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THE RIGHT TO SELF-DETERMINATION AND SOVEREIGNTY OVER NATURAL RESOURCES IN INTERNATIONAL LAW: RANGES AND LIMITATIONS

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Abstract: The paper considers international legal aspects of the right to self-determination and sovereignty over natural resources. The author starts from the standpoint that the general legal framework for the interpretation and further development of the rules in this sphere can be traced back to the concept of human rights, but that number of new questions have been opened in the so-called postcolonial period. It is pointed to the broader context of the discussion denoting the international legal framework of human rights which are significant for the right to self-determination and sovereignty over natural resources. In the conclusion, the author recognises numerous open issues that make impossible drawing firm conclusions on the nature and ranges of the right to self-determination and sovereignty over natural resources. The conflict of the right to self-determination and territorial integrity of the states, i.e. the question of the right to the secessionist self-determination, remain at the centre of the argument. Apart from this, under the contemporary circumstances, various conditions have contributed to the specific development of the meaning of these legal categories. New circumstances (in comparison to the period of decolonization) conditioned the need for upgrading the existing system of norms of the significance for the right to self-determination. The strengthening of the human rights is one of the possible paths in this area. Nevertheless, the right to self-determination and sovereignty over natural resources remain in the shadow of the political relations in the international community.

Key words: international law, right to self-determination, human rights, sovereignty, natural resources, sovereignty over natural resources, decolonisation.

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1. Introductory remarks

Although one can search for the discussions on the right to self-determination deep in the past of the development of civilisation and history of international law (and law in general), the positions which prevail are those that associate the question of self-determination (in a textbook manner) with the end of World War I. Nonetheless, Rodrigues-Santiago associates "one of the oldest modern demands for self-determination" with the European colonisation of America.[2] The defence of rights of indigenous peoples had been the subject treated by a number of philosophers and lawyers of that time.[3]Later, the concept of self-determination found its expression in the objectives of the French revolution. "... [G]overnment should be based on the will of the people".[4] But, it was as late as after World War I that self-determination gained special significance in international relations.[5] Within the development of the right to self-determination of peoples, its "anti-feudal and national-constitutional" or actually "anti-imperial" and "national liberation" nature is pointed out.[6] The discussion on sovereignty over natural resources implies the consideration of several remarks on "sovereignty". If some determinations of this notion, which had emerged in ancient philosophy, are ignored, the most complete elaborations were made by Bodin, Hobbes, Grotius, Pufendorf, Vattel, etc. "The most significant diplomatic and juridical event for the idea of sovereignty emerged from the Peace of Westphalia of 1648".[7] However, the significance and

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[2] See: Elizabeth Rodriguez-Santiago, "The Evolution of Self-Determination of Peoples in International Law", in: Fernando R. Teson (ed), *The Theory of Self-Determination*, Cambridge University Press, Cambridge, 2016, p. 202. The author also points to the similarities and differences between the Lenin's and Wilson's conception of self-determination relating them with what is today called "internal" and "external" aspects of self-determination. She also reminds on the methodological difficulties in following the development of these issues in the period before XX century, since the events and notions which in the previous period had some different meaning are subjected to an analysis by using the criteria of the present classification.

[3] Ibid., 203, etc.

[4] A. RigoSuredo, *The evolution of the right of self-determination*, A.W. Sijthoff – Leiden, 1973, p. 17.

[5] See: Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society*, Cambridge University Press, Cambridge, 2003, p. 127.

[6] Momčilo Subotić, *Pravo na samoopredeljenje i "jugoslovenski eksperiment": prva, druga i treća Jugoslavija* (The right to self-determination and "Yugoslav experiment": the first, second and third Yugoslavia), Institut za političke studije, Beograd, 2004, p. 3, etc.

[7] Winston P. Nagan, Aitza M. Haddad, Sovereignty in Theory and Practice, *San Diego International Law Journal*, Vol. 13, 2011-2012, p. 446. For more on the historical aspects of

meaning of sovereignty (and sovereignty over natural resources) changed throughout history.[8] The so-called internal and external sovereignty has always been closely connected with independence as its significant feature or actually with international autonomy and independence of sovereign power as well as its limitlessness within the state territory.[9] The verdict taken in the "Palmas" case has this same meaning and it says that sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.[10] Shaw also considers "independence and sovereignty" as equal, regarding them as the main characteristics of the state.[11]

The importance of these issues (the right to self-determination and sovereignty over natural resources) in the conditions of globalization and changed international relations adopts new dimensions. This deserves much more detailed analysis. This paper examines the international legal aspect of the right to self-determination and sovereignty over natural resources in the context of wider circumstances in international law and international relations. An overview of the basic sources of international law of the importance for discussing the right to self-determination and sovereignty over natural resources is provided. The author points to the limitations and open questions in the existing rules of international law. Particularly emphasized is the fact that the basic rules regarding the right to self-determination have been developed within the framework of the decolonization process and that their upgrading is

