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LEGAL ASPECTS OF SELF-DETERMINATION AS REGULATED IN INTERNATIONAL DOCUMENTS

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-Abstract-
This article examines the historical and political evolution of the right to self-determination, which began as a political slogan used by great powers to annex territories to support their spheres of influence, which gradually developed into a political principle, to finally lay the bases of right providing for the equal participation of all peoples and individuals in political processes. Self-determination first takes shape and finds its place only after World War II, when it will be incorporated for the first time as an international political and moral principle among key objectives of the United Nations aimed at preventing such conflicts and promoting world peace. The article further analyses the legal frameworks surrounding self-determination, particularly within key UN documents like the Covenants on Human Rights and related declarations, Council of Europe and OSCE documents and good practices, emphasizing its role in safeguarding individual freedoms, civil and political rights, and minority rights, as essential elements for achieving peace and stability in diverse societies.

Keywords: *right to self-determination, internal self-determination, self-determination in international documents*

I. INTRODUCTION TO THE RIGHT OF SELF-DETERMINATION

" Determining one's own destiny, also known as 'self-determination,' has been one of the most complex, intricate, emotion-mobilizing, aspiration-creating concept in our world,...".[1]
Thus, it is understandable why immediately after the end of the two world wars, the principle of self-determination became one of the fundamental principles crucial for maintaining the long-desired world peace, based on equality, friendly relations, respect for the rights of all, and self-determination.
The forms and pace of the development of the right to self-determination are primarily determined by historical and political events. The roots of the modern concept of self-determination can be traced back to the American, French, and Bolshevik revolutions, where it was used as a tool to achieve the interests of great powers: France for the expansion of its own state through the annexation of new territories, and Russia for the spread of socialist ideology. After the First World War, in 1918, in a document known as "Wilson's Fourteen Points," U.S. President Woodrow Wilson viewed self-determination as the right of peoples to freely choose their political leaders and representatives in government, considering it the only means of protection in the fight against oppression and conflict. Unfortunately, even after the First World War, self-determination remained only a declaration and a political slogan in the interest of the Allies and their supporters in the war for the redistribution of territories.
Self-determination first gained its contours and place after the Second World War, when it was incorporated for the first time as an international political and moral principle in the Charter of

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[1] Self-determination in our times, a Brief Re-Assessment, Wolfgang Danspeckgruber, October 2017. For more info, please follow the link: https://lisd.princeton.edu/publications/self-determination-crises-our-times-brief-re-assessesment.

the United Nations, the founding document of the United Nations (UN) in 1945. Learned from the experiences of the two world wars, that issues with minorities can lead to international conflicts and fractions that require an immediate response, this principle became one of the UN main goals of the. It became vital for the preservation of universal peace, through fostering friendly relations among nations, based on the respect for the principle of equality and self-determination of peoples.

With the adoption of the *Declaration on the Granting of Independence to Colonial Countries and Peoples* in 1960 (and the resolutions for its implementation), self-determination became a key criterion in the process of decolonization. The legal form of the right to self-determination is established in Article 1 of the two main UN human rights conventions: the *International Covenant on Civil and Political Rights (1966)* and the *Covenant on Economic, Social and Cultural Rights (1966)* (Covenants), where it is defined as the right of peoples to determine their political status, economic and cultural development. The right to self-determination is placed at the beginning of both covenants (in Article 1), as a foundation for the realization of basic human rights and freedoms. This is because peoples under foreign domination and slavery are denied the enjoyment of their human rights.

The regulation of self-determination in a way that does not lead to the violation of the unity and territorial integrity of states, and the fear of secession and its explosive character, significantly limits the possibilities for its realization, also known in theory as *external self-determination*. External self-determination, as the primary form of self-determination, was mainly realized in the process of decolonization as the right of colonial peoples to choose their international political status, through a democratically expressed will (referendum or elections), and the application of the principle of *uti possidetis*, where it reached its full development.

