



RIGA
GRADUATE
SCHOOL OF
LAW

Remedial secession as a federal phenomenon

BACHELOR THESIS

Author:

Diāna Bukēviča

LL.B 2015/2016 year student

student number B015069

(Ieva Miļūna)

SUPERVISOR:

(LL.M.)

DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

RIGA, 2018

SUMMARY

International human rights law is ever more pervading the conduct of international relations and the development of international law thereof. It is only after the humanity has witnessed human rights violations of an intolerable magnitude that it begins to insert provisions in international statutes that would envisage an option to protect those rights, albeit with an unenviable progress. Every rule prescribing a greater protection for the individuals as the most vulnerable subjects of international law is necessarily perceived by states as a threatening infringement upon their territorial integrity and henceforth sovereignty. The ancient and seemingly obsolete state paradigm is competing on a constant basis with the anthropocentrism as an emerging value and aim for the international community to strive for.

Given the lack of opportunity for a single individual to convince a state of his paramount importance as compared to state sovereignty, an occasion where a whole people claim a collective right to determine their fate themselves deserves a much closer attention. At this point, the inviolability of boundaries might elude. Self-determination of peoples as a peremptory norm of international law is supposed to grant a right to escape from injustices and secede from a sovereign authority that at some point has commenced an oppressive exercise of its powers. Therefore, right to remedial secession as a compromise between the two competing paradigms is suggested as a necessary means to ensure human-rights compliant and contemporarily-centred interaction between the state and its people.

However, the near inexistence of the right to remedial secession in international statutory law induces to search for its legality in another source of international law. Hence, the aim of this research is to argue that remedial secession is a right that can be invoked as legitimately, as any other human right mentioned in any of the international human rights documents. It is claimed to be existent in international customary law.

The research is specifically focused on federal states since their system of governance illustrates a symbiosis between the classical state paradigm and the autonomy of its subjects. In particular, it is argued that peoples inhabiting respective federal units possess a right to remedial secession due to the fact that the whole existence of the state who claims authority over them is based upon the consent of those peoples to give up a certain portion of autonomy to the sovereign. In this case, a remedy for unauthorized exercise of state power should in a normative sense be provided by federal constitutional law.

For the purposes of this research, four case studies of secession of federal units are selected as exemplary state practice in the case of gross human rights violations: Bangladesh, Chechnya, South Carolina and Kosovo. While circumstances of each case provide for different criteria to be met for the secession to qualify as remedial, a number of prevalent features appear throughout all four cases. Specifically, remedial secession calls for existence of a humanitarian crisis that has emerged from systematic human rights violations at different levels and a clear breach of competence to exercise authority by the federal sovereign.

As a matter of fact, however, it does not seem to be objective to make conclusions about definite numbers of casualties or concrete period during which those violations have to be exercised. Moreover, federal constitutional laws fail to envisage any mechanism of secession for units that have in essence concluded a social contract with their sovereigns upon certain guarantees. Right to secession, if mentioned at all, bears merely a declaratory character and through the wording of the law may even be interpreted as a completely different legal notion. In sum, ambiguity of international law regarding remedial secession and secession in general is perfectly reflected in constitutional law of separate states.

While it may be asserted that right to remedial secession exists indeed, peoples invoking it are subject to very specific circumstances and, in fact, possess a very limited opportunity to legitimately justify its invocation. The difficulty is posed already from the legal perspective, not even mentioning the political perspective where the state sovereignty paradigm prevails. Therefore, an inference from the aforementioned case studies is the following: remedial secession bears an excessively theoretical nature at the moment and needs an in-depth elaboration not only in soft law and judgments of the International Court of Justice, but also in actual statutory law both on international and national level.

CONTENTS

INTRODUCTION	5
CHAPTER 1: RELEVANCE OF THE RIGHT TO SECESSION FROM THE HUMAN RIGHTS LAW PERSPECTIVE.....	7
1. RESTRICTIVE NATURE OF FEDERALISM TOWARDS INTERNATIONAL HUMAN RIGHTS LAW	7
1.1. Conceptualization of federalism in the context of self-determination.....	7
1.2. Principle of autonomy vs. principle of territorial integrity	9
1.3. Decolonization principle as an established rule.....	11
1.3.1. Uti possidetis juris	12
2. LEGAL STATUS OF SECESSION.....	13
2.1. Interstices of self-determination	13
2.2. The definition of “people”	15
2.3. External self-determination in the form of right to secession.....	16
2.3.1. De lege lata	16
2.3.2. De lege ferenda.....	17
CHAPTER 2: EXISTING STATE PRACTICE ON REMEDIAL SECESSION	18
3. EX FACTIS JUS ORITUR – A GAP-FILLING INSTRUMENT	18
4. CIRCUMSTANCES CONSTITUTING REMEDIAL SECESSION	20
4.1. Bangladesh.....	20
4.1.1. Qualification for the right to secession.....	20
4.1.2. Existence of “remedial” circumstances	22
4.1.3. Carte blanche case of remedial secession.....	24
4.2. South Carolina	25
4.2.1. Secession as a means to preserve a constitutional right	25
4.2.2. State continuity	26
4.3. Chechnya	28
4.3.1. Conditional independence	28
4.3.2. Internal self-determination: a preventative measure	29
4.4. Kosovo	30
4.4.1. Forced harmonization	31
4.4.2. External intervention	32
4.4.3. Unilateral declaration of independence	33
CHAPTER 3 : EFFECTIVENESS OF REMEDIAL SECESSION IN PRACTICE	34
5. UT RES MAGIS VALEAT QUAM PEREAT	34
6. EFFECTIVENESS OF THE STATEHOOD	37
7. STATE RESPONSIBILITY	38
CONCLUSION	40
BIBLIOGRAPHY	42

INTRODUCTION

In the wake of numerous secessionist movements in the 21st century, a legitimate question arises of what legal framework should regulate the issue. The balancing of human rights with classical state sovereignty paradigms is becoming an ever-more complicated task, finding the solution for which is crucial if international community desires to be guided by the considerations of humanity. Such scholars as A. Pavkovic and P. Radan note the painful contemporary abundance of violent secessions, as well as violent secession attempts which, being invoked as a remedy for political and social justices, quite frequently acquire a dubious status.¹ Moreover, the open issues left by the illustrative Kosovo's secession raise a valid concern of whether self-determination as an umbrella concept for secession is legitimate under any circumstances. If the answer is in negative, the nature of restrictions and exceptions to the general self-determination needs to be examined.

Yet another concern arises when considering secession as an exceptional occasion of self-determination at very specific point only. There has been a discussion around the argument that self-determination does not entail the right to secession as such at all, subject to the very specific case of remedial secession. As the name suggests, it provides for secession in the case a remedy of last resort is absolutely necessary. However, the legality of this limited right is also yet deeply questionable.

To shed light on the issue of legality of remedial secession, the following **research question** is posed: has remedial secession evolved as a customary international rule regarding federal states?

Moreover, a peculiar state of affairs emerges in the case of federal countries. Secession under federal constitutional laws is subject to special conditions that in general retain a number of similarities. Therefore, secession is examined through the lens of federalism as a factor giving specific importance to this right.

In this regard, several sub-questions are also analysed throughout the thesis to provide a better insight into the details of the main question. The sub-questions for reflection are the following:

1. Why is secession important with respect to federal states?
2. Has right to secession been recognized and established in public international law?
3. What are the conditions for secession to qualify as remedial? More specifically, what rights need to be in violation and how grave should such violations be?

¹ Aleksandar Pavkovic, Peter Radan, *Creating New States: Theory and Practice of Secession* (London: Routledge Taylor & Francis Group, 2016), p. 3. Available on: <https://books.google.lv/books?id=AxwpDAAAQBAJ&printsec=frontcover&dq=secession&hl=ru&sa=X&ved=0ahUKEwin6a2t8IrbAhUmM5oKHfVdDNYQ6AEITzAF#v=onepage&q=secession&f=false>. Accessed May 16, 2018.

The thesis is primarily based on doctrinal methodology. Being divided in three chapters, it embraces interdisciplinary research, reflecting the nearly inevitable symbiosis of law and politics. The first chapter analyses the complicated and nuanced balance between the two fundamental legal concepts of right to secession and territorial integrity. With a specific focus on the former concept, legal status of right to secession *de lege lata* is examined. In order to embrace a versatile and contemporary approach to examination of this legal issue, normative legal philosophy *de lege ferenda* is also applied to the analysis of right to secession and at this point remedial secession in particular. As an additional point, the concept of a “people” that may invoke remedial secession is sought to be defined. In sum, the overall doctrinal analysis is viewed constantly through the prism of the legal philosophies of legal positivism and normativism.

The second chapter contains a comprehensive analysis through the method of comparative federalism. More specifically, state practice with respect to denial of or support for the secession and the subsequent circumstances pervasive and necessary for the secession to qualify as remedial is examined through the method of legal case study. Furthermore, federal constitutional laws and the mechanisms envisaged thereof for federal units to secede, as well as the equality of distribution of competences between the federal units and the sovereign are examined in detail. Thus, the legality of remedial secession is sought for in the actual case-law of several existing and historical federal states. The chosen cases are the secessions by Bangladesh, South Carolina, Chechnya and Kosovo for the particular relevance they bring to the evaluation of remedial practice.

The third chapter provides a completely fresh view to remedial secession, in that it swifts away from the extensive legal analysis of existence of a right rather touching upon the practical feasibility of remedial secession. In particular, the subsequent ability for the newly formed state to pass the test of effectiveness, as well as to meet the statehood criteria necessary to exercise a practically feasible existence is emphasized. Lastly, the concept of state responsibility for the denial of peremptory norms is discussed.

CHAPTER 1: RELEVANCE OF THE RIGHT TO SECESSION FROM THE HUMAN RIGHTS LAW PERSPECTIVE

1. RESTRICTIVE NATURE OF FEDERALISM TOWARDS INTERNATIONAL HUMAN RIGHTS LAW

1.1. Conceptualization of federalism in the context of self-determination

Federalism should be viewed as a factor of paramount significance in the actual implementation of collective human rights prescribed by international law, in that it represents a peculiar legal relationship between the state and its subjects. This relationship rests on acknowledgement of existence of a nexus among otherwise legally and ideologically different units. The state itself thus merely provides a framework within which those units can peacefully coexist. The argument upon which the following claims rest is that the federal framework is a decisive restriction in the realization of aspirations of its respective units with the intent of separation.

To continue with this argument, determination of the extent to which a federal state has been accorded delegated powers and persists legally as a sovereign directly affects invocation of collective rights by the units. As if a problem of what rights can be exercised by these units were not a substantial matter of legal discussion itself, the concept of what a federal state is appears ambiguous. Constitutionalist J. Fischer and J. Delors find it important to distinguish respectively between the terms of confederation or federation of nation-states and federation or federal state. While the former denotes a rather historical purely international grouping of states in the context of 19th century Germany and USA, the latter is a full-fledged sovereign within the meaning of international law.² For the purposes of analysing the current status of right to secession as the legal consequence of self-determination, the latter definition is applied.

As the consequent matter, exercise of rights by units should depend on their collective delegation or deprivation of powers upon the federal sovereign as the central authority. The idea that autonomy and thus self-determination of peoples is a natural sequel of federalist system stems from the philosophy of legal pluralism. With respect to the concept of federalism, it underlines affiliation of multiple groups to different nation-states within a federation.³ A crucial element underlying the whole essence of nation-states having united in a singular sovereign is decentralization. Here a strong form of what J. Locke would call a social contract is visible. The state is based on a conditional transfer of powers by its people for the sake of a

² “Federation and the Constitutional Theory of the State”. *The Jean Monnet Center for International and Regional Economic Law & Justice*. Available on: <https://jeanmonnetprogram.org/archive/papers/00/00f0301EN-02.html>. Accessed March 19, 2018.

³ Paul Schiff Berman, “Federalism and International Law Through the Lens of Legal Pluralism”, *GW Law Faculty Publications & Other Works*, 2008, p. 1155. Available on: https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?referer=https://www.google.lv/&httpsredir=1&article=1086&context=faculty_publications. Accessed March 19, 2018.

more effective enjoyment of their rights and greater protection.⁴ The aforementioned conditionality a fortiori applies to federations since they present artificial compositions. Legislative power is granted to the nation-states by a deliberative government that is intended as no constraint to their autonomy.⁵ Accordingly, normative systems of those nation-states exist separately from each other, albeit with at times substantial overlapping areas.⁶

However, at this point the issue of jurisdictional redundancy emerges. Varying and conflicting regulations by federal, national and international laws render it hard to distinguish, which norms are binding and legitimate in a specific case.⁷ Particular hardship is brought by the federal constitutional law which is not automatically subordinated to international legal norms and therefore occasionally fails to incorporate certain provisions of international human rights law.⁸ The issue of hierarchy of legal norms is illustrated in the famous *Medellin v. Texas* judgment by the US Supreme Court. It reversed an International Court of Justice (hereinafter ICJ) judgment in the case concerning *Avena and Other Mexican Nationals* against the US by stating in part C that international treaties are subject to a “post-ratification understanding” of signatory nations in terms of their own binding federal laws. Thus, enforceability of international law depends on domestic law provisions. Further it was held that

absent a clear and express statement to the contrary, the procedural rules of the forum State govern the implementation of the treaty in that State.⁹

Conclusion that stems from the judgment is that federal states can in most cases be considered the ultimate decision-makers as regards the actual implementation of international law. Specifically, the creeping federal power of such states as the US subjugates international law under its constitutional provisions. This infringes severely upon the highly valuable right to self-determination in particular which seems to be facing a grim reality from the point of view of nation-states and expression of their autonomous will. Although several Harvard Law School theorists note that federalism as a composition of different systems is naturally intended to provide units with the right to exit,¹⁰ even position of the international community is not clear on this issue. For instance, the ICJ states in its advisory opinion regarding *Reparation for Injuries Suffered in the service of the United Nations* that

⁴ “Locke’s Political Philosophy”. *Stanford Encyclopedia of Philosophy*. Available on: <https://plato.stanford.edu/entries/locke-political/#SepPowDisGov>. Accessed March 19, 2018.

⁵ Martha A. Field, “The Structures of Federalism”, *American University International Law Review*, Issue 2, Vol. 8, 1993, p. 445. Available on: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1861&context=auilr>. Accessed March 19, 2018.

⁶ *Supra* note 3. Accessed March 19, 2018.

⁷ *Ibid.*, p. 1159.

⁸ Mark V. Tushnet, “Federalism and International Human Rights in the New Constitutional Order”, *The Wayne Law Review*, Vol. 47, 2001, p. 847. Available on: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1256&context=facpub>. Accessed March 19, 2018.

⁹ *Jose Ernesto Medellin, Petitioner v. Texas* (25 March, 2008, unreported). Available on: <http://caselaw.findlaw.com/us-supreme-court/552/491.html>. Accessed March 19, 2018.

¹⁰ *Supra* note 5. Accessed March 19, 2018.

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community.¹¹

It is thereby open to interpretation of federal sovereigns what the nature and rights of their respective subjects are. The “needs of the community” can similarly lie at any extreme: should it be preservation of state sovereignty or respect for autonomy of the peoples.

1.2. Principle of autonomy vs. principle of territorial integrity

As soon as invocation of a pertinent human right to self-determination is being considered, inevitable clash between two fundamental international principles arises. The two values, although intended to intertwine and complement each other, in broad terms present quite opposite claims. While the first concerns an essential right given to peoples in the course of development of international community, the second embodies the perpetually prevalent state supremacy. The issue here evolves around the balancing of these two principles. For the purposes of this subchapter, the concept of self-determination is examined within the meaning of United Nations (hereinafter UN) Charter.

In the modern era of conscientious human rights compliance, it would be reasonable to begin the analysis with the placement of self-determination within the system of international law. Importantly, it stands as one of the very purposes for which the United Nations was formed, as the second paragraph of article one of the UN Charter holds:

to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.¹²

By analogy applying this provision to the system of federalism, the legal consequence would be that the sovereign should at all times respect aspirations of its subjects towards self-determination and despite any secession movements endeavour to preserve amity in further interactions with the latter. Moreover, the UN Charter imposes an even stronger obligation upon states by the specifically set out Declaration Regarding Non-Self-Governing Territories. In article 73 it upholds the paramount importance of interests of inhabitants from territories desiring to acquire self-governance, as well as even obliges in part b the states “to assist them in the progressive development of their free political institutions”.¹³

However, self-governance is arguably an incomplete form of the right to self-determination. It concerns the principle of autonomy which stands as a compromise in the interstices of self-determination and territorial integrity of states. In the writings of such jurists as Hannum it appears that autonomy is equated to a “less-than-sovereign self-determination”.¹⁴ Therefore, the sui generis nature of self-governance resembles relationship between federal subjects and their

¹¹ Reparation for Injuries Suffered in the service of the United Nations, Advisory Opinion, International Court of Justice (April 11, 1949, unreported). Available on: <http://www.icj-cij.org/files/case-related/4/004-19490411-ADV-01-00-EN.pdf>. Accessed March 19, 2018.

