


The Right to Self-Determination of Peoples through Examples of Åland Islands and Quebec: Recommendations for a Peaceful International Legal Order

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Keywords:

contemporary public international law, right to self-determination, peoples, secession, peace

Abstract: In contemporary public international law, it is increasingly common that in many countries of the world and Europe, political representatives of the peoples are calling for an inalienable right to the external self-determination of the peoples involving secession to try to achieve their independence and autonomy, forming their national states to the detriment of already existing countries in which they are currently living. However, this may cause destabilization and wars in many complex multiethnic states and the European Union. Therefore, the Åland Islands and Quebec cases are extremely important for today's understanding of the exercise of the right to self-determination of the people in contemporary public international law, in particular as the International Court of Justice in The Hague and the domestic courts invoke them as precedents to address all future cases of reference to the right of the people to external self-determination involving secession. Based on those cases, it has developed that the issue of secession is the question of the internal legal order of each sovereign country, which should deal with this issue through its constitutional legal order, and contemporary public international law should deal with its consequences. In connection with this, it is necessary to investigate and offer answers that will highlight possible abuses of the right to self-determination of all peoples as a collective human right in contemporary

public international law. Such unlawful conduct may result in adverse legal consequences, in particular, the violation of basic principles of public international law, including the principles of territoriality and sovereignty of the states, the distortion of world peace and order, economic progress, the rule of law and the pursuit of basic human rights and freedoms, as well as other collective human rights, which may ultimately be the cause of provocation and lead to international and civil wars.

1. Introduction

This article aims to explain, through the cases of the Åland Islands and Quebec, that the internal self-determination of people is a more acceptable form of realizing this collective human right, which should be done through broad constitutional and legal reforms in every multiethnic state (a certain degree of autonomy or decentralization), and that the external form of self-determination, which includes secession, is possible only exceptionally in the case of grave violations of human rights and freedoms, war crimes, repression, and systematic oppression, and only as a *sui generis* case that excludes the creation of a precedent (for example, Kosovo). Only with this approach can we prevent abuse of the right to self-determination (external self-determination that includes secession) and establish lasting peace in the world, as well as a balance between the realization of this right and the principle of territorial integrity. The scientific methods used in this article are theoretical, normative, historical, comparative-legal, and dogmatic methods, including a case study as a separate method applied during the legal analysis of judgments and opinions of national and international courts regarding the right to self-determination of all peoples.

The right to self-determination of people in contemporary public international law appears in two forms: *external (offensive)* and *internal (defensive)* self-determination. We will briefly talk about the former and its legal and political influence in contemporary public international law through examples of the Åland Islands¹ and Quebec.² As its name implies, this right

¹ See more: Patricia O'Brien, "The Åland Islands Solution A Precedent for Successful International Disputes Settlement" (speech, United Nations Headquarters, Delegates Entrance Lobby, January 17, 2012).

² See more: "Reference Re Secession of Quebec – SCC Cases," Supreme Court of Canada, accessed February 3, 2023, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.

unquestionably belongs to the peoples; they are the holders of the right to self-determination, which necessarily includes the element of territory, taking into account the principle of *uti possidetis iuris*.³ It is necessary to emphasize that contemporary public international law, in an affirmative manner, regards the internal exercise of the right to self-determination of all peoples. The external aspect of the right to self-determination often leads to the separation of territories and conflicts with the principle of *uti possidetis iuris*. Its secondary negative manifestations include a conflict with certain international instruments, in particular with the UN Charter.⁴ Generally, the right to self-determination nowadays is applicable as customary law and is recognized in that form by international legal literature. It is normatively ensured in Article 1⁵ of both Covenants of Human Rights⁶ that the right to self-determination becomes the fundamental principle of contemporary public international law with *erga omnes* effect. Here, it is stipulated that all peoples are entitled to self-determination based on which they decide about their political status.⁷ Political status⁸ represents a constitutional status within the meaning of the establishment of the internal arrangement, while the external arrangement constitutes an international positioning and obtaining recognition. There is no doubt that the right to self-determination of the people is nowadays recognized as a common rule of public international law, shown by international judicial practice. In the case of East Timor, the International Court of Justice in The Hague (ICJ)⁹

³ See more: “Uti Possidetis Juris,” LII/Legal Information Institute, accessed February 3, 2023, https://www.law.cornell.edu/wex/uti_possidetis_juris.

⁴ See more: “UN Charter,” United Nations, accessed February 3, 2023, <https://www.un.org/en/about-us/un-charter>.