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state sovereignty and international law, see: Senad F. Ganić, *Državni suverenitet u svetlu savremenog međunarodnog prava* (State Sovereignty in the Light of Contemporary International Law), Ph.D. thesis, University of Belgrade, Belgrade, 2012, p. 19, etc. See, also: Dragoljub Todić, Gordana Petković, "Suverenitet nad prirodnim resursima – fikcija ili stvarnost" (Sovereignty over natural resources - fiction or reality), in: Vlastimir Matejić (ed), Proceedings *„Tehnologija, kultura, razvoj"*,Institute „Mihajlo Pupin", Beograd, 1998. pp. 109–122.

[8] For a detailed overview of historical developments, see: Winston P. Nagan, Aitza M. Haddad, "Sovereignty in Theory and Practice", *San Diego International Law Journal*, Vol. 13, No. 2, 2012, pp. 429–520.

[9] PredragVukasović, *Evolucija pojma suvereniteta i problem intervencije* (Evolution of the concept of sovereignty and the problem of intervention), magistarski rad, Pravni fakultet, Beograd, 1983. p. 26.

[10] Stevan Đorđević, Milenko Kreća, Rodoljub Etinski, Ivan Čukalović, Momčilo Ristić (urs), *Građa međunarodnog javnog prava* (Structure of International Public Law), Knjiga I, Dnevnik, Novi Sad, 1988, p. 145.

[11] For more details see: Malcolm N. Shaw, *International Law*, Cambridge University Press, Cambridge, 2014, p. 153.

needed. There are several arguments for development in the direction of strengthening human rights, but this does not deny the possibility of developing specific forms of convergence of the right to self-determination and sovereignty over natural resources.

2. The general context of the debate

The meaning of the right to self-determination (and/or principle) should be interpreted in the light of the broader political environment or challenges in a particular historical context, characteristics of economic development, international relations, etc. "Since 1960, seventy-six states have faced challenges for greater self-determination."[12] Today, the process of decolonisation is usually taken as the common element in the development of the right of the peoples to self-determination and sovereignty over natural wealth.[13] "Thus, the right to self-determination was generally interpreted to be limited to emancipation from European imperial rule, and the right not to be subject to racist domination (as in South Africa) or alien occupation (e.g., the situation of the Palestinians)."[14] Shany notes that the right to self-determination, which was recognized in the relevant international instruments, is still narrow in scope and confined to four particular political contexts: colonialism, foreign occupation, racist regimes, and the disintegration of existing states.[15] However, it should be taken into consideration that "unilateral non-colonial secession" is also mentioned.[16] In

[12] See: Kathleen Gallagher Cunningham, Katherine Sawyer, "Is Self-determination Contagious? A Spatial Analysis of the Spread of Self-Determination Claims", International Organization 71, Summer 2017, p. 587.

[13] Nicolaas Schrijver, "Self-determination of peoples and sovereignty over natural wealth and resources", in: *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, UN, New York, 2013, pp. 95–102. In the process of decolonization, the links between the right to self-determination and sovereignty became considerably stronger. Pierre-Marie Dupuy, Jorge E. Viñuales, *International Environmental Law*, Cambridge University Press, 2016, p. 6.

[14] Michael Freeman, "The right to self-determination in international politics: six theories in search of a policy", *Review of International Studies,* Vol. 25, No. 3, 1999, p. 356.

[15] Yuval Shany, "Does International Law Grant the People of Crimea and Donetsk a Right to Secede? Revisiting Self-Determination in Light of the 2014 Events in Ukraine", *The Brown Journal of World Affairs,* Vol. XXI, No. 1,Fall/Winter 2014, p. 235.

[16] In that sense, Anderson takes the former Yugoslav republics as an example. Glen Anderson, "Unilateral Non-Colonial Secession and Internal Self-Determination: A Right of Newly Seceded Peoples to Democracy", *Arizona Journal of International and Comparative Law*, Vol. 34, No. 1, 2017, p. 2.

that way, the right of the peoples to self-determination has always entailed a sort of political compromise between various interests of parties concerned in international relations. Its organic relatedness to secession,[17] secessionist movements and the creation of new states has made more complicated (and still does) relations in the international community. Numerous titles concern these issues.[18] Some authors especially emphasise the significance of territorial integrity,[19] and the principles of *uti possidetis juris*.[20] The purpose of this principle at the time of the so-called colonial self-determination was completely clear. The right to self-determination of peoples and granting of independence to colonial countries "was strengthened by agreement among the UN states that the principle of *uti possidetis juris* applied to the new, independent states. This consensus was justified by the perceived need to empower the new states and to stabilise the new states-system".[21] For this reason, within the context of the right to self-determination, territorial disputes are also discussed in international law.[22] The right to self-determination, autonomy and in some cases to secession

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[17] "...[I]ts Siamese twin at birth..." Jan Klabbers, "The Right to Be Taken Seriously: Self-Determination in International Law," *Human Rights Quarterly,* Vol. 28, No. 1, 2006, p. 205.

