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External right to self-determination as a form of redress for minorities

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"Why don't we just draw a circle around our own two feet and call it Selfistan?"

Salman Rushdie, Shalimar the Clown

Summary

The concept of self-determination played an important role throughout the history. Despite the undoubted significance of the principle, it is very difficult not to notice all the ambiguity and some portion of confusion linked with the self-determination. The concept has gradually developed into the right and between the 1950s and the 1960s, the two branches of the right, have emerged. The focus of the thesis is aimed on the external form of the right and with that related question, who can claim the external right to self-determination? The answer to that question is more complex than it might at first sight appear. The cases such as Quebec, East Timor, Chechnya, Nagorno Karabakh or Kosovo perfectly illustrate such a statement. In that regard, the question may arise, which of the above-mentioned groups can claim external right to self-determination.

General understanding of the right is that only those falling under the scope of "peoples" can claim it. However, the fact is that the new entities emerge within the States all around the world and justify their independence by their alleged external right to self-determination and at the same time, not falling under the definition of the term "peoples".

Therefore, the thesis asks the question, whether the minorities can claim external right to self-determination, which can lead to secession from mother State, and it deals with the issue of not easy relationship between minority protection and external right to self-determination. Building on that, the thesis emphasizes the extreme circumstance, which could serve as a potential justification for such exception. The notion of "gross and systematic" human rights violations is elaborated and presents a threshold, which the minority has to meet in order to make its claims for secession, justified. In that regard, the self-determination is not perceived as an unlimited right, which can be any time misused.

The conclusion of the thesis highlights the fact that it is highly questionable whether the international community accepted the minorities as holders of the external right to self-determination in cases, they face systematic and gross human rights violations from the State, despite the fact that such acceptance would establish clear boundaries and at the same time, could provide a guarantee for the oppressed minority.

Abbreviations

(CERD)	UN Committee on the Elimination of Racial Discrimination
(GA)	General Assembly
(ECHR)	European Convention on Human Rights
(ECtHR)	European Court of Human Rights
(ICCPR)	International Covenant on Civil and Political Rights
(ICESCR)	International Covenant on Economic, Social and Cultural Rights
(ICERD)	The International Convention on the Elimination of All Forms of Racial Discrimination
(ICJ)	International Court of Justice
(IHRL)	International human rights law
(ICL)	International criminal law
(LON)	League of Nations
(NSGT)	Non-Self-Governing Territories
(OSCE)	Organization for Security and Cooperation in Europe
(PCIJ)	Permanent Court of International Justice
(VCLT)	Vienna Convention on the Law of Treaties
(UN)	United Nations
(SC)	Security Council
(SFRY)	Socialist Federal Republic of Yugoslavia
(WWI)	World War I
(WWII)	World War II

1. Introduction

1.1 Background

The roots of the external right to self-determination can be traced back to the 18th century, more specifically to the events of French Revolution and the American Declaration of Independence.[1] However, at that time, it was not perceived as a right but rather as the idea, very closely related with the concepts of sovereignty or liberalism.[2] The idea was slowly evolving and consequently, it developed into the important self-determination concept, very frequently used by Lenin and Wilson. However, their interpretation of the principle differed significantly. Irrespective of their thoughts, the fact is that the principle played a leading role after World War I (WWI) and with that related fall of the empires and rearrangement of the map of the world.[3] By the end of the World War II (WWII), the international community decided to enshrine the principle to the newly drafted United Nations Charter (UN Charter) in the Art. 1 (2), which reads as follows: „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;"[4] The fact that the principle was included in the UN Charter, hasn't automatically meant that self-determination started to be perceived as a right. Subsequently, the principle has transformed into the right during the decolonization period.[5] At the time, when the process of formulation of new States was completed, the attention has been directed on the territories under colonial domination and which have not achieved independence yet.[6] At about the same time, the two aspects of the self-determination right have been established.[7]

The focus of the thesis is directed on external form of the self-determination right. The first question arises, who can claim external right to self-determination? In the UN Charter is clearly stated that self-determination is associated with "peoples". Therefore, the right holders of the external self-determination are "peoples" (despite the fact that the two strands of the self-determination emerged in the second half of the 20th century, from today's perspective, it can be stated that self-determination as embedded in the UN Charter, was of the external

[1] A. Cassese, Self-determination of peoples: a legal reappraisal. Cambridge, 1996, p. 11.
[2] K. Senaratne, Beyond the Internal/External Dichotomy of the Principle of Self-Determination, 43 Hong Kong L.J. 463 (2013), p.465.
[3] Cassese (n1), p. 14-20.
[4] UN Charter, Art. 1 (2).
[5] Senaratne, (n2), p. 466.
[6] Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960.
[7] Senaratne, (n2), p. 466.

form). During the de-colonization period the term "peoples" evolved and those under the colonial domination or foreign occupation, started to be interpreted as "peoples" as well and based on that could claim external right to self-determination and free themselves from oppression.[8] The understanding of the term "peoples" hasn't changed significantly since the 1960s and despite of the rising voices within the international community, the terms "peoples" and "minorities" are still perceived as two different concepts.[9]

Based on the above-mentioned, it seems that the minorities cannot claim external right to self-determination, since they are not falling under the scope of "peoples". The territorial integrity of the State should be preserved. Therefore, members of the international community are reasonably afraid to grant minorities external right to self-determination, since they understand that such action can lead to instability and even internal conflicts.[10] Moreover, it can be even claimed that there exists no justified reason to recognize minority as "peoples", whereas the international and regional instruments already provide sufficient protection for the minorities.[11]

In that regard, the question arises, whether the extreme circumstances could possibly justify minority's claim for external right to self-determination and with that related right to secession from the State? In the thesis is elaborated the notion of "systematic and gross" human rights violations conducted by the State and directed towards minority, as a potential reason, which would justify minorities claims for external right to self-determination. However, it will be analysed more in-depth in the thesis, whether above-mentioned suggestion is supported and accepted by the international community.

1.2 Purpose and Research question

This thesis critically examines the external right to self-determination and its position in today's world. It even suggests that in case of no further development of the right and with that related term "peoples", the external form of the right may appear as superfluous. Therefore, the thesis investigates whether the members of the international community acknowledged the minorities as the potential right holders of the external self-determination,

[8] J. Schreuder, Minority protection within the concept of self-determination, Leiden Journal of International Law, 8(1), (1995), p. 54.
[9] Ibid, p. 54.
[10] Ibid, p. 60.
[11] As an example, can be mentioned, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Art. 1(4).

under limited and specific circumstances. Despite the fact that such exception seems to be recognized in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, the opinion of the international community about the issue, appears to be unclear. At the same time, the outcome of such recognition could contribute to increased protection of the minorities within the States and the external right to self-determination could work as a potential form of remedy, in cases the State conducts systematic and gross human rights violations towards its minority. As a side effect, the aforementioned exception can establish the clear limits in the international law and prevent the potential claims of some minorities for independence and separation from the State without any justified reason.

Therefore, for the purposes of the thesis, the main research question is:

- Can the minorities claim external right to self-determination in cases of systematic and gross human rights violations conducted by the State, which should ensure their protection?

In order to answer main question, the thesis examines following sub-questions:

- Who are those "peoples" under Art. 1 (2) of the UN Charter?
- Do the minorities fall under the scope of the term "peoples" and can they claim external right to self-determination?
- If the answer to above-mentioned is negative, could there exist some exceptions?

1.3 Delimitation

The thesis addresses the external right to self-determination and more specifically the term "peoples" as it is embedded in the UN Charter in Art. 1 (2). Despite the fact that the external form of self-determination is well established in the international law, there still exists some ambiguity and controversy related with the right. Therefore, the thesis uses the interpretation of the term "peoples" as it was elaborated by the UN Special Rapporteur, Mr. Aureliu Cristescu[12] and the way it has developed during the decolonization process. At that time, the term "peoples" has evolved and started to include those under colonial domination or foreign occupation.

[12] A. Cristescu, The Right to Self-Determination, Historical and Current Development on the Basis of United Nations Instruments (E/CN.4/Sub.2/404) vol. I, para. 279.

The internal form of self-determination is mentioned in the thesis, but the focus is aimed on the external aspect of the right. In that regard, the question may arise, whether the internal form would not present a less radical way to solve the issue than permission to interfere with the territorial integrity of the State. However, it has to be kept in mind that according to Cassese, the external form should be applied, only under extreme and unbearable circumstances, when there is no room for a non-violent solution of the conflict between minority and the State.[13]

The concept of minorities, similarly as self-determination right, presents to some extent the source of unclarity and confusion. Therefore, the thesis works with two working definitions, first is elaborated by the Capotorti[14] and second by the Eide[15] and the General Comment No. 23 adopted by the Human Rights Committee interpreting Art. 27 of the ICCPR. Despite of the lack of the one final, legal definition of the minority concept, there were formulated general objective and subjective factors, which the group has to meet in order to fall under the scope of the term minority.

The thesis uses international as well as regional instruments. However, when it comes to regional instruments, the focus is aimed on European level.

For the purposes of this thesis, it was important to identify what kind of State's acts towards minorities could serve as a justified reason, which the minorities could use to support their claims for seceding from the State. The "gross and systematic" human rights violations have been identified as a threshold, which could authorize minorities claims for independence and would override the internationally accepted principle of territorial integrity of the State.

1.4 Outline

Chapter 2 explains the right to self-determination in general terms. The Chapter is divided into two main parts. First part focuses on the question, what is the right to self-determination, its meaning and how it is defined. It briefly describes the history of the right, the difference between internal and external forms of the right to self-determination. Second part of the 2.Chapter explains, who can claim external right to self-determination by interpreting the term

[13] Cassese (n1), p. 120.
[14] Francesco Capotorti was a Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.
[15] Asbjørn Eide was a Special Rapporteur of the United Nations Sub-Commission on the Promotion and Protection of Human Rights.

"peoples". It concludes with the statement that minorities cannot claim external right to self-determination since they are not falling under the interpretation of the term "peoples".

Chapter 3 provides a more in-depth exploration of the concept of minorities and the specific reasons, why the minorities cannot claim external right to self-determination. Therefore, the reason that the minorities are not falling under the scope of "peoples" and because of that are not right holders of the external form of the self-determination, is supported by the claims of the territorial integrity of the State or the already existing minority protection instruments. The Chapter concludes with the introduction of the idea of existence of the possible exceptions to the exclusion of the minorities from the external self-determination concept.

Chapter 4 describes potential situation, which could justify the claims of minorities for external right to self-determination leading to secession from mother State. The Chapter analysis two cases, Aaland Islands case and Kosovo case, which at some point refer to oppressed minorities and whether under such circumstances, minorities can exceptionally fall under the scope of "peoples" and claim the right. The exceptional circumstance is elaborated more in detail in the subsection describing gross and systematic human rights violations.

Chapter 5 begins with summarising the findings from the previous chapters and then it continues with the final conclusion on the research question, and it provides the critical view on the topic.

2. The right to self-determination in international law

The self-determination concept can be very easily described as a controversial part of the international law. Therefore, it would not be a mistake to say that this right leaves a room for different interpretations. This Chapter is divided into two main parts. First part is focused on the origin of the self-determination principle, how it has developed into the right, two dimensions of the self-determination right and the interpretation of the right. Second part addresses the question, who can claim external right to self-determination and how the term "peoples" is interpreted? Last part of the Second Chapter brings some concluding remarks.

2.1 Introduction

Before addressing the substance of the self-determination concept, the history and the development of the right are elaborated more in detail. The two dimensions of the self-determination right are presented and specified. The purpose of the first part of the Second Chapter is to give a better understanding of the self-determination right, taking into consideration different views, which are inevitably attached to the right.