⁵ Edin Šarčević, “Pravo Naroda Na Samoopredjeljenje Sa Otcjepljenjem,” May 8, 2022, <https://edinsarcevic.wordpress.com/2022/05/08/pravo-naroda-na-samoopredjeljenje-sa-otcjepljenjem/>.

⁶ See more: “International Covenant on Economic, Social and Cultural Rights,” OHCHR, accessed February 3, 2023, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

⁷ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2007), 16.

⁸ Šarčević, “Pravo Naroda Na Samoopredjeljenje Sa Otcjepljenjem.”

⁹ See more: “East Timor (Portugal v. Australia)” International Court of Justice, accessed February 3, 2023, <https://www.icj-cij.org/en/case/84>.

confirmed that the right to self-determination is *erga omnes* binding right. In the case, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, the right to self-determination was interpreted as a “binding right of the people.” It means that it is *ius cogens* rule of public international law.¹⁰ The external self-determination of the peoples includes the right to decide their international status, i.e., to create a sovereign and independent state or to join with the existing sovereign state.¹¹ This form of self-determination is the most common subject matter of abuse in contemporary public international law involving secession and thus directly undermines the territorial integrity and sovereignty of the existing state. Requests for the self-determination of peoples in the external sense may be established, so they constitute an exception that is rare but still accepted in contemporary public international law (the case of Kosovo) and unfounded under the influence of economic, cultural, religious, and ideological reasons, which may indicate the abuse of this right. However, such a setting of self-determination of the people was not considered an abuse of law in the 1960s, and it was considered the right to be a country where people would be free from foreign interference and cease to be under foreign occupation or domination. This issue was particularly recent at the time of the drafting of the texts of international human rights covenants, i.e., at the time of the condemnation of colonialism. It signified the emergence of an indispensable anticolonial wave in international public policy. Internal self-determination is stipulated in Art. 1(1) of the International Covenant on Civil and Political Rights as a right of the people to “freely determine their political, economic, social and cultural development.” Antonio Cassese considers “the right of every member of the community to choose, in full freedom, the authority that will enforce the true will of the people.”¹² It is further explained that the internal view of the right to self-determination presupposes the existence and free exercise of other rights and freedoms

¹⁰ Hurst Hannum, “Rethinking Self-Determination,” *Virginia Journal of International Law* 34, no. 1 (1993): 13.

¹¹ Slobodanka Bursać, “Pravo Na Samoopredeljenje Naroda,” *Međunarodni Problemi* 62, no. 2 (2010): 279.

¹² See more: Antonio Cassese, “The Approach of the Helsinki Declaration to Human Rights,” *Vanderbilt Journal of Transnational Law* 13, no. 2 (2021), 275–291.

by which is expressed the will of the people, e.g., freedom of association and the right to vote. Here we want to point out that internal self-determination should be affirmatively understood and considered as a solution in complex multiethnic communities, such as the decentralization of government within a country aimed at affirming political, economic, and cultural self-determination. The same reasoning followed the Supreme Court of Canada in the case of the Quebec secession by defining the internal self-determination of the peoples as “achieving one’s political, economic and cultural development within the framework of the existing state.”

2. The Short Historical Development of the Right to Self-Determination of Peoples

The historical development of the right to self-determination of the people is important for explaining the origins and application of this right established in several stages. The first phase is national and constitutive; it took place between the end of the 18th and the beginning of the 19th century in North America and Western Europe, characterized by the fight against foreign domination and the creation of modern European nation-states. Then, self-determination represented the basic political principle of civil revolution. The second phase is anti-imperial and represents the period after World War I. The Versailles Conference recognized the right to self-determination of peoples who lived in the areas of the empires that lost the war: The Austro-Hungarian Monarchy and the Ottoman Empire. This period is marked by the proclamation of the principle of self-determination throughout Woodrow Wilson’s *Fourteen Points*.¹³ After each war, *great powers*¹⁴ were actively involved in the reorganization of Europe, most commonly through peace conferences.¹⁵ One of these was held in Paris and publicly or secretly addressed many state matters: issues of reorganization of Europe, questions of the old and new state’s boundaries, issues of protection of minorities, and

¹³ See more: “Milestones: 1914–1920 – Wilson’s Fourteen Points, 1918,” Office of the Historian, accessed February 3, 2023, <https://history.state.gov/milestones/1914-1920/fourteen-points>.

¹⁴ See more: Daniel Costa, “Great Power,” Britannica, accessed February 3, 2023, <https://www.britannica.com/topic/great-power>.