The solution to this issue will later be offered by the *UN Declaration on Principles of International Law Concerning Friendly Relations Between States in 1970*, which will link the principle of territorial integrity with the existence of a representative government that represents all the people, regardless of race, religion, skin colour, nationality, etc. Thus, the right of the people to democracy, through meaningful participation in government, becomes a proposal for a more practical or realistic implementation of the right, which in theory is also known as *internal self-determination*[2].

Self-determination grants every individual the right to decide to whom they will entrust the power to govern on their behalf, and the right to participate in political processes and decision-making that affect their lives, rights that are regulated in the Covenant on Civil and Political Rights. The participation of the people in political processes would be meaningless without the realization of these rights.

Internal self-determination should be viewed as an avant-garde principle that will succeed in uniting and accommodating the rights and interests of all people living on a given territory, enabling meaningful participation and systematic involvement of all communities and groups in public affairs. This is the path toward the realization of the right to internal self-determination as a right distributed to all in a multicultural society.

[2] The Supreme Court of Canada, in its decision on the Quebec Secession Case in 1998, explicitly mentions internal self-determination for the first time in a well-known ruling regarding Quebec's potential secession. The Court held that "generally recognized sources of international law provide that the right of self-determination of peoples can be exercised through internal self-determination," and that this right can only be realized through secession in exceptional cases—specifically where there is (or will be determined) a gross violation of basic human rights. For more info, please see: Supreme Court of Canada Decision on Quebec Secession.

II. REGULATION OF THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL DOCUMENTS

The legal foundations of the right to self-determination emerged after the end of World War II, within the framework of the UN system, with its incorporation into the *Charter of the United Nations*, where it is established as one of the fundamental principles in the efforts and commitments of the international community to strengthen universal peace.
Considering the experiences between the two world wars, which showed that issues related to minorities could lead to international conflicts that needed to be resolved as quickly as possible, this principle became one of the four basic principles (principle number 2) contained in the first chapter of the *UN Charter - Purposes and Principles*. This principle is vital for maintaining international peace based on the friendly international relations between the states.
The principle of self-determination is a logical consequence of recognizing human rights. Without political freedom, there is no respect for civil rights or the realization of the right to equality, meaning that equal rights must also be granted to the states in which these peoples live. Self-determination holds universal importance and shares the same goal as human rights: the respect and protection of human dignity.
In Article 1(2) of the Charter, self-determination is envisaged as one of the objectives of the UN to maintain friendly relations among nations, based on the respect for the principle of equal rights and the self-determination of peoples, with the aim of strengthening global peace. For this reason, the principle of self-determination was incorporated into Chapter XIX - International Economic and Social Cooperation of States, Article 55 of the Charter, which regulates the goals of this cooperation. The article clearly states the foundations on which friendly relations between states and world peace are based: *"... 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..."*
Furthermore, self-determination is included in the part of the Charter that deals with the UN's system for administering territories under the Mandate System. This is found in Chapter XI - Declaration Regarding Non-Self-Governing Territories (Article 73) and Chapter XII - International Trusteeship System (Article 76), where the crucial importance of respecting the will of peoples without self-government is emphasized. The obligation to support the attainment of freedom and independence, the establishment of self-government in these territories, rapid economic, cultural, and social development, and the well-being of the population are also outlined, along with the respect for human rights, regardless of differences.
The incorporation of the principle of self-determination into the Charter represents the culmination of its long development process. It introduces its legal character (as contained in the Charter— a multilateral international document and principle of modern international law) and serves as the starting point for a new process—the dynamic development of this principle and its application as a legal norm in intensive international relations[3].
Although the Charter makes an attempt to provide an initial form of self-determination, it unfortunately fails to offer the necessary substance for this principle, nor does it address one of the key questions regarding its implementation, namely, what is meant by the term "people"? As such, self-determination in the Charter remains merely mentioned among the goals of the United Nations related to the strengthening of universal peace, serving as a strong moral

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[3] Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments, United Nations in 1981, by the Aureliu Cristescu, who was the Special Rapporteur of the Sub-commission on Prevention of Discrimination and Protection of Minorities. Chapter III, General Legal and Political Aspects of the Principle of Equal Rights and Self-Determination of Peoples, paragraph 97.

principle with a certain political force, which will guide the actions of the UN organs in the dynamic international political life.