¹² United Nations Charter. San Francisco, (June 26, 1945). Available on: <http://www.un.org/en/sections/un-charter/un-charter-full-text/>. Accessed March 20, 2018.

¹³ Ibid. Accessed March 20, 2018.

¹⁴ Thomas D. Musgrave, *Self-Determination and National Minorities* (Oxford: Clarendon Press, 1997), p. 208.

respective sovereign. Federalism per se appears as an intermediate level combining the two opposite principles and accordingly providing a fruitful basis for examining legal status of autonomy as such at a down-to-earth level. Although at no point the relevance of autonomy as an international principle is doubted, it becomes unclear as to what should be the extent of support by the states. The UN Charter does not explain what “assistance” to these groups means, the more so guarantee of independence is never even mentioned. While it would arguably be excessively ambitious to expect a detailed explanation from the text of the UN Charter, as a matter of a fundamental principle it does not uphold independence in a declaratory manner to the least extent.

The principle of autonomy once again appears in the UN Declaration on the Rights of Indigenous Peoples. Merely for the sake of clarity, it is useful to explore the definitions applied thereby. In particular, article four maintains peoples indisputably possess the right to autonomy or self-government regarding their internal affairs and autonomous functions in the exercise of their right to self-determination.¹⁵ In essence, this wording implies that self-determination does not expand beyond the obviously restrictable self-governance.

Any kinds of restrictions thereof are put by the overwhelming authority of the principle of territorial integrity. Judge Huber contemplates that as the other side of the coin, it involves exercise of an exclusive control and right to display activities of the state within its territory.¹⁶ UN Charter enshrines this principle in the famous article 2.4:

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.¹⁷

Thus, however important human rights may have become, territorial integrity is still considered a cornerstone of international security and peace. The existing legal doctrine even suggests that the principle is divided into two parts – territorial preservation and territorial sovereignty¹⁸ – obviously excluding the possibility of secession. Internal or external intrusions upon it accordingly constitute a threat to the established international order.

By taking a weighing and balancing approach, the contemporary universality of territorial integrity is nevertheless questionable. The ever-stronger development of human rights should permit leeways in this otherwise supreme legal principle. The Helsinki Final Act of 1975 as a pinpoint of major breakthrough in this area has put forward in part eight an obligation for states to ensure equal rights and self-determination for peoples

¹⁵ Resolution adopted by the General Assembly, No. 61/295 United Nations Declaration on the Rights of Indigenous Peoples. (September 13, 2007). Available on: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Accessed March 20, 2018.

¹⁶ Supra note 14, p. 180.

¹⁷ Supra note 12. Accessed March 20, 2018.

¹⁸ Stuart Elden, “Contingent Sovereignty Territorial Integrity and the Sanctity of Borders”, *SAIS Review*, Vol. 26, No. 1, 2006, p. 11. Available on: <https://progressivegeographies.files.wordpress.com/2012/02/contingent-sovereignty.pdf>. Accessed March 20, 2018.

acting at all times in conformity [...] with the relevant norms of international law, including those relating to territorial integrity of States.¹⁹

Compared to other international legal documents, the same feature is present: self-determination must be respected subject to the mandatory norm of territorial integrity. While at first sight this assertion appears self-contradictory, it simply implies that territorial integrity should provide for exceptions, even if very limited and narrow. It is thus further necessary to explore what the narrow area of legal exceptions does and should involve.

1.3. Decolonization principle as an established rule

It can be claimed with confidence that federalism has contributed to a very specific, yet absolute occasion when autonomy unconditionally takes prevalence. Rights of peoples within non-self-governing territories are accorded a greater weight in the case of colonial territories. Threat to disruption of state sovereignty is at one unambiguous point considered less relevant than threat to fundamental human rights. The occasion in question focuses on decolonization which has emerged as a universal remedy for the constant longstanding and massive human rights violations and suppression of peoples.

The remedy embodied in General Assembly Resolution 1514 (XV) of 1960 illustrates the novel trend that has taken place following the World War II. Widespread human rights awareness has facilitated express acknowledgement of such values as “inalienable right to complete freedom”, as well as “the exercise of their sovereignty and the integrity of their national territory”²⁰ for all peoples. Despite the fact that disruption of territorial integrity is strictly forbidden by this resolution, “alien subjugation, domination and exploitation” of peoples is at the same time held to be an “impediment to the promotion of world peace”.²¹

Although the wording here is not as strong as in the UN Charter, where threat to territorial integrity is directly associated with threat to peace, it is nevertheless a document which finally speaks about threats to fundamental human rights as presenting at least an impediment to peace. The right to self-determination afforded to the peoples is, however, very limited in the aforementioned resolution. Surprisingly, from the UN documents in general the explicit term “colonialism” has been interpreted narrowly and thus presents a problem. The application of Resolution 1514 has been subject to a “salt water test” which in essence is fulfilled only by the colonial territories that are or have been geographically separated from the mainland of the state they have been subjected to. Having acquired a political rather than a legal connotation, it appears that geographically contiguous territories have been excluded from the definition of Resolution 1514.²² It does not mean that the latter do not possess the right to self-

¹⁹ Conference on Security and Co-Operation in Europe Final Act. Helsinki, 1975. Available on: <https://www.osce.org/helsinki-final-act?download=true>. Accessed March 20, 2018.

²⁰ Resolution adopted by the General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples, No. 1514 (XV). (December 14, 1960). Available on: <http://www.un.org/en/decolonization/declaration.shtml>. Accessed March 20, 2018.

²¹ Ibid. Accessed March 20, 2018.

²² Steven Wheatley, *Democracy, Minorities and International Law* (Cambridge: Cambridge University Press, 2005), p. 74. Available on:

determination. It simply means that they fall within the narrow area where exceptions are to be searched.

1.3.1. Uti possidetis juris

However, decolonization does not only imply the availability of right to secession through the territorial element. What is specifically relevant to the analysis of secession and, in particular, remedial secession, is the doctrine of uti possidetis juris because it emphasizes the people with a common spiritual belonging having faced violation of their rights by the dominating power as another element. Hence, before going into a detailed analysis of what elements self-determination comprises and in what cases it can legally lead to secession, it may prove useful to touch upon another legal principle that helps support a claim of the people from a non-self-governing territory to remedy the wrong that has been inflicted upon them.

The doctrine of uti possidetis juris has specifically emerged from the principles of self-determination and non-interference in the internal affairs meaning that jurisdiction and sovereignty of a country confines within the original delimitations of colonial administrative borders.²³ Essentially, a claim is stronger when existence of a state can historically be proven since peoples can associate themselves not only with a spiritual feeling, but also with a geographically delimited area.

The legal force of this uti possidetis juris should indeed not be underestimated, for even the ICJ has admitted in paragraph 23 of judgment in the frontier dispute case between Burkina Faso and Republic of Mali that in the process of decolonization it has acquired nature of a general principle of law:

Uti possidetis, as a principle which upgraded former administrative delimitations, established during the colonial period, to international frontiers, is therefore a principle of a general kind which is logically connected with this form of decolonization wherever it occurs.²⁴

The opposing view by some scholars is that uti possidetis juris should not be understood as a general principle of law because it bears purely an international law character and has not been transferred to international law from domestic legal systems. They rather argue that compliance with it has been demonstrated by the opinio juris and hence uti possidetis juris should be a customary law norm.²⁵ In such case argument in favour of self-determination would be even

<https://books.google.lv/books?id=Pbntu7mntWQC&pg=PA74&lpg=PA74&dq=salt+water+test+international+law&source=bl&ots=8yeFFCmHXJ&sig=nKffizfMgKOjkHU0WwBa0Zf2rHc&hl=ru&sa=X&ved=0ahUKewi6pNfq0frZAhWJ6CwKHcqYAUwQ6AEIRDAD#v=onepage&q=salt%20water%20test%20international%20law&f=false>. Accessed March 20, 2018.

²³ Enver Hasani, *Self-determination, Territorial Integrity and International Stability: The Case of Yugoslavia* (Vienna: National Defence Academy Institute for Peace Support and Conflict Management, 2003), pp. 19-20. Available on: http://www.bundesheer.at/pdf_pool/publikationen/hasa03.pdf. Accessed March 20, 2018.

²⁴ Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali), International Court of Justice Judgment of 22 December 1986, para 23. Available on: <http://www.icj-cij.org/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>. Accessed March 20, 2018.

²⁵ Edited by Christian Walter, Antje von Ungern-Sternberg, Kavus Abushov, *Self-determination and Secession in International Law* (Oxford: Oxford University Press, 2014), pp. 99-100.

more grounded, since it would be manifested in state practice as an important source of international law.

Moving further from the specific argument of *uti possidetis juris*, it is necessary to examine what the important occasions on which the principle of territorial integrity might be set aside in favour of self-determination are. For such purpose, legal scholar Daniele Archibugi puts forward a general statement that although international community in broad terms supports the meaning of self-determination in the context of colonialism, obvious exceptions could be demands of minorities and ethnic or cultural groups.²⁶ Indeed, the importance of self-determination and its further expressions is reinforced given the existence of considerable human rights violations.

2. LEGAL STATUS OF SECESSION

2.1. Interstices of self-determination

A group of peoples that genuinely desires to acquire more autonomy than feasible within the limits of assistance that is being provided to non-self-governing territories currently experiences a hard time. The more it is true when full-fledged independence rather than a greater form of autonomy is pursued. The principal issue here evolves around the dubious question of whether self-determination embodies automatic right to secession. Solidarist stance on the matter is lacking both from the practice of members of international community and statutory text of human rights law.²⁷ Nevertheless, in order to find lacunae in the text of international legal documents that could provide a place for right to secession, a comprehensive analysis of the fundamental sources of international human rights law is conducted.

The beginning point of the analysis might bring some disappointment since self-determination as an inalienable human right is not explicitly mentioned in the Universal Declaration of Human Rights (hereinafter UDHR) which can reasonably be considered the cornerstone document of human rights enshrining the practices that have evolved into customary international law. The sole ambiguous part which barely touches upon this right is article two:

[...] no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.²⁸

Surprisingly enough, the legal provision merely speaks about human equality irrespective of territorial belonging, at the same time by no means putting forward a right to determine this

²⁶ Daniele Archibugi, "A Critical Analysis of the Self-determination of Peoples: A Cosmopolitan Perspective", *Constellations*, Vol. 10, No. 4, 2003, p. 488. Available on: <http://www.danielearchibugi.org/downloads/papers/2017/11/Archibugi-A-Critical-Analysis-of-the-Self-determination-of-Peoples.pdf>. Accessed March 20, 2018.

²⁷ Michele Capeleto, "Does Self-Determination Entail an Automatic Right to Secession?". Available on: <http://www.e-ir.info/2014/05/02/does-self-determination-entail-an-automatic-right-to-secession/>. Accessed March 20, 2018.

²⁸ Universal Declaration of Human Rights. Available on: <http://www.un.org/en/universal-declaration-human-rights/>. Accessed March 20, 2018.

very belonging on a voluntary basis. It appears strongly that on the face of it international community adopts the approach of legal neutrality: secession is first and foremost neither allowed, nor prohibited.²⁹ Therefore, it is necessary to deepen the analysis by examining more detailed human rights documents.

Hence, the International Covenant on Civil and Political Rights (hereinafter ICCPR) embodies far more concrete stance regarding self-determination. Firstly, it is set out as the most important right in the very first article. Secondly, the very first paragraph of this article contains the following wording: “by virtue of that right they freely determine their political status”.³⁰ The promising provision seems *carte blanche* to peoples that are willing to secede as compared to the tight and rigid provisions of the UN Charter and UDHR. Beyond any doubt, the right to determine political status can lead to ultimate exercise of the right to secession if the desire of such status equates to political independence.

Furthermore, the third paragraph of the very same article stipulates that states not only have the obligation to administer the non-self-governing territories, but also “shall promote the realization of the right of self-determination”.³¹ Thus, the ICCPR prolifically complements the narrow set of state obligations imposed by the UN Charter. By invoking once again the argument of federalist system as an intermediary, it can be asserted that a system which in itself is merely a political notion should by the same merit allow formations and legitimate expressions of similar political nature, regardless of the generality of international legal norms regulating the matter. Although “promotion of right to self-determination” is *per se* a mildly worded obligation, it is nevertheless the only legal provision that envisages any legal consequences of self-determination. Moreover, the right to secession here stems quite as a natural legal consequence.

Interestingly, the International Covenant on Economic, Social and Cultural Rights also enshrines the right to self-determination in its first article,³² albeit the purpose of this Covenant is to cover a completely separate and even less recognized and internationally respected generation of human rights. Needless to question whether the importance of self-determination has been overestimated. Both Covenants expose it as the most crucial right which should be reminded of in lists of any types of rights. Therefore, the relevant inference that should be made is that self-determination is important from the perspective of two generations of human rights simultaneously. Given its multiple mention in human rights documents, it can be asserted that secession is a logical sequel of self-determination envisaged by international law.

In this respect, the scholar Lea Brilmayer presents an interesting view. In her distinguished paper under the title of “Secession and Self-Determination: A Territorial Interpretation” she

²⁹ Zoilo A. Velasco, “Self-determination and Secession: Human Rights-based Conflict Resolution”, *International Community Law Review*, Vol. 16, 2014, p. 88. Available on: HeinOnline. Accessed March 13, 2018.

³⁰ International Covenant on Civil and Political Rights. (March 23, 1976). Available on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed March 20, 2018.

³¹ *Ibid.* Accessed March 20, 2018.

³² International Covenant on Economic, Social and Cultural Rights. (December 16, 1966). Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Accessed March 20, 2018.

denies the existence of inconsistency between the principles of self-determination and territorial integrity at all. Instead, the allegedly competing principles complement each other because territorial integrity is threatened only by the right to rebel. Right to secession on its part is to be carefully distinguished from the right to rebel since it involves invocation of a human right and not a simple disruption of peace and security. Above all, territorial integrity in her mind means nothing without essential human right being complied with within such territory.³³

2.2. The definition of “people”

Another yet no less important question is which “people” are eligible to exercise secession. The term presents serious lacunae, for it is as broad and imprecise as self-determination. All the documents analysed previously fail to make any specifications. The more it is true even as regards the UN Charter which for the purpose of putting a general framework speaks only about the “principle of equal rights and self-determination of peoples” in its article 1.2. Seemingly, the only group that certainly falls within the notion of peoples are the inhabitants of former colonial territories.

However, the contemporary practice clearly shows the relevance of other groups that may potentially or arguably even currently claim their right to self-determination. United Nations Educational, Scientific and Cultural Organization’s (hereinafter – UNESCO) International Meeting of Experts on further study of the concept of the rights of peoples makes a valuable contribution here by listing in paragraph 22 of the final report and recommendations the criteria that characterize a homogeneous group as a “people”. These are, in particular, a common historical tradition, racial or ethnic identity, cultural or linguistic unity, religious or ideological affiliation, territorial connection or common economic conditions. What is more interesting, it is not even necessary for all the criteria to be met, it is said that only some would suffice.³⁴

Despite the aforementioned criteria being quite extensive but by no means exhaustive, the same document contains a certain disclaimer as well, stating that they bear the force of a soft law, not a binding definition.³⁵ Nevertheless, the state practice nowadays implies the practical relevance of those criteria. It is even reasonable to expect a constant supplementation of characteristics that in the future might provide a clear legal definition enshrined in international statutory law of what a “people” is. For the purposes of this research, the concept of a people is applied within the meaning of the UNESCO document with a specific limitation of the boundary of a federal unit.

There are more differing views on defining the concept of “people”. For instance, jurist Kelsen initiates a philosophy that “people” equate to “states” since the UN Charter is a piece of

³³ Lea Brilmayer, “Secession and Self-Determination: A Territorial Interpretation”, *Yale Journal of International Law*, Vol. 16, No. 177, 1991, pp. 178-180. Available on:

https://www.uvi.edu/files/documents/College_of_Liberal_Arts_and_Social_Sciences/social_sciences/OSDCD/Secession_and_Self-Determination_A_Territorial_Interpretation_Brilmayer.pdf. Accessed March 21, 2018.