¹⁵ Allen Lynch, “Woodrow Wilson and the Principle of ‘National Self-Determination’: A Reconsideration,” *Review of International Studies* 28, no. 2 (2002): 419.

the right to self-determination of the peoples. After the war, self-determination was presented indirectly through a mandate system by the League of Nations and Article 22 (4) of the Covenant of the League of Nations.¹⁶ Some national groups did not get their new state based on peace treaties, but they achieved mandate protection through treaties on minorities, otherwise adopted by the winning powers. These treaties are presented in three categories: treaties that regulate relations with the defeated states: Austria, Hungary, Bulgaria, and Turkey; treaties establishing new states: Czechoslovakia, Greece, Poland, Romania, and Yugoslavia; and treaties establishing special international regimes: Åland Islands, Danzig, Memel, and Upper Silesia. Such treaties do not have the power to solve issues related to self-determination, so President Wilson suggested that the Covenant of the League of Nations should specifically regulate the issue of self-determination. He suggested:

The Contracting Parties united to guarantee each other political independence and territorial integrity, give the possibility to exercise certain territorial concessions based on the self-determination and all for the best interests of a particular people. The Treaty Powers confirm that the preservation of peace in the world is the most important ideal.¹⁷

The third stage in the development of this right is crucial, and we call it the anticolonial stage; it played out between World War II and the end of the 1960s. At this stage, the former colonies achieved their independence and freedom peacefully through nonviolent means or the national liberation struggle. The last stage in the development of this right is called anticommunism and includes the period from the fall of the Berlin Wall until today. It is imperative to explain that contemporary public international law looks at the principle of self-determination as a legal principle that grows into the right to self-determination of the people. This stage ends the political character of this principle and begins its legal character through

¹⁶ See more: "Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919, Volume XIII – The Covenant of the League of Nations (Art. 1 to 26)," Office of the Historian, accessed February 3, 2023, <https://history.state.gov/historicaldocuments/frus1919Parisv13/ch10subch1>.

¹⁷ Bojan Gavrilović, "Istorija Prava Na Samoopredeljenje, (R)Evolucija Prava Na Samoopredeljenje," 2013, 8.

the adoption of the *UN Charter*, and finally takes shape with the adoption of the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960),¹⁸ the *International Covenants on Human Rights* (1966), and the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States following the Charter of the UN* (1970).¹⁹

3. Brief Review at Legal Sources on the Self-determination of Peoples

The right to self-determination at the outset is mentioned in Articles 1 and 55 of the *UN Charter*. According to Article 1 of the Charter, one of the aims of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.” The very mention in the *UN Charter* of the self-determination of peoples, in the opinion of Malcolm Shaw, enabled the establishment of subsequent interpretations that incurred the rule of public international law on the self-determination of peoples. The *Declaration on the Granting of Independence to Colonial Countries and Peoples*, according to the International Court of Justice in The Hague, represents the most important segment in the development of public international law concerning non-self-governing territories²⁰ and the basis for the decolonization process. Article 1 of the *International Covenants on Human Rights* states that “1. All peoples have the right to self-determination, to freely realize their political, economic, social and cultural development and 2. to freely dispose of their natural resources and sources on the basis of public international law.”²¹ The former Soviet Union countries wanted to restrict the application of this right only to colonial

¹⁸ See more: “Declaration on the Granting of Independence to Colonial Countries and Peoples,” OHCHR, accessed February 3, 2023, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>.

¹⁹ See more: “UN General Assembly (25th Sess.: 1970): Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States following the Charter of the United Nations, 1971,” United Nations Digital Library, <https://digitallibrary.un.org/record/202170>.

²⁰ See more: “Non-Self-Governing Territories,” The United Nations and Decolonization,” accessed February 3, 2023, <https://www.un.org/dppa/decolonization/en/nsqt>.

²¹ Gavrilović, “Istorija Prava Na Samoopredeljenje, (R)Evolucija Prava Na Samoopredeljenje,” 16.

peoples,²² although, in the final version of this Article, it is confirmed that this right belongs to all peoples and those who already have their own countries, and all in terms of achieving internal self-determination that we want to affirm by this paper. We want to give an impulse to reform the complex multiethnic states through their internal legal order, to improve their constitutions, and try to enable all peoples to equally participate in the exercise of their political, economic, social, cultural, and any other forms of affirmation, such as talks on possible government decentralization that would allow equal participation, presence, and visibility in the state administration to all peoples.

