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Research Article

ON THE CORRELATION OF THE PRINCIPLES OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND THE TERRITORIAL INTEGRITY OF STATES

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ABSTRACT

The article examines the correlation between the principles of the right of peoples to self-determination and the territorial integrity of states. It is noted that in international law, the question of the unilateral right of peoples to self-determination is extremely doubtful, this right is secondary compared to the principle of territorial integrity, subject to the condition.

The highest judicial authorities of a number of foreign countries have confirmed this right in court decisions.

KEYWORDS

Doctrine of international law, self-determination of peoples, territorial integrity of States, protection of minorities, universally recognized principles of international law.

INTRODUCTION

In the modern doctrine of international law, the question of the correlation of the principles of territorial integrity of States and self-determination of peoples is not only a theoretical problem, but also a source of conflicts that pose a threat to international security. Recently, a number of events have occurred

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that have intensified discussions in the doctrine of international law about the relationship and interaction of these principles.

In particular, we are talking about the attempt to declare independence by Catalonia, the possibility of holding a referendum on the independence of Scotland and Quebec, the unresolved situation concerning Northern Cyprus and Kosovo, attempts to create an independent state by Kurds (Kurdistan), Tuaregs (Azawad), Kashmiris (Azad Kashmir), etc. [1].

In general, this issue is also relevant in the post-Soviet space, where there are a number of self-proclaimed territorial entities on the territory of Moldova, Azerbaijan, Georgia, Tajikistan or existed in the recent past (Chechnya in Russia).

And with the appearance of the so-called Islamic State of Iraq and the Levant on the territory of Iraq and Syria, Russia's recognition of the self-proclaimed republics in Eastern Ukraine created a threat to universal peace and security and required intervention from the international community.

In recent years, some authors, in order to achieve their goals, without opposing certain norms of international law, refer to the alleged contradictions between individual norms and principles of international law [2]. Thus, it is suggested that some international legal principles contradict each other, for example, the principle of self-determination of peoples — the principle of territorial integrity of States [3], that there is a conflict between the principle of inviolability of borders and the right of peoples to freely dispose of their destiny [4].

Interstate cooperation on issues related to the protection of minorities began to develop intensively only after the First World War, starting in 1919. It was the forerunner of universal cooperation in the field of human rights. Neither in the past nor in the present has the issue of extending the right of peoples to self-determination to minorities seriously arisen. According to the reasoned opinion of M.S. Aktomirova, "This is due to the fact that in practice preference was given to the concept of the rights of persons belonging to minorities, and not the rights of minorities themselves" [5]. As an example, article 27 of the International Covenant on Civil and Political Rights can be cited, according to which in countries where minorities exist, "persons belonging to such minorities cannot be denied the right, together with other members of the same group, to enjoy their culture, to profess their religion, to perform its rituals, as well as to use their native language." [6].

Naturally, with this approach, there is no need to talk about the right of minorities to self-determination or, moreover, about their international legal personality. The reluctance to raise the issue of protecting the rights of minorities was explained both by fears of encouraging the isolation of minorities, which could lead to their artificial isolation and stimulate hostility with the rest of the population, and by fear of the appearance of separatist sentiments among some minorities.

In the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, the UN General Assembly gave the principle of self-determination of peoples a clear anti-colonial orientation. At the same time, the Declaration stated that "any attempt aimed at partially or completely violating the national unity or territorial integrity of the country is incompatible with the purposes and principles of the UN Charter" [7].

The UN Charter, the International Covenants on Economic, Social and Cultural Rights and on Civil and

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Political Rights of December 16, 1966 enshrine that the right to equal rights and self-determination means the right of peoples to freely establish their political status and ensure their economic, social and cultural development [8].

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992 [9] It is based on the concept of protecting the rights of persons belonging to minorities, who at the same time are not recognized as subjects of international law.

A similar provision, in fact, is contained in the Final Act of the CSCE, as well as in a number of other documents adopted by the CSCE (for example, the Charter of Paris for a New Europe in 1990, the document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE in 1991, the Declaration and Program of Action of the World Conference on Human Rights in Vienna, adopted in 1993 and dr.) [10].