2.1.1. History & development

The notion of the self-determination stems back to 18th century and is linked both with American Declaration of Independence signed in 1776 and the French Revolution which occurred in 1789. At the time, the form of self-determination concept as we know today, has not existed. It can be said that self-determination was an idea which was stemming from the concepts such as liberalism, sovereignty, or nationalism and this idea was slowly growing, changing, and developing into the form, we are familiar today. However, in 18th century, the self-determination was expressed only in tireless effort of people to free themselves from the oppressive powers, the effort to achieve that the government would be responsible to its people.[16]

The beginning of 20th century was marked by numerous significant events. Events, which changed the world fundamentally. It is worth mentioning the dissolution of the Austro-Hungarian or Ottoman empires and the groups of people who lived on the territories of those empires. The groups, which shared language, history, or self-identification, perceived the

[16] Senaratne, (n2), p. 465-466.

dissolution of the empires as a perfect chance for independence. In that regard, the concept of self-determination as well as nationalism[17] played a significant role.[18] Accordingly, it can be claimed that self-determination principle is only a result of the interplay between international law and the doctrine of nationalism.[19] The truth remains that when it comes to self-determination, it is very difficult to omit nationalism. Therefore, it seems that after the World War I, self-determination concept acquired important place in international relations. This is confirmed by the fact that the concept has been promoted by Vladimir Lenin or Woodrow Wilson, although their interpretation of the self-determination differed and was mostly stemming from their political interests.[20] In that regard, it is important to mention, the understanding of the concept of the former US president, Woodrow Wilson. He claimed that the self-determination principle is very closely connected with the democracy. In this context, former US president also addressed the issue of minorities by stating that concept of self-determination automatically encompasses the protection of minorities.[21] Lenin's idea of self-determination differed quite significantly from the one, Wilson has declared. Lenin perceived self-determination as a concept, based on which a violent secession was the only way how to free people from the oppressive bourgeois powers.[22]

However, it is important to emphasize that self-determination was not included in the Covenant of the League of Nations (LON). The reason for that is related with the fact that self-determination has been seen, at the time, as political principle rather than right under international law.[23] Aaland Islands case can serve as a confirmation of above-mentioned. In 1920, the Aaland Islands question was brought by the British Foreign Secretary Lord Curzon, to Secretary-General of the LON. British Foreign Secretary justified this action by the Art. 11[24] of the Covenant of LON, since the conflict over Aaland Islands had a serious potential to

[17] For Summers nationalism: „… uses the "nation" as the basic unit of politics." and „(…) nationalism does not seek any general definition of a nation, leaving it to individual nationalisms to fill in the relevant details. This leaves the doctrine very slippery as a concept, but also very flexible and dynamic (...)." It is worth to mention that the author of the article delimited two principles of the concept. First „ the world is divided into nations" and second, „ the nation is the basis for the state". See, J. Summers, The Right of Self-Determination and Nationalism in International Law, International Journal on Minority and Group Rights 12, 2005, p. 325-326.
[18] Senaratne, (n2), p. 465.
[19] Summers, (n17), p. 353-354.
[20] C. Saladin, Self-Determination, Minority Rights, and Constitutional Accommodation: The Example of the Czech and Slovak Federal Republic, 13 MICH. J. INT'L L. 172 (1991), p. 179-180.
[21] Ibid. p. 180.
[22] M. Sterio, On the Right to External Self-Determination: "Selfistans," Secession and the Great Powers' Rule, forthcoming in 19 MINNESOTA JOURNAL OF INTERNATIONAL LAW (2010), p. 3-4.
[23] Senaratne, (n2), p. 465.
[24] Covenant of the LON, (1920), Art. 11 reads as follows: „Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In

threaten the international peace.[25] Newly established LON responded on this request and appointed Committee of Rapporteurs as well as Commission of Jurists to assess the case. When it comes to doctrine of self-determination, both came to similar conclusion, by which self-determination, is political principle. In that regard, the Commission of Rapporteurs claimed following: „This principle [self-determination] is not, properly speaking a rule of international law and the League of Nations has not entered it in its Covenant."[26]

The situation has changed after WWII, when self-determination doctrine was included in the Art. 1(2) of the Charter of the United Nations (UN Charter), where was stated following: „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."[27] This was again emphasized on the Art. 55 of the UN Charter.[28] However, it is questionable whether the inclusion of the concept under the Charter automatically meant that the self-determination has been recognized as the right under international law. It may be considered that the vague and general form in which self-determination principle was expressed in the UN Charter, may only show that it has not created a legal obligation. However, the truth remains that the inclusion of the principle has definitely presented a step forward.[29] The years which followed after the principle has been included under the UN Charter, have been carried in the spirit of changes associated with the perception of the self-determination principle. Consequently, self-determination has changed its form from principle to right of the international law recognized by international community. This was also supported by the fact that after 1945, self-determination was established in numerous international instruments as well as applied in specific cases.[30]

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case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends."

[25] The Åland Islands Question – A League Success Story, The Invention of International Bureaucracy. https://projects.au.dk/inventingbureaucracy/blog/show/artikel/the-aaland-islands-question-a-league-success-story/

[26] Report of the Commission of Rapporteurs on the Aaland Islands Question, League of Nations, 1921 (B7.21/68/106).

[27] UN Charter, Art. 1 (2).

[28] UN Charter, Art. 55 reads as follows: „With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:"

[29] M. N. Shaw, International law. Cambridge, UK: Cambridge University Press, (2008), p. 252.

[30] Senaratne, (n2), p. 466.

It is worth to mention some instruments, in which the right to self-determination has been established. In the Declaration on the Granting of Independence to Colonial Countries and Peoples, where was declared peoples right to self-determination and based on that people have right to decide about their political status and at the same time pursue their cultural, economic and social development.[31]

In the Resolution has been recognized that the desire of people to free themselves from colonial powers cannot be ignored. Moreover, the efforts of people in Trust and Non-Self-Governing Territories should be supported by UN, so they would be able to attain independence and freedom. Furthermore, in the Resolution was proclaimed following: „(…) the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations (…).”[32] It is very difficult not to notice that in the Declaration, the right to self-determination was mentioned in relation to colonialism and its forthcoming end.

Both Covenants, International Covenant on Civil and Political Rights (ICCPR) as well as International Covenant on Economic, Social and Cultural Rights (ICESC), adopted in 1966, include right to self-determination in Art. 1 (1)[33] and Art. 1 (3)[34].

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States was adopted by the General Assembly in 1970 and the main purpose of the instrument was clarification of some provisions established in the UN Charter. In the beginning of the Declaration was emphasized the importance of preserving international peace and security. Moreover, the document draws attention to the principle of equal rights and self-determination of peoples.[35] It emphasizes that both principles are playing a very important role in international law and their application contributes to „the promotion of friendly relations among States, based on respect for the principle of sovereign equality.”[36] However, at the same time, it is important to keep in mind that the purpose of the Declaration

[31] Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 December 1960.
[32] Ibid.
[33] ICCPR and ICESCR, Art. 1 (1) reads as follows: „All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”
[34] ICCPR and ICESCR, Art. 1 (3) reads as follows „The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”
[35] UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution No. 2625 (XXV), of 24 October 1970, preamble.
[36] Ibid.

is not to encourage any possible movements to interfere with the territorial integrity of the independent States created in accordance with the equal rights principle and self-determination.[37]

The above-mentioned Declaration provided only general approach to self-determination. However, this has changed in following years, when numerous resolutions have been implemented both by General Assembly (GA) and Security Council (SC) which were applying self-determination to different situations. In that regard, self-determination started to transform from the principle to the right under international law.[38]

In 1970, SC decided to bring the following question before the International Court of Justice (ICJ): „ What are the legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council resolution 276 (1970)?"[39] The ICJ stated in its advisory opinion that the continued presence of South Africa in Namibia amounts to illegal activity from the side of South Africa.[40] Accordingly, the ICJ addressed the self-determination principle and stated following: „(…) as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. The concept of the sacred trust was confirmed and expanded to al1 "territories whose peoples have not yet attained a full measure of self-government" (Art. 73). Thus, it clearly embraced territories under a colonial regime (…)."[41]

The right to self-determination has not developed significantly since 1960s. This was also confirmed by the United Nations Millennium Declaration signed in 2000, in which was stated that self-determination is the right of peoples who are under colonial domination or foreign occupation.[42]

[37] Ibid.
[38] Shaw, (n29), p. 254.
[39] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, para 42.
[40] Ibid. para 133 (1).
[41] Ibid. para 52.
[42] United Nations Millennium Declaration (Resolution 55/2) signed in 2020, para. 4.

2.1.2. Three main phases of the right to self-determination

According to Hannum, the development of self-determination right can be expressed through at least three different phases.[43]

The first phase, during which the self-determination concept has been significantly applied was the period after the World War I (WWI). The Paris Peace Conference has been organized in 1919 by the victorious Allies, as the results of which the map of the world has been rearranged.[44] Therefore, the fall of the Great empires such as the Austro-Hungarian, Ottoman, and Russian empires, presented a chance for the people, who shared common characteristics such as language, ethnicity, culture, or territory and who nationally mobilised already in the 19th century, to create their own State.[45] It is important to mention that the people under the colonial domination were excluded from the opportunity to self-determine themselves, as they were not yet "politically mature".[46] The first phase lasted until the end of the World War II (WWII).[47]

Second phase is defined by the moment of establishing UN and inclusion of the self-determination concept under the UN Charter, which was enshrined under Art. 1 (2) and Art. 55 of the UN Charter.[48]

The beginning of 1960s was the period known for the process of decolonization. At that time, the Declaration on the Granting of Independence to Colonial Countries and Peoples has been adopted which clearly developed the scope of the right to self-determination.[49] It can be even claimed that the focus has been shifted from "peoples", who successfully exercised self-determination and developed into the States, into the part of the world, which was unfree, under colonial control. Therefore, during that period, the self-determination right was interpreted as the right of people to free themselves from colonial domination. However, it may be noticed that the self-determination was right exercised by the colonial territories rather than people under colonial rule. The justification for this assertion can be found in the international documents such as UN Charter in relation to the NSGT or Trust Territories, the

[43] H. Hannum, The Right of Self-Determination in the Twenty-First Century, 55 Wash. & Lee L. Rev. 773 (1998), p. 774.
[44] M. Spanu, What Is Self-Determination? Using History to Understand International Relations, 2014, p.1. https://www.e-ir.info/2014/04/17/what-is-self-determination-using-history-to-understand-international-relations/
[45] Ibid.
[46] Ibid.
[47] P. Carley, Self-determination, Sovereignty, Territorial Integrity, and the Right to Secession, United States Institute of Peace, 1996, p. 1.
[48] Ibid, p. 3.
[49] Ibid, p. 3-4.

Declaration on the Granting of Independence to Colonial Countries and Peoples and other international instruments adopted during that period. Therefore, based on the above-mentioned, important was that the colonial territory would achieve its independence irrespective of the different ethnic groups of the territory.[50] Consequently, right to self-determination has been interpreted as a right of the inhabitants of some territory, which has occurred under colonial domination irrespective of their cultural, religious, or ethnic background. However, even above-mentioned interpretation of the right to self-determination, has not guaranteed that it would be automatically applied to all cases complying with that interpretation. As an example, may serve the case of Gibraltar falling into the category of the colony. Therefore, based on the interpretation of the right, the colony could claim self-determination right and free themselves from colonial rule. However, the inhabitants of Gibraltar still remain under colonial rule.[51]

Today's understanding of the right to self-determination has not developed much since second half of 20th century. To the confirmation of this statement may serve Millennium Declaration from 2000, where was reiterated following: „(…) the right to self-determination of peoples which remain under colonial domination and foreign occupation (…)."[52]

Third phase of the development of the right to self-determination is controversial and understandably not accepted by all the members of international community. Hannum identifies third phase and at the same time claims that such a development of the self-determination right is not internationally accepted.[53] New ideas suggest that the self-determination right could be exercised by those who share same culture, religion, ethnicity or language, by other words, minorities of some territory. However, it is questionable to what extent, it has been accepted by the international community. The main reason for such a statement is preservation of the territorial integrity of the State.[54] It is quite understandable, since in this context, the recognition of the right to self-determination to minorities would have a potential to lead to secession from the State.[55] Therefore, for obvious reasons, the international actors have different interpretation of the scope of the self-determination right.

[50] Hannum, (n43), p. 775.
[51] H. Quane, The United Nations and the Evolving Right to Self-Determination, The International and Comparative Law Quarterly, Jul., Vol. 47, No. 3 (1998), p. 552-553.
[52] United Nations Millennium Declaration (Resolution 55/2) signed in 2020, para. 4.
[53] Hannum, (n43), p. 776.
[54] Ibid.
[55] Ibid.

To sum up, the roots of the self-determination concept, can be traced back to 18th century. The concept was developing and in the beginning of 20th century self-determination was perceived as a principle, which has been used by those, who shared some common characteristics and whose efforts for independence and own political unit amounted to establishment of the States, if they were successful enough. Later the concept was involved under UN Charter and consequently it transformed into the right during the decolonization period. When the process of formulation of new States was assumed to be completed, the attention has been drawn on the territories under colonial rule, which have not attained independence yet. The self-determination started to be interpreted as a right of people or better said, territories to free themselves from colonial Superpowers. At that time, the two dimensions of the self-determination right, have been developed. Both will be presented in the next section. It seems that the interpretation of the right to self-determination has not evolved significantly, since the second half of the 20th century. The new suggestions to interpretation of the self-determination right have been brought, but understandably have not met with global support. However, the question may arise, whether there can exist serious circumstances under which the opinion of the international community could possibly change. At the same time, if there is no room for development of the right to self-determination, does it mean that it has become superfluous?

