

# "... till law do us part!" – On the right to secede in international law

Last summer's events in the Caucasus demonstrated once again that issues of territorial integrity retain a central role in international conflict. The Russian-Caucasus conflict also serves as a reminder of one of the fundamental questions of international relations and law: Is there a right of secession?

Ever since the rise of nation-states in the 18th century, demands for secession have existed. Early examples include the American split from the English crown in 1776 and the separation of Finland from Russia in 1918. More recent examples include Kosovo and South Ossetia.

To be clear, secession is defined as the unilateral withdrawal of a people or parts of a people from one state's territory with the intention of either founding an independent sovereign state or uniting with an existing one. As such, secession lays bare the conflict between two essential principles of international law: its violation of the territorial integrity of the mother state, and its capacity to realize the right of self-determination of a people.

Countries eager to maintain the state-centric status quo generally take a negative view of the right of secession, largely because it is perceived as a source of regional destabilization and conflict. Also, every state fears the diminution of its territory resulting from secession and the related loss of population, resources and, ultimately, power.

## 1.1 Secession – between territorial integrity...

Territorial integrity is one of the key principles on which the international order has been based since the end of World War II. This notion of preservation of territorial boundaries is enshrined in the UN Charter (Art 2 Para 4):

*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.*

A commitment to this tenet is repeatedly reinforced in an array of documents, such as Security Council resolutions or the 'Vienna Convention on Succession of States in Respect of Treaties' (1978) as well as in the charters of various international organizations such as the Arab League (1945), the African Union (2002) and the Association of Southeast Asian Nations (2007).

## **1.2 ...and the right of self-determination**

With the rise of nationalism at the beginning of the 19th century, the idea of self-determination of people grew quickly in popularity. It was a crucial factor in establishing the international order, instrumental in both the creation and dissolution of states.

Until the mid-20th century, national self-determination was seen as a political concept rather than an actual legal rule. It was only with post-World War II decolonization that self-determination came to be understood as a principle of international law intended to assure people living under colonial rule of their right to free themselves and establish their own state. However, this colonial conception of self-determination was limited.

Only the end of the Cold War led to a paradigm shift: The right of self-determination should not anymore be limited to people under foreign rule but become a principle of universal validity.

## **1.3 Challenges to the right of self-determination**

However, obstacles remain to the universal exercise of the right of self-determination. When self-determination cannot be reached within existing state boundaries but involves an alteration of national borders, conflicts concerning the sovereignty and integrity of the mother state often results.

Here it might be helpful to think of the right of self-determination as composed of an internal and an external component. The external aspect is to protect peoples from external foreign rule, whereas the internal element should enable them to determine the economic, social and cultural organization of their state without external interference (Art 1 International Covenant on Civil and Political Rights (ICCPR) & International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966). While the internal component can be realized within existing state boundaries, it is the external element that could threaten territorial integrity and create potential conflict.

Also, the difficulty of identifying the legal entity entitled to exercise the right of self-determination presents another problem. That is, while in principle self-determination is the entitlement of all 'people,' there is actually no commonly accepted definition of this term enshrined in any document. There are only some indications that a people has to be 'ethnically homogeneous,' and together with a (subjective) feeling of belonging, there should be some objective criteria, such as linguistic, cultural and religious homogeneity, as well as a 'relatedness' to the respective territory.

## **1.4 Secession as means of last resort**

Since the end of the Cold War, the right of national self-determination has been widely accepted as common law. This was manifest in numerous references in the UN Charter and Human Rights Covenants as well as consideration in numerous UN resolutions.

At the same time, however, various documents demonstrate a distinctly negative attitude on the part of some countries toward the right of secession due to its nebulous definition and seeming

incompatibility with territorial integrity. Nevertheless, increased emphasis in recent years on human rights and the legal extension of the prohibition of aggression to the domestic affairs of a state is affecting how state-actors respond to secessionist demands.

Secession is increasingly seen as an acceptable response to serious human rights violations. However, secession as a way to realize the right of self-determination is still understood purely as a means of last resort. It has to satisfy the conditions of exercising the right to self-defense, with the explicit emphasis on the general primacy of state sovereignty and integrity.

Since the end of the Cold War and the conflict in the Balkans, there are signs that state-sponsored human rights violations are no longer the only pre-condition of legitimate secessionist claims; the withholding of the right of internal self-determination as well as violent reactions by the state to secessionist claims can also lead to international recognition of the seceding party. Still, this understanding does not imply a turning away from the usual primacy of the territorial integrity associated with state sovereignty.

For now, secession remains a right under construction with many questions still unanswered: Do states ultimately accept or oppose the *fait accompli* according to their geo-political interests? Even if a state's reaction is guided by *realpolitik*, do such motives really detract from the existence of that right? Also, does ignorance of the law imply its nonexistence or does a right only exist when it warrants universal acceptance? As the case law evolves perhaps more answers will begin to crystallize.