Evidence of these gaps and the need for precise regulation of this principle, in the interest of global peace and stability, is clearly written in General Assembly Resolution 421 (D) from 1950. This resolution states that past violations of this right resulted in bloodshed and war, posing a continuous threat to peace. To protect future generations from the threat of war, the resolution proposes that this principle be incorporated into international human rights documents (covenants).

The first legal contours of self-determination were formed in the General Assembly Resolutions on the right to self-determination of peoples and nations, particularly Resolution 637 A (VII) from 1952 and Resolution 1514 from 1960, adopted with the *Declaration on the Granting of Independence to Colonial Countries and Peoples.* These resolutions marked the end of all forms of colonialism, domination, and exploitation, urgently regulating its realization in territories under the mandate system and those without self-government.

Self-determination was granted to all peoples, with the understanding that it could only be realized only through adherence to the international principles and norms established in the Charter and the Declaration on Human Rights.

The Declaration stipulates that the denial of self-determination equates to the disregard of the people's will, fundamental human rights, and the provisions of the Charter. Consequently, its violation represents a serious threat to international peace and cooperation. With the Declaration on the Granting of Independence to Colonial Countries and Peoples, the right to self-determination is used as a key criterion in the process of decolonization.

The realization of the right to self-determination, as outlined in the declaration, imposes an obligation on colonial powers to decolonize the territories under their administration. It also establishes a set of principles that guide UN member states in determining which territories will gain independence.

Thus, the declaration provides the green light and foundation for initiating the decolonization process, which will be based on the principle of *uti possidetis* and the free expression of will by colonized peoples, with independence being achieved through plebiscites and elections. These forms of democratic expression will allow the people to make decisions about the future of their communities.

The principle of self-determination will open the doors to a major process for global peace, equality, and justice. It will initiate the long-desired freedom and independence for colonized and exploited peoples. The fight against domination and exploitation will enable those under colonial rule to realize their inalienable right to govern in freedom and make decisions about their political, economic, social, and cultural development. They will have the power to shape their future and organize their national life as they see fit, based on the interests and development of their society.

In this way, the principle of equal rights and self-determination will announce era of the elimination of colonialism and imperialistic policies. It will support the largest liberation movement the world had seen up to that point, establishing a new world order and realizing the great hopes of enslaved nations, creating a strong foundation for genuine global solidarity.

The implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples will be regulated through several resolutions of the UN General Assembly (GA) between 1966 and 1974, which will confirm the legitimacy of the struggle of colonial peoples for liberation and independence, with all necessary means at their disposal. Among these,