2.2 Internal and external forms of the right to self-determination

The purpose of this section is to provide better understanding of the two main dimensions of the right to self-determination. It starts with describing the origin of the internal and external forms of the right and continues with their definitions. It includes the international, regional documents, in which the dichotomy is directly included. Two subsections elaborate both forms of the right more in detail.

It is very important to detect the roots of the internal and external forms of self-determination right. It can be stated that the roots of the dichotomy can be traced back to the second half of the 20th century, when the self-determination has developed and started to be associated with the de-colonization movement and therefore, as a right of colonial people for independence and freedom and as a right of those under foreign occupation.[56]

[56] Senaratne, (n2), p. 466-467.

According to that, number of international actors believed that the complexity of the right required its specification which has been reflected into two aspects of the right. The demand for the dichotomy of the right has been expressed by the representative from Netherlands in 1950s, when both ICCPR and ICESCR were in the stage of drafting. His main argument for two dimensions of one concept was based on the fact that the right is very complex, and two aspects of the right would better reflect reality of the self-determination. Whereas, internal dimension of the right would focus on national level, external self-determination would be related with the international aspect. Therefore, right of people for independence from the colonial power has been categorized under external form of the self-determination right.[57] It can be considered that since the "peoples", (who are "peoples" will be specified in the next section), exercised self-determination and organized themselves into the States, self-determination expanded in order to include those, who were unfree and under colonial domination and included them under the term "peoples". However, just because the peoples organized themselves into the States, does not mean that they stopped being the right holders. At that point, they started to exercise it internally. According to Cristescu „(…) this means that such peoples are at liberty to choose their institutions, to conduct their domestic and foreign affairs freely, and to pursue their economic, social and cultural development."[58] External strand was therefore attributed to colonial people and those under foreign occupation who haven't determined their political status yet.

According to the most established doctrine, internal self-determination amounts to the preserving of the territorial integrity of the State and the idea that already existing boundaries of the State should remain unchanged. Moreover, it is regarded that the possible changes can be conducted only when it comes to the internal organization within the State. On the other hand, external self-determination can be construed as a way to achieve the change of the existing borders. It can be also understood as reconstruction of the States and their boundaries.[59]

However, it can be considered that the establishment of the two aspects of the right to self-determination, has been inevitable because of the historical changes. According to Senaratne, „(…) the contemporary "internal"/"external" dichotomy is one lens - but not the only one - through which self-determination can be understood; with its numerous dimensions and dichotomies in a state of constant change. The resulting absence of a concrete meaning

[57] Senaratne, (n2), p. 467.
[58] Cristescu, (n12), para. 286.
[59] Senaratne, (n2), p. 476.

suggests that the dichotomies attributed to the concept are constructed ones, and these can change anytime. It gives us the ability to think more broadly about the concept."[60] This brings an idea that the future development of the right is not only possible but also inevitable. Therefore, it may be considered that under certain circumstances, the minorities will also be able to exercise the external form of the right in the future. Despite the fact that today's position of the international actors about such issue, is certainly not clear.

2.2.1. Brief analysis of the international, regional or national instruments

There exists not that many international instruments, where the right to internal self-determination has been distinguished from external form of the right. Even when the self-determination as a concept and later as a right has been anchored in the documents, it was very often accompanied with the vagueness and lack of clarity.[61] Therefore, below are mentioned the documents, in which the two dimensions of the right to self-determination are directly recognized.

UN Committee on the Elimination of Racial Discrimination (CERD) in its General Recommendation No. 21 on the right to self-determination addressed both, internal and external strands of the self-determination right. In relation to internal part, it expressed following: „(....) the right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference (…)"[62] Then it continues with the stating that the governments are generally responsible for ensuring protection for all the people within its territory irrespective of the race, descent or national or ethnic origin of the individuals.[63] On the other hand, the external form of the self-determination right has been defined as follows: „The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation."[64] Another international document, where the two aspects of the right were recognized, was Helsinki Final Act from 1975, in which was highlighted the fact that all the States, which take part in

[60] Senaratne, (n2), p. 479.
[61] Quane, (n51), p. 542.
[62] UN Committee on the Elimination of Racial Discrimination (CERD) in its General Recommendation No. 21 (4).
[63] Ibid.
[64] Ibid.

the Conference, recognize the principle of equality and the self-determination right of peoples. When it comes to self-determination right, it is emphasized that all peoples have right to decide about their" internal and external political status."[65] In that context, the document also highlights the importance of respecting of this principle and preserving the friendly relations among the international actors.[66]

When it comes to national level, it is important to mention that the right to self-determination is enshrined in most, if not all the Constitutions of the States all over the world. However, in those cases, self-determination is meant as internal. There exist only a few Constitutions which recognize the dichotomy of the right to self-determination. The Constitution of Ethiopia, which includes both, internal and external right to self-determination, serves as a very rare exception to the rule that the Constitutions include only internal form of self-determination right. This dichotomy is embedded in the Art. 39 of the Ethiopia's Constitution, which ensures following "unconditional right to self-determination, including the right to secession."[67]

2.2.2. Right to Internal Self-Determination

Internal dimension of the right to self-determination is generally understood as the right of people within the sovereign State to elect their own representatives, have government based on their will, manage its internal affairs and therefore it also means freedom from the interference from another State.[68] Antonio Cassese, Italian jurist and the leading scholar who has further developed the dichotomy of the self-determination right stated that internal right to self-determination also encompasses the protection of minorities within the State, which must be ensured by the government.[69]

2.2.2.1. The scope of the internal form of the right

With the internal self-determination are related the notions such as liberty, human rights, or democracy. From a historical point of view, in the beginning of 20th century, former US

[65] Conference on Security and Co-operation in Europe Final Act, Helsinki 1975, principle VIII, Equal rights and self-determination of peoples.
[66] Ibid.
[67] A. Cats-Baril, Self-determination, International IDEA, This Constitution Brief, (2018), p.5.
[68] V. Van Dyke, Self-Determination and Minority Rights, International Studies Quarterly, Vol. 13, No. 3, (1969), p. 226.
[69] Senaratne, (n2), p. 468.

president, Woodrow Wilson, when speaking about self-determination, claimed that the emphasis should be placed on democratic regime within the State, which is nowadays considered as a main aspect of the internal right to self-determination.[70]

Therefore, as was already mentioned above, internal self-determination is directly associated with the democracy and based on that the people in the State are able to elect democratic government which will represent their interests.[71]

Other democratic practices which are offered by internal dimension of the right, are option of autonomous region or creation of the federal systems.[72] In that regard, as was also mentioned by Amanda Cats-Baril „(…) internal self-determination is often a tool for conflict mitigation (…).”[73] However, in that context, it is important to highlight the fact that the minority groups cannot claim neither internal, nor external form of the self-determination right. However, there exist the cases, in which the autonomy, as a demonstration of the internal self-determination, has been granted to a minority within the State.[74] As an example can be presented the case of South Tyrol, inhabited by a German speaking majority, which was transferred to Italy, after the WWI. Before these events occurred, the region was part of Austro-Hungarian Empire.[75] After WWII, the Gasperi-Gruber Agreement was concluded between Austria and Italy. The text of the document, signed in 1946, guaranteed German-speaking persons, who lived in the province, equal rights, same as were enjoyed by the Italian-speaking persons. „Moreover, the populations of these regions will enjoy legislative and executive autonomy;”[76] However, the agreement has not directly supported the idea of minorities having the right to internal self-determination.[77] Therefore, in some cases, the State may decide to grant autonomy as a form of internal self-determination, to some region, inhabited by the minority, which is majority within that region. However, it has to be kept in mind that minority is not perceived as “peoples”.

Another aspect of internal right to self-determination is that the internal affairs are managed within the State, without the interference from another State. Despite the fact that the international actors usually recognize the internal right to self-determination and therefore that

[70] Saladin, (n20), p. 179-180.
[71] Senaratne, (n2), p. 471.
[72] Cats-Baril, (n67), p. 3.
[73] Ibid.
[74] Cassese (n1), p. 104.
[75] C. Biaggi, Historical controversy in disputed regions. The case of South Tyrol, 2021. https://www.euroclio.eu/2021/01/06/historical-controversy-in-disputed-regions-the-case-of-south-tyrol/
[76] Annex I, The Austrian Delegation to the Secretary General of the Paris Peace Conference, 1946. https://history.state.gov/historicaldocuments/frus1946v04/d297
[77] Cassese (n1), p. 105.

no other State is allowed to interfere to internal affairs of another State, the history has shown that this is sometimes ignored by the States, which pursue their own political interests. The Intervention to Czechoslovakia in 1968 by Soviet Union, can serve as one of numerous examples, when the internal right has been violated. In that case, Soviet Union, obviously, denied the fact that they would not respect internal right to self-determination, instead of that they claimed that all of the people of socialist countries enjoy self-determination right. However, the right of people to manage their internal affairs by themselves, cannot violate the values built by socialism.[78] Based on that, the right of people within a sovereign State has been accepted only to the extent that it falls within the socialist ideology.

The existence of two dimensions of the right to self-determination, appears to be understandable and even necessary. Currently, no one questions the existence of the dichotomy of the right to self-determination since its significance is undeniable. It can be claimed that the prevalence is given to internal rather than external form of the self-determination right, since the meaning of the former is amounted to people's decision to choose the democratic government of their will and therefore, decide about their future within already existing sovereign State, protection of all groups of people within the State and the guarantee that these minority groups will not be oppressed by the government. Freedom from foreign intervention is also guaranteed by this form of self-determination.[79]

2.2.3. Right to External Self-Determination

External form of the self-determination right is generally interpreted as a right of "peoples" to decide about their political and international status. The origin of the external right to self-determination is related with the period of de-colonization. That was a time, when the international community decided to respond to claims of those, who lived under the colonial rule and give them the opportunity to free themselves from such a domination.[80] The fact is that self-determination principle embedded in the UN Charter under 1 (2) could be interpreted from today's perspective as of external form.

Today's understanding of the external right to self-determination has not developed much since 1960s, it is still interpreted as a right of those who are under colonial rule and those under foreign occupation[81] but not only. However, the answer to the question, who can claim

[78] Van Dyke, (n68), p. 226–227.
[79] Senaratne, (n2), p. 468.
[80] Cassese (n1), p. 71.
[81] United Nations Millennium Declaration (Resolution 55/2) signed in 2020, para. 4.

external right to self-determination, is developed in the next section. The scope of the external right to self-determination is elaborated below.

2.2.3.1. The scope of the external form of the right

In the second half of 20th century, the focus was redirected on the territories under colonial power. Therefore, the external form of the right primarily dealt with the cases of colonial domination over the territories and the people who lived there. In these kind of situations, the uti posseditis[82] principle has been applied. The territories which were administered by the colonial authorities, after the self-determination claims and the process of de-colonialization, became the territories of the newly created States.[83] The question may arise, whether this approach is justified, considering the fact that the self-determination is expressed as peoples right, not the right which belongs to territories. However, it also has to be emphasized that people within those territories were identified as "peoples", who exercised external right to self-determination. In that regard, it can be said that this border demarcation is unfair and not considering groups which share common cultural and ethnic background, unlike it was in the beginning of 20th century. Therefore, the argument can emerge that this groups should be able to create their own and separate entities apart from those, they shared with others during the colonial domination. However, based on the same logic, there can always exist a group, which will refuse to live within the newly created State and therefore, could use the same argument to separate and become an independent entity.[84] However, this kind of thinking has a potential to create infinite and at the same time unsustainable situations. Salman Rushdie asked in his book following question: „Why don't we just draw a circle around our own two feet and call it Selfistan?"[85] Therefore, the territorial integrity of the States is regarded as priority and any interference with the State's integrity, should be allowed only under the extreme circumstances.

It seems quite justified that the external right to self-determination, during the decolonization process, in spite of being defined as right of peoples, in reality was expressed as right which belonged to the peoples living in the territories. Therefore, the "territorial concept of peoples"

[82] The principle is defined by Legal Information Institute as follows: „ uti possidetis juris (UPJ) is a principle of customary international law that serves to preserve the boundaries of colonies emerging as States. Originally applied to establish the boundaries of decolonized territories in Latin America, UPJ has become a rule of wider application, notably in Africa.
https://www.law.cornell.edu/wex/uti_possidetis_juris

[83] R. Howse & R. Teitel, Humanity Bounded and Unbounded: The Regulation of External Self Determination under International Law, 7 L. & Ethics HUM. Rts. 155 (2013), p. 157.

[84] Ibid, p. 160.

[85] Salman Rushdie, Shalimar the Clown.

has been applied.[86] It can be suggested that the uti possidetis principle served as a method of avoiding potential conflicts. However, to what extent it was successful, is questionable.

