or historical frameworks (respectively, in this example, in the frameworks of the Irish Islands and the state of Great Britain);

3) that right is the inalienable and indivisible right of the subject of self-determination's right (the indication of the possible change of Northern Ireland's status: in points 1 and 3).

One can think that there is some interest in the question about how our point of view is agreed to the other principles of international law and first of all with the territorial integrity of the states. Regarding this, some authors write about some contradiction between the right to self-determination and the principle of territorial integrity of the states. Whereas, that kind of opinion cannot be accepted as true even theoretically, as, by agreeing to it, one can inadvertently suspect the existence of the international law itself as a whole process of legal regulation which is known by its general principles.

In the Declaration on Principles of International Law (1970), it is said: "[i]n their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles". If we try to realize it in practice then we will come to the conclusion that those principles not only do not contradict each other, but also are in some harmony. The principle of territorial integrity concerns the domain of interstate relations and is called to protect the territorial integrity and the national unity of states from encroachment of a foreign state, while the principle of self-determination presupposes to decide all the questions of peoples' state existence, including also the aspects that concern the territorial *status quo*'s protection or modification. That is why, one can suppose that in some terms the principle of territorial integrity is called to protect the free implementation of the right to self-determination: it protects from external encroachments and the existing *status quo* which is, in essence, a result of self-determination and a process of territorial changes which may occur on the basis of all the peoples'

right to self-determination.

In this connection, it is always important to mention that the existing *status quo* and its possible changes must be based on the self-determination. As Yu. G. Barsheghov mentioned yet in 1958, “the right of nations’ self-determination serves as the supreme legal title of the territorial demarcation”.

With this not only the content of territorial rights but also their boundaries are being defined<sup>26</sup>. And what concerns the territorial changes, we should take into account that the international law completely and, in particular, the members of negotiations during the development of the UN Charter “based on the circumstance that by prohibiting the war and the aggression, along with it they do not guarantee the *status quo* forever and do not exclude the possibility<sup>27</sup> of state boundaries’ changes”.

In this context we would like to present the opinion of one of the authors who writes: “[o]nly in case of people’s free agreement the territorial status can be defined and only thus the defined *status quo* can guarantee peace and friendly relations among peoples”.<sup>28</sup> The history and the development of recent years’ events totally confirm the true nature of that conclusion.

The Declaration on Principles of International Law (1970) contains also the correlation of principles of self-determination and state’s territorial integrity and some other aspects, the so-called “prophylactic special clause (clausula)” which protects the states from baseless separative pretensions. “Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any

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<sup>26</sup> Barseghov Yu. G. Territory in International Law. Legal Nature of Territorial Superiority and Legal Basis for Utilizing the Territory. Moscow, 1958, pp. 117-118. [Барсегов Ю.Г. Территория в международном праве. Юридическая природа территориального верховенства и правовые основания распоряжения территорией. М., 1958. С. 117-118].

<sup>27</sup> A Commentary on Dumbarton Oaks Proposals - Британская “белая книга”. Ю.Г. Самоопределение и территориальная целостность, М., 1993. С. 19.

<sup>28</sup> Speranskaya L.V. Principle of Self-Determination in Internatioanl Law. М., 1961, P. 108. [Сперанская Л.В. Принцип самоопределения в международном праве. М., 1961. С. 108].

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 color”<sup>29</sup>.

An important conclusion of the mentioned provision is that modern international law in some conditions allows “the violation of sovereign and independent states’ territorial integrity and political unity”, that is to say, the latter are not absolute and unconditional values from the perspective of international law. We can come also to other conclusions. First of all, here we find another confirmation for the conclusion about the fact that the right to self-determination applies not only to “colonial cases”, but also to “independent and sovereign states”

And secondly, from the mentioned provision it absolutely follows that in some conditions some minorities can be subjects of the right to self-determination, as the self-determining people is considered as a national minority inside a “sovereign and independent state”.

What concerns the conditions, at presence of which the self-determination is forbidden, which violate the territorial integrity of the state, they, as we can see, are the following: 1) the state “has to follow the principle of legal equality and self-determination in his actions”, 2) the state has “to have a government as a result of it, which will present... the whole people living in that territory”, 3) along with it, it must never put any discrimination.