Resolution 2621 (XXV), adopted in October 1970[4], stands out. It is a Program of Action for the full implementation of the Declaration, providing the framework and procedures for the realization of the right to self-determination during the decolonization process. The resolution outlines the following key directions for the implementation of this right:
The continuation of colonization in any form will be considered a criminal act and a violation of the UN Charter and the Declaration on the Principles of International Law concerning friendly relations and cooperation among states[5].
If colonial powers oppose the aspirations of colonized peoples for freedom and independence, these peoples have the right to fight by all means available to them to achieve their inherited right to self-determination[6].
All UN member states are obligated to provide both moral and material support to ensure the successful implementation of the decolonization process.
The right to self-determination is legally solidified in Article 1of both main UN human rights conventions, the International Covenant on Civil and Political Rights (1966)[7] and the International Covenant on Economic, Social, and Cultural Rights (1966). In these instruments, the right is defined as the right to determine the political status and economic and cultural development of peoples. It also includes the right to control and dispose of natural resources and wealth, which are essential for the people's existence and well-being.
Article 1(2) of both Pacts also addresses the important economic aspect of self-determination, or the right of a people to freely decide their economic system, international economic cooperation, investments, and the disposal of their natural wealth and resources on their territory – as basic means for the community's existence, in the interest of economic development and the well-being of the people. The right also includes the cultural aspect – cultural self-determination, that is, the right of a people to nurture and develop its culture and cultural heritage, based on the premise that every culture has its own value and uniqueness that must be respected and protected, both within the state and in international contexts.
What is important to note is that Article 1(3) of both Pacts provides that the obligation to promote, respect, and implement the right to self-determination, in accordance with the provisions of the United Nations Charter, lies with all states. This affirms the possibility of applying the right to self-determination outside the decolonization process. This formulation addressed the dilemmas of those who argued that the right to self-determination should be limited to the decolonization process and that the privilege of exercising this right should apply only to colonial peoples in order to gain freedom and independence.
By including self-determination in both major human rights pacts, it clearly establishes the characteristic of a fundamental right, as it is a basic prerequisite for the realization of individual rights, without which they cannot be fully applied. Self-determination serves as the foundation

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[4] Resolution GS 2621 (XXV), Program of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples of October 1970. For more information, please follow the link: http://www.worldlii.org/int/other/UNGA/1970/2.pdf
[5] The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by Resolution GS 2525, October 1970**.** For more information, please follow the link: https://www.un.org/ruleoflaw/files/3dda1f104.pdf
[6] Ibid, 1, C. The right to self-determination and the anti-colonial struggle, paragraph 48.
[7] Article 1 "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. In order to achieve their goals, all peoples may freely dispose of their natural resources and wealth without prejudice to the obligations arising from international economic cooperation, based on the principle of mutual benefit and international law. In no case shall a people be deprived of its own means of subsistence. The States parties to this Pact, including those responsible for administering non-self-governing territories and trust territories, are obliged to facilitate the realization of the right of peoples to self-determination and to respect this right in accordance with the provisions of the United Nations Charter."

for the realization of other rights (political, civil, economic, social, and cultural rights), the realization of which contributes to the fulfilment of the right to self-determination. For these reasons, the right to self-determination is positioned at the beginning of both pacts, more specifically in Article 1 (key international human rights documents), as the cornerstone and precondition for the realization of fundamental human rights and freedoms. This is evidenced by the fact that peoples under foreign domination and slavery are denied the realization of their human rights.

In this way, the two Pacts on human rights give meaning and legal substance to the principle of self-determination. However, they remain silent on several important questions, such as, who can exercise this right? how could it be implemented etc.? thus leaving room for numerous political and legal dilemmas, which make its realization politically sensitive and complex.

Certain clarifications on some of these questions are provided by the United Nations Charter, where the use of the term "*people*" is generally limited to entities that already possess "*attributes of sovereignty and statehood*." Additionally, a distinction between the terms "minorities" and "peoples" is made in the Covenant on Civil and Political Rights, where Article 27 regulates the rights of minorities, using the term "individuals (persons)." Furthermore, the General Comment of the Human Rights Committee "Rights of Minorities, Article 27," No. 23, 1994 clarifies that minority rights are individual rights, which, together with other rights, are enjoyed by the individual, thus distinguishing them from the right to self-determination, which is considered a collective right belonging to people. This clearly states that the exercise of minority rights shall be carried out in a manner that does not undermine the territorial integrity and sovereignty of the state.

Moreover, the General Comment on Article 1 – *The Right to Self-Determination from the Covenants on Human Rights, No. 12*, of the United Nations Human Rights Committee directly links the protection of human rights, to which every individual is entitled, including members of minorities, on one hand, and the right to self-determination of peoples, on the other.