The *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970)* confirms the right to self-determination of the colonial peoples and peoples that have been subjected to a different subjugation, dominance or exploitation. For all countries of the European continent, and in particular to those expressing their aspirations to full membership in the European Union, the *Helsinki Final Act (1975)*²³ proclaims the protection of territorial integrity and the inviolability of European borders, does not prevent their change amicably and with a consensual amending of borders, which is following contemporary public international law. All unilateral moves towards external self-determination involving secession without probable cause may mean the abuse of this right. Numerous voices in the international community claim that self-determination would lead to the Balkanization of the European continent if it came true.²⁴ This may also apply to the United States of America if, for example, Long Island or California wanted to secede, referring to self-determination. The right to self-determination, as well as any other law, is subject to abuse and, if it is not limited, might lead to disintegration processes

²² Yahia H. Zoubir, “The United States, the Soviet Union and Decolonization of the Maghreb, 1945–62,” *Middle Eastern Studies* 31, no. 1 (1995): 58.

²³ See more: “Milestones: 1969–1976 – Helsinki Final Act, 1975,” Office of the Historian, accessed February 3, 2023, <https://history.state.gov/milestones/1969-1976/helsinki>.

²⁴ Mladen Karadzowski and Goran Ilik, “Will the European Union Europeanise the Balkans to Avoid the Balkanisation of Europe?,” *Studia Europejskie – Studies in European Affairs* 23, no. 4 (December 23, 2019): 66.

in Europe. Instead of secession, we should insist on cooperation between countries, which is also the basic goal of the *Helsinki Final Act*.²⁵

4. The Right to External Self-Determination of Peoples

In the time of integration, the external self-determination of peoples in terms of secession is a disintegration process. Secession involves the use or threat of force, which may constitute a direct motive for war.²⁶ Professor Thomas Franck points out, “There is no right to secession in an international legal system, except in the minds of those who enjoy adventurous journeys through international practice.”²⁷

There are also cases where it is possible to exercise the right to self-determination (the external form that includes a change in sovereignty over the territory), which are undisputed and confirmed in practice. The first is the case of self-determination of the colonial peoples, and the second is the self-determination of peoples subjected to different subjugation, domination, or exploitation. These cases are linked to the content which is regulated by the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970)*, which introduced the *safeguard clause* concept. This clause prohibits “any action that would have the aim of destroying or jeopardizing, complete or partial, territorial integrity and political independence of each state, which respects the principle of equality and self-determination of peoples (changed final part of the 1993 Vienna Declaration clause).”²⁸ Not every external form of self-determination of peoples that reaches for secession is illegal and an abuse of that right. It is possible if certain conditions are fulfilled which would justify the exercise of such rights or possibilities, also known as “remedial secession,”²⁹

²⁵ Gavrilović, “Istorija Prava Na Samoopredeljenje, (R)Evolucija Prava Na Samoopredeljenje,” 2013, 16.

²⁶ Aleksandar Pavković and Peter Radan, *Creating New States: Theory and Practice of Secession*, 2nd ed. (Aldershot, Hampshire, England; Burlington, VT: Ashgate Publishing, 2013), 6.

²⁷ Gavrilović, “Istorija Prava Na Samoopredeljenje, (R)Evolucija Prava Na Samoopredeljenje,” 16.

²⁸ Bursać, “Pravo Na Samoopredeljenje Naroda,” 298.

²⁹ Jure Vidmar, “Remedial Secession in International Law: Theory and (Lack of) Practice,” *St Antony’s International Review* 6, no. 1 (2010): 37.

in the event of denial of the right to part of the people to be represented in government authorities. This condition is not the only one which must be satisfied to reach secession. The Supreme Court of Canada, in the case *Reference re Secession of Quebec*, refrained from concluding in this regard, and A. Cassese follows up on and considers that this right exists, but as the exception from the general rule that the territorial integrity and political independence of states are protected by international law and must be interpreted narrowly and subjected to strict conditions.³⁰ It can be concluded that any introduction of secession as a generally accepted rule in exercising the right to self-determination of peoples is nothing but a classic abuse of that right.

A. Cassese lists three conditions that must be fulfilled to exercise the right of secession: “1. The central government of the state must insist on refusing the group (people) the participation in the government; 2. The group (people) must undergo mass and systematic violation of human rights; 3. Any finding of a peaceful solution within the state must be ruled out.”³¹ These statements suggest that non-representation of the group (people) cannot produce the right of secession, but additional conditions that justify such a derogation from one of the basic principles of international law – the principle of the territorial integrity of the states must be fulfilled. In the words of Eleanor Roosevelt, “as the concept of individual human freedoms led to its logical extremes would mean anarchy, the principle of self-determination would also result with chaos if it were given the possibility of unlimited application.”³² We see there are reasons for prudence when it comes to requests for external self-determination of the people. Historically, there are not many examples, such as Czechoslovakia; most declarations of independence have encouraged conflicts and refugee crises, including some with long-term consequences. The reason for this lies in too much tension between two fundamental principles: the territorial integrity of the state and the liberal-democratic principle of the doctrine³³

³⁰ Bursać, “Pravo Na Samoopredeljenje Naroda,” 299.