The right to self—determination is one of the universally recognized principles of international law. The process of formation of this norm began in 1792, when the annexation of the papal Enclaves of Avignon and Venessen to France took place on the basis of a plebiscite. He received recognition in the process of the collapse of the colonial system first in Article 1 of the UN Charter [11], and then in the Declaration on the Granting of Independence to Colonial Countries and Peoples (adopted by resolution No. 1514 of the UN General Assembly on December 14, 1960), the Declaration on the Principles of International Law (dated October 24, 1970) [12] and subsequent UN international acts.

At the same time, the Declaration on the Principles of International Law emphasizes that "nothing in should be interpreted as authorizing or encouraging any actions that would lead to the dismemberment or partial or complete violation of the territorial integrity or political unity of sovereign and independent States.

The world community as a whole and many States individually have come to the need to create an effective mechanism for ensuring the rights of nationalities as a form of their self-determination. The need for such a mechanism is obvious: on the one hand, such ethnic communities cannot be recognized as subjects of international law for self-determination, and on the other hand, even such small groups can, with external support, create a real threat to the territorial integrity and security of any State.

In most cases, it is argued that the principle of territorial integrity of the State takes precedence over the right to national self-determination.

Thus, considering the issues of state structure, the Venice Commission in the Report of December 10-11, 1999 "On Self-Determination and Secession in Constitutional Law" has developed principles for determining the legal status of autonomous entities in unitary and federal States and standards for the protection of the rights of national minorities.

In it, the principle of self-determination was subordinated to the principle of territorial integrity of states. [13].

The review of the constitutions of European states made in the Report showed that in most of them the right to self-determination is not proclaimed, and if it is proclaimed, it is not associated with the right to secede from the state [14].

In the case of the proclamation of the right to self-determination, the constitutions of such States (the Russian Federation, Croatia, etc.) do not provide for legal mechanisms for its implementation. Consequently, the right to self-determination is limited only by national and cultural rights and is understood as internal self-determination of the people within the existing borders of the State and cannot be external self-determination through secession.

This approach is confirmed in the UN General Assembly resolution A/64/438 "On the universal realization of the

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right of peoples to self-determination" of December 18, 2009 [15].

A similar position is developed in PACE resolution No. 1832 of October 4, 2011, according to which "the right of ethnic minorities to self-determination (...)

does not provide for an automatic right to secession [and] first of all should be implemented by protecting the rights of minorities .... and the member States of the Council of Europe are urged to refrain from "recognizing or support of the actual authorities of illegally separated territories, including those that were supported by foreign military interventions."

It should be noted that the conclusion of the Venice Commission on this issue was the basis of its Conclusion of March 21, 2014 on the Crimean referendum, according to which the Constitution of Ukraine, like other constitutions of the member states of the Council of Europe, provides for the integrity of the country and does not allow any local referendum on secession.[16].

It should be noted that the priority of the principle of territorial integrity over the right of peoples to self-determination has been repeatedly confirmed by the highest judicial bodies of various States. Thus, the decision of the Supreme Court of Canada regarding Quebec in connection with the possibility of the withdrawal of this French-speaking province from Canada is of great interest.

The history of relations between Quebec and Canada perfectly shows how the issue of independence can be discussed for decades and how important mutual understanding and mutual respect of federal and regional authorities is.

After a two-year trial of the Ottawa lawsuit, the Supreme Court of the Federation in 1998 adopted a unanimous decision: **any unilateral secession (secession) of the province is considered illegal and incompatible with the Constitution** [17].

The Canadian Armed Forces noted that various international documents that speak about the right of nations to self-determination, at the same time contain clarifications that the exercise of this right should be limited to preventing threats to the territorial integrity of an existing State.

After the 1995 referendum on the independence of Quebec, on the basis of a special request from the Governor-General, the Supreme Court of Canada provided an explanation. The position of the Supreme Court consisted of four points that cannot be considered separately from each other. Firstly, federalism — one of the principles on which the Canadian Constitution is based — presupposes "reconciliation between diversity and unity" and exists in Canada not only to support the free association of provinces, but also to maintain national unity. Secondly, democracy, the Supreme Court is sure, is built on respect for "all voices in the market of ideas." Thirdly, constitutionality and legality presuppose the protection of citizens from illegal actions of the government. Fourth, the protection of minorities, which follows from all the previous paragraphs.