A significant step forward in the progressive development of the right to self-determination and in clarifying some of the aforementioned dilemmas and questions related to its application is made by the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States*[8] in accordance with the Charter of the United Nations. In its principle 5, it provided the most authoritative and comprehensive definition of the principle of The news introduced by the Declaration on Friendly Relations are: enriching and clarifying the definition of the right to self-determination, for the first time introducing potential forms of its implementation, stipulating the obligation of states to respect it, and emphasizing the obligation to respect the territorial integrity and sovereignty of states as universal principles of international law and relations.

The Declaration on Friendly Relations provides the best definition of the right to self-determination of peoples based on the UN Charter, according to which the principle of equal rights and the right to self-determination encompasses the right of peoples (all peoples) "to freely determine their political status and freely pursue their economic, social, and cultural development, without external interference."

The Declaration on Friendly Relations also for the first time outlines the ways of implementing the right to self-determination, and this regulation will greatly facilitate its application in the future. It will also contribute to clarifying the subjects who can exercise this right. Namely, it uses the term "states," foreseeing the obligation of all states to respect and promote this right in accordance with the principles of the Charter and, if necessary, contribute to its successful realization. This stands in contrast to the previously reserved application of self-determination,

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[8] Whose goal is to clarify the purposes and principles of the UN Charter, and which in its final provisions stipulates that its principles are the foundation of international law, considering that it serves to clarify the Charter.

due to certain dilemmas among advocates of the thesis that self-determination applies solely in the context of decolonization.
What is particularly important for this Declaration is that it clearly sets the boundaries of the application of the right to self-determination by stipulating the obligation of states to respect the sovereignty and territorial integrity of member states. In this way, it provides a form of guarantee for the real fears of UN member states regarding the secession of parts of their sovereignty, especially in multicultural societies where ethnic, religious, and linguistic communities and groups coexist.
The Declaration obliges states to respect human rights and the right to self-determination in such a way that they represent the will of all citizens on an equal basis, regardless of affiliation (racial, religious, etc.).
The right to self-determination, in addition to being found in the Covenants on Human Rights and the Declaration on Friendly Relations, is included in the following documents: the Helsinki Final Act of the 1975 Conference on Security and Cooperation in Europe, the African Charter on Human and Peoples' Rights of 1981, the Paris Charter for a New Europe of the 1990 Conference on Security and Cooperation in Europe, the Vienna Declaration and Programme of Action of 1993, as well as the jurisprudence of the International Court of Justice (ICJ) in the cases of Western Sahara, East Timor, and Namibia, where the erga omnes character of the right to self-determination was confirmed. Other significant documents contributing to the right to self-determination include the opinions of the UN Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and many leading international experts.
Considering that the right to self-determination is provided for in the UN Charter and both Covenants on Human Rights, which, according to Article 38 (1a) of the Statute of the International Court of Justice, are considered conventional sources of international law, it acquires the character of a conventional norm of international law. With this definition, the right to self-determination becomes one of the most important rules in international law, whose binding nature is based on the fact that it has a universal character—meaning it is unanimously accepted by all members and represents one of the basic prerequisites for the existence of the international community. In this way, its application is not limited to colonized peoples and the states administering them, but it is clearly stated that the realization of this right is an obligation for all states, not only within the process of decolonization.
Despite the establishment of the contours of self-determination as a right in the above-mentioned international legal documents, several important questions remain open, which complicate its application. One of these questions is what exactly is meant by the term "people" and who will be able to exercise this right, or, in other words, who constitutes the people that falls into this group? These dilemmas have appeared in practice in the cases of *Western Sahara, Montenegro, Tibet*, or regions where there will be a significant challenge as to which part of the people will have the right to express their self-determination through a plebiscite, referendum, etc. How is this right exercised? Furthermore, who holds the obligation to realize this right? The modest steps for its legal definition will face the challenge of ambiguities and uncertainties in its regulation, which to this day complicate its implementation. This leaves significant room for international political events to shape its application.
The potential for the realization of self-determination in more recent times is seen in proposals for its realization within state borders with the existence of a representative government, a solution first offered by the Declaration on Friendly Relations. The existence of a system representing everyone, based on dialogue and group interaction, which would be more effective in genuinely representing all communities and bringing them together in a pluralistic society, are proposals for a more practical or realistic implementation of the right, which in theory is also known as internal self-determination.