[18] For example, see Johan D. van der Vyver, "The Right to Self-Determination and Its Enforcement", *ILSA Journal of International & Comparative Law*, Vol. 10, No. 2, Spring 2004, p. 427. Susanna Mancini, "Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism, and the Right of Minorities to Self-Determination", *International Journal of Constitutional Law*, Vol. 6, No. 3 and 4, July/October 2008, pp. 553–584. Ved P. Nanda, "Self-Determination and Succession under International Law", *Denver Journal of International Law and Policy*, Vol. 29, No. 3 and 4, Summer/Fall 2001, pp. 305–326. Ernest Duga Titanji, "The Right of Indigenous Peoples to Self-Determination versus Secession: One Coin, Two Faces", *African Human Rights Law Journal*, Vol. 9, No. 1, 2009, pp. 52–75. Alfred P. Rubin, "Secession and Self-Determination: A Legal, Moral, and Political Analysis", *Stanford Journal of International Law*, Vol. 36, No. 2, Summer 2000, pp. 253–270. Zoilo A. Velasco, "Self-Determination and Secession: Human Rights-Based Conflict Resolution", *International Community Law Review*, Vol. 16, No. 1, 2014, pp. 75–105.

[19] Khazar Shirmammadov, "How Does the International Community Reconcile the Principles of Territorial Integrity and Self-Determination: The Case of Crimea", *Russian Law Journal*, Vol. 4, No. 1, 2016, pp. 61–97. Fernando R. Teson, "The Conundrum of Self-Determination", In: Fernando R. Teson (Ed). *The Theory of Self-Determination*, Cambridge University Press, Cambridge, 2016, p. 10.

[20] See: Malcolm N. Shaw, op. cit., pp. 211, 377.

[21] Michael Freeman, The right to self-determination in international politics: six theories in search of a policy, op. cit*.,* 357.

[22] See: Bojan N. Tubić, "Rešavanje teritorijalnih sporova u međunarodnom pravu" (Resolution of Territorial Disputes in International Law), *Zbornik radova Pravnog fakulteta u Novom Sadu*, No. 4, 2015, p. 1870, etc.

conflicts with sovereignty and territorial integrity of motherlands. This shows, *inter alia*, that in promoting the rights of individuals and groups, contemporary international law can come into conflict "with older visions that emphasise the role of the sovereign state for the protection stability and peace."[23] Some authors point to the need to understand the notion of sovereignty as the context within which one should interpret the nature of the conflict between "the territorial integrity of the internationally recognised state, on the one hand, and collective human right to self-determination and secession, on the other."[24] "International law, in the post-colonial period, does not provide legitimacy to the secession based on the right to self-determination."[25] Vyver has the explanations as to why the right of peoples to self-determination does not include a right to secession.[26] Berndtsson and Johansson made an interesting analysis of the 36 states' positions in respect to relations between sovereignty and self-determination.[27] The issue regarding the nature of the right to secession remains open, this particularly including political assessments and the political context.[28] In this context, some authors examine the significance of the

[23] Christian Walter, Antje von Ungern-Sternberg, "Introduction: Self-Determination and Secession in International Law—Perspectives and Trends with Particular Focus on the Commonwealth of Independent States", in: Christian Walter, Antje von Ungern-Sternberg, KavusAbushov (eds), *Self-Determination and Secession in International Law*, Oxford University Press, 2014, p. 1. The author further recognises that after the advisory opinion was issued by the International Court of Justice concerning the 2010 Declaration on Independence of Kosovo, many issues regarding self-determination and secession have remained open. Speaking more specifically, the author focuses the discussion on how the right to self-determination, which had predominantly been formed in the period of decolonisation after World War II, developed in the post-colonial period.

[24] Božidar Veljković, Milan Ambrož, "Pravo na samoopredelenje i otcepljenje", *Svarog*, No. 1, 2010, pp. 11–26.

[25] Gnanapala Welhengama, Nirmala Pillay, **"**Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", *Nordic Journal of International Law,* Vol.82, 2013, p. 252.

[26] Johan D. van der Vyver, "The Right to Self-Determination and Its Enforcement", *ILSA Journal of International & Comparative Law*, Vol. 10, 2004, p. 427.

[27] See: Joakim Berndtsson, Peter Johansson, "Principles on a collision course? State sovereignty meets peoples' right of self-determination in the case of Kosovo", *Cambridge Review of International Affairs*, Vol. 28, No. 3, 2015, 445–461. These questions deserve more thorough analysis.