³¹ Ibid.

³² Ibid., 311.

³³ Erika Harris, “Paradoks, Kontroverza i Nacionalno Samoodređenje,” *Politička Misao* 52, no. 1 (2015): 200.

of the external self-determination of peoples involving secession. It is apparent that the external self-determination of peoples stands in contrast with the principle of state sovereignty and territorial integrity: sovereignty requires the preservation of the territorial *uti possidetis iuris*; self-determination is at least potentially focused on its modification. In this contrast is the central antinomy that brings the right to self-determination: without the right to secession, there is no right to self-determination. If the right to self-determination, in any case, would entail the possibility of secession, it would, however, undermine self-determination as a separate right. The answer is in the internal (domestic) law known as the internal (definable) right to self-determination, as it opens the possibility of reactions that do not affect territorial integrity under the conditions of the exercise of this right. It is about different types of autonomy ensuring adequate legal³⁴ and factual status to the right-holder of the right to self-determination: territorial, personal, and functional autonomy. Finally, the doctrine of the external self-determination embodied in the *UN Charter* may undermine the Charter itself from which self-determination draws its normative power because while the *UN Charter* undertakes to “maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace” (Article 1 (1)), the doctrine of the external self-determination of peoples requires a secession that can threaten the sovereignty of the countries on which the international system of peace and security lies.³⁵

Professor of international law P. Nanda says the following:

When we talk about the external self-determination of the peoples, the requirement to secession and independence of a country, it is important to know that no member state of the United Nations supports requests for unilateral secession. The latest developments, particularly those of Bangladesh³⁶, East Timor and Kosovo, and in the light of the statement made by the Supreme Court of Canada, provide a possibility of exceptional circumstances that could justify a unilateral secession. One such exception around which there was a wider international consensus in the past was a process of decolonization,

³⁴ Šarčević, “Pravo Naroda Na Samoopredjeljenje Sa Otcjepljenjem.”

³⁵ Harris, “Paradoks, Kontroverza i Nacionalno Samoodređenje,” 199.

³⁶ Pavković and Radan, *Creating New States: Theory and Practice of Secession*, 7.

which included secession. And the other only possible exception justifying the secession is the existence of non-democratic regimes, which are not “representative”, and which do not allow the “people” to participate in political and economic activities within the state, especially where there is a gross violation of human rights.³⁷

5. The Åland Islands Case

One of the best examples to support everything forward has been said is the case of the Åland Islands. It concerns a dispute about the authority over the Åland Islands, a small archipelago of islands in the Baltic Sea off the Swedish coast. In 1809, the Islanders and Finns were assigned to Russia by Sweden. During that period, there was a Bolshevik euphoria in connection with the idea of self-determination during the Russian Revolution, which Finland used and declared independence. This campaign of Finland, assisted by the idea of self-determination that gripped during that time, encouraged the Ålanders to join Sweden. Of course, Sweden supported the intentions of the inhabitants of the Åland Islands, and Finland sent troops to Åland, and that was the beginning of the war in the peaceful area of the Baltic Sea. During that period, in 1920, the Council of the League of Nations appointed a three-member Committee of Jurists to investigate whether the League of Nations should be involved or if this was only an internal matter. It should be noted that the inhabitants of the Åland Islands had Swedish nationality, culture, and language. Sweden insisted that this matter should be resolved through a plebiscite and that the inhabitants of the Åland deserved the opportunity to express their free will and to decide on their direction (to separate themselves from Finland and to incorporate into the Kingdom of Sweden). On the other hand, Finland emphasized that this was a purely internal matter to be taken care of and dealt with within its national jurisdiction.³⁸ Subsequently, the Committee of Jurists declared its lack of competence regarding Finland’s relations vis-à-vis the Åland Islands

³⁷ Frederick V. Perry and Scheherazade Rehman, “Secession, the Rule of Law and the European Union,” *Connecticut Journal of International Law* 123, no. 31 (2015): 73.