III. IMPLEMENTATION OF THE INTERNATIONAL DOCUMENTS THAT REGULATE THE RIGHT OF SELF-DETERMINATION

The elements of internal self-determination increasingly had found support in numerous international documents, primarily adopted in Council of Europe and the OSCE in the 1990s, which introduce a new, innovative direction for the realization of the right to self-determination[9]. They stipulate the obligations of states to ensure conditions that will allow communities to express their distinctiveness in areas related to their identity such as culture, language, religion, and tradition, as well as to implement special measures to achieve actual equality, participation political decision-making, governance, institutions, as well as other spheres of society life.

Thus, the practice of power-sharing between various levels of government—central, regional, local, etc. is increasingly present in states today, reaching a point where one can even speak of shared sovereignty. Below are the main types of power devolution outlined in the document General Reference Legal Framework for Facilitating Ethno-Political Conflicts in Europe (the analysis) by experts of the Venice Commission[10].

Federalism[11] - The constitutions of federal states usually grant the federal units the remaining competences, ones that does not belong to the federation itself. Belgium is the first example of dissociative federalism (1970–1993), in which the classic unitary system first transitioned into a regional system and later into a federal system. Federalism can also arise as a result of the transformation of a confederation into a federation, as seen in the examples of Germany and the United States. What is characteristic of a federation is that certain functions are traditionally transferred to the central federal authority, such as: foreign affairs, defence, common monetary and customs policies, others, while its entities retain legislative, executive, and judicial powers and maintain competences that they have not delegated to the central authority, usually areas such as private law, social affairs etc. An example of such a design is the 'cantons' which are contained within the Bosniak-Croat Federation (one of the two entities of Bosnia and Hercegovina) which are either Bosniak or ethnic Croat dominated. The enforced continuation of territorial unity is meant to be eased by consociationalist power-sharing techniques. There are quite extensive con-sociational mechanisms of co-decision, disproportionate representation and veto provisions[12] in place providing for effective participation of the communities (known as decisions of vital interest of the constituent people) in legislatives, executive. There is

[9] International standards and best practices for the protection of minority rights are more thoroughly regulated in the following international documents: the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (UN General Assembly Resolution 47/135, 1992), the Framework Convention for the Protection of National Minorities (Council of Europe, 1995), as well as OSCE political commitments of member states on rights of national minorities: the Helsinki Final Act (1975), the document adopted at the Conference on Security and Cooperation in Europe in Copenhagen (1990), also known as the Copenhagen Criteria, and documents adopted at OSCE conferences from 1989 to 1999, which include commitments by OSCE member states to protect minority rights (Madrid 1983, Vienna 1989, Paris 1990, Moscow 1991, Helsinki 1992, Budapest 1994, Lisbon 1996, and Istanbul 1999).

[10] CDL-INF(2000)016-e, A *General Legal Reference Framework to Facilitate the Settlement of Ethno-Political Conflicts in Europe:* Adopted by the Venice Commission at its 44th Plenary meeting, 13-14 October 200).

[11] *Associative federalism* is the rule but for a long time, it was not considered a means of resolving ethnic conflicts. Federalism is more often seen as a process of gradual unification leading to greater interconnection/dependence among entities, such as in the case of the European Union.

[12] Constitution of Federation of Bosnia and Hercegovina, Article 18 "…The vital interests of any of the constituent nations require the consent of the majority of delegates in the House of Peoples, including the majority of Bosniak delegates and the majority of Croatian delegates…".

provision for excessive representation in all governance units at the federal and cantonal, as well as central and entity levels[13].