[28] Neera Chandhoke, "What Sort of a Right Is the Right of Secession", *Global Jurist*, Vol. 10, No. 1, 2010, pp. [i]-14. James J. Summers, "The Rhetoric and Practice of Self-Determination: A Right of All Peoples or Political Institutions", *Nordic Journal of International Law*, Vol. 73, No. 3, 2004, pp. 325–364.

Declaration on Friendship Relationships and Cooperation between States (1970).[29] In this way, the path from such discussions to discussions on terrorism, international peace and security seem to be comparatively well established.[30] After the end of World War II, terrorism again became linked with the violent methods used by various anti-colonialist groups seeking self-determination.[31] The debate on armed conflicts is also related to the right of the peoples to self-determination,[32] since the self-determination conflicts are among the most persistent and destructive forms of warfare.[33] To this there should be added the problems of refugees which are the consequence of the conflict, as well as the state of the international legal regulation in this field, which could be said to deserve significant improvements. Dilemmas on the right to humanitarian intervention, as always, incite various discussions on the sovereignty of the states.[34] In relation to this, the questions of recognition of states are being opened, this later including succession in international law, too, etc.[35] Referring to the "practical approach" as the practice of some in the recognition of the states, Almqvist points to possible problems in relation to the rules of international law.[36]

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[29] A/RES/25/2625, 24 October 1970. Subrata is of the view that, "it would be difficult to deny the legal status of self-determination after 24 October 1970 when the General Assembly passed its celebrated Resolution 2625 (XXV)," … and "adopted the Declaration on Principles on International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations …"Subrata Roy Chowdhury, "The Status and Norms of Self-determination in Contemporary International Law", *Netherlands International Law Review*, Vol. 24, 1-2, May 1977, pp. 72–84.

[30] Andrew Coffin, "Self-Determination and Terrorism: Creating a New Paradigm of Differentiation", *Naval Law Review*, Vol. 63, 2014, pp. 31–66. Yasmine Nahlawi, "Self-Determination and the Right to Revolution: Syria", *Human Rights & International Legal Discourse*, Vol. 8, No. 1, 2014, pp. 84–108. Lawrence M. Frankel, "International Law of Secession: New Rules for a New Era", *Houston Journal of International Law,* Vol. 14, No. 3, Spring 1992, pp. 521–564.

[31] Alan Greene, "Defining terrorism: one size fits all?", *International and Comparative Law Quarterly*, Vol. 66, No. 2, p. 413.

[32] Vladan Jončić, "Pravni smisao oružanih sukoba u procesu evropskih integracija", *Srpska politička misao*, No. 1/2015, p. 198.

[33] Marc Weller, *Escaping the Self-Determination Trap,* MartinusNijhoff Publishers, Leiden, 2008, p. 13.

[34] See, for example, Sarah Williams, Humanitarian Assistance and Changing Notions of State Sovereignty, *Netherland International Law Review*, Vol. 64, No. 1, 2017, pp. 183–187

[35] Glen Anderson, "Unilateral Non-Colonial Secession and the Criteria for Statehood in International Law", *Brooklyn Journal of International Law*, Vol. 41, No. 1, 2015, pp. 1–98.

[36] Jessica Almqvist, *EU and the Recognition of New States*, Euborders Working Paper 12, September 2017. http://www.euborders.com/download/WorkingPaper_12_Almqvist.pdf (15.2.2018).

Thus, international legal aspects of the discussions on the right to self-determination and sovereignty over natural resources can be put in various contexts. They have several levels and contents of a possible debate. Cassese used the "contextual approach" in which history, politics and jurisprudence are fed into the service of explaining legal phenomena.[37] However, a reservation regarding the legal aspects of the self-determination debate, Cassese formulates through a question. The author inquires whether the discussion on self-determination can contribute to the resolution of the eternal question: to what extent international law really restricts the behaviour of the state, and to what extent does it simply provide the structure for justification for this behaviour.[38] The contemporary notion of human rights is most often taken as a general framework. Maguire and McGee, also emphasised human rights as the most appropriate framework for discussion (in the anticipation of further development of the right to self-determination).[39] In a part of debates, special attention is devoted to the norms of international law regulating the position of minorities.[40] The problems of overlapping the term "minority" and the term "peoples", are pointed out by Ryngaert and Griffioen.[41] Saul emphasises the following four normative levels of discussion: human rights, sovereignty, the scope of implementation of rules (*erga omnes*) and nature of *jus cogens* rules.[42]

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[37] Antonio Kaseze (Antonio Cassese), *Samoodređenje naroda* (Self-Determination of Peoples), Službeni glasnik, Beograd, 2011, p. 23.

[38] Ibid, p. 28.

[39] Amy Maguire, Jeffrey McGee, "A Universal Human Right to Shape Responses to a Global Problem? The Role of Self-Determination in Guiding the International Legal Response to Climate Change", *Review of European Community & International Environmental Law*, Vol. 26, No. 1, 2017, p. 58, etc.