By Daniel Högger

Daniel Högger holds a master's in political science and international law from the University of Zurich and is currently conducting postgraduate studies in International Political Economy at the University of Birmingham, UK.

## **1.5 Resources**

### **1.5.1 Legal documents dealing with self-determination and territorial integrity**

Charter of the United Nations (UN Charter)

The United Nations Charter established the UN. It was signed at the UN Conference on International Organization in San Francisco, California, United States on 26 June 1945, and entered into force on 24 October 1945 after being ratified by the five permanent members of the Security Council and a majority of other signatories. The Charter deals not just with the issues of self-determination and territorial integrity but also with colonialism (Art 1 para 2).

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is a UN treaty based on the Universal Declaration of Human Rights, created in 1966 and entered into force on 23 March 1976. (Art 1)

### International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 and entered into force from 3 January 1976. It commits its parties to work toward the granting of economic, social and cultural rights (ESCR) to individuals, including labor rights and rights to health, education and an adequate standard of living. (Art 1)

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Res 2625 (XXV) ('Friendly Relations Declaration')

The 'Friendly Relations Declaration' is a UN resolution created during the 1883rd plenary meeting, 24 October 1970. It could be described as a list of fundamental principles on international relations. In Principle V, the focus lies on self-determination of people.

### Helsinki Accords

The Final Act of the Conference on Security and Cooperation in Europe, known as the Helsinki Accords, was the final act of the Conference on Security and Co-operation in Europe held in Helsinki, Finland during July and August 1975. Principle VII gives special attention to self-determination of peoples.

### Legal Consequences for States of the Continued Presence of South Africa in Namibia (1971)

On 21 June 1971 the International Court of Justice (ICJ) decided that the continued presence of South Africa in Namibia was illegal. Therefore, South Africa was forced to withdraw and respect the self-determination of the Namibia people.

### ICJ Judgment on Western Sahara (1975)

In the summer of 1975, the International Court of Justice (ICJ) considered two questions regarding the disputed territory of Western Sahara (then Spanish Sahara). In 1969, Spain returned the region of Ifni to Morocco.

### Case concerning East Timor (Portugal v Australia) (1995)

This judgment of the ICJ is particularly remarkable due to its emphasis on self-determination as "one of the essential principles of contemporary international law" and the confirmation of its erga omnes characteristics.

## **1.5.2 Legal documents dealing with colonialism**

### Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)

The Declaration on the Granting of Independence to Colonial Countries and Peoples could be described as the milestone documenting decolonization. Also known as UN Resolution 1514, and was adopted on 14 December 1960.

### Main Documents on Decolonization

An official UN collection on various documents on decolonization.

### **1.5.3 Other documents**

Vladimir Ilyich Lenin “The Right of Nations to Self-Determination” (1914)

Lenin was a strong supporter of the right of self-determination of peoples as a right of secession, writing: “[I]t would be wrong to interpret the right to self-determination as meaning anything but the right to existence as a separate state” His complete work “Right of Nations to Self-Determination” can be accessed by clicking on the link above.

Woodrow Wilson “Fourteen Point Program” (1918)

On 8 January 1918, President Woodrow Wilson proposed a 14-point program for world peace to the US Congress. These points were later taken as the basis for peace negotiations at the end of World War I.

### **1.5.4 Research and academia**

Self-Determination in Focus, Washington DC, USA

Self-Determination in Focus, a project of Foreign Policy In Focus (FPIF), aims to provide comprehensive analysis of self-determination issues around the world. As a 'think tank without walls,' FPIF brings together an international network of analysts and activists dedicated to "making the US a more responsible global leader and partner."

The Middlebury Institute for the study of separatism, secession and self-determination, Cold Spring, NY, USA

The Middlebury Institute has been launched by a group of activists and professionals to promote the serious study of separatism, secession, self-determination and similar devolutionary trends and developments on both the national international level.

What is a Minority Group?

Dayton Law School’s online explanations and definition of minority groups.

### **1.5.5 International organizations**

Special Committee on Decolonization

The Special Committee on Decolonization was established in 1962 by the General Assembly of the United Nations with the purpose of monitoring implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and to make recommendations on its application.

Unrepresented Nations and Peoples Organization (UNPO)

An international organization created by unrecognized nations and peoples around the world who are not represented as such in the world's principal international organizations, such as the UN.

### **1.5.6 Nongovernmental organizations**

Secession Issues

An Open Directory Project listing a wide range of links on secession

secession.net

Radical libertarian project to create a worldwide secessionist network. Offers information on methods and strategies of nonviolent action.

**Movements for National, Ethnic Liberation or Regional Autonomy**

This is a list of currently active autonomist and secessionist movements around the world.