The *concept of a regional state,* which can be said that do not fundamentally differ from federalism, shares the common characteristic of dividing legislative and to some extent, executive powers, between the center and the entities. In this context, it is important to note that unlike decentralization (where decisions are mainly made by the central authority), in autonomy, entities have the competence to make decisions independently, with certain legal solutions, of course, in line with national legislation. The regional state model has developed in Italy and Spain, where it is primarily determined by historical events in these countries. In Italy, this process has taken a long period (around 25 years) and was introduced with the 1974 constitution and established through constitutional laws, granting special status (or greater autonomy) to certain regions Sicily, Sardinia, Friuli Venezia Giulia, Trentino-Alto Adige, and Valle d'Aost). Heterogeneous regionalism is also present in Spain, where the 1978 constitution allows for the initiation of a decentralized local self-government process, primarily intended for regions inhabited by communities with distinct historical and linguistic characteristics. The basic and main functions remain with the state, while the remaining state functions are entrusted to autonomous communities. It should be noted that there is no significant difference between federal and regional forms of government, as both involve legislative and executive powers shared between the central authority and the entities in the state (federal units, regions, autonomous communities).

A *high degree of decentralization* in England has also led to the creation of a new form of regional system, which grants different governmental functions to its entities, such as Scotland, Wales, and Northern Ireland.

There are various examples of devolution with *autonomy* in Europe, which resulted from the self-determination agreements made during the Cold War period (the Faroe Islands, South Tyrol, Belgium – the Brussels region, Portugal, Spain, etc.) and after its end, such as in Moldova and others.

Regional self-government in autonomy can also go hand in hand with regions with specific ethnic or geographical characteristics. An example of this is Denmark, where the Faroe Islands, which differ in their linguistic characteristics and history, have their own legislative and executive powers. With the Home Rule Act of 1948, the Faroe Islands gained greater powers in local self-government than they had previously within the Danish state. The Åland Islands in Finland, where the majority of residents speak Swedish, obtained autonomous status, legislative powers, and the use of Swedish in state schools through an international agreement reached under the patronage of the League of Nations via peaceful means (one of the best examples of peaceful conflict resolution). Noteworthy, the Swedish-speaking residents were in favour of union or reunification with Sweden. Furthermore, such examples are present in Portugal (the Azores Archipelago and Madeira), which have an autonomous political and administrative status, where laws and amendments are drafted at the regional level and approved by the Assembly of the Republic.

In more recent times, with the end of the Cold War, there was risk of causing regional destabilization, especially in Europe. Hence, settlements were imposed in relation to some of them, in particular the former Yugoslavia, as well as in cases of long-running conflicts in other regions influenced by the Cold War supporters. Settlements suddenly became an attractive option to both sides, especially as tool for either prevention from or termination of the

[13] European Journal of International Law, Volume 20, Issue 1, Pages 111–165, Settling Self-determination Conflicts: Recent Developments, Marc Weller, 2009.

respective conflicts. Hence, since the end of the Cold War in 1988, at least 32 self-determination settlements have been achieved worldwide[14].

Some of these examples include the European unitary state Moldova which has granted special autonomous status to Gagauzia, where the majority of residents are of Turkish descent, Christian faith, thus resolving the crisis that arose after the unilateral declaration of the Gagauz Republic in 1990. This status is based on provisions in the Constitution of Moldova, which stipulate that autonomy can be granted by an organic law, to certain parts of the southern Republic of Moldova, where the Gagauz region is located. This status for Gagauzia is the result of negotiations which led to an Act that provides that, Gagauzia is an autonomous territorial unit with special status, representing a form of self-determination for the people of Gagauzia and which is an integral part of the Republic of Moldova. Similar situation applies to the Transnistrian region of Moldova. Enhanced local self-government was deployed as a substitute for autonomy in the Ohrid Agreement in the Republic of North Macedonia, after 2001 conflict. The agreement also provides for power sharing modalities that ensure effective participation of minorities in legislative, executive branches, as well as public administration. Of note, the agreement re confirms the Macedonia sovereignty and territorial integrity, and the unitary character of the state as inviolable and that they must be preserved.