³⁸ Joshua Castellino and Jérémie Gilbert, “Self-Determination, Indigenous Peoples and Minorities,” *Macquarie Law Journal*, no. 3 (2003): 161.

with the claim that Finland was not a “definitely established state”³⁹ and assigned to the League to appoint the Commission of Rapporteurs tasked to determine further actions which the League of Nations should take in this regard.⁴⁰ The Commission of Rapporteurs noted that the Committee of Jurists’ opinion was not correct and considered Finland “an established state.” Then, it was pointed out that the Ålanders had no right to self-determination. The Commission of Rapporteurs, however, subsequently decided that if Finland could not guarantee a certain degree of autonomy in expressing the cultural identity of the people living on the Åland Islands, the secession may be justified. In all these cases, a court or any other commission had always taken a stand that a unilateral declaration of independence in some area, region, or province should always be the last option, and any other action taken would be contrary to the *UN Charter*, which protects the sovereignty, territorial integrity, and political independence of each country.⁴¹

6. The Quebec Case

Quebec is one of the ten provinces in Canada that expressed and continues to express hopes for secession. French Canadians support Quebec’s right to secession. They believe that historically this right had belonged to them since the time when they first settled in the 17th century. Their view of English Canadians is such that they consider that they have “continued loyalty to England.” Their desire is to create a state that will reflect their French heritage. The referendum in Quebec was crucial for achieving independence. The first independence referendum was held in 1980 and had little support; only 40.4% of Quebec’s population voted “in favor.” The subsequent referendum received 49.4% support and was an important basis for achieving independence in 1995. These referendums are important because of the Canadian government’s stance on the issue of secession, which was subsequently decided by the Supreme Court of Canada. The Supreme Court considers that “the success of the referendums creates a moral obligation for the Canadian government regarding the issue of secession and the future

³⁹ James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford: New York: Clarendon Press; Oxford University Press, 2006), 24.

⁴⁰ Hannum, “Rethinking Self-Determination,” 26.

⁴¹ *Ibid.*, 28.

of the Quebec province.”⁴² The majority of the votes had to be 51%, a percentage not yet reached in the province. Ultimately, “the Supreme Court did not accept Quebec’s unilateral secession and declaration of independence.” The support for the independence of Quebec was not strong enough to allow the negotiations.

In the years to come, the independence movement had many problems, which lasted until 2005, when an informal referendum was held that showed support for the independence of 54%, a good sign for some future Quebec independence.⁴³ The Supreme Court of Canada, in 1998, was asked to deliver an opinion on the right to external self-determination of Quebec. The Supreme Court of Canada took the position in the case *Reference re secession of Quebec* that “the secession of one province from Canada must be considered, from the legal side, and through amendments to the Constitution, to allow the negotiation of a possible right to external self-determination.” With this opinion of the Supreme Court, Canada considers Quebec its autonomous province, which is subject to constitutional restrictions on the pursuit of external self-determination, i.e., secession. That makes any secessionist action of Quebec, without the approval of Canada, unconstitutional. The Supreme Court of Canada considers that Quebec already enjoys high autonomy within Canada and has achieved its internal self-determination. Therefore, any reference to a unilateral secession will be regarded as an abuse of the right to self-determination and unconstitutional action.⁴⁴

The international community is opposed to unilateral secession, arguing that “public international law has not been laid down or approved by the constituent parts of a sovereign state to be legally entitled to unilateral secession from its mother country.” Regarding the issue of self-determination, the Supreme Court of Canada considers “that this right must not be exercised contrary to the principle of territorial integrity and calls for reforms that will support the principle of internal self-determination.”⁴⁵ Self-determination for Quebec would be *internal*, and as such, Quebec would “best

⁴² Angelina M. Sasich, “The Right to Self-Determination and Its Implication on the Sovereign Right of States: The Inconsistent Application of International Standards for Independence concerning Kosovo,” *Michigan State International Law Review* 20, no. 2 (2012): 511.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid., 512.

achieve its political, economic, social and cultural development” within Canada. In the case that Canada derogated or limited by the constitution the guaranteed rights, the Supreme Court of Canada leaves the possibility for Quebec to achieve “negotiated secession.”⁴⁶ Furthermore, Quebec cannot be allowed unilateral secession for reasons that Quebec is not “exposed to external submission, dominance or exploitation.” The Canadians outline that Quebec was not “denied access to the government,” and that does not represent a submission. Quebec’s participation in the government of Canada appears to be partially worthy of mention because history shows that Quebec has offered numerous ministerial positions in the Canadian government. Thus, the opinion of the Supreme Court of Canada is that Quebec can enjoy freedom without unilateral secession.⁴⁷ The view of the Supreme Court of Canada on the issue of Quebec independence is very significant and serves as a precedent for the conduct of all future similar cases around the world. The Supreme Court of Canada guarantees territorial integrity. The Supreme Court protected the constitutional legal order of Canada and concluded that there is no legal right to unilateral secession of Quebec.