[40] Frances Raday, "Self-Determination and Minority Rights", *Fordham International Law Journal*, Vol. 26, No. 3, March 2003, pp. 453–499. Jerome Wilson, "Ethinic Groups and the Right to Self-Determination", *Connecticut Journal of International Law*, Vol. 11, No. 3, Spring 1996, pp. 433–486. See also, Dragoljub Todić, Marko Nikolić, "Status nacionalnih i drugih manjina i proces evropskih integracija Srbije", *Evropsko zakonodavstvo*, No. 3-4, 2014, pp. 445–464.

[41] Interestingly, the authors (without detailed elaboration) conclude the following: "Considering the fact that Kosovo Albanians do have an identity by which they can be distinguished from Albanian Albanians, it is submitted here that the former are, in fact, a minority and a people at the same time and that, therefore, they have the right of self-determination." Cedric Ryngaert, Christine Griffioen, "The Relevance of the Right to Self-determination in the Kosovo Matter: In Partial Response to the Agora Papers", *Chinese Journal of International Law*, Vol. 8, No. 3, 2009, p. 578.

[42] Matthew Saul, "The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right", *Human Rights Law Review*, Vol. 11, No. 4, 2011, pp. 609–644.

However, the issue concerning the right of the peoples to self-determination is not the one belonging to international law only. Its primary and strong base lies in the norms of domestic law, while it is gaining international significance through the norms of international law which make some states obliged to respect them. In this way, one usually and most often discusses the nature and characteristics of the political system, respect and guarantees of human rights and freedoms within the domestic legal order, constitutional-legal aspects of this right, etc.[43]

3. United Nations (UN) Charter and other sources of law

Even though UN was of the key importance for the process of decolonization, the role of UN in the development of the right to self-determination can be assessed in a number of ways.[44] According to the Article 1 of the UN Charter, the purposes of the UN are, inter alia, "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".[45] The expression "based on respect for the principle of equal rights and self-determination of peoples" was added for the

[43] Diana Draganova, "Chechnya's Right of Secession under Russian Constitution Law", *Chinese Journal of International Law*, Vol. 3, No. 2, 2004, pp. 571-590. Roya M. Hanna, "Right to Self-Determination in In Re Secession of Quebec", *Maryland Journal of International Law and Trade*, Vol. 23, 1999, pp. 213–246. Ben Bagwell, "Yugoslavian Constitutional Questions: Self-Determination and Secession of Member Republics", *Georgia Journal of International and Comparative Law*, Vol. 21, No. 3, 1991, pp. 489–524. Elysa L. Teric, "The Legality of Croatia's Right to Self-Determination", *Temple International and Comparative Law Journal*, Vol. 6, No. 2, Fall 1992, pp. 403–428.

[44] For more on this issue see, for example: Helen Quane, "The United Nations and the Evolving Right to Self-Determination", *International and Comparative Law Quarterly*, Vol. 47, July 1998, pp. 537–572. Glen Anderson, "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession", *Vanderbilt Journal of Transnational Law,* Vol. 49, No. 4, November 2016, pp. 1183–1254. Erica-Irene A Daes, "An overview of the history of indigenous peoples: self-determination and the United Nations", Cambridge *Review of International Affairs*, Vol. 21, No. 1, March 2008, pp. 7-26. The contribution of the international judicial institutions deserved special analysis.

[45] Besides that, the meaning of the principle should be interpreted in the light of objectives, and the objectives are prescribed in Article 55 and include, inter alia: c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.On that way, the link with human rights is founded on the broadest international-legal basis.

first time at the San Francisco Conference by the four sponsoring powers (China, the United Kingdom, the United States, and the Soviet Union).[46]

In Article 73 of the Charter, members of the UN recognize the principle that the interests of the inhabitants of non-self-governing territories "are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories …"[47]

As formulated by the UN Charter the ranges of principles of state sovereignty should be interpreted within the context of the principles and purposes of this organisation. The purposes presented in Article 1 include, among other things, to maintain international peace and security, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, to achieve international co-operation in solving international problems…and respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Article 74 of the Charter mentions the obligation of member states to ensure that their policy is based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters. This is based on the Latin legal maxim "*sic uteretuout alienum non laedas.*[48]

Since the 1960s up to the present days, several documents which are important for the understanding of international legal aspects of the right of the peoples to self-determination and sovereignty over natural resources have

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[46] M. K. Nawaz, "The meaning and range of the principle of self-determination", *Duke Law Journal*, Vol. 82, 1965, p. 89. However, these countries did not define what they meant by self-determination. The committee which discussed the concept said: "Concerning the principle of self-determination, it was strongly emphasized on the one side that this principle corresponded closely to the will and desires of peoples everywhere and should be dearly enunciated in the Chapter; on the other side, it was stated that the principle conformed to the purposes of the Charter only insofar as it implied the right of self-government of peoples and not the right of secession", Ibid.