Only in case of following these conditions should the priority be given to the protection of state’s unity, otherwise it may be put under suspicion.

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<sup>29</sup> It should be mentioned that some authors, making a reference to the provision of the international legal document, prefer to be limited by only the first part putting a full stop after the words “... sovereign and independent states by which they willy-nilly distort its content, which is actually another question.”

And even if these conditions are three, the most essential of them by which the others are determined, is perhaps the first condition. In our opinion, it contains an even bigger key of perception's perspective which is linked with self-determination and the questions concerning modern state's international legal nature.

As the demand for the state of "... following the principle of legal equality and self-determination in his actions", which can be expressed in a certain way, for example, in some cases by holding a referendum, first of all means the unconditional recognition of the right of self-definition for all the peoples, among which are the peoples included in that state's structure.

And the existence of the state, rather maintaining the unity in case of recognition means just one thing that the state is the expression and the product of the self-determination of the peoples. That is to say, only at that time he can "follow in his actions" the principle of the peoples' self-determination, when it is itself the result and the product of that kind of self-determination.

From that point of view, the questions of the co-relations of other principles of the international law with the self-determination are imagined in a new way, the real fundamental nature of that principle reveals. Like, for example, the principle of not interfering is called to protect the internal side of self-determination's right, the principle of sovereign equality of states arises in a limited way from the recognition of peoples' legal equality and serves as a guarantee of respecting the people's (peoples') self-determination, which is expressed in a sovereign state, etc..

Thus, we suggest considering the self-determination as a broader principle, which is not being limited by secessions or other questions. We may suppose that from the perspective of modern international law, all the states (unitary and federative, with one nation and multiethnic) are the result of the existing subjects' (nation, people, nations, peoples) self-determination.

The legitimate and main factor of any state's existence is that it's a way of implementing the existing subject's (subjects') self-determination. Moreover, the existence of such a basis should be

considered as something occasional and simultaneous, which has to correspond to the very moment of the self-determination's implementation and, taking into consideration the circumstance that the "right" is inalienable and belongs to the "peoples" "forever", the self-determination should be understood as a continuous process, the main and permanent condition of its legal and factual existence.

In the light of it, the essence of the "prophylactic clausula" is revealed, according to which only the integrity of the states should be maintained which are based on self-determination of all the people who live in their territory.

The analysis of present normative staff, the consideration of the modern international right's content and the relevant practice lets us come to broader conclusions. The principle of legal equality and peoples' self-determination, being one of the fundamental principles of international law, fixes the inalienable right of peoples to freely choose their own fate. By its virtue, all peoples and nations have the right to self-determination which is being realized by the free expression of the people's or nation's will and presupposes the people's or nations' choice opportunity of separating from a state or in other conditions integrate in another state, that is to say, it is the free choice of political status.

Along with this, it's necessary to take into account that the right to self-determination does not lead to the freedom of separating, but, as it has been mentioned above, it's a broader concept which is not limited by the issue of secession. As one of the authors has truly mentioned: "[i]t is not obligatory for the self-determination be expressed in political separation; but without the recognition of the freedom of separation, there is no right<sup>30</sup> to self-determination".

The admission of the circumstance that peoples can, in the boundaries of multi-ethnic states, in principle, be subjects of self-determination and, by using that right, can choose the way of creating their own state, which can be a serious guarantee for their

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<sup>30</sup> Barseghov Yu.G. Self-determination and Territorial Integrity. Moscow, 1993, P. 8. [Барсегов Ю.Г. Самоопределение и территориальная целостность, М.,1993. С. 8].

rights. As the contrary statement like totally or partially hands the national communities to the government or central government of the majorities as a ransom of mercy and whim, which (the government) can roughly and often violate their rights up to a genocide.

From this point of view, the principle of legal equality and peoples' self-determination is called to serve to the fact that the existing states correspond to a great degree to their own multiethnic nature, to the self-determination of all the subjects included in it, which will be a guarantee of a democratic interethnic agreement, a factor of peace and stability both inside the state and in the international stage.

In other words, the recognition of the right to self-determination can be an important means of protection for peoples, as in those conditions no violations of their rights can stay without a remedial, but can be the reasons for serious and essential changes in their status up to the formation of an independent state.