³⁴ United Nations Educational, Scientific and Cultural Organization’s International Meeting of Experts on further study of the concept of the rights of peoples, Final report and recommendations. (November 27-30, 1989).

Available on: <http://unesdoc.unesco.org/images/0008/000851/085152eo.pdf>. Accessed May 2, 2018.

³⁵ *Ibid.* Accessed May 2, 2018.

legislation that regulates relations between states. However, this view is if not completely rejected, then definitely visibly extended by travaux préparatoires of the UN Charter, in which the preparatory committee stated that equality of rights was intended to apply to states, nations and peoples in the same manner.³⁶ Similarly, reference to the above-mentioned excerpt from Resolution 2625 also clarifies that states have the obligation to refrain from denial of self-determination. Beyond any doubt, this denotes a clear distinction between states as sovereigns and peoples as their subjects.

2.3. External self-determination in the form of right to secession

Furthermore, it is necessary to focus the attention on the very specific legal consequence that previously discussed peoples invoking self-determination are hoping for – the right to secession. As opposed to self-governance which involves a set of internal self-determination rights of all kinds required to be respected by the mother state, secession falls into the realm of external self-determination. It is widely held that theoretically in case of oppressions of such human rights the peoples acquire as the right to independence as a remedy.³⁷

2.3.1. De lege lata

In order to determine to what extent right to secession is theoretical and how much legal force it currently carries it is first and foremost useful to examine the statutory law covering the issue. More specifically, two questions are important to be analysed: legality or permissibility of secession per se and the criteria for peoples to be met to qualify for secession. Legal framework for the purposes of this research is examined de lege lata.

While the Resolution 1514 is generally quite sceptical about secession, in that it expressly condemns partial or total disruption of territorial integrity,³⁸ there is yet another UN Resolution that covers the notion of secession extensively. The Resolution 2625 contains a declaration on principles that are necessary prerequisites for friendly relations among the states. By putting self-determination in e part of its preamble as one of the principles in an exhaustive list that requires progressive development and codification,³⁹ the UN delimits exercise of state powers by according self-determination the status of jus cogens or a peremptory international norm. It

³⁶Supra note 14, pp. 148-149

³⁷ Milena Sterio, “On the Right to External Self-Determination: ‘Selfistans’, Secession and the Great Powers’ Rule”, Cleveland-Marshall College of Law, Research Paper 09-163, *Minnesota Journal of International Law*, Vol. 19, 2010, pp. 1-2. Available on:

<https://poseidon01.ssrn.com/delivery.php?ID=803090114088005103007124099064023103016052085015079029126118079027126065064115112030006052013006037046016116069076005089116001048011066061044005103022122098116036083077091102084117004014068096120121117091096091086125111013083092093104126021103126&EXT=pdf>. Accessed March 21, 2018.

³⁸ Supra note 20. Accessed March 21, 2018.

³⁹ Resolution adopted by the General Assembly No. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. (October 24, 1970). Available on: <http://www.un-documents.net/a25r2625.htm>. Accessed March 21, 2018.

has accorded a special status to self-determination which renders it a peremptory norm of international law.⁴⁰

The foregoing argument that speaks about the peremptory nature of self-determination is by no means arbitrary. A case before the ICJ between Portugal and Australia concerning East Timor contains an important finding that self-determination is irreproachably an international erga omnes obligation, the existence of which does not in any way depend on lawfulness of the conduct of any state.⁴¹ On the basis of this judgment, it could therefore be inferred that state practice bears little significance if examined from a purely legal perspective, not in a political context.

Arguably, the Resolution 2625 also imposes a significant exception to the highly praised territorial integrity in yet another way. Peculiarly enough, it expressly prohibits states to act against self-determination movements even if they strive for independence:

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.⁴²

However, a problem might be posed by the fact that the specific term of secession is never applied. Although “freedom and independence” practically means right for the peoples to secede, ambiguity of this provision and the excessively broad term of self-determination is interpreted to mean almost any discontent among the peoples regarding their mother state. Undoubtedly, the right to secession deserves its place in statutory international law, albeit merely between the lines.

In sum, statutory law unfortunately does not provide clear explanation of the relevant terms and does not specify the conditions for secession. As can be concluded from the legal analysis it is due not to doubtful legality of secession but rather to lack of specific legal acts regulating the matter and the use of such broad terms in the existing acts that there are open to misinterpretation. Hence, it is necessary to resort to a slight application of normative philosophy.

2.3.2. De lege ferenda

Contemplations about de lege ferenda regarding the right to secession have received a valuable contribution from the work of Allen Buchanan. He believes that the framework of international institutions gives rise to institutional moral right for a group to secede defended by international

⁴⁰ Alexander Orakhelashvili, “The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions”, *The European Journal of International Law*, Vol. 16, No.1, 2005, p. 59. Available on: <http://www.ejil.org/pdfs/16/1/290.pdf>. Accessed March 21, 2018.

⁴¹ Case concerning East Timor (*Portugal v. Australia*) (June 30, 1995), Judgment, I.C.J. Reports. Available on: <http://www.icj-cij.org/files/case-related/84/084-19950630-JUD-01-00-EN.pdf>. Accessed April 14, 2018.

⁴² Supra note 39. Accessed March 21, 2018.

ethical norms.⁴³ Such normative legal philosophy could provide a solid basis for further development of international legislation on secession.

Buchanan proposes two theories of secession. The first is Primary Right Theory which permits secession on two legitimate grounds. On the first occasion, there has to be an ascriptive group the distinctiveness of which is defined by any other than political characteristics. Secondly, there may be an associative group which no matter how heterogeneous has to assert a right of political association and secede on grounds of voluntary political choice. Both cases, either apolitical or political are feasible on the merits of the group's sole desire to secede.⁴⁴

The other theory is much more subtle and does not consider mere existence of group's unity as a sufficient prerequisite for secession. Remedial Right Only Theory assumes that secession is legitimate if and only if violations of fundamental human rights are so unbearable that there is no other option than to exit. Buchanan distinguishes it from Locke's theory of revolution by implying that the purpose of Remedial Right Only Theory is not to overthrow the government per se but to get rid from its oppressive control over a certain part of territory.⁴⁵ This more restrictive theory can be successfully supplemented by Amandine Catala's "just cause theory" of remedial secession. She adds two elements for the arousal of claim to remedial secession: disregard of its political legitimacy by the mother state and failure thereby to ensure provision of justice.⁴⁶

Since the current research examines in detail self-determination in the specific external form of secession, the author finds it relevant to analyse the current international practice of secession through the lens of integral "remedial" element. International human rights law does not permit explicitly secession per se, it leaves lacunae for legal remedy for gross human rights violations. Therefore, the following chapters are focused on circumstances constituting secession as remedial in the current state practice.

CHAPTER 2: EXISTING STATE PRACTICE ON REMEDIAL SECESSION

3. EX FACTIS JUS ORITUR – A GAP-FILLING INSTRUMENT

To begin with, the extreme incompleteness of international legal regulation in the matter of secession gives rise to a thought that factual background may legitimize such right. The proposition can be affirmed by the ever-existing relationship between two international legal principles: *ex injuria jus non oritur* (hereinafter *ex injuria*) and *ex factis jus oritur* (hereinafter *ex factis*). The latter maxim by its nature can be considered a remedy, since it implies that law

⁴³ Allen Buchanan, "Theories of Secession", *Philosophy and Public Affairs*, Vol. 26, No. 1, 1997, p. 32. Available on: <http://philosophyfaculty.ucsd.edu/faculty/rarneson/phil267fa12/BuchananTheoriesSecession.pdf>. Accessed March 21, 2018.

⁴⁴ *Ibid.*, pp. 38-39. Accessed March 21, 2018.

⁴⁵ *Ibid.*, p. 35. Accessed March 21, 2018.

⁴⁶ Amandine Catala, "Remedial Theories of Secession and Territorial Justification", *Journal of Social Philosophy*, Vol. 44, No. 1, 2013, p. 75. Available on: EBSCO host. Accessed March 13, 2018.

arises from facts,⁴⁷ in the case of human rights law meaning the respective wrongdoings by states. In sum, facts rather than law legitimize remedial secession. This principle is crucial not for generating remedial circumstances in a complete absence of violations of actually existing laws but rather for filling in the previously mentioned gaps in law regarding the way in which such violations shall be remedied.

Moreover, the abundance of lacunae in the norms prescribing self-determination even proves the objective necessity to evaluate each case in the account of factual circumstances. The international environment in its weakest places experiences demonstration of superior power of states taking the duty of legislating the ambiguous matters. Already back in 1951 the scholar T. Cheng correctly noted that where the authority of international law is the most minimal, establishing the scope of *ex factis* as a social force is the only way to counterbalance the actual display of disruptive forces.⁴⁸ As to sovereigns who legislate at the expense of rights of their units, the maxim is even more relevant as a remedy against the abuse of delegated power at the federal level.

Nevertheless, *ex factis* is unfortunately no less ambiguous than statutory international law. Despite the undeniable importance of this maxim, its application has to be carried out narrowly. While *ex injuria* is presumed to eliminate injustice, *ex factis* should provide a safeguard against disorder.⁴⁹ Illustrative evidence of the application of *ex factis* is present in state practice in the case of independence of the Baltic States in 1991. While *ex injuria* would mean secession from the Soviet Union as a result of its dissolution, *ex factis* was the actual principle under which the independence was rather to be restored than secession exercised. It essentially means that determination of status of the Baltic States was dependent upon the factual circumstances of that time.⁵⁰ Further elaborating upon Cheng's considerations, it has been rightly concluded that *ex factis* as a social force carries the risk of law being used to attain the desired social ends.⁵¹

⁴⁷ Christopher R. Rossi, "Ex Injuria Jus Non Oritur, Ex Factis Jus Oritur, and the Elusive Search for Equilibrium After Ukraine", *Tulane J. of Int'l and Comp. Law*, Vol. 24, 2015, pp. 148-149. Available on: <https://poseidon01.ssrn.com/delivery.php?ID=33507411107401506610710112708810007310901702407203503010607902311120085009067094107037033035060058099112005015102031097113109062066043049061127115112002090102010067086029023124120088097082120065109097020080018027106122113072068064030113005026117009091&EXT=pdf>. Accessed April 14, 2018.

⁴⁸ Ti-Chiang Chen, *The international law of recognition* (New York: Frederick A. Praeger, Inc., 1951), p. 421. Available on:

<https://books.google.lv/books?id=3g8KAwAAQBAJ&pg=PA420&lpg=PA420&dq=ex+factis+jus+oritur&source=bl&ots=P-bJQLrWM1&sig=MVCEzWiF1VwW6VYp2-FLeZmiYWo&hl=ru&sa=X&ved=0ahUKEwimYXCjrraAhVCOJoKHao8D5YQ6AEIZDAI#v=onepage&q=ex%20factis%20jus%20oritur&f=false>. Accessed April 14, 2018.

⁴⁹ Gérard Kreijen, *State Failure, Sovereignty and Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa* (Leiden: Martinus Nijhoff Publishers, 2004), pp. 175-176. Available on: https://books.google.lv/books?id=LQCgNzL3RJQC&pg=PA175&lpg=PA175&dq=ex+factis+jus+oritur&source=bl&ots=6vfgdR5Tcs&sig=ob036_H1TOHpx7k4QFYQWqApxy8&hl=ru&sa=X&ved=0ahUKEwiR9qOxjbraAhWh0aYKHfAsBN4Q6AEIaTAJ#v=onepage&q=ex%20factis%20jus%20oritur&f=false. Accessed April 14, 2018.

⁵⁰ Peter Van Elsuwege, *From Soviet Republics to EU Member States: A Legal and Political Assessment of the Baltic States' Accession to the EU* (Leiden: Martinus Nijhoff Publishers, 2008), pp. 59-61. Available on: <https://books.google.lv/books?id=E5v0RuGkB0EC&pg=PA59&lpg=PA59&dq=ex+factis+jus+oritur+international+law&source=bl&ots=ZoVW-2w36y&sig=bK7vqzaC694SoRp6KM4w-JPBcy0&hl=lv&sa=X&ved=0ahUKEwi5i-2i->

In this specific issue the ICJ held in paragraph 91 of its judgment in South West Africa cases that in the process of application of teleological interpretation to the international law “rights cannot be presumed to exist merely because it might seem desirable that they should”.⁵² Hence, rectification of international law has to be very limited and subject to strict case-specific factual conditions for *ex factis* to be regarded as a legal instrument. State practice and in particular federal practice is thereby a reference point for examining the existence of customary law in the form of remedial secession given these conditions.

4. CIRCUMSTANCES CONSTITUTING REMEDIAL SECESSION

4.1. Bangladesh

Analysis of state practice is applied to clarify what “remedial” part of right to secession involves and subsequently to establish the existence of customary law. A scholar Ieva Vezbergaite suggest that Bangladesh should be demonstrated as the cornerstone of analysis of remedial secession because as a geographically separate province called East Pakistan it managed to secede from Pakistan in 1971 outside the meaning of colonial-self-determination and form an independent state. Beyond any doubt, fundamental human rights violations as a phenomenon present on an illustratively large-scale⁵³ is by no means underestimated.

4.1.1. Qualification for the right to secession

First and foremost, Bengalis as inhabitants of East Pakistan possess the right to secession due to absence of any means to exclude them from notion of the term “people”. Besides being geographically separated, Bengalis are according to a Study of Secular and Religious Frontiers considered a culturally, linguistically and religiously distinct group not only within the borders of Pakistan, but also the subcontinent in general.⁵⁴ It is clear that strong-multifaceted cohesion is prevalent within this group that qualifies them as “people” that have been afforded collective rights.

Secondly, aspiration of Bengalis towards unilateral independence is by no means arbitrary. Given the rough division of Pakistan into ideologically separate West and East Pakistan, internal tensions intensified due to concentration of economic and political power in the

ezaAhVGDywkHWWsBuoQ6AEIwTAH#v=onepage&q=ex%20factis%20jus%20oritur%20international%20law&f=false. Accessed May 5, 2018.

⁵¹ Supra note 48. Accessed May 5, 2018.

⁵² South West Africa cases (*Ethiopia v. South Africa; Liberia v. South Africa*), (July 18, 1966), Judgment, I.C.J. Reports. Available on: <http://www.icj-cij.org/files/case-related/47/047-19660718-JUD-01-00-EN.pdf>. Accessed April 14, 2018.

⁵³ Ieva Vezbergaite, “Remedial Secession as an Exercise of the Right to Self-determination of peoples”, Legal studies department, Central European University, Budapest, 2011, p. 75.

⁵⁴ Sanjay K. Bhardwaj, “Contesting Identities in Bangladesh: A Study of Secular and Religious Frontiers”, *Asia Research Centre Working Paper* No. 36. Available on: <https://pdfs.semanticscholar.org/22c8/14b2f62d41ede000a4cc1ec740672e59e53b.pdf>. Accessed April 15, 2018.

former.⁵⁵ Here, it is necessary to examine the provisions of Pakistani federal constitutional law at the time of 1962 to detect existence of any imbalance. It is important to note that article one expressly puts forward the provinces of West and East Pakistan as the only constituent units of the federation and other territories that “[...] are or may become included in Pakistan, whether by accession or otherwise”.⁵⁶ This means prima facie that any territory is not afforded the same status, given that other constituent territories are not even listed.

Looking more specifically at the provisions on governance in the country, part four of the Constitution called “The Provinces” prescribes the legislative and judicial system for West and East Pakistan. Although it may seem that at least these two principal provinces should have equal separation of powers, a discrepancy appears in article 97 that covers “The High Courts” system. While the first and second paragraph of this article envisages in an equal manner permanent seats for the High Court in both provinces, the third paragraph states that:

A Judge of the High Court of the Province of West Pakistan shall not be transferred from a permanent seat of that Court to another permanent seat of that Court without the approval of the President first being obtained [...].⁵⁷

Peculiarly, there is no provision in the Constitution that would prohibit transfer of a judge to another seat without a specific approval on the part of East Pakistan. A conclusion follows that courts of West Pakistan have more judicial power since they are under an intensified scrutiny of the president. This means that even in legal terms East Pakistan is facing discriminatory treatment since there are more stringent judicial requirements than in West Pakistan. The obvious imbalance clearly breaches the principles of democracy, freedom and equality mentioned in the preamble of the Constitution.⁵⁸ Certain abuse of federal power is also present which means that politically right to secession for East Pakistan is justified.