[47] An international trusteeship system has been established for the administration and supervision of trust territories (Article 75). Chapter XII of the United Nations Charter deals with the international trusteeship system.

[48] Hassan considers territorial sovereignty and state responsibility within the context of the following three cases: The Trail Smelter dispute, Lake Lanoux Arbitration and the Case Concerning the Gabcikovo-Nagymaros Project. Daud Hassan, "Territorial sovereignty and state responsibility - an environmental perspective", *Environmental Policy and Law*, Vol. 45, No. 3, 2015, pp. 139–145.

been adopted. Within the UN,[49] a few documents could be considered the most appropriate for the interpretation of the scope of the philosophical bases of the right of the peoples to self-determination and sovereignty over natural resources. These are, for example, the UN General Assembly Resolution (UNGAR) No. 1803(XVII) of 14 December 1962 (Permanent Sovereignty over Natural Resources), UNGAR No. 2625(XXV) of 24 October 1970 (Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations), and the UNGAR No. 61/295 of 2 October 2007 (Declaration on the Rights of Indigenous Peoples).[50]

4. The right to self-determination and sovereignty over natural resources as a human right – elements and framework

The whole corpus of documents on human rights (universal and regional) includes the norms which are significant for the right to self-determination and sovereignty over natural resources.[51] McCorquodale thinks that the "only appropriate legal framework to consider the right of self-determination which meets these demanding requirements ("*in order to resolve the potentially competing claims and obligations concerning the right of self-determination*") is one based on the legal rules developed in international human rights law" (emphasis added).[52] The absence of clear criteria is the basic problem.[53] On the other hand, Anderson is of the opinion that "unilateral non-colonial secession"

[49] The role of the UN General Assembly can be specifically considered.

[50] A/RES/1803(XVII), 14 December 1962, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/1803(XVII) (18.12.2017); A/RES/25/2625,24 October 1970, http://www.un-documents.net/a25r2625.htm (19.1.2018); A/RES/61/295, 2 October 2007, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/295&Lang=E (18.12.2017).

[51] African Charter on Human and Peoples' Rights (1981) in Article 20 states that "all peoples ... shall have *the unquestionable and inalienable right to self-determination*. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen." (emphasis added). For the text of Charter see: https://treaties.un.org/doc/Publication/UNTS/Volume%201520/volume-1520-I-26363-English.pdf (12.1.2018). Among the regional documents, significance of the Final Act of the Conference on Security and Co-operation in Europe ('Helsinki Final Act'), Helsinki, 1975, Principle VIII: Equal Rights and Self-Determination of Peoples, can be discussed. See: http://www.osce.org/helsinki-final-act?download=true (4.1.2018)

[52] Robert McCorquodale, "Self-Determination: A Human Rights Approach", *International and Comparative Law Quarterly,* Vol, 43, No. 4, October 1994, p. 857.

[53] "As Sterio notes, whether a people will ultimately have a meaningful right to (external) self-determination depends on whether it has garnered the support of the most powerful states,

is "a primary method by which new states are created."[54]If the concept of human rights is taken as a general normative basis of the right to self-determination and management of natural resources, the clearest provisions can be found in the key international human rights documents. Although the Universal Declaration of Human Rights (1948) did not mention self-determination, several provisions contain elements of self-determination (preamble, Article 21 (3).[55] Provisions of Article 1 of the International Covenant on Civil and Political Rights adopted by the Resolution of the UN General Assembly No. 2200A(XXI) of 16 December 1966 (it entered into force on 23 March 1976).[56] The document states the following: "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.[57] Besides, "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence." Paragraph 3 of Article 1refers to the UN Charter that includes the responsibility of the States Parties to the Covenant

more than whether its situation meets certain objective requirements". Merijn Chamon, Guillaume Van der Loo, "The Temporal Paradox of Regions in the EU Seeking Independence: Contraction and Fragmentation versus Widening and Deepening?", *European Law Journal,* Vol. 20, No. 5, September 2014, p. 616. See, also: Milena Sterio, "On the Right to External Self-Determination: Selfistans, Secession, and the Great Powers' Rule", *Minnesota Journal of International Law,* Vol. 19, No. 1, 2010, p. 140.

[54] Glen Anderson, A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?, op. cit., p. 1185.

[55] "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law" (Preamble); "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures" (Article 21, para 3). Universal Declaration of Human Rights. http://www.un.org/en/universal-declaration-human-rights/ (10.1.2018).

[56] A/RES/21/2200,16 December 1966. United Nations Declaration on the Rights of Indigenous Peoples. http://www.un-documents.net/a21r2200.htm (1.12.2017). Frank Przetacznik, "The Basic Collective Human Right to Self-Determination of Peoples and Nations as a Prerequisite for Peace", *New York Law School Journal of Human Rights*, Vol. 8, No. 1, Fall 1990, pp. 49–110.

