

Self-Determination - A History of Concept and its Basic Principles

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Abstract: *Self-determination is seen, according to Art. 1. of the Charter of the United Nations, as a freedom of determination, without external interference, of political status and aspirations to economic, social and cultural development [Charter of United Nations. Article 1., [in:] Official website of the United Nations: <http://www.un.org/en/sections/un-charter/chapter-i/index.html> (access: 13.09.2017). M. Skrobtal, *Prawo narodów do samostanowienia jako czynnik konfliktogenny*, [in:] A. Potyrała (ed.), *Współpraca-rywalizacja- walka, Studia przypadków z zakresu współczesnych stosunków międzynarodowych*, Wydawnictwo Naukowe WNPiD UAM, Poznań 2008, p. 9]. The history of this privilege dates back to the seventeenth century, although its intensive development took place in the second half of the 20th century.*

Keywords: self-determination, nation, state

The principle of self-determination has been operating in international law since the 1940s, but the problem of self-determination has appeared much earlier. Considered in the medieval context of mutual relations between monarchy and serves, self-determination has taken the form of natural law attributed to the society during the Rebirth and Reformation [M. Perkowski, *Samostanowienie narodów w prawie międzynarodowym*, Wydawnictwo Prawnicze, Warszawa 2001, p. 17], [Natural law - a set of norms, evaluations or values that override norms of positive law, which is the criterion

for evaluating the latter. These standards define human behavior, they are objective and stable. They accept the will of God, the history, the nature of man or society as their basis. See more in: J. Derek(ed.). *Słownik myśli społeczno-politycznej*, PPU „PARK”, Bielsko-Biała 2004, p.485]

The 17th-century experts of international law worked out a common position, in which the will of the people reduced the ruler's right to subordinate his territory, but it did not work in international practice. The abandonment by the socio-political thought of the progressive assumptions of the Rebirth has resulted in a marked stagnation of self-determination in favor of the expansion of absolutism without affecting social consciousness [M. Perkowski, *op. cit.*, p.17]. The thinkers of the Enlightenment, such as Jean Jacques Rousseau, Baruch Spinoza and John Locke, began to notice the incompatibility of absolutism with the rights of individuals and communities and came to conclude, that the right to enjoy freedom through collectivity should be seen as an inalienable right of societies, in which remains the competence to establish and to change the forms of governance [Ibidem].

The memoirs of cleric Emanuel Joseph Sieyès- "*What is the third state?*" [E.-J. Sieyès, *What is the Third Estate?* (1789), [in:] Official website of the University of Oregon: <http://pages.uoregon.edu/dluebke/301ModernEurope/Sieyes3dEstate.pdf> (access: 13.09.2017)] - illustrates, in the best way, the interpretation of the issue of self-determination, made by the French Revolution. For the French revolutionaries the title of the third state equaled the nation, thus the nation became a weapon in the struggle against the privileges of the aristocracy-„[...]The Third Estate then contains everything that pertains to the nation

while nobody outside the Third Estate can be considered as part of the nation. What is the Third Estate? Everything [...]” [Ibidem, p.3]. The letters of E.J. Sieyès did not touch on any ethnic or cultural aspects, defining in their place the subject of self-determination as a "group living according to the same rules of law represented by the common people's assembly" [T. Gullberg, *State, Territory and Identity*, Akademi University Press, Åbo 2000, p.36]. The French state created the basis for the implementation of self-determination and used it to justify its annexation policies during the Napoleonic wars. From a revolutionary point of view, the states with free citizens were lawful, while the states, ruled by oppressive regimes, were liberated and drawn into the French influence's zone [Ibidem].

In 1815, the Vienna Congress approved the primacy of legitimacy in the relations between rulers and society, and in the middle of the 19th century there were national movements, which promoted the aspirations of independence in Europe [M. Perkowski, *op. cit.*, p. 18]. As a result of these activities, two independent states, Greece and Belgium, were established, although many nations were fighting for freedom. The highest intensity of passions associated with self-determination occurred in the Spring of the People, which caused the institutional reforms in many European monarchies [M. Skrobtal, *op. cit.*, p. 11]. In 1851 Italian professor of international law, Pasquale Mancini, described, as first, the principle of nationality, based on the essence of the law understood in the right to freedom of individuals and communities. This prerogative for the nation was to be realized in the form of the right to choose the internal system, the right to international independence - to create one's own, sovereign state [L. Dembiński, *Samostanowienie w prawie i praktyce ONZ*, Państwowe Wydawnictwo Naukowe, Warszawa 1969, p. 12-13, M. Perkowski, *op. cit.*, p. 18].