7. Conclusions

The concept of secession embodies external self-determination, and the whole world fears potential destabilization and threat to peace. External self-determination, as we have proven, is easy to abuse with a skillful legal game with the notion of a people which as such is not even defined in contemporary public international law and with the false vulnerability of political, economic, cultural, and linguistic rights of peoples. In addition, it arouses separatist movements worldwide and supports disintegration processes, which is opposed to the idea of a united Europe, which, after World War II, seeks to integrate all European states. Secession is not defined in contemporary public international law, although it is not permitted by the international community as well. Secession includes the separation of a certain part of the sovereign state’s territory, which is only allowed in exceptional cases through the “remedial secession theory” and when a particular people have been subjected to repression and systematic violations of human rights

⁴⁶ Ibid.

⁴⁷ Ibid.

(the example of Kosovo is *sui generis* case in contemporary public international law). Calls for unilateral secession (examples of the Åland Islands, Quebec, and Catalonia) are unlawful and cannot be tolerated in contemporary public international law.

Thanks to the activities of the International Court of Justice in The Hague, the domestic courts of individual states, and the Badinter Commission⁴⁸ have also developed a theory of *negotiated secession*, which calls on states to issue legal solutions through comprehensive constitutional and legal reforms⁴⁹ in agreement with the authorities of their countries (examples of this approach are the Åland Islands, Quebec, and Scotland). The Supreme Court of Canada used the precedent of the Åland Islands case to make a decision that precludes the possibility of secession for Quebec and to support the internal self-determination of the peoples but also presented the form of *negotiated secession* in case the state of Canada exclude or restrict the constitutionally guaranteed rights of peoples. Contemporary public international law has accepted the right of non-colonial peoples to secession from the existing state as a form of external self-determination “when a group is collectively deprived of civil and political rights and when a group is exposed to outrageous abuses.” This right to secession has become known as *remedial secession* and finds its origin in the 1920 Åland Islands case.⁵⁰ Secession undermines the Westphalian system of states, which includes: equality of states, non-interference in the internal affairs of states, territorial integrity, and inviolability of international borders of states.⁵¹ Currently, according to Coppieters, there are between twenty and twenty-five “significant” separatist movements in Europe. Secession most commonly causes wars and represents an ongoing threat to international peace and security. The best example of building the concept of protecting the highest human ideals of life, solidarity, peace, security, and prosperity is the European Union. This

⁴⁸ See more: Alain Pellet, “The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples,” *European Journal of International Law* 3, no. 1 (1992): 178–185, <https://doi.org/10.1093/oxfordjournals.ejil.a035802>.

⁴⁹ Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, 19.

⁵⁰ Milena Sterio, “On the Right to External Self-Determination: Selfistans, Secession, and the Great Powers’ Rule,” *Minnesota Journal of International Law* 19, no. 1 (2010): 143.

⁵¹ *Ibid.*, 154.

is also the best example of the development of integration processes against disintegration processes in the contemporary world.⁵²

It should be said that when seeking secession, secessionists betray, Weiler considers, the ideals of solidarity and human integration that form the foundations of modern Europe. Secessionist movements are a lasting problem of the international community and a phenomenon in legal and political terms. Existing norms of contemporary public international law on self-determination are insufficient and incomplete. We should work more carefully on the adoption of new laws and/or giving new interpretations to existing international laws within international and regional organizations. The institutionalization and normalization of self-determination, including the particularly sensitive issue of secession, is not easily enforceable in the United Nations. However, it could be somewhat easier to implement within the European Union.⁵³

References

- Buchanan, Allen. *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. Oxford: Oxford University Press, 2007.
- Bursać, Slobodanka. "Pravo Na Samoopredeljenje Naroda." *Međunarodni Problemi* 62, no. 2 (2010): 276–313.
- Cassese, Antonio. "The Approach of the Helsinki Declaration to Human Rights." *Vanderbilt Journal of Transnational Law* 13, no. 2 (2021): 275–291.
- Castellino, Joshua, and Jérémie Gilbert. "Self-Determination, Indigenous Peoples and Minorities." *Macquarie Law Journal*, no. 3 (2003): 155–178.
- Costa, Daniel. "Great Power." Britannica. Accessed February 3, 2023. <https://www.britannica.com/topic/great-power>.
- Crawford, James. *The Creation of States in International Law*, 2nd ed. Oxford: New York: Clarendon Press; Oxford University Press, 2006.
- Gavrilović, Bojan. "Istorija Prava Na Samoopredeljenje, (R)Evolucija Prava Na Samoopredeljenje." 2013, 1–26.
- Hannum, Hurst. "Rethinking Self-Determination." *Virginia Journal of International Law* 34, no. 1 (1993): 1–69.
- Harris, Erika. "Paradoks, Kontroverza i Nacionalno Samoodređenje." *Politička Misao* 52, no. 1 (2015): 191–202.