[57] Article 1. paragraph 1 of the International Covenant on Civil and Political Rights. The same is stated by the International Covenant on Economic, Social and Cultural Rights (OJ of SFRJ – International treaties, No. 7/1971). However, it should be borne in mind that, as already indicated, the nature of the right to self-determination exceeds the legal dimension prescribed by the human rights instruments.

to "promote the realization of the right of self-determination".[58] The fact that Article 1 of both Covenants has the same contents additionally emphasises their significance.[59]

Today, the opinion prevails that the right of states and peoples to freely dispose of their natural resources is firmly based upon the principle of permanent sovereignty over natural resources, which is incorporated in this right.[60] However, one should also bear in mind the difference between the sovereignty over natural resources that is based on the "people" and the one whose bearer is "the state".[61] Besides, the International Court of Justice has also recognised the significance of this principle considering it the one belonging to customary international law.[62]

Based on the provisions on human rights formulated in such a way one could recognise the following: 1. Although there were different proposals for the definition of the term "peoples", there are no generally accepted definitions.[63] However, "...the element of self-identification by a group as a

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[58] 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 (paragraph 3).

[59] Dorothée Cambou, Stefaan Smis, "Permanent sovereignty over natural resources from a human rights perspective: natural resources exploitation and indigenous peoples' rights in the Arctic", *Michigan State International Law Review*, Vol. 22, No.1, 2013, p. 357, 358.

[60] Daniella Dam – De Jong, *International Law and Governance of Natural Resources in Conflict and Post – Conflict Situations*, Cambridge University Press, Cambridge, 2015, p. 34.

[61] "State sovereignty emphasizes the supremacy of states in the hierarchy of land and natural resources ownership. On the other hand, peoples-based sovereignty acknowledges citizens as the original owners of land and natural resources even where they assign management rights to the government." See: Temitope Tunbi Onifade, "Peoples-Based Permanent Sovereignty over Natural Resources: Toward Functional Distributive Justice?", *Human Rights Review*, Vol. 16, Vol. 4. 2015, pp. 343–368, p. 355. Cambou and Smis also emphasize this difference in the approachbetween international law and the "human rights corpus". Dorothée Cambou, Stefaan Smis, "Permanent sovereignty over natural resources from a human right perspective: natural resources exploitation and indigenous peoples' rights in the Arctic", op. cit., p. 357.

[62] See: International Court of Justice, Case Concerning Armed Activities in the Territory of the Congo (*Democratic Republic of the Congo* v. *Uganda*), Judgment of 19 December 2005, *I.C.J. Reports 2005*, para. 244.

[63] For more details on proposals, see: Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*, Cambridge University Press, 2002, 193–98. The author summarizes the meaning of this term in the following way:

'people' was recognised as a 'fundamental criterion' of the definition of 'peoples' in the ILO Convention concerning Indigenous and Tribal People in Independent Countries 1989."[64]

Interpretation of the meaning of this notion causes various dilemmas with implications on the position of individual groups. The question of the position of the indigenous people is especially actualized in the literature.[65] McVay questioned whether groups of forced migrants can be included in the notion of "people" in the context of the right to self-determination.[66] The common meaning of the expression "all peoples" suggests that this is a principle which is implemented universally. Regardless of the fact how the ranges of these provisions are specifically interpreted it is hard to imagine that these provisions are implemented to some peoples only.[67] Also, it is clear that this is a collective right.[68] However, as

"peoples" means the inhabitants of all countries and territories, whether sovereign and independent or non-self-governing. The term probably includes indigenous peoples as well as ethnic, religious and linguistic minorities within such countries and territories, oppressed majorities, and displaced peoples." Ibid., 197.

[64] Robert McCorquodale, Self-Determination: A Human Rights Approach, op. cit., p. 867.

[65] Musafiri examines if indigenous people and minority groups are eligible to the right to self-determination. See: Prosper Nobirabo Musafiri, "Right to Self-Determination in International Law: Towards Theorisation of the Concept of Indigenous Peoples/National Minority?", *International Journal on Minority and Group Rights,* Vol.19, 2012, pp. 481–532. Those rights were later reaffirmed by the UN Declaration on the Rights of Indigenous Peoples. See: United Nations Declaration on the Rights of Indigenous Peoples, OR GA, Sixty-first Session, Supplement No. 53 (A/61/53), part one, chap. II, sect. A, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (20.12.2017). This includes the right to control and use their own natural resources while states are obliged to respect, protect and promote the interests of indigenous peoples concerning the exploitation of natural resources. Dorothée Cambou, Stefaan Smis, "Permanent sovereignty over natural resources from a human rights perspective: natural resources exploitation and indigenous peoples' rights in the Arctic", op. cit., p. 361. See, also: Boris Krivokapić, "Domorodački narodi i osnovni elementi njihove međunarodno-pravne zaštite" (Indigenous people and the basic elements of their international protection), in: Zoran Radivojević (ur), *Ustavne i međunarodno pravne garancije ljudskih prava* (Constitutional and International Legal Guarantees of Human Rights), Pravni fakultet, Niš, 2008, pp. 19–43.

