

Secession as a form of exercising the right of self-determination

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SUMMARY

The dissertation deals with the subject of the right of self-determination and secession, which may constitute a method of its execution. Although these issues have been widely discussed by multiple scholars, the development of International Law in this field prompts further considerations and encourages putting them into a framework. The main objective of this dissertation was to present the impact of the right of self-determination on the legality of secession in International Law, taking into account various circumstances surrounding this process.

Due to its state-building function, the issue of secession is an important aspect of International Law. However, its sources do not explicitly refer to secession itself as a legal notion, instead they only provide partial information regarding the basis of its execution and legal consequences of this process. In practice, secessionist parties usually justify their decision to create a new state by the right of self-determination. It seems problematic that, so far, there has not been produced a document which would consolidate a list of legal prerequisites of secession in International Law. Therefore, in current circumstances, states and international organisations may freely evaluate and recognise this act as well as its substantive results, which usually appear as new entities claiming their statehood.

The right of self-determination, despite its various historical concepts, is one of the basic principles of contemporary International Law, enshrined in treaties and other documents, including Charter of the United Nations, International Covenants on Human Rights and Helsinki Final Act, as well as various regional acts. Within the last decades, the right of self-determination has been repeatedly mentioned in resolutions of international organisations as well as in international jurisprudence. Nowadays, the theory and practice of International Law increasingly define the right of self-determination as a peremptory norm of an *erga omnes* character.

Interestingly, in spite of so many documents referring to the right of self-determination, its scope as well as the list of subjects which may exercise it, are widely debated by scholars. It should be emphasised that the right of self-determination can be exercised both internally and externally. The latter form triggers secession, although there is no clear guidance in International Law as to when the right of self-determination may not be executed within an existing state.

The dissertation consists of an introduction, three chapters and a summary. A list of abbreviations was also provided within the initial part of the dissertation, while the final section includes a bibliography.

The introduction defines the subject of the dissertation, as well as scope and purpose of the research. It also indicates the analytical methods and sources used in the course of research.

Chapter I discusses the definition of the right of self-determination, its historical origins, its legal foundations, as well as specific elements of the notion and its legal nature. In addition, the concept of internal right of self-determination in certain municipal legal systems has also been analysed. This chapter also includes considerations on the ties of the right of self-determination to other notions of International Law, such as sovereignty, *uti possidetis*, territorial integrity and inviolability of borders, as well as human rights.

The central issue presented in Chapter II is the theory of secession. Its evolution was undoubtedly triggered by the development of International Law and legal philosophy. The history of the notion of secession leads us to its contemporary definitions and criteria of its lawfulness, taking into account various legal sources. Chapter II considers also the elements of a state, recognition in International Law as well as its influence on state-building function of secession. The consequences of this process are carefully considered by the international community, especially in light of the principles of legalism and effectiveness. Their conflict seems to be inevitable, and the tangible evidence of this issue is the existence of *de facto* states in International Law.

Chapter III is focused on the rationale behind some of the secession processes which occurred in Africa, Asia and Europe in the 20th and 21st century. Considerations in this chapter are based on a case-study approach, which resulted in the analysis of legal prerequisites of secession in International Law. These include the consent of the home state and the concept of remedial secession. While the former is unlikely to be controversial, there exist various forms of granting consent to secession, which are determined in municipal legal systems. In contrast, the illegality of secession is certainly triggered by the involvement of other states and external subjects. Additionally, chapter III examines the influence of international organisations and jurisprudence (both municipal and international) on secession.

The dissertation ends with a summary. In order to investigate the problems outlined above, it was necessary to conduct legal-dogmatic, legal-historical, legal-comparative and empirical research. As a result, the following theses were proven:

- a) the right of self-determination in International Law exists beyond the colonial context;
- b) the subjects of the right of self-determination in International Law include peoples living in their own states and peoples under foreign subjugation, as well as national and ethnic minorities;
- c) remedial secession is permissible in case the right of self-determination may not be exercised internally due to violations of human rights (including collective rights);
- d) historical title does not imply the legality of secession, as it is necessary to evidence the infeasibility to exercise the right of self-determination without any territorial changes involved;
- e) effectiveness and economic factors do not constitute independent legal grounds of secession;
- f) the accordance of secession with International Law requires for this process to be initiated internally by the members of the secessionist group;
- g) the success of secession depends on its perception on the international stage, the role of states, international organizations and courts in this regard is essential.

In the absence of detailed regulations on secession and the right of self-determination in International Law, it seems necessary to bring forward legal proposals aimed at sorting out the accordance of secession with International Law, the subjects of the right of self-determination, and a list of conditions which determine its unfeasibility within the borders of existing states.

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