The second half of the nineteenth century was the arena for changes resulting from industrial revolution, socio-economic transformations, growing importance of electoral rights and growing democratization of public life. The above transformations were connected with "national awakening" in Central Europe [M. Skrobtal, *op. cit.*, p. 11]. The development of nations was accompanied by nationalism, which assumed the principle of self-determination. New

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international states have emerged on the international political scene, including two resulting from the unification-Germany and Italy. The Balkan states - Romania, Bulgaria, Serbia, Montenegro (already having relative independence), and Albania- won an independence Norway has successfully completed secession from Sweden [Ibidem].

The self-determination as a political postulate gained in importance during World War I, when two different concepts emerged. The first, by Vladimir Lenin of 1917, with a very radical tone, gave all nations, without any restrictions, the right to create and have one's own state [M. Perkowski, *op. cit.*, p.18]- „[...] So, if we want to understand the meaning of self-determination, not playing with legal definitions, not "producing" abstract terms, but considering the historical-economic conditions of national movements; we will inevitably come to the following conclusion: self-determination means national separation from groups of foreign nations; it is the creation of an independent nation-state [...]" [W.I. Lenin, *Dziela wybrane*, Tom I, Książka i Wiedza, Warszawa 1949, [in:] Official website of Marxists Internet Archive: <http://www.marxists.org/polski/lenin/1914/prawonar/01.htm> (access: 13.09.2017)]. The second, created by then President of the United States Thomas W. Wilson, publicly presented in January 1918, referred to so-called "The consent of the governed", emphasizing the fact, that each people has the right to choose their own form of government [M. Perkowski, *op. cit.*, p.18]. The ideal for American president was the state, in which all nations could enjoy having their own states. However, given theory and practice, a number of contradictions outlined in the views of T.W. Wilson. It was not known what kind of "nations" would this principle concern? How to lead the boundaries of the territory occupied by a particular nation and to whom it belongs? What indicators should have been adopted as criteria for citizenship? [S.L. Carruthers, *Historia stosunków międzynarodowych 1900-1945*, [in:] J. Baylis, S. Smith (ed.), *Globalizacja polityki światowej. Wprowadzenie do stosunków międzynarodowych*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2008, p. 78-79. Individual European communities, perceiving themselves as national communities, did not live in strictly defined areas, especially in these areas where the empires had lasted until recently- in the Balkans or in Central and Eastern Europe [Ibidem, p.79].

The builders of the European peace were waiting for the challenge - the need to set new borders, often never before existed. Frequently the agreements on border lines were achieved through a painful compromise, as was the case with Czechoslovakia in 1919, which, due to the multiplicity of national groups included in it, B. Mussolini gave the name "Czecho-German-Polish-Hungarian-Russia-Romania-Slovakia" [Ibidem].

The campaign of T.W. Wilson, aimed at self-determination in old continent, brought with itself more harm than good. 60 million people got their own states, but 25 million others were transformed into minorities within imperfect, nation-states. No wonder, that new states of Central, Eastern and South Europe have struggled with many difficulties, facing ethnic divisions, fighting with economic problems or making political institutions from the scratch [Ibidem].

After World War II, decolonization played a key role in self-determination. Initially, it covered Asia and Africa, later also Oceania and the Caribbean (this stage was not resulted form revolution but from planned activity of the metropolis and national liberation struggles) [M. Skrobtal, *op. cit.*, p. 12]. With achievement of independence by individual colonies, there the concern arose, if the right of self-determination remained available only to individuals built by colonial states, or that the peoples, who lived in these countries, could also use it? [Ibidem]. The colonial boundaries have divided the communities speaking in different languages, professing distinct religions and having different cultures. Internal conflicts have led to the emergence of a post-colonial phase of ways of implementing the law to self-determination, opposed to the order of decolonization [Ibidem].