External right to self-determination can be also claimed by those, who are under the foreign occupation.[87] The case of East Timor, which was under the Indonesian occupation between 1976 and 2002, may serve as an example of above-mentioned. The State was first colonized by Portugal and later, occupied by Indonesia. UN GA and SC passed several resolutions, in which the acts of Indonesia, were condemned.[88] In the GA Resolution 3485 (XXX), UN GA called upon Indonesia to "withdraw without delay its armed forces from the Territory in order to enable the people of the Territory freely to exercise their right to self-determination and independence."[89]

To sum up, the two dimensions of the self-determination right were introduced in the second half of the 20th century during the drafting of the two human rights Covenants. It can be considered that the reason for establishing two strands of the right may stem from the fact that the internal right to self-determination would better fulfil the needs of the newly created States and those who already exercised external right to self-determination. On the other hand, external form of the right would be determined for those people who were under colonial domination or foreign occupation and they craved for freedom and independence.

2.3 Who can claim external right to self-determination?

The focus of this part of the Chapter is aimed on the question, who can claim self-determination as it is enshrined in the UN Charter. Next subsection asks similar question, who can claim external right to self-determination, taking into consideration the decolonization process. The answer can be found in the General Assembly Resolution 1514(XV): Declaration on the Granting of Independence to Colonial Countries and Peoples. This section also enquires whether there exist some groups that could be also considered as right holders of the external form of self-determination.

2.3.1. Interpretation of the term "peoples"

[86] Quane, (n51), p. 552.
[87] Cassese (n1), p. 93.
[88] Indonesian occupation of East Timor
https://en.wikipedia.org/wiki/Indonesian_occupation_of_East_Timor#cite_note-73
[89] GA Resolution 3485 (XXX), Adopted at the 2439th plenary meeting 1975.

2.3.1.1. The term "peoples" under UN Charter

Self-determination principle has been included in the UN Charter which was signed on 1945. There are two provisions in the international instrument, which refer to self-determination. Art. 1 (2) reads as follows: „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;"[90] and in Art. 55 of the UN Charter, which states following: „With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (…)."[91] As it can be noticed, first international instrument, in which self-determination concept has been enshrined, is not providing any clarification on the term "peoples".[92]

However, the term "peoples" has not been mentioned under the UN Charter only in relation with the self-determination principle. Therefore, the meaning of the term, can possibly be found by assessing other articles, in which the "peoples" have occurred.[93] The document will be interpreted in the way it is stated under the Vienna Convention on the Law of Treaties (VCLT). That means that: „A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[94] Based on the general interpretation of the subjects under the international law, which prevailed in 1945, the term "peoples" from the UN Charter, referred to States. This suggestion can find its justification in the Preamble of the UN Charter, which refers on "We the peoples of the United Nations determined (…)"[95] and it ends with the following "(…) our respective Governments (…), who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations (...)."[96] Therefore, if above-mentioned suggestion would be regarded as correct, the term "peoples" would be interpreted as the States. In that regard, self-determination could be interpreted as a "sovereign equality".[97]Another possible interpretation of the term "peoples" in the context of the self-determination principle, as it is enshrined in the UN Charter, can be taken from the Chapter XI and XII of the UN Charter. In relation to that, "peoples" are associated with the

[90] UN Charter, Art. 1 (2).
[91] UN Charter, Art. 55.
[92] Schreuder, (n8), p. 54.
[93] Quane, (n51), p. 539.
[94] Vienna Convention on the Law of Treaties, (1969), Art.31.
[95] Preamble of the UN Charter, 1945.
[96] Ibid.
[97] Quane, (n51), p. 547.

Non-Self-Governing Territories (NSGT)[98] as well as Trust Territories[99]. Therefore, it may be considered that the term "peoples" as it is expressed in the Art. 1(2) and Art. 55 could possibly amount to the inhabitants of the NSGT or the Trust Territories. Based on that, self-determination could be construed as a right to independence or self-government. According to that, the possible meaning of the self-determination principle as enshrined under Art. 1 (2) and Art. 55 could amount to right of people to free themselves from colonial domination.[100]

Another possible interpretation of the term "peoples" has been elaborated by the UN Special Rapporteur, Mr. Aureliu Cristescu.[101] According to Cristescu, the "peoples" are differentiated from the terms as "nations" or even "States", which are both included under UN Charter. „The question was raised in the Co-ordination Committee as to whether the juxtaposition of' friendly relations among nations' and 'self-determination of peoples' is proper. There appears to be no difficulty in this juxtaposition since 'nations' is used in the sense of all political entities, states and non-states, whereas 'peoples' refers to groups of human beings who may, or may not, comprise states or nations."[102] Based on the above-mentioned, it is quite clear that the term "peoples" is distinguished from "nations"[103] and "States"[104], which are interpreted in the narrower way. On the other hand, "peoples" is very wide term and possibly applies to all people, irrespective of the fact whether they organized themselves into the States or not.[105] Based on that the interpretation of "peoples" has the universal character. Furthermore, the definition of the term "peoples" was introduced by the Cristescu, in which is stated following:

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[98] UN Charter, Art. 73.
[99] UN Charter, Art. 76.
[100] Quane, (n51), p. 540-544.
[101] Aureliu Cristescu was a Special Rapporteur, who was designated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its twenty-seventh session, by its resolution 3 (XXVII) adopted on 16 August 1974.
[102] Documents of the United Nations Conference on International Organization, CO/156 (vol. XVIII), p. 658.
[103] Nations are interpreted in the following manner: „Nations —entities to which the Charter of the United Nations refers at several points — are also holders of equal rights and the right of self-determination." and „History shows that the emergence of the nation as a form of human community and a form of development of the national life of peoples is an inevitable social process, a necessary and compulsory stage in the evolution of every people. The nation has always had a powerful influence on the economic, social and political progress of peoples." See, Cristescu, (n12), paras. 280-281.
[104] States are interpreted in relation to self-determination as follows: „States —that is to say, peoples constituted as States — are the holders of the right to equality and self-determination, and they cannot be deprived of it because they have formed an independent State; this means that such peoples are at liberty to choose their institutions, to conduct their domestic and foreign affairs freely, and to pursue their economic, social and cultural development. The object of the exercise of the right of self-determination is the achievement of full sovereignty and complete independence, and all States should try to ensure that peoples which have exercised this right can choose to live under a régime that is truly sovereign and fully independent, for only then can the goal of the sovereign equality of States be attained. The application of this principle is an essential factor in political, economic, social and cultural development, and respect for it is a prerequisite for progress, because it implies for all peoples constituted as States the right to decide on their own future without foreign interference, on the basis of the free and genuine expression of their will." See, Cristescu, (n12), para. 286.
[105] Cristescu, (n12), para. 268.

„(…) *(a)* The term "people" denotes a social entity possessing a clear identity and its own characteristics; *(b)* It implies a relationship with a territory, even if the people in question has been wrongfully expelled from it and artificially replaced by another population; (c) A people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognized in article 27 of the International Covenant on Civil and Political Rights."[106]

Despite the fact that the definition of "peoples" was developed, in my opinion, it is still accompanied with the vagueness and confusion. The situation, in which the "peoples" based on the above-mentioned definition, exercise self-determination and organize themselves into the State, may be suggested. However, it is very possible that within their territory of the newly created State are living other "peoples" who have not had the same opportunity to exercise self-determination and create the State. In my opinion, that social entity amounts to "peoples" and therefore, self-determination principle applies to them, they just cannot exercise it or exercise it only in exceptional situations since, „the application of the principle to all peoples should not be interpreted as an encouragement to secessionist or irredentist movements, or as justifying activities aimed at changing a country's system of government."[107] As an example to above-mentioned statement can serve the case of Quebec, in which was asserted that in spite of considering the fact that the population of the province of Quebec could amount to term "peoples" (therefore, the external right to self-determination is attributable to them), cannot secede from Canada.[108] However, even in case that "peoples" have not exercised self-determination and didn't create own State, cannot be mistaken with the minorities, which are excluded from the scope of the term of "peoples". Even though, in some kind of situations, it can be a bit problematic to differentiate minorities from above-mentioned "peoples".

The fact that so many interpretations of the term "peoples" associated with the self-determination principle, have emerged, only confirms the vagueness and unclarity which is accompanied with the principle introduced by the UN Charter.

Next subsection will provide more specified view on the term "peoples" and how it developed in the 1960s, it can be considered, when the "peoples" have exercised self-determination and successfully organized into the States. Therefore, the focus has been shifted from those who

[106] Cristescu, (n12), para. 279.
[107] Ibid, para. 268.
[108] Reference by the Governor in council, pursuant to Art. 53 of the Supreme Court Act, concerning the secession of Quebec from Canada, S.C.R. 217, ilm 37 (1998), para. 138.

completed self-determination process, to the part of the world, which has not had that opportunity yet.

2.3.1.2. The term "peoples" during decolonization period

The term "peoples" linked to self-determination principle, has been developed by the state practice, during the years which were known by the decolonization process. During that period, the interpretation of "peoples" has been narrowed and was attributed to those who lived under colonial power. Based on the self-determination right they could free themselves from such a domination.[109] ,,This narrow interpretation of "peoples" may be reconciled with the apparent universality of the provision by adopting the position that self-determination has already been exercised by peoples in existing States and must now be "universalised" to apply to colonial peoples."[110]

General Assembly Resolution 1514(XV): Declaration on the Granting of Independence to Colonial Countries and Peoples adopted in 1960, serves as a confirmation of the above-mentioned. Its text includes following, ,,All 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,"[111] The document is interpreted by taking into consideration its object and purpose.[112] The Resolution refers to inhabitants of Trust and Non-Self-Governing Territories. Therefore, "all peoples" as enshrined in the Resolution 1514 are interpreted as colonial people. However, the question may arise, what exactly does it mean? The right of peoples to self-determination is related with the territory which is under colonial rule. Territorial aspect in defining colonial people who can claim self-determination, plays a crucial role, rather than ethnic origin of the people within the territory.[113] Even the Resolution 1514 emphasizes on the importance of the complying with the territorial integrity principle and states following: ,,Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."[114] Therefore, the ethnic origin of the different people within

[109] Schreuder, (n8) p. 54.
[110] Quane, (n51), p. 548-549.
[111] General Assembly Resolution 1514(XV): Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960, 2.
[112] Vienna Convention on the Law of Treaties, (1969), Art.31.
[113] Quane, (n51), p. 549-550.
[114] General Assembly Resolution 1514(XV): Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960, 6.

the territory has been overlooked and the self-determination has been attributed to "all peoples" within the territory which was under colonial domination.[115]

The decolonization period was also a time, during which, the self-determination principle started to be slowly transformed into the right and the two dimensions of the right have been introduced.[116] The external form of the right has been interpreted as a right of people for independence and freedom from colonial domination.[117]

2.3.1.3. The term "peoples" and minorities as two different concepts

Building upon the above-mentioned, it is important to reiterate, who is not amounting to interpretation of the term "peoples" and thus, do not have external right to self-determination. Since the 1945, when the self-determination principle was anchored in the UN Charter, there existed a very clear understanding that the concept of minorities and the "peoples" are two different terms.[118] This form of the unwillingness from the States is quite understandable and arising from the fear of the international community that the possible inclusion of the minorities into the term "peoples" would be a confirmation that they could claim self-determination. The States were and still are concerned that their territorial integrity would be put in danger and that the minorities could very easily see the external form of self-determination as a permission for secession in case the situation within the State would not be satisfactory.[119]

2.4 Concluding Remarks

UN Charter, as first international document, included self-determination principle and mentioned it in its two Articles. Answer for the question who can exercise self-determination principle, as it is included under the UN document, is "peoples". However, the term "peoples" falls under several interpretations. Cristescu introduced quite general interpretation of the term "peoples", which differs from terms "Nations" or "States". In my opinion, some "peoples" were more successful than others and based on the self-determination principle, decided about their political status by organizing themselves into the States. However, this process can be considered as completed. The fact that some "peoples" exercised self-

[115] Quane, (n51), p. 550.
[116] Senaratne, (n2), p. 466-467.
[117] Howse & Teitel, (n83), p. 157.
[118] Schreuder, (n8), p. 54.
[119] Ibid. p. 56.

determination, it does not mean that they stopped being the right holders of the right. They started to exercise it internally. However, as was already mentioned above, the "peoples" already exercised self-determination and determined their political status. At that time, the focus has been shifted on those who have not had the opportunity to exercise self-determination yet, colonial people and those under foreign occupation. At that time, the dichotomy of the self-determination right has been fully established and internal form was exercised by those who organized themselves into some political unit and external form of the self-determination right was attributed to people who were under colonial domination or foreign occupation. The term "peoples" has not developed significantly since the beginning of the decolonization period. Therefore, to answer the question, who can claim external right to self-determination and as a result determine own political status such a creation of own State, from today's perspective, would be colonial people and people under foreign occupation. However, some already existing States consist of more than one "peoples" as defined by Cristescu. There may occur situation when the social entity within the State, decides to exercise external right to self-determination, therefore wants to separate and establish own State. This could be possibly justified, if they are falling under the scope of "peoples" and therefore have external right to self-determination. However, the claims of these "peoples" are mostly rejected and this is supported by the protection of the territorial integrity of the States. The Supreme Court of Canada in its conclusion about the secession of the Quebec from Canada, stated following: ,,In summary, the international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination. Such exceptional circumstances are manifestly inapplicable to Quebec under existing conditions. Accordingly, neither the population of the province of Quebec, even if characterized in terms of "people" or "peoples", nor its representative institutions, the National Assembly, the legislature or government of Quebec, possess a right, under international law, to secede unilaterally from Canada."[120] Therefore, the inhabitants of Quebec possibly amount to term "peoples" and they could exercise external right to self-

[120] Reference by the Governor in council, pursuant to Art. 53 of the Supreme Court Act, concerning the secession of Quebec from Canada, 1998, S.C.R. 217, ilm 37 (1998), para. 138.

determination, however, only in case, they would met with the above-mentioned, limited circumstances.