Based on this decision of the Supreme Court, the Canadian Parliament adopted the "Clarification Act", which was intended to indicate the conditions under which one of the provinces can leave the federation. The essence of this act is that the will of citizens in a referendum is not enough to declare independence. Since the declaration of independence has two interested parties — the region and the federation — they need to come to an agreement on the meaning of the referendum. The law gave the House of Commons of Canada to decide whether the citizens of a certain province had clearly expressed their desire to secede from the federation.

As can be seen, issues related to the territory are important for each State. The presence of its own territory is one of the main and essential conditions necessary for the material existence of any state. As the famous scholar in the field of international law L. F. L. Oppenheim figuratively noted, "a state without a

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territory is impossible."[18]. At the same time, the author emphasized: "... the importance of the territory of the state is that it is a space within which the state exercises its supreme and, as a rule, exclusive power. **The Federal Constitutional Court of Germany** stated that "In the Federal Republic of Germany as a national state based on the constituent power of the German people, the lands are not "masters of the Basic Law". There is no place in the Basic Law for separatist aspirations of individual lands. They violate the constitutional order"[19].

The Constitutional Court of Spain in 2008 stated that national sovereignty belongs exclusively to the Spanish people, and in order for a regional referendum on secession to become legitimate, a reform of the **Spanish Constitution of 1978 is required** [20].

In the decision of the Constitutional Court of Italy No. 118 dated 29.04.2015, it was stated that since the consultative referendum on the status of the Veneto region was an invasion of the sphere of competence of the national rather than regional level, an attempt was made to overthrow the constitutional principle of unity and indivisibility of the Republic [21].

As for the modern constitutional and legal doctrine on secession, according to G. N. Andreeva "it is at the stage of searching for a combination of various theories and a balance of the fundamental principles of a modern democratic constitutional state. These searches are currently determined to a large extent by the choice of priority values: preference for the principle of unity, integrity of the state and the principle of sovereignty entails the denial of the right to secession; focusing on human and peoples' rights forces us to look at secession as one of the ways to realize these rights."[22]

It seems that since the recognition of the new State by the international community lies in the sphere of international law, the doctrine of secession should develop at the junction of international and national constitutional law. In international law — as the realization of the rights of peoples in international relations, in national law — as the creation of mechanisms to maximize the realization of the interests of the peoples living in the State, the whole complex of their economic, political, social and cultural rights and the resolution of emerging conflicts of interest.

In the report "Possible ways and means to facilitate peaceful and constructive solutions to problems related to minorities", A. Eide, Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights, notes that the issue of the unilateral right to self-determination is extremely doubtful, this right is secondary compared to the principle of territorial integrity while respecting conditions that the State has a government that represents the interests of the entire population, regardless of any differences based on race, religion or skin color.[23]. M. Shaw emphasizes that from the clause contained in the Declaration on International Principles of 1970 and repeated in the Vienna Declaration on Human Rights of 1993, one can see, firstly, the establishment of the primacy of the principle of territorial integrity and, secondly, an indication of the content of self-determination within the territory [24].

S. Yu. Marochkin also notes that the principle of self-determination of peoples should be applied based on the principle of territorial integrity of states [25]. J. Vidmar concludes: it is generally accepted in international legal science that the principle of equality and self-determination of peoples is limited by the principle of territorial integrity of States [26].

Accordingly, it can be concluded that the principle of territorial integrity of States is a basic principle of international law and has the character of norms of jus cogens. This circumstance is also indicated in the practice of the International Court of Justice of the United Nations [27], and in the international legal doctrine. The world's leading experts in the field of international law T. Frank, R. Higgins, A. Pelle, M. Shaw and K. Tomushat in the report "The territorial integrity of Quebec in the event of sovereignty" note: "Few

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principles of modern international law are so firmly rooted as the territorial integrity of states. Although this is an old principle connected with the concept of the state itself, it has been solemnly and especially convincingly confirmed in the last fifty years." [28].

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