Interestingly enough, preamble of the Constitution contains the following wording: “Pakistan should be a democratic State based on Islamic principles of social justice”.⁵⁹ The allegedly restrictive federal law therefore makes a reference to ex factis principle very explicitly, in essence stating that justice is by its nature a social phenomenon. However, the Constitution does not lean towards permitting secession. Ineptitude with the principle of social justice is visible again in the third part of the preamble stipulating that the provinces shall be “enjoying such autonomy as is consistent with the unity and interest of Pakistan as a whole”.⁶⁰ Indisputably, secession would distort the unity and most likely be against the interest of Pakistan as a federal sovereign. Inconsistency among the different principles of Constitution is due to excessive centralization of federal power for which further a remedy has to be provided.

⁵⁵ Caitlin Reiger, “Fighting Past Impunity in Bangladesh: A National Tribunal for the Crimes of 1971”, ICTJ briefing, 2010, p. 1. Available on: <http://ictj.org/sites/default/files/ICTJ-BGD-NationalTribunal-Briefing-2010-English.pdf>. Accessed April 15, 2018.

⁵⁶ Pakistan. The Constitution of the Republic of Pakistan, 1962. Available on: http://pakistanspace.tripod.com/archives/62_00.htm. Accessed April 15, 2018.

⁵⁷ Ibid. Accessed April 15, 2018.

⁵⁸ Ibid. Accessed April 15, 2018.

⁵⁹ Ibid. Accessed April 15, 2018.

⁶⁰ Ibid. Accessed April 15, 2018.

4.1.2. Existence of “remedial” circumstances

Disregarding even the presence of political inequality among the provinces which due to respect of territorial integrity may not be acknowledged a valid ground for secession, a strong “remedial” element is prevalent. The most important argument that can be put forward is massive perpetration of human rights violations on three different levels. As a matter of fact, each type on its own expressly calls for the abused people to secede, while together they reinstitute legality of remedial secession.

The first level concerns breach of cultural, linguistic, political and social rights of Bengali people. An illustrative instance of violation is subversion of Bengali language by not recognizing it as official, although more than 50% of Pakistan’s population natively spoke Bengali. In addition, leadership of the country was mostly non-Bengali, leaving a strong sense of underrepresentation in East Pakistan. The language recognition movements were constantly rejected and even suppressed by police force. The ethnic composition of Pakistani government accordingly also left Bengalis relatively politically disenfranchised.⁶¹

In economic terms similarly, East Pakistan was receiving a significantly lower share of government expenditures since industrialization was aimed at West Pakistan. Hence, the largely agrarian East Pakistan was regarded merely as a junior economic partner of West Pakistan and overall faced a certain kind of “inter-regional colonialism”.⁶² Before even coming to international human rights law, such treatment of constituent peoples breaches federal constitutional guarantees in Pakistan, for in the third part of preamble of the Constitution, point e, it is emphasized that respect should be paid for: “the fundamental human rights (including the rights of equality before law, [...], of social, economic and political justice)”.⁶³

Unsurprisingly, disregard of federal constitutional rights in this case is yet the mildest form of human rights violations. What follows on the second level is summarized successfully by a scholar Zuzana Žaludova. Claiming that all the available options for realization of rights for Bengali people were exhausted, it can be inferred that internationally accepted and recognized right to internal self-determination was denied.⁶⁴ This is yet another legitimate ground for remedially seceding from the oppressive federal sovereign.

Finally, the third level violations provide the most convincing argument for remedial secession. Outrageous atrocities were perpetrated by the federal sovereign against the independence movement initiated by the Awami League who won the representation rights of East Pakistan in the elections of 1971.⁶⁵ The peaceful movement was violently suppressed by Pakistani military junta in a specifically targeted Operation Searchlight, exterminating the cultural

⁶¹ “JCC: East Pakistan Crisis Bangladesh”, Princeton Model United Nations Conference 2016, pp. 7-9. Available on: https://irc.princeton.edu/pmunc/docs/JCC_Bangladesh_Formatted.pdf. Accessed April 15, 2018.

⁶² Ibid., pp. 11-12. Accessed April 15, 2018.

⁶³ Supra note 56. Accessed April 15, 2018.

⁶⁴ Zuzana Žaludova, “Concept of Remedial Secession under International Law”, Charles University in Prague, Faculty of Law, 2015, p. 19.

⁶⁵ “Bangladesh: the path to democracy, 1991-2009”. *MountHolyoke*. Available on: <https://www.mtholyoke.edu/~khan23n/classweb/worldpolitics116/Templates2/LiberationWar.html>. Accessed April 15, 2018.

activists, students, teachers who participated. Different newspapers suggest that federal violence was so widespread that it is not even possible to evaluate the number of casualties which ranged approximately from 10'000 to 35'000.⁶⁶

There is hardly any reason to rebut the right to remedial secession under these circumstances. Bengali people themselves acknowledge in the proclamation of independence of April 10, 1971, that independence of their country is a “due fulfilment of the legitimate right of self-determination of the people of Bangladesh”.⁶⁷ Moreover, it is important to note that the aforementioned document does not declare independence on its own merits. It makes a relevant reference to the twofold ultimate reason for secession. On the one hand it concerns denial of a right to internal self-determination:

[...] the Pakistan Government by levying an unjust war and committing genocide and by other repressive measures made it impossible for the elected representatives of the people of Bangladesh to meet and frame a Constitution, and give to themselves a Government.⁶⁸

Thus, federal repression is a circumstance that requires a remedy. On the other hand, there is an even more substantial circumstance also mentioned in the proclamation of independence that implies the only feasible remedy to the foregoing violations is secession:

[...] in the conduct of a ruthless and savage war the Pakistani authorities committed and are still continuously committing numerous acts of genocide and unprecedented tortures, amongst others on the civilian and unarmed people of Bangladesh.⁶⁹

This means that fundamental human rights enshrined in UDHR and ICCPR have been expressly neglected by the federal sovereign. A term that deserves a special attention here is “genocide”. If that is even possible, it underlines the necessity for remedial secession even more.

In the writings of international doctrine it is also common to notice Liberation war in Bangladesh being compared by analogy to the crime of genocide, not simply falling within the meaning of “civil war” or “war of independence”.⁷⁰ This circumstance clearly aggravates the seriousness of oppression by the federal sovereign. Moreover, it even falls under the international humanitarian law, as there is a dispute between Pakistan and India brought before the ICJ regarding the punishment of war criminals in the situation regarding Bangladesh, in

⁶⁶ “Operation Searchlight: Genocide unleashed on Bangalis in East Pakistan”. *Dhaka Tribune*. Available on: <https://www.dhakatribune.com/bangladesh/2017/03/25/operation-searchlight-genocide-unleashed/>. Accessed April 15, 2018.

⁶⁷ The Proclamation of Independence, Mujibnagar, Bangladesh. (April 10, 1971). Available on: https://www.constituteproject.org/constitution/Bangladesh_2011.pdf. Accessed April 15, 2018.

⁶⁸ Ibid. Accessed April 15, 2018.

⁶⁹ Ibid. Accessed April 15, 2018.

⁷⁰ Smita A. Rahman, *Time, Memory and the Politics of Contingency* (London: Routledge). Available on: https://books.google.lv/books?id=2-oABAAQBAJ&pg=PT181&lpg=PT181&dq=Operation+Searchlight+scholarly&source=bl&ots=0KyHW_pmS6&sig=mHF83PMLtCQkRChODGcmI8Fpmzo&hl=ru&sa=X&ved=0ahUKEwjV7piP5rvaAhVByaYKHei6DC44ChDoAQhMMAo#v=onepage&q=Operation%20Searchlight%20scholarly&f=false. Accessed April 15, 2018.

which the Genocide Convention was invoked as the legal basis for the first time before the ICJ.⁷¹ In particular,

[...] one hundred and ninety-five Pakistani nationals or any other number, now in Indian custody [are] accused of committing acts of genocide in Pakistani territory,⁷²

the last notion being applied to East Pakistan, since Pakistan objects to extradition of these nationals by stating that “India would act illegally in transferring such persons to "Bangla Desh" for trial”.⁷³ Despite Pakistan obviously objecting to transfer of jurisdiction, the fact that it admits perpetration of war crimes by itself reaffirms existence of circumstances that qualify as remedial and henceforth the right to secede under these circumstances.

4.1.3. Carte blanche case of remedial secession

While it has previously been concluded that remedial secession is a fluid international concept if legal at all, from the case-study of Bangladesh it should be inferred that it possesses a status of a full-fledged and absolutely legitimate right. The reason for such inference is that several strong criteria are being put forward to clarify the concept of “remedy” in this context. These are: denial of internal self-determination, infringement of fundamental rights enshrined in the federal constitutional law, breach of international human rights law of such extent that it already falls within the realm of humanitarian law. Additionally, the people invoking remedial secession have to constitute a fully cohesive group, have made peaceful expressions of will for independence and be considered as a federal unit within the meaning of federal constitution.

Given the peculiar circumstances of the Bangladesh case-study, scholars recognize it could be afforded a separate term: humanitarian secession. It stems from a complete impossibility to resolve an irreversible scale of human rights violations.⁷⁴ After all, with theoretically any remedy completely absent for remedying the intolerable injustices suffered by the people, literally the only way out is secession.

⁷¹ William Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2000), p. 425. Available on:

https://books.google.lv/books?id=pYptuRHDQPgC&pg=PA425&lpg=PA425&dq=icj+case+pakistan+v+india+war+prisoners&source=bl&ots=l4AKeOEXCI&sig=YeQldnPrp5YmR1wovFUlt3U9dTg&hl=ru&sa=X&ved=0ahUKEwi_9bX_zLraAhXIDpoKHUF0DQIQ6AEIXTAH#v=onepage&q=icj%20case%20pakistan%20v%20india%20war%20prisoners&f=false. Accessed April 15, 2018.

⁷² Case concerning Trial of Pakistani Prisoners of War (*Pakistan v. India*), (May 11, 1973), Request for the Indication of Interim Measures of Protection. Available on: <http://www.icj-cij.org/files/case-related/60/10697.pdf>. Accessed April 15, 2018.

⁷³ Ibid. Accessed April 15, 2018.

⁷⁴ Juan Francisco Escudero Espinosa, *Self-Determination and Humanitarian Secession in International Law of a Globalized World* (Leon: Springer, 2017), p. 164. Available on: <https://books.google.lv/books?id=9Q1TDwAAQBAJ&pg=PA164&dq=bangladesh+remedial+secession&hl=ru&sa=X&ved=0ahUKEwj10OHg5bvaAhXGdpoKHSqEBzAQ6AEINjAC#v=onepage&q=bangladesh%20remedial%20secession&f=false>. Accessed April 15, 2018.

4.2. South Carolina

4.2.1. Secession as a means to preserve a constitutional right

Bangladesh being analysed as an exemplary case-study of the criteria necessary to legitimize remedial secession at first hand, the next step is to elaborate further in detail upon the circumstances in which remedial secession could have crystallized as customary law. Secession of South Carolina depicts yet another peculiar case-study from the legal perspective. Although the events evolving around its secession took place in the 19th century, in the process of establishing existence of customary law regarding this issue the case is nevertheless legally relevant. Perhaps this is even due to the fact that the secession movement was highly politicized.

As difficult as it may seem from the contemporary perspective to apprehend the core reason of secession, but its nature was rough: slavery. In view of the political abolitionist movements during the 1850s, South Carolinians felt an existential threat to their political system, since 90% of population of South Carolina was Afro-American but the government – a slave-holding oligarchy.⁷⁵ As rudimentary as it may seem, for the purposes of this analysis slaveholding is to be understood as a constitutional right.

From the moment the states forming USA decided to unite, freedom and independence were considered the fundamental rights. It is vividly enshrined in the Declaration of Independence of 1776: “these united colonies are and ought to be free and independent states.”⁷⁶ Furthermore, the explicit constitutional right to hold slaves was provided by the Constitution at the time in article four, section two:

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.⁷⁷

Accordingly, abolition of slavery is clearly a disregard of constitutional safeguard to the detriment of federal subunits for which this right is crucial. It can thus be inferred that existential threat to welfare and functioning of the state is also a circumstance justifying remedial secession.

Therefore, South Carolina case is somewhat similar to that of Bangladesh: both secessions are invoked on the basis of breach of rights. What logically follows is South Carolina’s retreat from its obligations under the federal law of USA included in the Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union:

⁷⁵ John Barnwell, “Love of Order: South Carolina’s First Secession Crisis.” *Texas Christian University*. Available on: <http://personal.tcu.edu/swoodworth/Barnwell.html>. Accessed April 15, 2018.

⁷⁶ The Declaration of Independence, United States of America. (July 4, 1776). Available on: <http://www.ushistory.org/declaration/document/>. Accessed April 15, 2018.

⁷⁷ United States of America. *The Constitution of the United States: A Transcription*. 21 November, 1879. Available on: <https://www.archives.gov/founding-docs/constitution-transcript>. Accessed April 15, 2018.

the constituted compact has been deliberately broken and disregarded by the non-slaveholding States, and the consequence follows that South Carolina is released from her obligation.⁷⁸

To the contrary, there has been another political discourse on the part of the government that southern states as a whole have begun to run the country by their slaveholding oligarchy, as opposed to northern states who began to lose that power.⁷⁹ A conclusion that follows is that this case-study presents another form of abuse of federal power by the sovereign.

4.2.2. State continuity

What even worsens the breach of a constitutional right, thus quite reasonably helping South Carolina's secession to meet the requirements for qualifying as "remedial" is the breach of doctrine of state continuity by US as a federal sovereign. At this point, the analysis of South Carolina case and its respective circumstances of remedial secession needs to be performed in a more generalized framework. The reason for such generalization lies in the special character of the federal states' obligations towards their federal units. In this regard, the scholar Krystyna Marek upholds the important notion of state identity that, in her opinion, has crystallized in the contemporary public international law.

More specifically, K. Marek notes that state identity is the total of its rights and obligations under both customary and statutory international law. The exercise of rights and respect for obligations thereof adds the temporal element of state continuity to the notion of state identity. She then logically concludes that state continuity is a mandatory dynamic predicate for a state to possess legal identity at all.⁸⁰ It would further be valid to assert that the doctrine of state continuity is particularly relevant for federal states concerning respect for their obligations towards partially autonomous subunits. Hence, the case of South Carolina may be demonstrated as an illustrative example of the US failing to comply with this doctrine.

With the slaveholding right standing at the fore of South Carolina's secession, it is equally legit to refer to the more general obligation of the US as a federal sovereign embodied in the section four of article four of the Original constitution:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion.⁸¹

⁷⁸ Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union. (December 24, 1860). Available on: http://avalon.law.yale.edu/19th_century/csa_scarsec.asp. Accessed April 15, 2018.

⁷⁹ "Abraham Lincoln and Slavery". *Abraham Lincoln's Classroom*. Available on: <http://www.abrahamlincolnsclassroom.org/abraham-lincoln-in-depth/abraham-lincoln-and-slavery/#dred>. Accessed April 15, 2018.

⁸⁰ Krystyna Marek, *Identity and Continuity of States in Public International Law* (Geneva: Geneve Librairie Droz 11, Rue Massot, 1968), p. 5. Available on: https://books.google.lv/books?id=QaF7mnj9igkC&pg=PA5&lpg=PA5&dq=state+continuity&source=bl&ots=oK8jm_7ZtS&sig=RAow-1B5XVs8NZCuSx0RtmXcdfk&hl=ru&sa=X&ved=0ahUKEwja_Z68j87aAhWhHJoKHa0UB1Y4ChDoAQg5MAI#v=onepage&q=state%20continuity&f=false. Accessed April 22, 2018.

⁸¹ Supra note 77. Accessed April 22, 2018.

The key term that is of interest in this particular provision is the “invasion”. While open to interpretation in a wide sense, it definitely bears the ultimate aim of preservation of the extent of autonomy the federal units are allowed to retain. By letting each unit to form its own government, the federal sovereign recognizes an obligation of non-interference. Preamble of the Original constitution further lays down a basis for an agreement upon which the units initially decided to form their sovereign:

[...] to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to [them]selves and [their] Posterity [...].⁸²

The mention of a number of fundamental values in the preamble is indicative of the basic threshold the previously mentioned “invasion” may not be directed against.

Hence, South Carolina’s autonomy having suffered from invasion upon a constitutional slaveholding right complemented by the more general rights to maintain welfare and liberty even if that meant using serfdom as an appropriate means secession is justified as remedial. If the very constitutional foundation of the US is perceived as an agreement made by the federal units, it can be inferred that anti-slavery policies implemented by the federal sovereign and the northern states undermined the terms agreed upon, thus discharging South Carolina from its respective obligations.⁸³ After all, it does not have to bear the burden of its obligations before the sovereign if, as suggested by the judge Ineta Ziemele, due to drastic changes the federal state has ceased to exist as the same state, thereby violating state continuity.⁸⁴ As a natural consequence, secession may be considered as a remedy for the contractual breach.