From above-mentioned, it could be considered clear enough to see who the "peoples" are, in the claims of external self-determination right. In that regard, it is important to mention who are not "peoples". Minorities were always distinguished from the term "peoples" as not falling under the scope of the term. The truth remains that the international community consisting of the States, is unable to include minorities under the "peoples" and the following Chapter will provide relevant reasons why. However, in spite of such limitation of the external right to self-determination, the fact remains that new entities emerge time to time and for justification of such a secession from the States, they use external self-determination claims, without fully understanding interpretation of the right or the term "peoples". The success of their existence depended on the fact whether they receive support from international community, or better said Great Powers.[121] However, this may be reflected in the political interests of the States rather than legal. The question may arise, how the international community responds to this limited interpretation of the external right to self-determination and what does it mean for the right itself?

The following Chapter elaborates the concept of "minorities" and the question whether the minorities can claim external right to self-determination.

[121] Senaratne, (n2), p. 466-467.

3. Minorities and the right to external self-determination

Well established understanding of the external right to the self-determination is that only those falling under the scope of "peoples" can claim the right. Based on the above-mentioned, minorities are not considered as "peoples" and thus, cannot claim external right to self-determination. This Chapter is divided into two main parts. First part focuses on the concept of "minorities" and second part asks the question, whether the minorities can claim external right to self-determination and at the same time, deals with the specific reasons why the minorities are excluded from the opportunity to claim such right. The relevant reasons such as protection of the territorial integrity of the States, danger of the secessionist movements or the claim that there already exist the international instruments which ensure protection of the minorities are presented.

3.1 The concept of "Minority"

It seems that the international community has been unable to develop a clear definition of the concept of minorities. The truth remains that after WWII, almost all the attention has been directed on the individual rights, failing to address the collective rights, which are associated with the minorities.[122] It may be argued that there have emerged a few attempts from the international community to establish one clear definition of the minorities. However, all these attempts failed or were postponed. Therefore, the question may arise, what is the definition of the concept of "minority"?

The first attempts to define the minorities have origin in the work of the Permanent Court of International Justice (PCIJ) and specifically in the Advisory Opinion on Minority Schools in Albania, in which was stated following: „The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and cooperating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs."[123] In another paragraph of the Advisory Opinion is highlighted the fact that persons sharing racial, religious or linguistic characteristic in other term (minorities) should be treated

[122] F. Palermo, Current and Future Challenges for International Minority Protection, European Yearbook of Minority Issues (Brill), (2011), p. 22.
[123] P.C.I.J., Advisory Opinion of April 6th, 1935, Series A./B. No. 64, Minority Schools in Albania, para. 48.

equally same way as other nationals of the State[124] and the special characteristics which the members of the minority are sharing have to be preserved by the State.[125]

Despite the fact that after the WWII, the focus was mostly aimed on individuals and theirs rights, there emerged efforts from the international community to define the concept of minority. Art. 27 of the ICCPR[126] serves as a proof of above-mentioned. According to Scheinin: „Article 27 of the Covenant represents a broad understanding of minorities and minority rights (…)"[127] and at the same time Scheinin compares it with the notion of "national minority" which is mostly characterised by the group, which members have to be the citizens of the State and has long history within such State.[128] The Scheinin continues by stating that: „The Covenant speaks of 'ethnic, religious or linguistic minorities' and applies even to groups that have recently arrived or are temporarily based in the country in question."[129] Despite the fact that the focus of this paper is directed on the concept of "minorities" and its link with the external right to self-determination, it is important to keep in mind the existence of the narrower concept "national minorities".

Scheinin claims that the members of the national minority "must be citizens of the State."[130] However, such a statement is not very accurate. The Framework Convention for the Protection of National Minorities is a regional document of the CoE (Framework Convention), which encompasses the provisions on protection of the national minorities but does not include the definition of the national minority. The reasons may stem from the fact that there exists no consensus amongst member States of the CoE on the definition. Therefore, the margin of appreciation given to States can be regarded as wide. However, the States have to keep in mind that while defining the concept of national minority, they have to act in a good faith and act in accordance with their obligations arising from the international and regional instruments, which they have ratified.[131] The manner in which the national minorities are defined by the State Parties, differ significantly. Some of the States take "an open approach", according to which the non-citizens are also included under the concept of

[124] P.C.I.J., Advisory Opinion of April 6th, 1935, Series A./B. No. 64, Minority Schools in Albania, para. 50.
[125] Ibid, para. 51.
[126] ICCPR, Art. 27 reads as follows: „In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."
[127] M. Scheinin, Indigenous Peoples' Land Rights Under the International Covenant on Civil and Political Rights, Aboriginal Policy Research Consortium International (APRCi), 2004, p. 5
[128] Ibid
[129] Ibid.
[130] Ibid.
[131] About the Framework Convention for the Protection of National Minorities https://www.coe.int/en/web/minorities/at-a-glance#{%2279030665%22:[1]}

national minorities. Sweden or the UK can be presented as exceptions, which went for "open approach" and therefore, the Framework Convention on National Minorities applies also to non-citizens.[132] However, most of the States choose "restrictive approach", by which the non-citizens are excluded from national minority concept.[133] Therefore, in my opinion the nationality criterion, when it comes to national minorities, depends on States and how they decide to define the concept. It seems that there exists not that strong difference between the concepts of "minority" and "national minority". However, in my opinion, the "national minority" is mostly used within European space. Therefore, the preference in this paper is given to generally used concept of "minority" as established in the Art. 27 of the ICCPR and its interpretation developed by the Human Rights Committee in General Comment No. 23. The Committee claims that the "the persons designed to be protected" mentioned in the Art. 27, are defined as those, who belong to a group and share some common characteristics such as religion, language and/ or culture.[134] It is also stated in the General Comment that "the individuals designed to be protected" do not have to be citizens of the State.[135] Moreover, Article 27: „(…) confers rights on persons belonging to minorities which "exist" in a State party."[136]

The efforts of the Sub-Commission on Prevention of Discrimination and Protection of Minorities[137] (later known as The Sub-Commission on the Promotion and Protection of Human Rights - Sub-Commission) were aimed in defining the term minorities. As a result, only some suggestions have been brought but have not amounted to one and final definition.[138] Later, in 1977 Francesco Capotorti,[139] suggested a following definition of the minorities, which reads as follows: „A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture,

[132] Palermo, (n122), p. 33.
[133] About the Framework Convention for the Protection of National Minorities https://www.coe.int/en/web/minorities/at-a-glance#{%2279030665%22:[1]}
[134] Human Rights Committee, General Comment No. 23, Art. 27 of the ICCPR, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994), para. 5.1.
[135] Ibid.
[136] Ibid, para. 5.2.
[137] The Sub-Commission on Prevention of Discrimination and Protection of Minorities was created in 1947.
[138] Schreuder, (n8), p. 58.
[139] Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities

traditions, religion or language."[140] Despite the fact that above-mentioned definition is generally used, it does not present internationally accepted definition. However, it can be claimed that the suggested interpretation of the term minority includes the objective and subjective criteria. Objective factors amount to existence of the language, ethnicity or religion which are shared within the minority. Subjective factor is expressed in the idea of self-identification. That means that some persons must identify themselves as belonging to some specific minority.[141]

In 1992, the General Assembly adopted the United Nations Minorities Declaration to National or Ethnic, Religious and Linguistic Minorities and this document defines minorities as those sharing national or ethnic, cultural, religious and linguistic identity.[142] However, it again did not contain the clear definition of the term "minority".

Asbjørn Eide, Special Rapporteur of the Sub-Commission[143] defined minorities in the following manner: ,,For the purpose of this study, a minority is any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population."[144] In my opinion, this definition is crucial since contrary to the Capotorti's definition, it does not include nationality criterion. Therefore, the groups within the territory of the State, which are meeting both objective and subjective factors, irrespective of being the nationals of the State, can be identified as minorities. Moreover, this was confirmed in the General Comment No. 23, which states that the rights enshrined in Art. 27 of the ICCPR, does not belong only to the citizens of the State party.[145]

To sum up, when it comes to concept of minorities, the one can easily get confused, and more questions arise than the answers. Can the persons with a certain sexual orientation or disabled persons within the State be considered as members of some minorities? Despite the fact that

[140] F. Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, UN Doc. E/CN.4/Sub.2/384/Rev.1, United Nation, 1979, para. 568.
[141] Minorities under international law, Who are minorities under international law? https://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx
[142] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art. 1 (1) reads as follows: ,,States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity."
[143] Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, 1981—2003.
[144] A. Eide, Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities, 1993, para. 29.
[145] Human Rights Committee, General Comment No. 23, Art. 27 of the ICCPR, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994), para. 5.1.

also above-mentioned groups may face discrimination, the document such as the United Nations Minorities Declaration to National or Ethnic, Religious and Linguistic Minorities in Art. 2 (1) refers to minorities as: ,,Persons belonging to national or ethnic, religious and linguistic minorities (…).”[146] Therefore, in spite of the lack of clear definition of the concept, above-mentioned Special Rapporteurs of the Sub-Commission suggested the definition of the “minority”, from which can be taken some generally accepted elements such as common characteristics, which specific group of persons must share (objective factor) and those persons must identify themselves as members of such as group (subjective factor). Another requirement is that the group must be established within the State and be in a non-dominant position. The requirement of the citizenship of the persons of the group is not relevant, whereas the Human Rights Committee in the General Comment No. 23 stated following: ,,those terms also indicate that the individuals designed to be protected need not be citizens of the State party.”[147]

It can be said that the final decision whether some group can be granted with the minority rights, depends on the States and the fact whether they ratified international or regional documents including minority rights. However, as stated in the General Comment No. 23: ,,The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.”[148]

Based on that, there may exist the cases, when the group of persons will meet the requirements of the minority suggested by the Special Rapporteurs of the Sub-Commission and General Comment 23, therefore, will be recognized as minority, but will not be able to exercise minority rights. As an example, can be used France, which made a reservation in relation to the Art. 27 of the ICCPR.[149] Therefore, the group can be recognized as a minority, but will not be able to exercise rights under Art. 27 of the ICCPR but it has to be kept in mind that those individuals still enjoy individual rights guaranteed by the State and they can use those rights to protect their culture, heritage or history, as it was in the case of Francis Hopu

[146] Minorities Declaration to National or Ethnic, Religious and Linguistic Minorities, 1992, Art. 2 (1).
[147] Human Rights Committee, General Comment No. 23, Art. 27 of the ICCPR, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994), para. 5.1.
[148] Ibid, para. 5.2.
[149] Human Rights Committee stated following: ,,It confirmed its previous jurisprudence that the French "declaration" on article 27 operated as a reservation and, accordingly, concluded that it was not competent to consider complaints directed against France under article 27 of the Covenant.” See, Francis Hopu and Tepoaitu Bessert v. France, Communication No. 549/1993, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. (1997), para. 4.3.

and Tepoaitu Bessert v. France, in which the Committee found the violation of the authors right to family and privacy.[150]

3.2 Critical analysis of the exclusion of minorities from external self-determination right

It can be stated that the main reason why the minorities do not have external right to self-determination is simple, they are not regarded as "peoples" under international law and therefore they are not holders of the external form of the self-determination right. However, a few reasons can be identified, which clearly show that the incapability of the international community to define minorities as "peoples" stems from the consequences which such an inclusion could bring. The most important identified reason is preserving the territorial integrity of the State. It appears that another reason could be the fact that the international and regional instruments already provide sufficient protection for minorities. However, further analysis of such reason proves the opposite.