The principle of self-determination has been confirmed in the Charter of the United Nations. According to Article 1, item 2.: „[...] The Purposes of the United Nations are: [...] To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace [...]” [Charter of United Nations. Article 1., [in:] Official website of the United Nations: <http://www.un.org/en/sections/un-charter/chapter-i/index.html>(access: 13.09.2017)], and Article 55 of this document: „[...] With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development, b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion [...]” [Charter of United Nations. Article 55., [in:] Official website of the United Nations: <http://www.un.org/en/sections/un-charter/chapter-i/index.html>(access: 13.09.2017)]. From above provisions it can be concluded. that the principle of self-determination is organically related to the principle of equality of nations. It emphasizes free and true expression of their will [L. Antonowicz, *Podręcznik prawa międzynarodowego*, LexisNexis, arszawa 2011, p. 45]. It does not oppose voluntary union of nations. It refers to all national communities, regardless of degree of their development and form of political being. It should be considered together with other provisions of the Charter of the United Nations [Ibidem, p. 45].

Most of contemporary nations live in communities of great ethnic diversity, which does not conflict with the principle of self-determination [Ibidem]. The Charter of the United Nations, however, demands, that multinationals respect the equality of nations in their internal system by fully equalizing all citizens regardless of their race or nationality. This obligation can be fulfilled within individual

constitutional systems and the choice among them is the responsibility of concerned state [Ibidem, p.45-46].

The Resolution 1514 (XV), *the Declaration on the Granting of Independence to Colonial Countries and Peoples*, approved on December 14, 1960, insists on the fact, that: „[...] *All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development* [...]” [Declaration on the Granting of Independence to Colonial Countries and Peoples, [in:] Official website of the United Nations and Decolonization: <http://www.un.org/en/decolonization/declaration.shtml> (access: 13.09.2017)]. The UN General Assembly Resolution 1747 / XVI of 28 June 1962 on Southern Rhodesia is a turning point in the development of the concept of self-determination and the clarification of nature of the right to self-determination [W. Petsch, *Międzynarodowo-prawna ochrona terytorium państwa w systemie bezpieczeństwa zbiorowego*, Państwowe Wydawnictwo Naukowe, Warszawa 1978, p. 240]. It proclaims, that the right to self-determination, combined so far with the right to independence of objectively defined ethnic groups, does not bring up all aspects of its content. Perhaps it is the situation of emergence of independent state, that opposes free expression of will of its citizens, even going so far as to discriminate against them [Ibidem]. Therefore, the government of Ian Smith (created by white minority and not indigenous population of the colony) in Southern Rhodesia was not respected and the Africans opted for use of force to influence the change of regime, that harmed overwhelming majority of Rhodesia's population, which resulted in the non-recognition of South Rhodesia's independence by Great Britain and the imposition of economic sanctions on rebellious African country [Ibidem]. Another example is provided by Cyprus, where the United Nations has acted both for non-use of force in the existing clashes between the two populations- Greek and Turkish, and for obtaining full constitutional guarantees for the Turkish minority [Ibidem, p.240-241].

On December 16, 1966, the UN General Assembly adopted international conventions on human rights - the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both these acts contain the same first article, which assumes, that: „[...] *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. [...] The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations* [...]” [International Covenant on Civil and Political Rights. Article 1, [in:] Official website of the United Nations Treaty Collections: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (access: 13.09.2017)

International Covenant on Economic, Social and Cultural Rights. Article 1, [in:] Official website of the United Nations

Treaty

https://treaties.un.org/doc/Treaties/1976/01/19760103%2009-57%20PM/Ch_IV_03.pdf (access: 13.09.2017)]. These conventions entered into force in 1976, creating binding agreements between their signatories [M. N.Shaw, *Prawo międzynarodowe*, Książka i Wiedza, Warszawa 2006, p.155].

Significant contributions to the development of the principle of self-determination were submitted by the CSCE Final Act, signed in Helsinki on August 1, 1975. It formulated fundamental principles, what should apply in international relations, referring to the norms enshrined in the Charter of the United Nations. Among 10 principles contained in the CSCE Final Act, there is also a record of the right of peoples to self-determination [M. Skrobtal, *op. cit.*, p. 13]- „[...] *The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating States reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle* [...]” [CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE FINAL ACT, HELSINKI 1975. Article VIII, [in:] Official website of the Organization for Security and Co-operation in Europe: <http://www.osce.org/helsinki-final-act?download=true>(access: 13.09.2017)]

The "Autumn of Nations" and the transformation of Central and Eastern Europe brought with itself the break-up of multinational socialist federations: USSR, Yugoslavia and Czechoslovakia. Emerging and former states have experienced the problem of resurgent nationalism and the pursuit of minorities (e.g. the Hungarian minorities in Slovakia, Romania and Serbia) [M. Skrobtal, *op. cit.*, p. 13]. The Arbitration Commission of the Conference on Yugoslavia [Three of the six territorial disputes in Croatia refer to the border with Serbia. The cause of one of the disputes are the Danube islands of Vukovar and Sarengrad. The islands opposite Vukovar belonged to Croatia, but during the 1991 war they were taken over by the People's Army of Yugoslavia, which consisted mostly of Serbs supported by Serbian paramilitary forces. After the declaration of independence by Croatia in 1991, the Arbitration Commission for Yugoslavia stated that, the border of the Yugoslav Republics should be transformed into a border between new states, according to the norm of *uti possidetis*.