Overall, South Carolina’s secession bears a number of similar features in comparison with Bangladesh. On one hand, fundamental constitutional rights were breached in both cases, simultaneously clearly infringing upon the fundamental values prescribed by international human rights law. While Bangladesh illustrates an exemplary remedial situation with the violations present thereby so grave that they even qualify as humanitarian, South Carolina arguably adds yet another no less important criterion to be met in order for remedial secession to be legitimately invoked. In fact, it further narrows down the scope of remedial secession because its essence focuses rather on the federal sovereign itself: the state authority has to experience changes so drastic that it can no longer be regarded as the same state.

⁸² Ibid. Accessed April 22, 2018.

⁸³ Martin D. Carcieri, “The South Carolina Secession Statement of 1860 and the One Florida Initiative: The Limits of a Historical Analogy and the Possibility of Racial Reconciliation”, *St. Thomas Law Review*, Vol. 13, 2001, p. 581. Available on: HeinOnline. Accessed March 25, 2018.

⁸⁴ Ineta Ziemele, “Acceptance of a Claim for State Continuity: A Question of International Law and its Consequences”, *Juridiskā zinātne / Law*, No. 9, 2016, p. 43. Available on: https://www.journaloftheuniversityoflatvialaw.lv/fileadmin/user_upload/lu_portal/projekti/journaloftheuniversityoflatvialaw/No9/3.Ineta_Ziemele.pdf. Accessed April 22, 2018.

4.3. Chechnya

4.3.1. Conditional independence

The next case-study that could prove to be a fertile soil for finding indications of customary law for remedial secession is Chechnya. Chechen grievances might be traced back to 1940s when Stalin's policies of collectivization turned to the finest urban cities of the region Grozny and Nazran making them the primary suppliers of refined oil and motor fuel to the whole USSR with Chechen-Ingush Republic having been left prey to marginalization and poverty unemployment rate of 59%, while the same indicator being merely 27% in the USSR in general.⁸⁵ Unsurprisingly, having faced such severe discrimination and economic exploitation nearly equal to violations of social rights in Bangladesh, Chechens employed the chance to "take as much sovereignty as [they] can stomach"⁸⁶ at the time of Gorbachev's popular appeal in 1990 to Russia's ethnic republics.

However, Chechnya's case is not peculiar merely due to the two long secessionist wars from 1994 to 1999 and from 1999 to present which have commonly been denoted as graveyards of human rights witnessing violations that disputably even amounted to ethnic cleansing and genocide.⁸⁷ Its path of exercising remedial secession bears a seemingly democratic component – a referendum – that, as paradoxical as it may seem, arguably adds one more remedial circumstance. Although under Putin's initiative in 2003 a referendum on the issue of ratification of a new constitution was designed to grant Chechnya a considerably wider autonomy while still being an integral part of Russian Federation, independent experts deeply question the legitimacy of its results which show 80% of voter turnout and 96% of votes in favour of the constitution.⁸⁸ What the current president of the Chechen Republic Ramzan Kadyrov notes is that the referendum can be considered as a tool for preserving Russia's integrity once and for all.⁸⁹

⁸⁵ Nicola Bunick, "Chechnya: Access Denied", *Georgetown Journal of International Law*, Vol. 40, 2009, pp. 1003-1004. Available on: HeinOnline. Accessed March 25, 2018.

⁸⁶ James Hughes, Gwendolyn Sasse, *Ethnicity and Territory in the Former Soviet Union: Regions in Conflict* (London: Routledge Taylor & Francis Group, 2014), p. 55. Available on: <https://books.google.lv/books?id=QBWgBAAAQBAJ&pg=PA55&lpg=PA55&dq=take+as+much+sovereignty+as+you+can+stomach.&source=bl&ots=0Gr5BLGxYp&sig=hL0X4CkzJq4iaHz-gumA3vLZvLo&hl=ru&sa=X&ved=0ahUKEwjZxbeFqdHaAhVSb5oKHT0vAQwO6AEIJzAA#v=onepage&q=take%20as%20much%20sovereignty%20as%20you%20can%20stomach.&f=false>. Accessed April 24, 2018.

⁸⁷ Roman Khalilov, "Moral justifications of secession: the case of Chechnya". *Nonviolent Radical Party transnational and transparty*. Available on: <http://www.radicalparty.org/en/content/moral-justifications-secession-case-chechnya-1>. Accessed April 24, 2018.

⁸⁸ Richard Sakwa, *Chechnya: From Past to Future* (London: Anthem Press, 2005), p. 235. Available on: <https://books.google.lv/books?id=eFNJ-speCywC&pg=PA235&lpg=PA235&dq=chechnya+referendum+2003&source=bl&ots=i8rmeKTCwW&sig=kgdAc2HmKh23Kg6EpM-QCLqk6SM&hl=ru&sa=X&ved=0ahUKEwiX18y6ktHaAhXkApoKHSTaBNk4FBDoAQg0MAI#v=onepage&q=chechnya%20referendum%202003&f=false>. Accessed April 24, 2018.

⁸⁹ "Р. Кадиров: 'Референдум 2003 года сохранил целостность России'" (R. Kadyrov: Referendum of 2003 has preserved the integrity of Russia). *Leadership and Government of the Chechen Republic*. Available on: <http://www.chechnya.gov.ru/page.php?id=5036&r=126>. Accessed April 24, 2018.

The commonly denoted “conditional independence”⁹⁰ that is claimed to have been established in Chechnya through the referendum can certainly be considered a denial of the right to secession. What reaffirms presence of a remedial circumstance is conjunction of the referendum with the constant human rights violations during the armed conflicts in Chechnya. Hence, each of these aspects are necessary to be examined to specify the nuances Chechnya case brings to determination of customary law regarding remedial secession.

4.3.2. Internal self-determination: a preventative measure

In the context of Chechnya case, it is crucial to distinguish between external and internal self-determination and the relevant interconnection thereof. External determination is touched by the secession in a direct way. To begin with, the issue of secession per se is quite unambiguously settled in Russian federal constitutional law. In particular, chapter three of the Constitution of the Russian Federation which establishes the federal structure of the country, firstly, lists in article 65 both Chechen Republic and the Republic of Ingushetia as constituent federal subjects of the Russian Federation and further contains an article which explicitly puts forward provisions for determination of status of such federal subjects.⁹¹ Specifically, part five of article 66 maintains that:

The status of a subject of the Russian Federation may be changed upon mutual agreement of the Russian Federation and the subject of the Russian Federation and according to the federal constitutional law.⁹²

The rule enshrined in this provision leaves no doubt as to whether secession of federal subjects is permissible under Russian federal constitutional law as long as it is coordinated with the federal sovereign. Although referendum may indeed in this particular case be considered a point of mutual consent between the sovereign and its subjects, conditionality of independence it grants to the republics is an outright violation of the right to external self-determination. At this point, the linkage turns smoothly to internal self-determination. Initiation of a referendum with the ultimate aim of imposing a constitution that obliges Chechnya to remain under the sovereignty of the Russian Federation even if to a limited extent can reasonably be perceived as a measure tailored to prevent secession by the means of establishing a special status of internal self-determination.⁹³

Restrictive nature of the referendum is also proven by taking a glance at the Declaration on sovereignty of Chechen-Ingush Republic of 1999. The very first article of this document places Chechen-Ingush Republic as a sovereign state created as a result of self-determination of Chechen and Ingush peoples. Moreover, it underlines that sovereignty is a natural and

⁹⁰ Supra note 87. Accessed April 24, 2018.

⁹¹ Russian Federation. The Constitution of the Russian Federation. (December 12, 1993). Available on: <http://www.constitution.ru/en/10003000-01.htm>. Accessed April 29, 2018.

⁹² Ibid. Accessed April 29, 2018.

⁹³ Conor Mulcahy, “Pre-Determined: The March 23, 2003 Constitutional Referendum in Chechnya and its Relationship to the Law of Self-Determination”, *Boston College International & Comparative Law Review*, Vol. 28, Issue 1, Article 6, 2005, p. 179. Available on: <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1080&context=iclr>. Accessed April 29, 2018.

necessary precondition for the existence of statehood of Chechen-Ingush Republic.⁹⁴ Nevertheless, what the aforementioned referendum strives for is devolution of power to the federal subject in a manner that puts such conditions to Chechnya's sovereignty as never to exercise its external self-determination.

Remedial secession as an exercise of external self-determination can be held as practically non-existing under Russian federal constitutional law. Such inference is illustrated by the Judgment of the Constitutional Court of the Russian Federation of 31 July 1995 on the constitutionality of the Presidential Decrees and the Resolutions of the Federal Government concerning the situation in Chechnya:

The exercise of the right to self-determination should not be construed as sanctioning or encouraging any acts leading to the dismemberment or complete disruption of territorial integrity or political unity of sovereign independent States acting pursuant to the principle of equality and self-determination of nations.⁹⁵

Given the obvious lack of constitutional regulation on the procedure and mechanisms for altering the status of federal subjects in Russia,⁹⁶ remedial secession is sought to be replaced by every attempt from the side of the federal sovereign.

The argument here is that allowing the Chechen and Ingush peoples to exercise their right to internal self-determination in a manner pre-determined by the federal sovereign is the beginning point for denial of any further attempt of external self-determination as well. Although the Constitution in article 69 firmly upholds respect for the rights of the indigenous small peoples in accordance with international principles,⁹⁷ the wording appears to be a nearly empty phrase.

4.4. Kosovo

The discussion around the lawfulness of right to remedial secession inevitably leads to the case of Kosovo. Being considered as a sui generis case of secession, it reveals a large number of remedial circumstances that arguably constitute an "authoritative precedent".⁹⁸ Given the complicated background of the case, as well as the abundance of legal issues present, a framework of what a customary rule on remedial secession involves may be established.

⁹⁴ "Декларация о суверенитете Чечено-ингушской республики" (Declaration on the sovereignty of Chechen-Ingush Republic). (November 27, 1999). *Leadership and Government of the Chechen Republic*. Available on: <http://chechenlaw.ru/?p=55>. Accessed April 29, 2018.

⁹⁵ Judgment of the Constitutional Court of the Russian Federation of 31 July 1995 on the constitutionality of the Presidential Decrees and the Resolutions of the Federal Government concerning the situation in Chechnya. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(1996\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(1996)001-e). Accessed April 29, 2018.

⁹⁶ Diana Draganova, "Chechnya's Right of Secession under Russian Constitution Law", 3 *Chinese JIL*, 2004, p. 580. Available on: HeinOnline. Accessed March 25, 2018.

⁹⁷ Supra note 91. Accessed April 30, 2018.

⁹⁸ Sopio Asatiani, "Remedial Secession under International law: Analysis of Kosovo, Abkhazia and South Ossetia", LL.M. Human Rights thesis, *Central European University*, 2013, p. 42

4.4.1. Forced harmonization

The uneasy 1990s the signalling event of which was the dissolution of Yugoslavia as a matter of fact gave rise to numerous secession movements, similarly as the case of Chechnya and the Soviet Union. Although a commonly shared view in the academic discourse evolves around secessions being the cause and root of armed conflicts, in the case of Yugoslavia, it can be contended that unionist attempts directly contributed to the disaster that certainly required secession as a remedy.⁹⁹ Sonja Biserko, the president of the Helsinki Committee for Human Rights in Serbia made an important point in her speech of 2012 at the Third Annual Humanity in Action International Conference in Sarajevo. In particular, she noted that in the wake of consecutive emancipations of Slovenes, Croats, Bosnians, Montenegrins and Macedonians, the remnants of Yugoslavia essentially formed an “extended Serbia” which despite Yugoslavia having always been a federal state rejected any perspective of existing further as a union of equal states.¹⁰⁰

Ms. Biserko’s point is relevant for the reason it hints at one of the most early-stage remedial circumstances of this case. It may be called deprivation of equality for the former federal subjects. This circumstance is evidenced by comparison of the constitutions of Yugoslavia and Serbia as its successor. The very first article of the Constitution of Federal Republic of Yugoslavia establishes a federal sovereign comprised of equal subjects:

The Federal Republic of Yugoslavia shall be a sovereign federal state, founded on the equality of citizens and the equality of its member republics.¹⁰¹

To the contrary, the important legal principle of equality before law has certainly been removed in the Constitution of the Republic of Serbia which superseded the Yugoslav federal constitutional law. The wording of article four exemplifies this argument:

The territory of the Republic of Serbia is a single whole, no part of which may be alienated. Any change in the boundaries of the Republic of Serbia shall be decided upon by the citizens in a referendum.¹⁰²

The particular provision deserves a special emphasis since it bears the first reflection of the sui generis nature of Kosovo case. Defederalization here implies deterioration of fundamental rights accorded to the federal subjects, since formation of a unitary state of Serbia expressly prohibits secession. Thus, lack of federally provided autonomy may also prove to be a remedial circumstance, albeit under restrictive conditions. More specifically, concentration of power of state authority has to be implemented at an unequivocal expense of autonomy dispersed among the federal subjects. From the article six of the Constitution of Serbia it is visible that the sole autonomy left to the federal subjects is mere separation into the three

⁹⁹ Daniel Kofman, “Secession, Law, and Rights: The Case of the Former Yugoslavia”, *Human Rights Review*, 2000, p. 9. Available on: EBSCO host. Accessed March 25, 2018.

¹⁰⁰ Sonja Biserko, “The Dissolution of Yugoslavia: Roots of the Conflict”. *Humanity in Action*. Available on: <https://www.humanityinaction.org/knowledgebase/360-the-dissolution-of-yugoslavia-roots-of-the-conflict>. Accessed April 30, 2018.

¹⁰¹ Yugoslavia. The Constitution of Federal Republic of Yugoslavia. (April 27, 1992). Available on: <http://www.cecl.gr/RigasNetwork/databank/Constitutions/Yugoslavia.html>. Accessed April 30, 2018.

¹⁰² Serbia. The Constitution of the Republic of Serbia. (September 28, 1990). Available on: <http://unpan1.un.org/intradoc/groups/public/documents/unpan019071.pdf>. Accessed April 30, 2018.

provinces of Voivodina, Metohia and Kosovo, “these being the forms of territorial autonomy”.¹⁰³

Thus, before even exploring the absence or presence of internal self-determination, it appears that federal subjects as autonomous entities face political or legal inequality. The remedial circumstance arises therefore not factually from the violations of fundamental rights and principles prescribed by the constitution. It is pervasive in the federal constitutional law itself.

4.4.2. External intervention

Another sui generis element is presented by the NATO intervention in the humanitarian crisis that unrolled in Kosovo following the constitutional alteration of Kosovo’s autonomy. Facts of the case being similar to those of Bangladesh case, during the secession movements in 1998, over 1’500 Kosovar Albanians, the predominant ethnicity in Kosovo, were killed by Serbian police and military forces, and around 400’000 were forced to flee.¹⁰⁴ Needless to evaluate the human rights violations separately, for discrimination of ethnic group of peoples was present in a manner similar to that of Bangladesh or Chechnya case, and internal self-determination was also denied as in the case of Bangladesh.

What proves to be a remedial circumstance in this case is indeed not a mere violation of human rights if this might be formulated so. The gravity of atrocities perpetrated against the people of Kosovo amounts to a threat to international peace and security expressed in the UN Security Council Resolution 1244 which:

demands in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.¹⁰⁵

In the sequel, remedial secession is an indisputably legitimate right when the aggregation of remedial circumstances poses a direct grave concern to the international community itself. The issue does not even concern the unlawful alteration of political and legal status of Kosovo. It rather touches upon the subsequent treatment of the Kosovo people. Judge Cançado Trindade suggests in this regard that the systematic oppression of Kosovar Albanians can be said to have been exercised in such a scale that Serbia as a state forfeited its unjust privilege over them, thus validating the right to remedial secession.¹⁰⁶

An important issue that seems to be left open is the unprecedented nature of Kosovo’s secession. The people of Kosovo undoubtedly perceive their independence as “a special case arising from Yugoslavia's non-consensual breakup [which] is not a precedent for any other

¹⁰³ Ibid. Accessed May 1, 2018.

¹⁰⁴ “NATO's role in relation to the conflict in Kosovo”. *NATO's role in Kosovo*. Available on: <https://www.nato.int/kosovo/history.htm>. Accessed May 1, 2018.

¹⁰⁵ United Nations Security Council Resolution No. 1244 on the situation relating Kosovo. (June 10, 1999). Available on: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>. Accessed May 1, 2018.