3.2.1. Principle of territorial integrity of the State and secession

The external right to self-determination can be perceived as encompassing two different perspectives. It can be seen as an opportunity for oppressed peoples to free themselves and create their own State but at the same time it can be seen as directly connected with a breakup of the States and the real threat to territorial integrity of the States.[151] In that regard, the question may arise, whether the external right to self-determination automatically amounts to right to secession?[152]

Art 2 (4) of the UN Charter reads as follows: ,,All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[153] Therefore, UN Charter as well as other international or regional

[150] ,,The Committee therefore concludes that the construction of a hotel complex on the authors' ancestral burial grounds did interfere with their right to family and privacy. The State party has not shown that this interference was reasonable in the circumstances, and nothing in the information before the Committee shows that the State party duly took into account the importance of the burial grounds for the authors, when it decided to lease the site for the building of a hotel complex. The Committee concludes that there has been an arbitrary interference with the authors' right to family and privacy, in violation of articles 17, paragraph 1, and 23, paragraph 1." See, Francis Hopu and Tepoaitu Bessert v. France, Communication No. 549/1993, U.N. Doc. CCPR/C/60/D/549/1993/Rev.1. (1997), para. 10.3.

[151] J. Klabbers, The Right to be Taken Seriously: Self-Determination in International Law, Human Rights Quarterly, 2006, p. 187.

[152] Ibid, p. 189.

[153] UN Charter, Art. 2 (4).

instruments, when referring to self-determination, at the same time, always emphasize the territorial integrity of the States and the fact that the borders of the existing States should be preserved and respected not only from other States but also by the groups within the State. Thus, the stability within the State should be preserved.[154]

In that regard, it could be possible to affirm that the entity within the State, which falls under the scope of "peoples", has external right to self-determination. However, whether those "peoples" can exercise the right, is questionable.[155] It is quite visible that the efforts of the international bodies in relation to the external right to self-determination were expressed in separation of the right from its direct outcome, right to secession.[156] According to that, Supreme Court of Canada in its decision about Quebec claimed following: „(…) international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states. Where this is not possible, in the exceptional circumstances discussed below, a right of secession may arise."[157] Therefore, even when the inhabitants of Quebec amount to term "peoples" and thus, can claim external right to self-determination, they could possibly exercise it only under exceptional circumstances. Based on that, the territorial integrity of the State will prevail over the claims of the "peoples" for seceding.

Therefore, to answer above-mentioned question, it may be said that external right to self-determination does not automatically amount to right to secession.

When it comes to minorities, they cannot claim external right to self-determination, since they are not "peoples", therefore, they don't have the right to secession. It is understandable that the international community tries to limit the scope of external right to self-determination as much as possible. However, it might be reasonable to ask whether the right can be perceived as superfluous, considering the fact that it can result in the secession only under special circumstances. Based on that, it can be understood that the prevalence is given to territorial integrity of the State over right to secession as a possible consequence of the external right to self-determination, when it comes to "peoples".

[154] Schreuder, (n8), p. 60.
[155] Klabbers, (n151), p. 188.
[156] Ibid, p. 197.
[157] Reference by the Governor in council, pursuant to Art. 53 of the Supreme Court Act, concerning the secession of Quebec from Canada, 1998, S.C.R. 217, ilm 37 (1998), para. 122.

3.2.2. International and regional protection of minorities

There may arise the question, why the external right to self-determination is even considered, when it comes to minorities, since their rights are already protected by the international and regional instruments. The truth is that the documents such as ICCPR, The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and others include provisions on the minority protection. In fact, Convention on the Prevention and Punishment of the Crime of Genocide in Art. 2 directly refers to racial, ethnical, national or religious groups, with the intention to protect such groups from the acts committed with the purpose to destroy the minority in whole.[158]

However, the Art. 27 of the ICCPR refers only to the members belonging to the minority and the rights, which emerge by this membership. According to that, such a formulation does not indicate that the whole minority could have collective rights.[159] In that regard, the question may arise, what are the international or regional instruments for protection of minority as a whole group not only ensuring protection for its members.

ICERD in the Art. 1 (4) refers to both, individuals, also to groups in relation to the equal enjoyment of the human rights[160] Despite the fact that the minorities are not directly mentioned in the ICERD, it could be possible to understand that the term groups amount to minorities.

It can be noticed that the non-binding instrument, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in its Art. 1, refers directly to minorities and the preservation of their identity.[161] However other provisions of the Declaration deal with the term "persons belonging to minorities."[162]

At the regional level, European Convention on Human Rights (ECHR) does not guarantee protection or right to minorities, only the individuals who could happen to be members of

[158] UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948, Art. 2.
[159] Schreuder, (n8), p. 64.
[160] ICERD, Art. 1 (4) reads as follows: „Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."
[161] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art. 1 (1) reads as follows: „States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity."
[162] For example, Art. 2 (1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

some minority can bring the case before the European Court of Human Rights (ECtHR). This was confirmed in the case of X. v. Austria, in which was stated following: „The Convention does not provide for any rights of a linguistic minority as such, and the protection of individual members of such minority is limited to the right no to be discriminated in the enjoyment of the Convention rights on the ground of their belonging to the minority (Article 14 of the Convention).”[163] Therefore, if the rights of the individual are violated by the State, the person can bring the claim before ECtHR. However, same doesn't apply to the whole minority.

Despite the fact that the Council of Europe's Parliamentary Assembly's Recommendation 1134[164] introduced the provisions, which make a distinction between national minority and individuals belonging to that minority,[165] the subsequent document, Framework Convention, refers only to "persons belonging to national minorities."[166] Based on the above-mentioned, it may be noticed how carefully international and regional institutions choose the terminology, when it comes to minorities. The discussions about the acknowledgment of the collective rights to groups very often end in focusing on the individuals of the minority rather than a specific group. As Kymlicka correctly stated the "debate over the reducibility of community interests to individual interests dominates the literature on collective rights."[167]

To sum up, according to Schreuder, minorities as collective groups, have rights such as not to be discriminated, to preserve their identity, right to establish specific institutions for minorities or the opportunity to take part in public affairs. However, it is important to keep in mind that it is State's decision whether the rights of the collective character will be attributed to minorities or not.[168] Based on the above-mentioned, it seems that the States are not prepared to afford more collective rights to minorities, since their main task is to ensure internal stability and prevent any potential secession movements.

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[163] ECHR Commission, Application No. 8142/78, 18 Decs. and Reports (1979), p. 92-93.
[164] Recommendation 1134 on the rights of minorities, Eur. Parl. Ass., 42d Sess., 2d part (1990). https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15168&lang=en
[165] As an example, the Recommendation 1134 on the rights of minorities in the provisions 11.1, 11.2, 11.3, 11.4 states following: „national minorities shall have the right to be recognised as such by the states in which they live; national minorities shall have the right to maintain and develop their culture; national minorities shall have the right to maintain their own educational, religious and cultural institutions. For this purpose, they shall also have the right to solicit voluntary financial and other contributions including public assistance; national minorities shall have the right to participate fully in decision-making about matters which affect the preservation and development of their identity and in the implementation of those decisions;"
[166] Framework Convention for the Protection of National Minorities.
[167] W. Kymlicka, Multicultural citizenship: a liberal theory of minority rights. Oxford: Clarendon, 1996, p. 47.
[168] Schreuder, (n8), p. 77.

Despite the fact that there exists clear negligence from the international community, when it comes to defining collective rights and its attribution to minorities, the question here is why the focus of this paper is directed on minorities as groups not on the particular persons belonging to minority groups and what difference it makes. According to that, Tibor Várady stated following: „It is abundantly clear that the targeted victims are precisely the minority groups, rather than citizens as individuals. Consciously ignoring the target of the attack prevents the operation of a viable system of protection. Serbs, Croats, Muslims, and others are driven out from particular regions, precisely because they are Serbs, Croats, Muslims… The denial of bilingual road signs, place names, and minority schools can hardly be conceived as anything but an attitude and a gesture towards a group; it would be quite difficult to structure opposition against such denial on the basis of individual rights."[169] In that regard, it has to be understood that collectiveness of some group is expressed through its members but there is also a segment of "shared consciousness of its members" which is expressed through the shared language, culture, traditions, history and other elements.[170] It can be said that if the group or collective is oppressed and the majority even tries to destroy that minority, there is a very low chance of preservation of the identity of the group. Individuals may survive; however, the existence of the group would be under the question.[171]

3.3 Concluding Remarks

The principle of territorial integrity is fundamental and always highlighted by the international community. Even those who can claim external right to self-determination, can secede from the State only under exceptional circumstances and the territorial integrity almost always overrides the claims for secession. As was mentioned-above, minorities do not have the same right. This approach of the international community, which consists of the States, is reasonable and fully understandable. It is important to bear in mind that including minorities under the scope of "peoples" and therefore, giving them the external right to self-determination could be regarded by them as a permission to secede and undermine territorial integrity of the State. Therefore, the preservation of the territorial integrity and avoidance of

[169] T. Várady, Minorities, Majorities, Law, and Ethnicity: Reflections of the Yugoslav Case, 19 HUM. RTS. Q. 9, (1997), p. 38-39.
[170] P. Thornberry, International Law and the Rights of Minorities, Oxford: Clarendon, 1993, p. 57.
[171] A. M. Jovanovic, Recognizing Minority Identities Through Collective Rights, Human Rights Quarterly, Volume 27, Number 2, 2005, p. 633.

the internal conflicts within the State, serves as the strongest argument against the claims of granting minorities external right to self-determination.

Despite the fact that the international and regional protection of minorities has been included under the section, which elaborates the reasons, based on which minorities cannot claim the right, it has been proven that the individual rights of the persons belonging to minorities are ensured rather than the collective rights of the whole minority group. Therefore, the argument that the minority cannot claim the external form of the self-determination right, which could lead to secession, because their rights are already strongly guaranteed by the international and regional instruments, cannot be regarded as justified and could be even seen as a reason, why the external right to self-determination, could be attributed to them under certain circumstances.

However, what if the rights of minority are systematically and grossly violated by the State, which should ensure protection of the minority? According to that, could such a group under the specific circumstances fall under the scope of the term "peoples" and claim external-right to self-determination? The suggestion of this paper is that the international community should respond to such limited application of the external right to self-determination and should start with the developing the term "peoples" in order to include minorities to the scope of "peoples" under some exceptional and clearly defined circumstances such as systematic and gross human rights violations from the State. In my opinion, such a step would properly respond to the reality of 21th century, ensure higher protection of minorities and would prevent arbitrary secession movements within the State. The case law and the potential exception, which could justify minority's claims for external right to self-determination, are elaborated in the following Chapter.

4. Analysis of the cases and the circumstance which could possibly justify the minority's claims for external right to self-determination

The aim of this Chapter is to elaborate the potential situations which could serve as arguments based on which the minorities would fall under the scope of "peoples" and could claim external right to self-determination, consequently leading to right to secession. First part of this Chapter introduces two cases, Aaland Islands case and Kosovo case, which at some point refer to oppressed minorities. Both cases deal with the question whether the external right to self-determination plays any role in relation to the oppressed minorities. The possible exception, gross and systematic human rights violations directed towards minority by the State, is explained more in-depth, in the second part of this Chapter. The issue, whether the minority has external right to self-determination in case of systematic and gross human rights violations, is analysed more in detail.

4.1 Introduction

As mentioned above, minorities cannot claim external right to self-determination. However, growing voices within the international community suggest that in some extreme cases, minorities should have external form of the right, consequently resulting in the right to secession.[172] When it comes to matter of self-determination, international documents do not forget to highlight the principle of territorial integrity and protection of the State's borders.[173]

However, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States also includes a provision which could be regarded as an exception to above-mentioned principle. The document states the following: ,,Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a

[172] P. Hilpold, Self-determination and Autonomy: Between Secession and Internal Self-determination, international journal on minority and group rights 24, (2017), p. 322.