M. Sobczyński, *Zmiany polityczne, terytorialne i spory graniczne w Europie Środkowo-Wschodniej po 1989 r.*, [in:] P. Ebenhard (ed.), *Studia nad geopolityką XXI w.*, Instytut

Geografii i Przestrzennego Zagospodarowania Polskiej Akademii Nauk, Warszawa 2013, p.217], often referred to as the Badinter Arbitration Commission from the name of its president, French lawyer and politician Robert Badinter, has ruled on case of the right to self-determination of Bosnian Serbs, that states, in which national minorities live, are obliged to respect their rights. This opinion has implemented a certain interpretation of the right to self-determination and its borders, the relation to territorial integrity [M. Skrobtal, *op. cit.*, p.13].

The recognition of the law of a particular nation for self-determination by the international community has concrete legal consequences. In other words, the content of the principle of self-determination is the rights and duties of its subjects [M. Perkowski, *op. cit.*, p.67]. The analysis of the sources of international law and the interpreters' views allows us to conclude, that the right to self-determination can be equated with the right to form a sovereign state. The interpretation of the principle of self-determination in the *Declaration of the Principles of International Law, 1970*, emphasizes, that this right includes the right to integrate into a sovereign state or to manifest itself in another form, defined by the nation [Ibidem].

These privileges should enjoy respect and support of the international community, with a simultaneous mutual commitment to respect and fulfill the cardinal human rights and fundamental freedoms of the UN Charter [Ibidem]- „[...] *By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter [...]* The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people [...]” [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*, [in:] Official website of the UN Documents: <http://www.un-documents.net/a25r2625.htm> (access: 13.09.2017)].

According to the current condition of international law, the practice of states and the doctrine associated with it, it is accepted, that the right to self-determination is based on the right of nation of a particular territory to build and maintain an organization, which exercises authority within that territory by means of appropriate institutions [M. Perkowski, *op. cit.*, p. 75]. It should be able to hold relationships with similar geopolitical entities, make their own decisions about their internal and external affairs and respect the rights of other states and the key principles of international law, based on the democratic system in internal relations [Ibidem].

The content of the right to self-determination includes the right of a nation to integrate into a sovereign state, with observance of equality and voluntariness of legitimized

peoples, who, by managing the independence or possible independence of their states, are the only ones who have the opportunity to unite. Polish lawyer Lech Antonowicz claims, that the union has so important and fruitful consequences, that in its attainment one should not substitute its peoples from the outside [L. Antonowicz, *op. cit.*, p. 45]. Moreover, this decision remains with the state authorities, if it is in harmony with wishes of nation, transferred directly or indirectly [Ibidem].

Although the law of the nation to connect with sovereign state tends to create a state, it must not be equated with the right of people to form a state. Emphasis is placed on the fact, that in the case of integration the nation, entitled to self-determination, is transformed (after the completion of integration, the joining nation and the nation of sovereign state together build a new nation of sovereign state), while in the case of creating the state, the nation remains unchanged.

In the light of self-determination, the doctrine of international law usually specifies the rights of nations to secession, autonomy, development and the right to natural resources [Ibidem].

Secession is based on the realization of separatist activities by concrete, organized community with the goal of building one's own state or merging with another sovereign state. When this process is successful, it becomes a fact, that international law imposes certain legal effects, reflecting the incorporation of secession states (whether former USSR republics or former SFR republics of Yugoslavia) into the United Nations [Ibidem, p. 81]. It is worth noting, however, that the action of internal disintegration forces, e.g. the continuing movement of the population aiming at separating from present state with the intention of establishing a state or tie up with another country, decides about the legality of secession [Ibidem].