¹⁰⁶ Evan M. Brewer, “To Break Free from Tyranny and Oppression: Proposing a Model for a Remedial Right to Secession in the Wake of the Kosovo Advisory Opinion”, *Vanderbilt Journal of Transnational Law*, Vol. 45, No. 245, 2012, p. 268. Available on: EBSCO host. Accessed March 25, 2018.

situation”¹⁰⁷ according to the exact wording of the Kosovo’s declaration of independence. Most likely, the reason for such perception of uniqueness is combination of the factors of forceful harmonization of political power by Serbia and international institutional supervision thereof which accompanied the process of liberation:

Grateful that in 1999 the world intervened, thereby removing Belgrade's governance over Kosovo and placing Kosovo under United Nations interim administration.¹⁰⁸

However, it would be legit to assume that the term “unprecedented” in the Kosovo’s declaration of independence is applied out of pomposity rather than legal relevance. Besides the external intervention, there are hardly any remedial circumstances entirely uncommon. Nevertheless, a moment which deserves more attention is Kosovo’s unilateral declaration of independence carried out in a disregard of the internationally taken action.

4.4.3. Unilateral declaration of independence

Ex factis framework adds another legal issue to the evaluation of remedial circumstances in Kosovo since despite cherishing the feelings of deep gratitude towards the international community for its intervention, Kosovo unilaterally declared independence on 17 February, 2008, contravening the crisis solution adopted in the Resolution 1244.¹⁰⁹ Whereas the referendum of 1991 convened by an underground parliament of Kosovar Albanians on the issue of Kosovo’s independence¹¹⁰ may be legally justified under article four of the Serbian constitution which in a way permits such democratic expressions, the actual declaration of independence by no means falls under this constitutional provision.

From the Resolution 1244 it is unambiguous that concrete steps and working guidelines were set out for resolving the crisis situation. It contains a reference to the internationally established interim government in Kosovo as well:

A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo.¹¹¹

Hence, it logically follows that Kosovo breached also one of the basic provisions of the Constitutional Framework for Provisional Self-Government in Kosovo (hereinafter Constitutional Framework) which has directly been intended as the remedy for the detrimental change of political status of Kosovo as an autonomous province:

Kosovo is an undivided territory throughout which the Provisional Institutions of Self-Government established by this Constitutional Framework for Provisional Self-Government (Constitutional Framework) shall exercise their responsibilities.¹¹²

¹⁰⁷ Kosovo’s declaration of independence, (February 17, 2008). Available on: <http://news.bbc.co.uk/2/hi/europe/7249677.stm>. Accessed May 1, 2018.

¹⁰⁸ Ibid. Accessed May 1, 2018.

¹⁰⁹ “ICJ rules on Kosovo's Declaration of Independence”. *The Hague Justice Portal*. Available on: <http://www.haguejusticeportal.net/index.php?id=11906>. Accessed May 1, 2018.

¹¹⁰ Jure Vidmar, “International Legal Responses to Kosovo’s Declaration of Independence”, *Vanderbilt Journal of Transnational Law*, Vol. 42, No. 779, p. 789. Available on: https://www.vanderbilt.edu/wp-content/uploads/sites/78/Vidmar-cr_final_final1.pdf. Accessed May 1, 2018.

¹¹¹ Supra note 105. Accessed May 1, 2018.

Apparently, exercise of Kosovo people's right to remedial secession has been on the expense of an already existing remedy. Despite the dubious acceptance of international assistance and compliance with its terms by the Kosovo people, there seems to still exist a remedial circumstance. The ICJ has implied in paragraph 105 of its advisory opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (hereinafter Advisory Opinion) that:

The declaration of independence reflects the awareness of its authors that the final status negotiations had failed and that a critical moment for the future of Kosovo had been reached.¹¹³

Such inference by the international judicial authority clearly means that if the crisis situation is of such nature that international assistance fails to be satisfactory, unilateral actions may be legitimated. The fact that the ICJ admitted eventually in paragraph 122 of its Advisory Opinion that neither general international law, nor Resolution 1244 or the Constitutional Framework has been violated by the adoption of the declaration¹¹⁴ sets out the presence of a remedial circumstance in the case of inadequacy of existing remedies, as paradoxical as it may seem.

Having made this conclusion, it is regretful to notice that the ICJ did not rule generally on the right to secession. Although it clearly emphasized, that Kosovo's secession was not prohibited given the remedial circumstances present, it did not recognize existence of a customary rule authorizing remedial secession.¹¹⁵ From the available facts, the Kosovo case suggests that remedial secession is legitimate under the circumstances of deprivation of political and legal autonomy, previously mentioned denial of internal self-determination, perpetration of human rights violations on a scale that amounts to a humanitarian crisis and inadequacy of any remedies present at a time.

CHAPTER 3 : EFFECTIVENESS OF REMEDIAL SECESSION IN PRACTICE

5. UT RES MAGIS VALEAT QUAM PEREAT

The highly theoretical contemplations about contentious international legal issues, for instance the legality of remedial secession under such restrictive circumstances as in the cases of Bangladesh, South Carolina, Chechnya, Kosovo not contributing much to the process of finding a real solution, the issue of what is the practical relevance of a legal right arises. It is

¹¹² Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo. (May 15, 2001). Available on: http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf. Accessed May 1, 2018.

¹¹³ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion. (July 22, 2010). Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>. Accessed May 1, 2018.

¹¹⁴ Ibid. Accessed May 1, 2018.

¹¹⁵ Theodore Christakis, "The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?", *Leiden Journal of International Law*, Vol. 24, 2011, p. 76. Available on: EBSCO host. Accessed May 1, 2018.

not therefore sufficient to establish that having met stringent legal criteria or having experienced circumstances exemplified by the relevant state practice a people may legitimately invoke their right to remedial secession by relying on it as a customary rule. Mere legality does not automatically entail subsequent effectiveness. The next important argument is thus that remedial secession may only truly be considered a customary rule when it is effective for the state it has provided independence.

The argument is hidden in the interstices of the ICJ interpretation of international law. It has been found by the scholars that opinions and judgments of the ICJ, as well as authorizations by the UN to exercise certain functions or powers are all based on the maxim *ut res magis valeat quam pereat* (hereinafter principle of effectiveness) that envisages a utilitarian approach based on the evaluation of effectiveness.¹¹⁶ Since the only case where authorization by the UN to implement a political solution was Kosovo, it may be concluded in favour of the Kosovo secession, that the remedy provided in the form of interim government was not effective.

However, the principle of effectiveness is not confined to the realm of activities by the international decision-making bodies. Where it is directly applicable to all the cases mentioned above is treaty law, more specifically speaking about Vienna Convention on the Law of Treaties (hereinafter VCLT). It has been suggested that the principle of effectiveness in the process of interpretation remedies the silence of law regarding an issue.¹¹⁷ Given the unclear legal status of remedial secession, this might be the right case. Accordingly, article 31, part one maintains:

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.¹¹⁸

This in essence means that interpretation of the human rights documents is subject to ordinary interpretation. Although the article does not expressly state principle of effectiveness as the guiding maxim, from its conservative wording it should be clear that only decolonization would be accorded the ordinary meaning of the term self-determination as a settled and unquestionable legal matter.

However, there fortunately is a gap left for remedial secession to squeeze in. The third part of the same article puts forward in point b that account should be taken of:

¹¹⁶ “World Court and United Nations Charter: The Principle of Effectiveness in Interpretation”, *Duke Law Journal*, 1962, p. 85. Available on:

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1792&context=dlj>. Accessed May 1, 2018.

¹¹⁷ Mustafa Kamil Yasseen, *L'interprétation des traités d'après la Convention de Vienne sur le droit des traités* (The interpretation of treaties according to the Vienna Convention on the Law of Treaties), (Leiden: Martinus Nijhoff Publishers), p. 71. Available on:

https://books.google.lv/books?id=6ySwI9AUGJ8C&pg=PA71&lpg=PA71&dq=Ut+res+magis+valeat+quam+pereat+source=bl&ots=Ls9AnT1opl&sig=THA8E63-Vk0BTzj_67k0WhFCCRw&hl=ru&sa=X&ved=0ahUKEwiSt9DI9dzaAhWIBZoKHfJQCvgQ6AEIUTAF#v=onepage&q=Ut%20res%20magis%20valeat%20quam%20pereat&f=false/. Accessed May 1, 2018.

¹¹⁸ Vienna Convention on the Law of Treaties. (May 23, 1969). Available on:

<https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>. Accessed May 1, 2018.

Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.¹¹⁹

Since remedial secession does not deserve an express mention in the international statutory law, its legality is found in state practice that forms international customary law. Beyond any doubt, state practice regarding self-determination and, more specifically, remedial secession, may be considered application of a treaty by subsequent practice. Hence, an argument could be put forward that effective application of treaty thereof renders remedial secession effective as such.

Despite the principle of effectiveness not being explicitly set out in the VCLT, its importance should not be underestimated. When taking a glimpse at the preparatory work of the International Law Commission carried out for the VCLT, an interesting proposal by the Special Rapporteur, Sir Humphrey Waldock deserves attention. He holds that articles 70 and 71 of VCLT that cover the consequences of invalidity and termination of treaties¹²⁰ shall be interpreted as to give the fullest weight to the treaty provisions in accordance with the natural and ordinary meaning, as well as the objectives and purposes of a treaty.¹²¹ Hence, before the states decided to dismantle their obligation to respect self-determination, a due diligence process would have to be carried out to meet the requirements of effectiveness.

While it may seem that travaux préparatoires bear no legal significance at all, VCLT itself affords them a special place after the general rule of interpretation. In this regard, article 32 provides:

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31.¹²²

Although the wording is mild and states only that supplementary means may be resorted to in case of necessity, it is only logical that “ambiguous” and “obscure” meanings, as well as “manifestly absurd” and “unreasonable”¹²³ results do not leave any option other than finding the principle of effectiveness in the travaux préparatoires and arguably also the interstices of VCLT text per se. Thus, it can be inferred that the law of treaties indirectly prevents states from arbitrary denial of right to remedial secession, provided the ad hoc circumstances render it effective.

¹¹⁹ Ibid. Accessed May 1, 2018.

¹²⁰ Ibid. Accessed May 1, 2018.

¹²¹ Ulf Linderfalk, *On the Interpretation of Treaties: The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Dordrecht: Springer, 2007), p. 218. Available on: [https://books.google.lv/books?id=74RIG7PLInUC&pg=PA218&lpg=PA218&dq=Ut+res+magis+valeat+quam+per eat&source=bl&ots=7_rf5bqHVn&sig=Ebl5xO6khzNEOxYpTtzsGL4yKSI&hl=ru&sa=X&ved=0ahUKEwjw2NiW99zaAhVLDJoKHTYzBrAQ6AEIbjAJ#v=onepage&q=Ut%20res%20magis%20valeat%20quam%20per eat&f=false](https://books.google.lv/books?id=74RIG7PLInUC&pg=PA218&lpg=PA218&dq=Ut+res+magis+valeat+quam+pereat&source=bl&ots=7_rf5bqHVn&sig=Ebl5xO6khzNEOxYpTtzsGL4yKSI&hl=ru&sa=X&ved=0ahUKEwjw2NiW99zaAhVLDJoKHTYzBrAQ6AEIbjAJ#v=onepage&q=Ut%20res%20magis%20valeat%20quam%20per eat&f=false). Accessed May 1, 2018.

¹²² Supra note 118. Accessed May 1, 2018.

¹²³ Ibid. Accessed May 1, 2018.

6. EFFECTIVENESS OF THE STATEHOOD

In an ascending scale of importance, a more prevalent directly related to the effectiveness is the qualification of statehood. The noble discussions around existence of a remedial right to secession mean literally nothing in practice if the newly independent states are not able to exercise their statehood. It has to be proven that remedial secession goes beyond the normative theoretical realm.

In this regard, Montevideo Convention on the Rights and Duties of States (hereinafter Montevideo Convention) proves to be useful in defining statehood. Particularly, it puts forwards four criteria in its very first article: a permanent population, a defined territory, a government and the capacity to enter into relations with the other states.¹²⁴ While the states of case studies at hand obviously do not experience difficulties meeting the former three, the latter deserves special attention.

The capacity to conduct relations with other states implies acceptance of it as an international legal subject. Thus, or the remedial secession to qualify as effective, it is not even sufficient to meet the statehood criteria. The new state has to conform to the “policy of recognition”¹²⁵. The law of recognition currently evolves in two schools of thought: consecutive and declaratory. While the latter holds that a state acquires statehood at the moment it acquires marks of a state, the former strictly poses a requirement of recognition by the other states as the integral criterion of statehood.¹²⁶ The Montevideo Convention is ambivalent on this matter. It states in article three:

The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.¹²⁷

It is clear that a state has to possess all the three criteria to qualify for statehood. As to recognition, however, it appears that it adds legal personality to the state. While it may exist as a political entity, it may bear no practical relevance in the conduct of international relations. The problem is visible in the Kosovo case, a country which has been recognized by 114 other states but still lacks recognition of its former oppressor Serbia and such important international actor as Russia.¹²⁸ Thus, its effectiveness as a state-like entity is at best limited.

¹²⁴ Montevideo Convention on the Rights and Duties of States. (December 26, 1933). Available on: <http://www.jus.uio.no/english/services/library/treaties/01/I-02/rights-duties-states.xml>. Accessed May 2, 2018.

¹²⁵ Ali Zounuzy Zadeh, “International Law and the Criteria for Statehood”, LL.M Thesis Public International Law, Tilburg University, Faculty of Law, p. 17. Available on: <http://arno.uvt.nl/show.cgi?fid=121942>. Accessed May 2, 2018.

¹²⁶ Supra note 48, p. 14. Available on: https://books.google.lv/books?id=3g8KAwAAQBAJ&pg=PA13&hl=lv&source=gbs_toc_r&cad=4#v=onepage&q&f=false. Accessed May 2, 2018.

¹²⁷ Supra note 124. Accessed May 2, 2018.

¹²⁸ Eve-Anne Travers, “Scrapping state recognition: What alternatives exist for Kosovo?”. *Prishtina Insight*. Available on: <http://prishtinainsight.com/scrapping-state-recognition-alternatives-exist-kosovo-mag/>. Accessed May 2, 2018.

While politically it has regained its status in a form of independence, the legal status is not very clear and thus does not permit to assert the rights of a state to the fullest extent.

7. STATE RESPONSIBILITY

The last point that is relevant for examination in view of remedial secession is state responsibility. An argument that can be made here is that commission of internationally wrongful acts by states adds yet another remedial circumstance for invoking right to secession and aggravates the magnitude of human rights violations present in a particular case. As seen from the cases of Bangladesh and Kosovo especially, presence of a humanitarian crisis was one of the decisive elements that legitimated secession. It has therefore been lately contended that the breach of humanitarian law composed of massive human rights violation occasions fall within the realm of traditional inter-state relations, for which state responsibility must be applied.¹²⁹

The specific remedial circumstance arises out of failure to comply with the peremptory norms envisaged by the article 26 of the whole list providing Responsibility of States for Internationally Wrongful Acts:

Nothing in this chapter precludes the wrongfulness of any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law.¹³⁰

Further, it is necessary to clarify if not from the international human rights law perspective, then at least from the commentaries for the Draft articles on Responsibility of States for Internationally Wrongful Acts which norms for the purposes of ascertaining the responsibility of states are considered peremptory. Thus, part five of the commentary for the aforementioned article 26 contains the following explanation.

Those peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination.¹³¹

This leaves no doubt as to the nature of self-determination as an international norm. By making attempts to deprive the peoples of Bangladesh, South Carolina, Chechnya and Kosovo of the right to remedial secession, the federal sovereigns have committed clear-cut international wrongful acts. Moreover, genocide and crimes against humanity supplemented with torture were not absent in the denial of self-determination.

¹²⁹ Marco Sassòli, “State responsibility for violations of international humanitarian law”, IRRC, Vol. 84, No. 846, 2002, p. 401. Available on: https://www.icrc.org/eng/assets/files/other/401_434_sassoli.pdf. Accessed May 2, 2018.

¹³⁰ Responsibility of States for Internationally Wrongful Acts, 2001. Available on: <https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/International%20Law%20Commission%202001%20Draft%20Articles%20on%20State%20Responsibility.pdf>. Accessed May 2, 2018.

¹³¹ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001. Available on: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Accessed May 2, 2018.

Although the concept of “internationally wrongful acts” has been decriminalized throughout the ILC drafts on articles of state responsibility,¹³² it should be concluded that exercise of the remedial secession in the view of breach of peremptory norms not only illustratively demonstrates an entirely legitimate cause for secession, but also entails a further legal step to be taken. In this regard, the peoples should not be perceived as the perpetrators against the territorial integrity of states. Rather, the states should be viewed as condemnable international wrongdoers that perpetrate breaches of the most cherished peremptory norms and their legitimate exercise thereof by unjustifiably preserving territorial integrity by unlawful means.