⁵² Ibid.

⁵³ Ibid.

- International Court of Justice. “East Timor (Portugal v. Australia.” Accessed February 3, 2023. <https://www.icj-cij.org/en/case/84>.
- International Court of Justice. “Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).” Accessed February 3, 2023. <https://www.icj-cij.org/en/case/53>.
- Karadzowski, Mladen, and Goran Ilik. “Will the European Union Europeanise the Balkans to Avoid the Balkanisation of Europe?.” *Studia Europejskie – Studies in European Affairs* 23, no. 4 (December 23, 2019): 41–72.
- LII/Legal Information Institute. “Uti Possidetis Juris.” Accessed February 3, 2023. https://www.law.cornell.edu/wex/uti_possidetis_juris.
- Lynch, Allen. “Woodrow Wilson and the Principle of ‘National Self-Determination’: A Reconsideration.” *Review of International Studies* 28, no. 2 (2002): 419–436.
- O’Brien, Patricia. “The Åland Islands Solution A Precedent for Successful International Disputes Settlement.” Speech presented in the United Nations Headquarters, Delegates Entrance Lobby, January 17, 2012.
- Office of the Historian. “Milestones: 1914–1920 – Wilson’s Fourteen Points, 1918.” Accessed February 3, 2023. <https://history.state.gov/milestones/1914-1920/fourteen-points>.
- Office of the Historian. “Milestones: 1969–1976 – Helsinki Final Act, 1975.” Accessed February 3, 2023. <https://history.state.gov/milestones/1969-1976/helsinki>.
- Office of the Historian. “Papers Relating to the Foreign Relations of the United States, The Paris Peace Conference, 1919, Volume XIII – The Covenant of the League of Nations (Art. 1 to 26).” Accessed February 3, 2023. <https://history.state.gov/historicaldocuments/frus1919Parisv13/ch10subch1>.
- OHCHR. “Declaration on the Granting of Independence to Colonial Countries and Peoples.” Accessed February 3, 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>.
- OHCHR. “International Covenant on Economic, Social and Cultural Rights.” Accessed February 3, 2023. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.
- Pavković, Aleksandar, and Peter Radan. *Creating New States: Theory and Practice of Secession*, 2nd ed. Aldershot, Hampshire, England; Burlington, VT: Ashgate Publishing, 2013.
- Pellet, Alain. “The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples.” *European Journal of Interna-*

- tional Law* 3, no. 1 (1992): 178–185. <https://doi.org/10.1093/oxfordjournals.ejil.a035802>.
- Perry, Frederick V., and Scheherazade Rehman. “Secession, the Rule of Law and the European Union.” *Connecticut Journal of International Law* 123, no. 31 (2015): 61–91.
- Šarčević, Edin. “Pravo Naroda Na Samoopredjeljenje Sa Otcjepljenjem.” May 8, 2022. <https://edinsarcevic.wordpress.com/2022/05/08/pravo-naroda-na-samoopredjeljenje-sa-otcjepljenjem/>.
- Sasich, Angelina M. “The Right to Self-Determination and Its Implication on the Sovereign Right of States: The Inconsistent Application of International Standards for Independence concerning Kosovo.” *Michigan State International Law Review* 20, no. 2 (2012): 495–519.
- Sterio, Milena. “On the Right to External Self-Determination: Selfistans, Secession, and the Great Powers’ Rule.” *Minnesota Journal of International Law* 19, no. 1 (2010): 137–76.
- Supreme Court in Canada. “Reference Re Secession of Quebec – SCC Cases.” Accessed February 3, 2023. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.
- The United Nations and Decolonization. “Non-Self-Governing Territories.” Accessed February 3, 2023. <https://www.un.org/dppa/decolonization/en/nsgt>.
- United Nations Digital Library. “UN General Assembly (25th. sess.: 1970): Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States following the Charter of the United Nations, 1971.” <https://digitallibrary.un.org/record/202170>.
- United Nations. “UN Charter.” Accessed February 3, 2023. <https://www.un.org/en/about-us/un-charter>.
- Vidmar, Jure. “Remedial Secession in International Law: Theory and (Lack of) Practice.” *St Antony’s International Review* 6, no. 1 (2010): 37–56.
- Zoubir, Yahia H. “The United States, the Soviet Union and Decolonization of the Maghreb, 1945–62.” *Middle Eastern Studies* 31, no. 1 (1995): 58–84.