It is difficult not to admit, that, when nations have the right to create a sovereign state or have the right to join such a state, they have the right to autonomy within a sovereign state [Ibidem, p. 83]. The right to autonomy would remain at the disposal of those peoples, who wish to continue to exist on a multinational state and are seeking to get the security of their collective identity. Proponents of this law assume that, thanks to autonomy, those peoples will gain the subjective sense of self-determination, which will lead to the preservation of territorial integrity of multinational states [Ibidem]. The opponents of the right to autonomy say, that, although this solution to rationality can not be denied, it forms a substitute for self-determination- the self-government, because the autonomy is generally "offered", not "given"[Ibidem, p. 85].

A lot of requests are made in front of a nation seeking to become self-defined. Objection to giving the nation the right to develop would be withdrawn with maintenance of political status quo in the world. Only sustainable economic, social and cultural development can guarantee the elite capable of representing peoples and the potential to safeguard their effectiveness in pursuing self-determination. [Ibidem, p. 85] On 4 December 1986, the United Nations General Assembly adopted the *Declaration on the Right to*

Development. According to its provisions, development must be seen as a global process of economic, social, cultural and political character, driven by steady increase in the welfare of society and of all individuals, based on their activity and significant participation in development and equitable distribution of wealth [Ibidem]- „[...] *The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized [...]*” [Declaration on the Right to Development, [in:] Official website of the United Nations: <http://www.un.org/documents/ga/res/41/a41r128.htm> (access: 13.09.2017)]. The prohibitions of genocide and racial discrimination, as well as international human rights’ standards are a guarantee of respect for the right to development [The Realization of the Right to Development. Global Consultations of the Rights to Development as a Human Right, Human Right, UN Publications, 1991, N° 2, p. 33, 45]. In the doctrine of international law, there is a theory that human rights, including the right to development, are called the laws of the third generation [K. Drzewiecki, *Prawo do rozwoju: studium z zakresu praw człowieka*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 1988, p.63]. Polish lawyer Adam Łopatka argued, that the right to development should be seen as inalienable human right in individual and group dimensions, it carries with itself a 100% implementation of the right of peoples to self-determination and fulfillment of the right to non-negotiable and unchanging sovereignty over the riches and natural resources [A. Łopatka, *Prawo do rozwoju*, [in:] W. Sokolewicz (ed.), *Prawa człowieka- model prawny*, Wydawnictwo PAN, Wrocław 1991, p.45]. The last mentioned law was also placed in the Covenants on Human Rights of 1966. In adhering to international practice, it is important to agree with those doctrines, which perceive this law as the right of sovereign states, and as the law of "nations" include it in the sphere of postulates [J. Tyranowski, *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*, Wydawnictwa Prawnicze PWN, Warszawa 1990, p. 284]. It is not about the right to wealth, but the richnesses itself. The necessity seems to exist on the side of legitimate actors of real, not just declared, ability to secure the riches. The governance of the natural resources by nations in their territories depends on their efficiency and legal state-building capacity [M. Perkowski, *op. cit.*, p. 86].

The powers of nations are joined by the responsibilities of states, the most important of which is the general obligation to respect the right of peoples to self-determination. Multinational states and colonial metropolis subordinate themselves to the principle of non-violence against "colonial nations" or nations forming part of their population, and aiming for self-reliance, unless in a given case there is no intervention of foreign state [Ibidem, p.87]. Foreign states must avoid interfering in the ethnic affairs of states, which respect the right to self-determination of their peoples. At time, when a particular state violates the right of peoples to self-determination in their "peoples" area, there is the possibility of intervention by the international community

solely for the purpose of defending and respecting this right. [Ibidem]

Most of the commitments are on shoulders of states responsible for the management of dependent territories or for administration of trust territories. Apart from discussed duties, the content of the chapter XI or XII of the Charter of the United Nations also applies to them [Ibidem]. The key commitments, that relate to the administration of dependent territories, are:

The development of self-government and the consideration of political intentions of the peoples living in these areas, supporting them in the development of free political institutions. The states-area trustees must accept the slow development of these areas on their way to self-government or independence [Ibidem].

Obligated and legitimate entities of the principles of self-determination are subject to basic human rights. According to Polish professor of law Zbigniew Resich, there can be no speech on the freedom of individuals, where freedom can not be enjoyed by the whole nation, what leads to the conclusion, that collective right of nations to self-determination is an invaluable condition for enjoyment of all individual rights [Z. Resich, *Międzynarodowa ochrona praw człowieka*, Państwowe Wydawnictwo Naukowe, Warszawa 1981, p. 49 i 133].

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