To sum up, commission of an internationally wrongful act that involves the breach of the article 26 should logically entail an automatic right to remedial secession. This would certainly mean criminalization of violation of the self-determination of peoples on the basis of principle of *ultimum remedium*. As seen from the analysed cases, lesser measures are not likely to succeed, for a graver crime than the breach of a peremptory norm may not be thought of at all.¹³³

¹³² Sophie Carlgren, “The Elimination of the Concept of ‘Crime’ from the ILC’s Draft Articles”, Master thesis, University of Lund, Faculty of Law, 2009. Available on: <http://lup.lub.lu.se/luur/download?func=downloadFile&recordOID=1556644&fileOID=1564057>. Accessed May 2, 2018.

¹³³ Frans Koenraadt, Jos Mooij, *The Mental Condition in Criminal Law: Forensic Mental Health Assessment in a Residential Setting* (Utrecht: Dutch University Press, 2007), p. 17. Available on: https://books.google.lv/books?id=-9q0UguDPI8C&pg=PA17&lpg=PA17&dq=ultimum+remedium+criminal+law&source=bl&ots=KZ4W7qdNSE&sig=HfUKBnkGW_0CWSL0uISkbmpsL4o&hl=lv&sa=X&ved=0ahUKEwjV_vuiy-XaAhWGESwKHX5qAycQ6AEIZzAJ#v=onepage&q=ultimum%20remedium%20criminal%20law&f=false. Accessed May 2, 2018.

CONCLUSION

The right to remedial secession can with a solid ground be claimed as a customary international law rule in the absence of express treaty provisions. As a source of international law, it should carry no less legal force, since the state practice concerning the matter provides quite self-explanatory criteria of the circumstances in which remedial secession is legally permissible. Although always left for ad hoc evaluation of each specific case, a provisory framework of what legalizes remedial secession can successfully be developed.

First and foremost, remedial secession may be described as a federal phenomenon solely. What is so peculiar about the federal states, is the exercise of their power granted by the federal constitution at the expense of autonomy of its federal subjects that have formed this particular federal sovereign at their free will. The case does not pertain to the unitary states, since abuse of power by the sovereign cannot be said to have been exercised in a clear contravention with the social contract between different and entirely separate groups of people and the sovereign. The peoples of non-federal states may not claim rights they have never possessed and hence never deprived of.

Further, it is useful to sum up the circumstances that have emerged as the qualifying criteria for remedial secession from the illustrative federalist secessions of Bangladesh, South Carolina, Chechnya and Kosovo. These are, in particular, denial of internal self-determination, violent suppression of secessionist and independence movements, presence of a humanitarian element, possibly even with commission of a war crime by the federal sovereign, breach of state continuity doctrine. It may be added that a *sui generis* circumstance of remedial secession, as exemplified by Kosovo, is change of the political and legal status of the federal subject to its detriment.

An assertion can also be made that an integral element of legitimation of remedial secession is the effectiveness of existence of an independent unit thereof. Although this is a post-facto criterion, it cannot be denied that secession as such does not have any practical meaning without effective existence. Thus, since remedial secession is said to exist in a form of customary law, the exercise of this right shall also be subject to the test of effectiveness.

Despite the state practice being quite extensive on the invocation of the right to remedial secession, the legality of remedial secession suffers from its practical inexistence in the international statutory law. No matter, how convincing and prolific the explanation of remedial circumstances provided by state practice is, it will always be quite complicated to invoke a phenomenon not expressly defined in authoritative legal texts, nor ever mentioned explicitly in case-law of the ICJ. Indeed, circumstances that qualify for remedial secession may practically be present, although the changing nature of facts and the equivocal interpretation of what happened through the principle of *ex factis jus oritur* may lead to abuse by the federal sovereigns of their power to deny right to self-determination and remedial secession.

Fortunately, a promising movement towards a greater respect of right to self-determination is pervasive. Undoubtedly, the concept has far exceeded its initial meaning that was confined to the realm of decolonization. It can now be claimed that self-determination has truly evolved into a nearly full-fledged right to secession. The “remedial” connotation here, albeit currently bearing the nature of a constraining factor to the general right to secession, can reasonably be expected to develop beyond its status of exception. The moment when violations of human rights of a lesser extent would legitimate secession, it could validly be asserted that the “remedial” element is obsolete and a gradually disappearing concept of international law.

Overall, the international community is undeniably shifting from the state-centric perception of international relations to an anthropocentric one. Where violations of human rights outside the colonial possessions were once remedied at best with the internal self-determination or imposition of a status of non-self-governing territory, external self-determination now comes into play as the democratic and libertarian expression of a human value. While earlier human rights could be complied with strictly within the limits of territorial integrity of sovereigns, now the individual human supersedes political, legal and territorial boundaries. The international community is currently experiencing the dawn of human rights era, as spectacular and overwhelming as never precipitated before.

BIBLIOGRAPHY

Primary sources

International statutory law

1. International treaties

- International Covenant on Civil and Political Rights. (March 23, 1976). Available on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed March 20, 2018.
- International Covenant on Economic, Social and Cultural Rights. (December 16, 1966). Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. Accessed March 20, 2018.
- Montevideo Convention on the Rights and Duties of States. (December 26, 1933). Available on: <http://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml>. Accessed May 2, 2018.
- Responsibility of States for Internationally Wrongful Acts, 2001. Available on: <https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/International%20Law%20Commission%202001%20Draft%20Articles%20on%20State%20Responsibility.pdf>. Accessed May 2, 2018.
- United Nations Charter. San Francisco, (June 26, 1945). Available on: <http://www.un.org/en/sections/un-charter/un-charter-full-text/>. Accessed March 20, 2018.
- Universal Declaration of Human Rights. Paris, (December 10, 1948). Available on: <http://www.un.org/en/universal-declaration-human-rights/>. Accessed March 20, 2018.
- Vienna Convention on the Law of Treaties. (May 23, 1969). Available on: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>. Accessed May 1, 2018.

2. United Nations General Assembly/Security Council resolutions

- Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo. 15 May, 2001. Available on: http://www.assembly-kosova.org/common/docs/FrameworkPocket_ENG_Dec2002.pdf. Accessed May 1, 2018.
- Resolution adopted by the General Assembly No. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. (October 24, 1970). Available on: <http://www.un-documents.net/a25r2625.htm>. Accessed March 21, 2018.
- Resolution adopted by the General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples, No. 1514 (XV). (December 14, 1960). Available on: <http://www.un.org/en/decolonization/declaration.shtml>. Accessed March 20, 2018.
- Resolution adopted by the General Assembly, No. 61/295 United Nations Declaration on the Rights of Indigenous Peoples. (September 13, 2007). Available on: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Accessed March 20, 2018.

- United Nations Security Council Resolution No. 1244 on the situation relating Kosovo. 10 June, 1999. Available on: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>. Accessed May 1, 2018.

National constitutional law

- Pakistan. The Constitution of the Republic of Pakistan, 1962. Available on: http://pakistan.space.tripod.com/archives/62_00.htm. Accessed April 15, 2018.
- Serbia. The Constitution of the Republic of Serbia. (September 28, 1990). Available on: <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan019071.pdf>. Accessed April 30, 2018.
- Russian Federation. The Constitution of the Russian Federation. (December 12, 1993). Available on: <http://www.constitution.ru/en/10003000-01.htm>. Accessed April 29, 2018.
- United States of America. The Constitution of the United States: A Transcription. (November 21, 1879). Available on: <https://www.archives.gov/founding-docs/constitution-transcript>. Accessed April 15, 2018.
- Yugoslavia. The Constitution of Federal Republic of Yugoslavia. (April 27, 1992). Available on: <http://www.cecl.gr/RigasNetwork/databank/Constitutions/Yugoslavia.html>. Accessed April 30, 2018.

Case-law

1. ICJ case-law

- Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion. (July 22, 2010). Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>. Accessed May 1, 2018.
- Case concerning East Timor (*Portugal v. Australia*) (June 30, 1995), Judgment, I. C.J. Reports. Available on: <http://www.icj-cij.org/files/case-related/84/084-19950630-JUD-01-00-EN.pdf>. Accessed April 14, 2018.
- Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali), International Court of Justice Judgment of 22 December 1986, para 23. Available on: <http://www.icj-cij.org/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>. Accessed March 20, 2018.
- Case concerning Trial of Pakistani Prisoners of War (*Pakistan v. India*), (May 11, 1973) Request for the Indication of Interim Measures of Protection. Available on: <http://www.icj-cij.org/files/case-related/60/10697.pdf>. Accessed April 15, 2018.
- Reparation for Injuries Suffered in the service of the United Nations, Advisory Opinion, International Court of Justice (April 11, 1949, unreported). Available on: <http://www.icj-cij.org/files/case-related/4/004-19490411-ADV-01-00-EN.pdf>. Accessed March 19, 2018.
- South West Africa cases (*Ethiopia v. South Africa; Liberia v. South Africa*), (July 18, 1966), Judgment, I.C.J. Reports. Available on: <http://www.icj-cij.org/files/case-related/47/047-19660718-JUD-01-00-EN.pdf>. Accessed April 14, 2018.

2. National case-law

- *Jose Ernesto Medellin, Petitioner v. Texas* (25 March, 2008, unreported). Available on: <http://caselaw.findlaw.com/us-supreme-court/552/491.html>. Accessed March 19, 2018.
- Judgment of the Constitutional Court of the Russian Federation of 31 July 1995 on the constitutionality of the Presidential Decrees and the Resolutions of the Federal Government concerning the situation in Chechnya. Available on: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(1996\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(1996)001-e). Accessed April 29, 2018.

Semi-primary sources

Soft law

- Conference on Security and Co-Operation in Europe Final Act. Helsinki, (August 1, 1975). Available on: <https://www.osce.org/helsinki-final-act?download=true>. Accessed March 20, 2018.
- Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union. South Carolina, (24 December, 1860). Available on: http://avalon.law.yale.edu/19th_century/csa_scarsec.asp. Accessed April 15, 2018.
- Kosovo's declaration of independence, (February 17, 2008). Available on: <http://news.bbc.co.uk/2/hi/europe/7249677.stm>. Accessed May 1, 2018.
- The Declaration of Independence, United States of America. (July 4, 1776). Available on: <http://www.ushistory.org/declaration/document/>. Accessed April 15, 2018.
- The Proclamation of Independence, Mujibnagar, Bangladesh. (April 10, 1971). Available on: https://www.constituteproject.org/constitution/Bangladesh_2011.pdf. Accessed April 15, 2018.
- “Декларация о суверенитете Чечено-ингушской республики” (Declaration on the sovereignty of Chechen-Ingush Republic). 27 November, 1999. *Leadership and Government of the Chechen Republic*. Available on: <http://chechenlaw.ru/?p=55>. Accessed April 29, 2018.

Travaux préparatoires

- Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001. Available on: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. Accessed May 2, 2018.

Official documents

- *United Nations Educational, Scientific and Cultural Organization's International Meeting of Experts on further study of the concept of the rights of peoples, Final report and recommendations*. (November 27-30, 1989). Available on: <http://unesdoc.unesco.org/images/0008/000851/085152eo.pdf>. Accessed May 2, 2018.

Secondary sources

1. Scholarly books

- Musgrave, Thomas D., *Self Determination and National Minorities* (Oxford: Clarendon Press, 1997).

- Walter, Christian, Antje von Ungern-Sternberg, Kavus Abushov, *Self-determination and Secession in International Law* (Oxford: Oxford University Press, 2014).

2. Electronic scholarly books

- Archibugi, Daniele, “A Critical Analysis of the Self-determination of Peoples: A Cosmopolitan Perspective”, *Constellations*, Vol. 10, No. 4, 2003. Available on: <http://www.danielearchibugi.org/downloads/papers/2017/11/Archibugi-A-Critical-Analysis-of-the-Self-determination-of-Peoples.pdf>. Accessed March 20, 2018.
- Chen, Ti-Chiang, *The international law of recognition* (New York: Frederick A. Praeger, Inc., 1951). Available on: <https://books.google.lv/books?id=3g8KAwAAQBAJ&pg=PA420&lpg=PA420&dq=ex+factis+jus+oritur&source=bl&ots=P-bJQLrWM1&sig=MVCEzWiF1VwW6VYp2-FLeZmiYWo&hl=ru&sa=X&ved=0ahUKEwirnYXCjrraAhVCOJoKHao8D5YQ6AEIZDAI#v=onepage&q=ex%20factis%20jus%20oritur&f=false>. Accessed April 14, 2018.
- Espinosa, Juan Francisco Escudero, *Self-Determination and Humanitarian Secession in International Law of a Globalized World* (Leon: Springer, 2017). Available on: <https://books.google.lv/books?id=9Q1TDwAAQBAJ&pg=PA164&dq=bangladesh+remedial+secession&hl=ru&sa=X&ved=0ahUKEwj10OHg5bvaAhXGdpoKHSqEBzAQ6AEINjAC#v=onepage&q=bangladesh%20remedial%20secession&f=false>. Accessed April 15, 2018.
- Hasani, Enver, *Self-determination, Territorial Integrity and International Stability: The Case of Yugoslavia* (Vienna: National Defence Academy Institute for Peace Support and Conflict Management, 2003). Available on: http://www.bundesheer.at/pdf_pool/publikationen/hasa03.pdf. Accessed March 20, 2018.
- Hughes, James, Gwendolyn Sasse, *Ethnicity and Territory in the Former Soviet Union: Regions in Conflict* (London: Routledge Taylor & Francis Group, 2014). Available on: <https://books.google.lv/books?id=QBWgBAAAQBAJ&pg=PA55&lpg=PA55&dq=take+as+much+sovereignty+as+you+can+stomach.&source=bl&ots=0Gr5BLGxYp&sig=hL0X4CkzJq4iaHz-gumA3vLZvLo&hl=ru&sa=X&ved=0ahUKEwjZxbeFqdHaAhVSb5oKHT0vAQwQ6AEIJzAA#v=onepage&q=take%20as%20much%20sovereignty%20as%20you%20can%20stomach.&f=false>. Accessed April 24, 2018.
- Koenraadt, Frans, Jos Mooij, *The Mental Condition in Criminal Law: Forensic Mental Health Assessment in a Residential Setting* (Utrecht: Dutch University Press, 2007). Available on: https://books.google.lv/books?id=-9q0UguDPI8C&pg=PA17&lpg=PA17&dq=ultimum+remedium+criminal+law&source=bl&ots=KZ4W7qdNSE&sig=HfUKBnkGW_0CWSL0uISkbmpsL4o&hl=lv&sa=X&ved=0ahUKEwjV_vuiy-XaAhWGESwKHX5qAycQ6AEIZzAJ#v=onepage&q=ultimum%20remedium%20criminal%20law&f=false. Accessed May 2, 2018.
- Kreijen, Gérard, *State Failure, Sovereignty and Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa* (Leiden: Martinus Nijhoff Publishers, 2004). Available on: <https://books.google.lv/books?id=LQCgNzL3RJQC&pg=PA175&lpg=PA175&dq=ex>