Political agreements for power-sharing are advocated in political contexts where different communities coexist, as solutions to ethno-political conflicts. These agreements are not based on dividing of the political unit into multiple entities, but on creating special political arrangements within the entity that allow for the representation of different communities. Such agreements provide the opportunity for communities to be represented in government and political life through their representation in the legislative and executive branches, as well as adequate participation and reflection of their interests and needs in the budgetary allocation process. An example of this is Northern Ireland, where British unionists and the Irish national minority are proportionally represented in the legislative body, key decisions are made by consensus between the two communities, there is a division of key state functions (including the roles of Prime Minister, Deputy Prime Minister, and Ministers), and there is an appropriate budgetary allocation, etc.

In exchange for autonomy, a number of states have adopted the *System for the Protection of Minority Rights*. This indicates that autonomy is not always the solution for the effective realization and protection of the rights of minority communities. Such examples include Denmark and some minority communities in Germany (e.g., Frisian and Sorb). A special status through a system of personal autonomy can be granted without any specific form of local self-government. A middle-ground solution is provided in Hungary, where, although there is no system of territorial autonomy, local minority councils have a say in all matters significant to their communities. At the national level, communities are represented where they do not have their own elected representatives for their respective communities. The mechanism for the protection of minority rights can be a solution in cases where community members are not concentrated in certain areas but they are dispersed throughout the country.

In conclusion, there are various forms providing for the effective participation of the minority communities within the borders of the state they leave in. This broad approach to self-determination creates space for a different or innovative way of interpreting minority rights and their realization through democratic processes and effective participation. Giving possibilities for each state to decide which creative solution to apply that it believes will suit its context and specifics, aimed at ensuring the most adequate and effective participation of minority communities in governance and social life, as a preventive measure against potential dissatisfaction and future conflicts.

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[14] Ibid 13

IV. CONCLUDING OBSERVATIONS

The legal nature of the right to self-determination is established through its regulation in Article 1 of both main international human rights conventions of the United Nations (the Covenants on Human Rights), recognizing it as the right to determine the political status, economic, and cultural development of peoples. The Covenants on Human Rights give substance and legal meaning to the principle of self-determination. However, they remain silent on questions such as who can exercise this right and what is meant by the term "people". This opens the possibility for its broad interpretation, fuelling the hopes of ethnic groups to seek the realization of the right to external self-determination and secession. The UN Declaration on Principles of International Law concerning Friendly Relations between states provides clarification on certain aspects of self-determination, stating that states are the entities that can exercise this right, while also setting boundaries for its implementation by imposing the obligation to respect territorial integrity and sovereignty. In this way, it alleviates the real fears of states regarding conflicts and secession. Further clarifications are provided by the UN Charter, which generally limits the term "people" to entities already possessing "attributes of sovereignty and statehood." Additionally, the General Comments of the UN Human Rights Committee—such as General Comment No. 23 on the Rights of Minorities (Article 27) and General Comment No. 12 on the Right to Self-Determination (Article 1)—make a distinction between the protection of individual human rights, including the rights of minorities, and the right to self-determination of peoples. This does not mean that this fundamental right is inapplicable to minorities. On the contrary, as individuals who are part of society, minorities can exercise their share of self-determination in the state in which they live through participation in governance and the realization of their rights, as enshrined in both Covenants (particularly Articles 19, 21, 22, 25, and 27), including minority rights. Due to the challenges associated with the application of self-determination, as mentioned above, its potential in more recent times is seen in proposals for its realization within state borders, where the existence of a representative government could ensure the effective participation of all groups, including minority communities. This approach is viewed as a vital component for the peace and stability in a pluralistic society. Thus, the practice of power-sharing between various levels of government, central, regional, local, etc. is increasingly present in states today in various forms (federation, autonomy, regional government, decentralisation, power sharing, protection mechanism of minorities' rights etc.) reaching a point where one can even speak of shared sovereignty.

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