[173] For example, it is stated in the UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution No. 2625 (XXV), of 24 October 1970, preamble: ,,(...) any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter."

government representing the whole people belonging to the territory without distinction as to race, creed or colour."[174] Therefore, the instrument emphasizes the need of preservation of the territorial integrity of the State but at the same time, it seems that the provision included the condition, by which the territorial integrity is directly linked with the government and whether it represents the whole population without any distinction. It may be suggested that if that condition, is not met (the government doesn't represent some groups within the State), that may serve as a justification for the group to fall under the scope of "peoples" and claim external right to self-determination and secede from the State.[175] However, this will be explained more in detail in the following subsections. Moreover, it has to be understood that the Declaration is not binding document and above-mentioned interpretation cannot be taken as internationally accepted.[176]

In the following subsections are presented two cases (the Aaland Islands case and the Kosovo case), which could be possibly interpreted as the confirmation of the theory that the minorities can be included under the term "peoples" and claim external form of the right, under certain circumstances. In other words, when the State uses oppressive tactic (for the purposes of this paper, oppression is specified and further used as gross and systematic human rights violations) towards the groups within its territory, minority may claim external right to self-determination and secede from the State.[177]

The two above-mentioned cases were selected for further interpretation since both are addressing the position of the minority within the State. In the case of Aaland Islands, the Commission of Rapporteurs admitted that the minority could possibly separate from the State, in case the group would be oppressed by the State.[178] The case was brought before LON in 1920, therefore the case was also chosen with the purpose to observe, whether the external right to self-determination and the term "peoples" developed in relation to concept of "minorities" throughout the history. On the other hand, Kosovo case is a recent case, when the minorities which suffered systematic and gross human rights violations, separated from the State. Therefore, Kosovo case can be seen as a clear example of the case when the minorities exercised external right to self-determination and were able to create own State. However, it

[174] UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution No. 2625 (XXV), of 24 October 1970, preamble.
[175] Cassese (n1), p. 33.
[176] Ibid.
[177] Ibid.
[178] Report of the Commission of Rapporteurs on the Aaland Islands Question, League of Nations, 1921 (B7.21/68/106).

has to be highlighted that Kosovo is at the same time controversial case, which has to be assessed more in detail from the perspective of the external right to self-determination and the concept of "minority".

4.1.1 The Aaland Islands case

It may be considered that the Aaland Islands case is a perfect example of the case dealing with the protection of minorities.[179] However, the question may arise whether such a decision found by the Commissions, is internationally accepted and applicable today.

At the time, when the LON has been established, in spite of the suggestions of some international actors such as President Wilson, the final draft of the LON Covenant didn't include the provisions dealing with the protection of the minorities. However, this was partially covered by the LON's body, PCIJ. [180] The function of the PCIJ was also to assess the cases concerning minority issues and publish advisory opinion about that matter.[181] When the Aaland Islands question was brought before LON, PCIJ wasn't established yet and the case was examined by the Commission of Jurists and later by the Commission of Rapporteurs appointed by the Council of the LON.[182] Before the focus will be aimed on legal issues, it is important to present background of the case.

The Aaland Islands are located in the Baltic Sea between Sweden and Finland. In 1920, it was considered that 97 % of the inhabitants, were Swedish. The Islands were part of Sweden, until 1809, when it was together with the territory of Finland yielded to Russia. Consequently, the Islands became part of the Grand Duchy of Finland and this lasted till 1917, when the Finland took the opportunity and declared independence from Russia. At the same time, the inhabitants of Aaland Islands expressed an interest and will to become part of Sweden. Their decision was supposed to be supported by the self-determination principle. The Finish representatives have understood the seriousness of the situation and tried to solve the issue by granting the autonomy to Aaland Islanders. However, this gesture was not accepted by the inhabitants of the Islands.[183] As a result, United Kingdom representatives, based on the Art. 11 of the Covenant of the LON, brought the matter before the LON. At the time, when Sweden fully supported the desire of the Aaland Islanders for union with them and declared

[179] S. Spiliopoulou Åkermark, The Åland Islands Question in the League of Nations: The Ideal Minority Case, Redescriptions Political Thought Conceptual History and Feminist Theory, 2009, p. 195.
[180] Ibid, p. 196-197.
[181] This can be observed in the cases such as Rights of Minorities in Upper Silesia (Germ. v. Pol.), 1928 P.C.I.J. (ser. A) No. 15 (Apr. 26).
[182] T. D. Musgrave, Self-Determination and National Minorities, Oxford: Clarendon Press, 1997, p. 35-36.
[183] Ibid, p. 32-33.

that the claims of the inhabitants of the Islands should be acknowledged, since Aaland Islanders are acting only in accordance with the self-determination principle, Finland was less enthusiastic and stated that the whole issue is domestic matter and should not be assessed internationally.[184] According to that the LON appointed the Commission of Jurists in order to examine whether the issue was of domestic or international character and whether the self-determination principle could be applied in this case.[185] After the Commission found that the matter was of international level not only domestic, it also tackled with the self-determination principle. It concluded that since Finland was still in process of establishing itself into a form of the sovereign State "revolutionary entity"[186], only because of that the self-determination principle may be applied to current case of Aaland Islands.[187]

Consequently, LON appointed Commission of Rapporteurs to decide the dispute on the merits. The Commission of Rapporteurs confirmed that the self-determination is not regarded as "a rule of international law and the League of Nations has not entered it in its Covenant."[188] However, the Commission also stated that Finland is constituted State,[189] therefore the principle of self-determination is not of any relevance in the case of Aaland Islands.[190] In the report, the Commission further asks following question: „Is it possible to admit as an absolute rule that a minority of the population of a State, which is definitely constituted and perfectly

[184] Musgrave, (n182), p. 34.
[185] Cassese (n1), p. 28.
[186] Musgrave, (n182), p. 35.
[187] As was stated in the Report of the Committee of Jurists on the Aaland Islands Question in the *part „The Principle of Self-Determination and the Rights of Peoples"*: „Although the principle of self-determination of peoples plays an important part in modern political thought, especially since the Great War, it must be pointed out that there is no mention of it in the Covenant of the League of Nations."
„Positive International Law does not recognize the right of national groups, as such, to separate themselves from the State of which they form part by the simple expression of a wish, any more than it recognizes the right of other States to claim such a separation. Generally speaking, the grant or refusal of the right to a portion of its population of determining its own political fate by plebiscite or by some other method, is, exclusively an attribute of the sovereignty of every State which is definitively constituted."
„From the point of view of both domestic and international law, the formation, transformation, and dismemberment of States as a result of revolutions and wars create situations of fact which, to a large extent, cannot be met by the application of the normal rules of positive law. This amounts to a statement that if the essential basis of these rules, that is to say, territorial sovereignty, is lacking, either because the State is not yet fully formed or because it is undergoing transformation or dissolution, the situation is obscure and uncertain from a legal point of view and will not become clear until the period of development is completed and a definite new situation, which is normal in respect to territorial sovereignty, has been established."
As was stated in the part „*Self-Determination as Applied to de facto Situations. Its Forms*": „Under such circumstances, the principle of self-determination of peoples may be called into play." See, Report of the Committee of Jurists on the Aaland Islands Question, League of Nations, 1920 (LN Doc. B.7 21/68/106).
[188] Report of the Commission of Rapporteurs on the Aaland Islands Question, League of Nations, 1921 (B7.21/68/106).
[189] As was stated in the Report of the Commission of Rapporteurs on the Aaland Islands Question: „The Aalanders and the Swedes are wrong in citing the example of Finland, which, in determining her own fate, has succeeded, thanks to the results of the great war, in freeing herself from her dependence on Russia." See, Report of the Commission of Rapporteurs on the Aaland Islands Question, League of Nations, 1921 (B7.21/68/106).
[190] Musgrave, (n182), p.35.

capable of fulfilling its duties as such, has the right of separating itself from her in order to be incorporated in another State or to declare its independence? The answer can only be in the negative."[191] The document emphasizes the fact that the stability and territorial integrity of the State shall prevail over the desire of some minority within the State to separate from the State. However, the seceding from the State can be permitted only as a last resort, when the State cannot provide sufficient guarantees for the minorities.[192] In that regard, the Commission referred to the fact of oppression and persecution of the Finnish people under the rule of Russia. The Aaland Islanders have never experienced any form of oppression from Finland.[193] Therefore, the oppression may be perceived as a relevant reason, which would allow the minority to separate from the State. However, that is not relevant in the case of Aaland Islanders, since they haven't experienced any oppression from Finland. Thus, there exists no justification for the minority to unify with the Sweden and separate from Finland.[194]

To sum up, in relation to Aaland Islands case, it is important to understand that the case was brought before LON in 1920, at the time, when self-determination was perceived only as a principle rather political than legal, and it was not taken as a rule of international law. Both Commissions came to that conclusion. However, Commission of Rapporteurs claimed that the Finland is a sovereign State and there are no concerns that it would not ensure protection of the minorities within its territory, referring specifically on Aaland Islanders. Based on that, there exists no relevant reason why the minority should be allowed to separate from the State. Despite the fact that the Commission declares that the self-determination is not relevant in the current case, since Finland is "definitely constituted State", at the same time it provides the exceptional circumstances, under which the minorities could separate from the State.[195] The "exceptional circumstances" can be interpreted as the acts of the oppression or persecution

[191] Report of the Commission of Rapporteurs on the Aaland Islands Question, League of Nations, 1921 (B7.21/68/106).
[192] In the Report of the Commission of Rapporteurs on the Aaland Islands Question is stated following: „ But what reasons would there be for allowing a minority to separate itself from the State to which it is united, if this State gives it the guarantees which it is within its rights in demanding, for the presentation of its social, ethnical or religious character? Such indulgence, apart from every political consideration, would be supremely unjust to the State prepared to make these concessions. The separation of a minority from the State of which it forms a part and its incorporation in another State can only be considered as an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees." See, Report of the Committee of Jurists on the Aaland Islands Question, League of Nations, 1920 (LN Doc. B.7 21/68/106).
[193] Report of the Commission of Rapporteurs on the Aaland Islands Question, League of Nations, 1921 (B7.21/68/106).
[194] Ibid.
[195] Ibid.

directed against the minorities by the State. In that case, the self-determination principle can be applied as a form of last resort for the minority protection.[196]

4.1.2 The Kosovo case

Kosovo is a partially recognized State, which separated from Serbia and consequently, declared independence in 2008. Kosovo is recognized by 98 members of UN[197] and by most of the members of international community is perceived as a controversial case, which had a potential to redefine the scope of external right to self-determination by expanding the term "peoples."[198]

In 1974, Kosovo, inhabited predominantly by Kosovar Albanians, was granted a status of autonomy by Josip Broz Tito with the intention to prevent the possible separatist movements, and such "independence" lasted approximately for 15 years, when the status was revoked by former Serbian President Slobodan Milošević.[199] The dissatisfaction of the Kosovars has reflected in their desire to secede from Serbia and create independent State, which was declared in 1992. The government in Belgrade dominated by Serbs has not seen such a separation of Kosovo from Serbia as an option and undertook all the necessary steps to supress the efforts of Kosovars, which led to ethnic cleansing and oppression of the minority.[200] The international community has not remained silent and in 1999, NATO intervened with the intention to end the massive human rights violations. As a result, Milošević's troops were defeated and during that period, the UN Security Council Resolution 1244/1999 was adopted[201], in which "international civil presence in Kosovo" was established.[202] Since the international status of Kosovo has not been decided by the Resolution 1244/1999, the entity decided to declared independence in 2008.[203] The declaration of independence of Kosovo brought some controversial questions. Does it mean

[196] Cassese (n1), p. 33.
[197] Kosovo
https://en.wikipedia.org/wiki/Kosovo
[198] Hilpold, (n172), p. 325.
[199] Ibid, p. 320.
[200] Ibid.
[201] M. Siddi, Abkhazia, Kosovo and the right to external self-determination of peoples, Central Asia and the Caucasus 12 (1), 2011, p. 5-6.
[202] UN Security Council RESOLUTION 1244 (1999), 10, states following: „(…) the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo (...)."
[203] Hilpold, (n172), p. 320.

that the external right to self-determination developed and based on Kosovo example, minorities can fall under the scope of "peoples", claim the right and under some circumstances separate from the State? This opinion is certainly supported by the fact that after Kosovars claimed independence, number of significant members of the international community (Great Powers) recognized newly formed State.[204]

However, above-mentioned statements have not found support in the ICJ Advisory Opinion of 22 July 2010 requested by the GA, in which ICJ was assessing following question: ,,Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"[205] Other matters related with the possible development of the self-determination right or with that related "remedial right of secession",[206] the ICJ decided not to address, since the question brought before the ICJ was only about the unilateral declaration and its relation with the international law.[207] Therefore, it seems that ICJ assessed Kosovo case as "sui generis" and by this avoided all the questions related with the external right to self-determination.[208]

To sum up, in spite of the fact that the Kosovo case brings more questions than answers, it can be noticed that Kosovar Albanians, the inhabitants of Kosovo were minority within Serbia, who in fact enjoyed autonomous status for 15 years. The oppressive tactics from the central government started to emerge by abolishing the autonomy of the Serbian province and then continued with the oppression[209] of the minority. Therefore, the Kosovars were perceived as

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[204] Sterio, (n22), p. 22.

[205] I.C.J., Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, Report 2010, No. 141, para. 49.

[206] Ibid, para. 82.