- [+factis+jus+oritur&source=bl&ots=6vfgdR5Tcs&sig=ob036_H1TOHpx7k4QFYQWqApxy8&hl=ru&sa=X&ved=0ahUKEwiR9qOxjbraAhWh0aYKHfAsBN4Q6AEIaTAJ#v=onepage&q=ex%20factis%20jus%20oritur&f=false](https://books.google.lv/books?hl=ru&sa=X&ved=0ahUKEwiR9qOxjbraAhWh0aYKHfAsBN4Q6AEIaTAJ#v=onepage&q=ex%20factis%20jus%20oritur&f=false). Accessed April 14, 2018.
- Linderfalk, Ulf, *On the Interpretation of Treaties: The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties* (Dordrecht: Springer, 2007). Available on: https://books.google.lv/books?id=74RIG7PLInUC&pg=PA218&lpg=PA218&dq=Ut+res+magis+valeat+quam+pereat&source=bl&ots=7_rf5bqHVn&sig=Ebl5xO6khzNEOxYpTtzsGL4yKSI&hl=ru&sa=X&ved=0ahUKEwjw2NiW99zaAhVLDJoKHTYzBrAQ6AEIbjAJ#v=onepage&q=Ut%20res%20magis%20valeat%20quam%20pereat&f=false. Accessed May 1, 2018.
 - Marek, Krystyna, *Identity and Continuity of States in Public International Law* (Geneva: Geneve Librairie Droz 11, Rue Massot, 1968). Available on: https://books.google.lv/books?id=QaF7mnj9igkC&pg=PA5&lpg=PA5&dq=state+continuity&source=bl&ots=oK8jm_7ZtS&sig=RAow-1B5XVs8NZCuSx0RtmXcdfk&hl=ru&sa=X&ved=0ahUKEwja_Z68j87aAhWhHJoKHa0UB1Y4ChDoAQg5MAI#v=onepage&q=state%20continuity&f=false. Accessed April 22, 2018.
 - Pavkovic Aleksandar, Peter Radan, *Creating New States: Theory and Practice of Secession* (London: Routledge Taylor & Francis Group, 2016). Available on: <https://books.google.lv/books?id=AxwpDAAAQBAJ&printsec=frontcover&dq=secession&hl=ru&sa=X&ved=0ahUKEwin6a2t8IrbAhUmM5oKHfVdDNYQ6AEITzAF#v=onepage&q=secession&f=false>. Accessed May 16, 2018.
 - Rahman, Smita A., *Time, Memory and the Politics of Contingency* (London: Routledge). Available on: https://books.google.lv/books?id=2-oABAAAQBAJ&pg=PT181&lpg=PT181&dq=Operation+Searchlight+scholarly&source=bl&ots=0KyHW_pmS6&sig=mHF83PMLtCQkRChODGcmI8Fpmzo&hl=ru&sa=X&ved=0ahUKEwjV7piP5rvaAhVByaYKHei6DC44ChDoAQhMMAo#v=onepage&q=Operation%20Searchlight%20scholarly&f=false. Accessed April 15, 2018.
 - Sakwa, Richard, *Chechnya: From Past to Future* (London: Anthem Press, 2005). Available on: <https://books.google.lv/books?id=eFNJ-speCywC&pg=PA235&lpg=PA235&dq=chechnya+referendum+2003&source=bl&ots=i8rmeKTCwW&sig=kgdAc2HmKh23Kg6EpM-QCLqk6SM&hl=ru&sa=X&ved=0ahUKEwiX18y6ktHaAhXkApoKHSTaBNk4FBD0AQg0MAI#v=onepage&q=chechnya%20referendum%202003&f=false>. Accessed April 24, 2018.
 - Schabas, William, *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2000). Available on: https://books.google.lv/books?id=pYptuRHDQPgC&pg=PA425&lpg=PA425&dq=icj+case+pakistan+v+india+war+prisoners&source=bl&ots=l4AKeOEXCI&sig=YeQldnPrp5YmR1wovFUlt3U9dTg&hl=ru&sa=X&ved=0ahUKEwi_9bX_zLraAhXIDpoKHUF0DQIQ6AEIXTAH#v=onepage&q=icj%20case%20pakistan%20v%20india%20war%20prisoners&f=false. Accessed April 15, 2018.
 - Van Elsuwege, Peter, *From Soviet Republics to EU Member States: A Legal and Political Assessment of the Baltic States' Accession to the EU* (Leiden: Martinus Nijhoff Publishers, 2008). Available on:

<https://books.google.lv/books?id=E5v0RuGkB0EC&pg=PA59&lpg=PA59&dq=ex+factis+jus+oritur+international+law&source=bl&ots=ZoVW-2w36y&sig=bK7vqzaC694SoRp6KM4w-JPBcy0&hl=lv&sa=X&ved=0ahUKEwi5i-2i-ezaAhVGdywKHWWsBuoQ6AEIWTAH#v=onepage&q=ex%20factis%20jus%20oritur%20international%20law&f=false>. Accessed May 5, 2018.

- Wheatley, Steven, *Democracy, Minorities and International Law* (Cambridge: Cambridge University Press, 2005). Available on: <https://books.google.lv/books?id=Pbntu7mntWQC&pg=PA74&lpg=PA74&dq=salt+water+test+international+law&source=bl&ots=8yeFFCmHXJ&sig=nKffizfMgKOjKHU0WwBa0Zf2rHc&hl=ru&sa=X&ved=0ahUKEwi6pNfq0frZAhWJ6CwKHcqYAUwQ6AEIRDAD#v=onepage&q=salt%20water%20test%20international%20law&f=false>. Accessed March 20, 2018.
- Yasseen, Mustafa Kamil, *L'interprétation des traités d'après la Convention de Vienne sur le droit des traités* (The interpretation of treaties according to the Vienna Convention on the Law of Treaties), (Leiden: Martinus Nijhoff Publishers). Available on: https://books.google.lv/books?id=6ySwI9AUGJ8C&pg=PA71&lpg=PA71&dq=Ut+res+magis+valeat+quam+pereat&source=bl&ots=Ls9AnT1opl&sig=THA8E63-Vk0BTzj_67k0WhFCCRw&hl=ru&sa=X&ved=0ahUKEwiSt9DI9dzaAhWIBZoKHfJQCvgQ6AEIUTAF#v=onepage&q=Ut%20res%20magis%20valeat%20quam%20pereat&f=false. Accessed May 1, 2018.

Journal articles

- Berman, Paul Schiff, “Federalism and International Law Through the Lens of Legal Pluralism”, *GW Law Faculty Publications & Other Works*, 2008. Available on: https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?referer=https://www.google.lv/&httpsredir=1&article=1086&context=faculty_publications. Accessed March 19, 2018.
- Brewer, Evan M., “To Break Free from Tyranny and Oppression: Proposing a Model for a Remedial Right to Secession in the Wake of the Kosovo Advisory Opinion”, *Vanderbilt Journal of Transnational Law*, Vol. 45, No. 245, 2012. Available on: EBSCO host. Accessed March 25, 2018.
- Brilmayer, Lea, “Secession and Self-Determination: A Territorial Interpretation”, *Yale Journal of International Law*, Vol. 16, No. 177, 1991. Available on: https://www.uvi.edu/files/documents/College_of_Liberal_Arts_and_Social_Sciences/social_sciences/OSDCD/Secession_and_Self-Determination_A_Territorial_Interpretation_Brilmayer.pdf. Accessed March 21, 2018.
- Buchanan, Allen, “Theories of Secession”, *Philosophy and Public Affairs*, Vol. 26, No. 1, 1997. Available on: <http://philosophyfaculty.ucsd.edu/faculty/rarneson/phil267fa12/BuchananTheoriesSecession.pdf>. Accessed March 21, 2018.
- Bunick, Nicola, “Chechnya: Access Denied”, *Georgetown Journal of International Law*, Vol. 40, 2009. Available on: HeinOnline. Accessed March 25, 2018.
- Carcieri, Martin D., “The South Carolina Secession Statement of 1860 and the One Florida Initiative: The Limits of a Historical Analogy and the Possibility of Racial

- Reconciliation”, *St. Thomas Law Review*, Vol. 13, 2001. Available on: HeinOnline. Accessed March 25, 2018.
- Catala, Amandine, “Remedial Theories of Secession and Territorial Justification”, *Journal of Social Philosophy*, Vol. 44, No. 1, 2013. Available on: EBSCO host. Accessed March 13, 2018.
 - Christakis, Theodore, “The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?”, *Leiden Journal of International Law*, Vol. 24, 2011. Available on: EBSCO host. Accessed May 1, 2018.
 - Draganova, Diana, “Chechnya's Right of Secession under Russian Constitution Law”, *3 Chinese JIL*, 2004. Available on: HeinOnline. Accessed March 25, 2018.
 - Elden, Stuart, “Contingent Sovereignty Territorial Integrity and the Sanctity of Borders”, *SAIS Review*, Vol. 26, No. 1, 2006. Available on: <https://progressivegeographies.files.wordpress.com/2012/02/contingent-sovereignty.pdf>. Accessed March 20, 2018.
 - Field, Martha A., “The Structures of Federalism”, *American University International Law Review*, Issue 2, Vol. 8, 1993. Available on: <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1861&context=auilr>. Accessed March 19, 2018.
 - Kofman, Daniel, “Secession, Law, and Rights: The Case of the Former Yugoslavia”, *Human Rights Review*, 2000. Available on: EBSCO host. Accessed March 25, 2018.
 - Mulcahy, Conor, “Pre-Determined: The March 23, 2003 Constitutional Referendum in Chechnya and its Relationship to the Law of Self-Determination”, *Boston College International & Comparative Law Review*, Vol. 28, Issue 1, Article 6, 2005. Available on: <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1080&context=iclr>. Accessed April 29, 2018.
 - Orakhelashvili, Alexander, “The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions”, *The European Journal of International Law*, Vol. 16, No.1, 2005. Available on: <http://www.ejil.org/pdfs/16/1/290.pdf>. Accessed March 21, 2018.
 - Rossi, Christopher R., “Ex Injuria Jus Non Oritur, Ex Factis Jus Oritur, and the Elusive Search for Equilibrium After Ukraine”, *Tulane J. of Int'l and Comp. Law*, Vol. 24, 2015. Available on: <https://poseidon01.ssrn.com/delivery.php?ID=335074111074015066107101127088100073109017024072035030106079023111120085009067094107037033035060058099112005015102031097113109062066043049061127115112002090102010067086029023124120088097082120065109097020080018027106122113072068064030113005026117009091&EXT=pdf>. Accessed April 14, 2018.
 - Sassòli, Marco, “State responsibility for violations of international humanitarian law”, *IRRC*, Vol. 84, No. 846, 2002. Available on: https://www.icrc.org/eng/assets/files/other/401_434_sassoli.pdf. Accessed May 2, 2018.
 - Sterio, Milena, “On the Right to External Self-Determination: ‘Selfistans’, Secession and the Great Powers’ Rule”, Cleveland-Marshall College of Law, Research Paper 09-163, *Minnesota Journal of International Law*, Vol. 19, 2010. Available on: <https://poseidon01.ssrn.com/delivery.php?ID=80309011408800510300712409906402310301605208501507902912611807902712606506411511203000605201300603704601611606907600508911600104801106606104400510302212209811603608307709>

- [1102084117004014068096120121117091096091086125111013083092093104126021103126&EXT=pdf](https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1256&context=facpub). Accessed March 21, 2018.
- Tushnet, Mark V., “Federalism and International Human Rights in the New Constitutional Order”, *The Wayne Law Review*, Vol. 47, 2001. Available on: <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1256&context=facpub>. Accessed March 19, 2018.
 - Velasco, Zoilo A., “Self-determination and Secession: Human Rights-based Conflict Resolution”, *International Community Law Review*, Vol. 16, 2014. Available on: HeinOnline. Accessed March 13, 2018.
 - Vidmar, Jure, “International Legal Responses to Kosovo’s Declaration of Independence”, *Vanderbilt Journal of Transnational Law*, Vol. 42, No. 779. Available on: https://www.vanderbilt.edu/wp-content/uploads/sites/78/Vidmar-cr_final_final1.pdf. Accessed May 1, 2018.
 - “World Court and United Nations Charter: The Principle of Effectiveness in Interpretation”, *Duke Law Journal*, 1962. Available on: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1792&context=dlj>. Accessed May 1, 2018.
 - Zadeh, Ali Zounuzy, “International Law and the Criteria for Statehood”, LL.M Thesis Public International Law, Tilburg University, Faculty of Law. Available on: <http://arno.uvt.nl/show.cgi?fid=121942>. Accessed May 2, 2018.
 - Ziemele, Ineta, “Acceptance of a Claim for State Continuity: A Question of International Law and its Consequences”, *Juridiskā zinātne / Law*, No. 9, 2016. Available on: https://www.journaloftheuniversityoflatvialaw.lu.lv/fileadmin/user_upload/lu_portal/projekti/journaloftheuniversityoflatvialaw/No9/3.Ineta_Ziemele.pdf. Accessed April 22, 2018.

Working papers/reports

- Bhardwaj, Sanjay K., “Contesting Identities in Bangladesh: A Study of Secular and Religious Frontiers”, *Asia Research Centre Working Paper* No. 36. Available on: <https://pdfs.semanticscholar.org/22c8/14b2f62d41ede000a4cc1ec740672e59e53b.pdf>. Accessed April 15, 2018.
- “JCC: East Pakistan Crisis Bangladesh”, Princeton Model United Nations Conference 2016. Available on: https://irc.princeton.edu/pmunc/docs/JCC_Bangladesh_Formatted.pdf. Accessed April 15, 2018.
- Reiger, Caitlin, “Fighting Past Impunity in Bangladesh: A National Tribunal for the Crimes of 1971”, ICTJ briefing, 2010. Available on: <http://ictj.org/sites/default/files/ICTJ-BGD-NationalTribunal-Briefing-2010-English.pdf>. Accessed April 15, 2018.

Dissertations

- Sopio Asatiani, “Remedial Secession under International law: Analysis of Kosovo, Abkhazia and South Ossetia”, Central European University, LL.M. Human Rights thesis, 2013.
- Carlgren, Sophie, “The Elimination of the Concept of ‘Crime’ from the ILC’s Draft Articles”, University of Lund, Faculty of Law, Master thesis, 2009. Available on:

<http://lup.lub.lu.se/luur/download?func=downloadFile&recordOid=1556644&fileOid=1564057>. Accessed May 2, 2018

- Vezbergaite, Ieva, “Remedial Secession as an Exercise of the Right to Self-determination of peoples”, Central European University, Budapest, Legal studies department, Master thesis, 2011.
- Žaludova, Zuzana, “Concept of Remedial Secession under International Law”, Charles University in Prague, Faculty of Law, Master thesis, 2015, p. 19.

Website sources

- “Abraham Lincoln and Slavery”. *Abraham Lincoln’s Classroom*. Available on: <http://www.abrahamlincolnsclassroom.org/abraham-lincoln-in-depth/abraham-lincoln-and-slavery/#dred>. Accessed April 15, 2018.
- Barnwell, John, “Love of Order: South Carolina’s First Secession Crisis.” *Texas Christian University*. Available on: <http://personal.tcu.edu/swoodworth/Barnwell.html>. Accessed April 15, 2018.
- Capeleto, Michele, “Does Self-Determination Entail an Automatic Right to Secession?”. Available on: <http://www.e-ir.info/2014/05/02/does-self-determination-entail-an-automatic-right-to-secession/>. Accessed March 20, 2018.
- “Federation and the Constitutional Theory of the State”. *The Jean Monnet Center for International and Regional Economic Law & Justice*. Available on: <https://jeanmonnetprogram.org/archive/papers/00/00f0301EN-02.html>. Accessed March 19, 2018.
- “Locke’s Political Philosophy”. *Stanford Encyclopedia of Philosophy*. Available on: <https://plato.stanford.edu/entries/locke-political/#SepPowDisGov>. Accessed March 19, 2018.

News/magazine articles

- Biserko, Sonja, “The Dissolution of Yugoslavia: Roots of the Conflict”. *Humanity in Action*. Available on: <https://www.humanityinaction.org/knowledgebase/360-the-dissolution-of-yugoslavia-roots-of-the-conflict>. Accessed April 30, 2018.
- “Bangladesh: the path to democracy, 1991-2009”. *MountHolyoke*. Available on: <https://www.mtholyoke.edu/~khan23n/classweb/worldpolitics116/Templates2/Liberati onWar.html>. Accessed April 15, 2018.
- “ICJ rules on Kosovo's Declaration of Independence”. *The Hague Justice Portal*. Available on: <http://www.haguejusticeportal.net/index.php?id=11906>. Accessed May 1, 2018.
- Khalilov, Roman, “Moral justifications of secession: the case of Chechnya”. *Nonviolent Radical Party transnational and transparty*. Available on: <http://www.radicalparty.org/en/content/moral-justifications-secession-case-chechnya-1>. Accessed April 24, 2018.
- “NATO's role in relation to the conflict in Kosovo”. *NATO’s role in Kosovo*. Available on: <https://www.nato.int/kosovo/history.htm>. Accessed May 1, 2018.
- “Operation Searchlight: Genocide unleashed on Bangalis in East Pakistan”. *Dhaka Tribune*. Available on: <https://www.dhakatribune.com/bangladesh/2017/03/25/operation-searchlight-genocide-unleashed/>. Accessed April 15, 2018.

- Travers, Eve-Anne, “Scrapping state recognition: What alternatives exist for Kosovo?”. *Prishtina Insight*. Available on: <http://prishtinainsight.com/scrapping-state-recognition-alternatives-exist-kosovo-mag/>. Accessed May 2, 2018.
- “Р. Кадыров: ‘Референдум 2003 года сохранил целостность России’ ” (R. Kadyrov: Referendum of 2003 has preserved the integrity of Russia). *Leadership and Government of the Chechen Republic*. Available on: <http://www.chechnya.gov.ru/page.php?id=5036&r=126>. Accessed April 24, 2018.