[207] The ICJ, in its advisory opinion regarding the case of Kosovo, states following: ,, The Court has already noted (see paragraph 79 above) that one of the major developments of international law during the second half of the twentieth century has been the evolution of the right of self-determination. Whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances. There was also a sharp difference of views as to whether the circumstances which some participants maintained would give rise to a right of "remedial secession" were actually present in Kosovo." See, I.C.J., Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, Report 2010, No. 141, para. 82.

,,The Court considers that it is not necessary to resolve these questions in the present case. The General Assembly has requested the Court's opinion only on whether or not the declaration of independence is in accordance with international law." See, I.C.J., Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, Report 2010, No. 141, para. 83.

[208] Hilpold, (n172), p. 325.

[209] Commission on Human Rights, Report on the Fifty-Fifth Session, Supplements No. 3, E/CN.4/1999/167, Situation of human rights in Kosovo, 1999: „ Expressing deep concern at the continued campaign of repression

the oppressed minority within Serbia, which was striving for independence by external self-determination claims.

Based on the above-mentioned, it can be claimed that it is highly debatable, whether the Kosovo case contributed to development of the term "peoples". However, this case opened the door for the consideration that the minorities should be able to claim external right to self-determination under certain circumstances and have the chance to separate from the State, as a form of last resort. Such a circumstance is elaborated more in-depth in the following section.

4.2 Exception based on which minorities could claim external right to self-determination

Despite the fact that the above-mentioned cases suggest that the minorities could fall under the scope of the term "peoples" and claim external right to self-determination, it is questionable whether the international community acknowledged such a statement. However, both cases are referring to oppression as a reason, which could serve as a possible justification of minority 's claims for separation from the State. For the purposes of this thesis, the term "gross and systematic human rights violations" is applied. According to Cassese, in the case that the rights of the groups within the State are grossly and systematically violated, they can separate from the State.[210] Such interpretation is deduced from the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States[211] According to that external right for such groups is granted, as a form of last resort and when it is understandable that the situation has not had the chance to be resolved by internal self-determination (such an autonomy).[212]

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and the gross and systematic violations of the human rights of the Kosovars following the revocation of autonomy by the Serbian authorities (...)"

[210] As Cassese stated: „It can therefore be suggested that following conditions might warrant secession: when the central authorities of a sovereign State persistently refuse to grant participatory rights to religious or racial group, grossly and systematically trample upon their fundamental rights, and deny the possibility of reaching a peaceful settlement within the framework of the State structure. Thus, denial of the basic right of representation does not give rise per se to the right to secession. In addition, there must be gross breaches of fundamental human rights, and, what is more, the exclusion of any likelihood for a possible peaceful solution within the existing State structure." See, Cassese (n1), p. 120.

[211] UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution No. 2625 (XXV), of 24 October 1970, preamble.

[212] Cassese (n1), p. 120.

4.2.1. Gross and systematic human rights violations

When it comes to minorities, it is significantly important to define what kind of conduct of the State towards the groups within its territory, amounts to oppression and could possibly justify efforts of the minority to separate from the State. Such oppression can be interpreted in the notion of gross and systematic human rights violations directed towards minorities.[213] Defining the threshold is crucial in order to avoid arbitrariness and not to forget, at stake is territorial integrity of the State. According to that, the question arises, how is defined the notion of gross and systematic human rights violations?

The term gross and systematic violations of human rights have been introduced in the Commission resolution 8th of March 1967. However, at that time, instead of the term "systematic", the word "consistent pattern" has been used.[214] Therefore, according to Tardu, "consistent pattern of violations" is characterised by the features such as the fact that more than one victim is involved, certain number of violations is required, the component of planning is involved on the side of perpetrator. Also, the "qualitative test" must be applied in order to assess whether the violations were of the "gross" nature.[215]

The fact is that the notion of "gross and systematic" human rights violation is in some international or regional instruments replaced by the terms "grave and systematic" violations, "gross and large-scale" or "serious violations" of human rights.[216] It seems that the terms used above, work as synonymous to the term gross and systematic. Mr. Stanislav Chernichenko submitted a working paper, in accordance with Sub-Commission decision 1992/109, in which his efforts were directed in defining the notion of gross and large-scale violations of human rights. In the paper, Mr. Stanislav Chernichenko describes gross and large-scale violations as follows: „Gross and large-scale human rights violations committed on the orders of a Government or with its sanction are a grave violation of the principle of respect for human rights and constitute an international crime. Such violations shall be deemed to include principally the following: (a) Murder, including arbitrary execution; (b) Torture; (c) Genocide; (d) Apartheid; (e) Discrimination on racial, national, ethnic, linguistic or religious grounds; (f) Establishing or maintaining over persons the status of slavery, servitude or forced

[213] Cassese (n1), p. 120.
[214] M. E. Tardu, United Nations response to Gross Violations of Human Rights: The 1503 Procedure, Santa Clara Law Review, Vol. 20 (1980), p. 582.
[215] Ibid, p. 583-584.
[216] Geneva Academy of International Humanitarian Law and Human Rights, What amounts to 'a serious violation of international human rights law'? An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty, 2014, p. 11-12.

labour; (g) Enforced or involuntary disappearances; (h) Arbitrary and prolonged detention; (i) Deportation or forcible transfer of population."[217]

As appears evident between international human rights law (IHRL) and international criminal law (ICL), can be observed certain similarities, when it comes to human rights violations and the concept of crimes against humanity. However, a few differences of two above-mentioned concepts appear in the context of consequences for gross and systematic human rights breaches and committing crimes against humanity. ICL through established tribunals strives to establish individual criminal responsibility of those individuals who committed the crimes. On the other hand, the individual responsibility doesn't play a role in the case of IHRL and the question here is, whether the State can be held responsible for such violations of human rights.[218] In my opinion, when it comes to gross and systematic human rights violation aimed towards minority conducted by the State, the remedy for such a group should be the external right of self-determination, as a form of last resort, leading to seceding from the State, in the case it is a desire of the minority.[219]

4.3 Concluding Remarks

The main purpose of Chapter 4 was to examine whether the minorities could fall under the scope of "peoples" and claim external right to self-determination as a form of last resort. In that regard, the provision of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States suggests such an option. Subsequently, the Aaland Islands case and Kosovo case are addressing the issue of minority protection and with that related claims of external form of the right more in detail. Despite the fact that the observed outcomes of both cases bring the idea that the minorities, in cases of gross and systematic human rights violations conducted by the State, could claim the right, the reality seems different. Specifically in Kosovo case, it can be noticed that the ICJ acknowledged the existence of different opinions related with the self-determination and its possible

[217] Working Paper submitted by Mr Stanislav Chernichenko in accordance with Sub-Commission Decision 1992/109, UN doc. E/CN.4/Sub.2/1993/10, 8 June 1993, para. 50, Art. 1.

[218] Geneva Academy of International Humanitarian Law and Human Rights, What amounts to 'a serious violation of international human rights law'? An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty, 2014, p. 9.

[219] In cases that individuals belonging to minority group are suffering, they can bring the claims before regional (such ECtHR) or international bodies, in case of human rights violation. However, in case the whole group is oppressed, the question may arise, what kind of remedy or protection, the group can demand and how can the State be held accountable for such a conduct towards minority? Of, course, through perspective of ICL, the individuals can be found guilty for their acts before the tribunals. But how about IHRL and its response to gross and systematic human rights violation committed towards minorities? In my opinion, external right of self-determination can play a significant role in that regard.

development.[220] However, at the same time, it hasn't regarded necessary to address the issue, since it wasn't the question brought for assessment.[221] Hilpold in accordance to Kosovo case, stated the following: „The attempt was to open the door for a very specific case of self-determination that could not and should not be impeded but to close the door immediately afterwards."[222] Interpretation of the Kosovo, as a "sui generis" case[223], only serves as a proof that the international community is not ready to evolve external right to self-determination or define minorities as "peoples" even in situation if the rights of minorities are systematically and grossly violated by the State.

[220] I.C.J., Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, Report 2010, No. 141, para. 82.
[221] Ibid, para. 83.
[222] Hilpold, (n172), p. 325.
[223] Ibid.

Conclusion

In order to answer the question, whether the minorities can claim external right to self-determination in cases of systematic and gross human rights violations conducted by the State, the thesis examined the self-determination right and its external dimension, the concept of minority and the relevant case law.

The above-asked research question has to be divided into two parts. First, is the external form of the right attributed to minority? The answer to that question, is negative. Minorites cannot claim the right since they are not falling under the scope of the term "peoples" as enshrined in the UN Charter in Art. 1 (2) and later developed during the de-colonization period. The international community approaches the concept of "minority" and self-determination right, very carefully and always highlights the principle of territorial integrity. The question may also arise, why should be minority even considered as a potential right holder of the external self-determination, when there exist the instruments for minority protection. However, the conclusion of Chapter 3 demonstrated that minorities are not sufficiently protected and the extent of rights, which are attributed to them, depends on States.

However, what would be the case if the minority is oppressed, more specifically has to face systematic and gross human rights violations from the State? Can such a circumstance serve as the potential exception, which would justify minority's claims for separation from the State and their exceptional inclusion to the term "peoples"?

In relation to the above-mentioned, UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, could be perceived as a document, which includes such exception. In the Declaration is stated that the territorial integrity of the States has to be preserved but at the same time it indicates that in case the government does not represent the whole population "without distinction as to race, creed or colour," [224] such part of a population could potentially exercise the right. The fact that "race, creed or colour," were highlighted, suggests that the document refers to minorities. According to Cassese, if there are gross and systematic human rights violations directed towards minority and conducted by the State and there exists no option for ,,peaceful solution within the existing State structure,"[225] minority can exceptionally be perceived as "peoples" and

[224] UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution No. 2625 (XXV), of 24 October 1970, preamble.
[225] Cassese (n1), p.119-120.

claim the external form of the right and thus, separate from the State. The internal right to self-determination and its form, autonomy, is not considered as a possible option for conflict solving, since the focus is aimed on the cases, in which the rights of minority are systematically and grossly violated by the State. However, besides above mentioned Declaration, which is perceived as not-legally binding document and the UN Convention on the Prevention and Punishment of the Crime of Genocide, which defines the genocide[226] and can be perceived as a justified circumstance, when the minority could claim external right to self-determination[227], there exist no other international instruments, which would consider minority as a potential holder of the external right to self-determination, not even in extreme cases.

In Aaland Islands case, the Commission of Rapporteurs acknowledged that the oppression of the minority within the territory of the State, could be perceived as a reason which would allow the minority to separate from the State. Despite the fact that it was not the case of Aaland Islanders. However, it is questionable, whether such refence to self-determination principle, had a binding character. In my opinion, the fact that at that time, self-determination was perceived as a principle, not legal but political as well as the fact that by the international community, it was not interpreted as "a rule of international law,"[228] and it wasn't even included in the Covenant of the LON, all of these may suggest that such a statement made by the Commission is not of binding character. Moreover, in 1945, when the principle was embedded in the UN Charter, the term "peoples" wasn't interpreted as including minorities. In that regard, Cristescu, when interpreting the term "peoples", stated following: „A people should not be confused with ethnic, religious or linguistic minorities."[229]

However, even if the above-mentioned cannot serve as the confirmation that the minorities may claim external right to self-determination under certain circumstances, Kosovo case can prove differently. The ICJ in its Advisory Opinion about Kosovo, concluded that the fact that the Kosovars declared independence, did not violate international law.[230] Such conclusion of the ICJ definitely suggests that minorities, in cases of systematic and gross human rights violations conducted by the State, may claim the external self-determination, leading to right

[226] UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948, Art. 2.
[227] Genocide, Introduction/ Definition.
https://pesd.princeton.edu/node/446
[228] Report of the Commission of Rapporteurs on the Aaland Islands Question, League of Nations, 1921 (B7.21/68/106).
[229] Cristescu, (n12), para. 279.
[230] I.C.J., Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, Report 2010, No. 141, para. 122.

to secession. However, the fact that the ICJ decided not to address self-determination matter or its possible development, could suggest the lack of existence of opinio juris amongst the members of international community about the development of the right and inclusion of the minority to the term "peoples."

Therefore, to answer the aforementioned question, this thesis suggests that minorities cannot claim external right to self-determination even in cases of gross and systematic human rights violations conducted by the State, since there exists no unified and final consensus among the States. To that conclusion also contributes the fact that also those falling under the scope of "peoples" can claim the right, however, they can exercise it only exceptionally. The territorial integrity of the States prevails over the secessionist claims.

In my opinion, the scope of the external right to self-determination, should be developed and include minority groups as a right holders, in cases their rights are grossly and systematically violated by the State and thus, serve as a form of remedy for the groups. Moreover, such a development of the right would have a power to establish clear limits and prevent arbitrary interference with the territorial integrity of the States. However, it is important to highlight the fact that reality is more complicated, and the external right to self-determination is a perfect example, when the political interests of the States prevail over the international law.

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