[66] Kathelen McVay, "Self-Determination in New Contexts: The Self-Determination of Refugees and Forced Migration in International Law", *Merkourios: Utrecht Journal of International and European Law*, Vol. 28, No. 75, 2012, p. 38.

[67] Helen Quane, "The United Nations and the Evolving Right to Self-Determination", op. cit., p. 559.

[68] Hans Morten Haugen, "Peoples' right to self-determination and self-governance over natural resources: Possible and desirable? *Etikk i praksis–Nordic Journal of Applied Ethics*, Vol. 8, No. 1, 2014, p. s 4. The positions of the UN Committee for Human Rights confirm this.

provided for by the Optional Protocol, written communications can be submitted only by individuals and not by representatives of the peoples.[69] 2. The provision suggests that the right to self-determination contains "free determination of their political status" 3. This also includes "free pursuing of economic, social and cultural development". 4. The right to development consists of three components (economic, social and cultural). 5. The right of the peoples to self-determination also implies the right of the peoples to "free disposal of their own natural wealth and resources". 6. However, the right of "free disposal of their own natural wealth and resources" is limited by obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law". 7. "The people's own means of subsistence" must be at disposal to the people, or actually "in no case may a people be deprived of its own means of subsistence".[70] All this points to the need of taking into consideration other guaranteed human rights in the assessment of the elements and content of the right to self-determination. Only in the context of the wholeness of the system that it could be possible to assess the state and needs of further advancements in the field.

However, a more specific interpretation of the provisions formulated in such a way brings about controversial approaches of various factors in international relations. In the literature, as already mentioned, authors usually first discuss some open issues related to the holder of the right to self-determination (the notion of "people"),[71] then the limits to freedom in determining the "political

[69] Vojin Dimitrijević, "Prava pripadnika manjina prema Međunarodnom paktu o građanskim i političkim pravima" (Rights of Members of Minorities Provided by the International Covenant on Civil and Political Rights), in: Zoran Radivojević (ed.), op. cit, p. 12.

[70] According to the *Article 47 of the* International Covenant on Civil and Political Rights **"n**othing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources."

[71] "The traditional test is allegedly two-pronged where in the first part an objective assessment of the group is made, and in the second part the supposedly more subjective question whether the members of the group perceive themselves as a people is explored." Merijn Chamon, Guillaume Van der Loo, "The Temporal Paradox of Regions in the EU Seeking Independence: Contraction and Fragmentation versus Widening and Deepening?", *European Law Journal,* Vol. 20, No. 5, September 2014, p. 615. Nevertheless, there are a number of issues that can be considered in more detail. According to Shany, "the right to self-determination of peoples and its realization in accordance with the *uti possidetis* principle suggests that 'people' has been defined in international law, in effect, based upon considerations of geography, not demography." Yuval Shany, "Does International Law Grant the People of Crimea and Donetsk a Right to Secede? Revisiting Self-Determination in Light of the 2014 Events in Ukraine", *The Brown Journal of World Affairs,* Vol. XXI, No. 1,Fall/Winter 2014, p. 236. For more on the interpretation of the notion of "peoples", in the case of Kosovo

status", the nature of "economic, social and cultural development" which is being "pursued", etc. If one of the achievements of the right to self-determination is "free determination of the political status" and "free pursuing of....development", then it is hard to avoid the question who, in what way and by what measures determines that there are no possibilities to attain these objectives within the existing state. Another key point is that there must be an opportunity to exercise free choice. Several authors emphasizes the importance of the referendum.[72] It is interesting that Cassese, when explaining the crisis in the former Yugoslavia, emphasizes the role of the referendum. At the same time, when explaining the role of the referendum in the recognizing Bosnia and Herzegovina's independence, the author interprets this question without the reservation.[73]

Albanians, see: Helen Quane, "A Right to Self-determination for the Kosovo Albanians?", *Leiden Journal of International Law*, Vol. 13, No. 1, 2000, p. 222. However, Cassese believes that the notion of "people" is sufficiently clear and that it includes: colonial peoples, peoples (populations) living under foreign military occupation, and racial groups living in sovereign states. Also, according to the same author, self-determination rules are applicable to "the entire population of each state party" (Article 1 of both Human Rights Pacts). Antonio Kaseze, op. cit. p. 377. If it is so, in which of these groups, and on the basis of which arguments, could we, according to this author, be able to classify the Albanians from Kosovo and Metohija?

[72] Andrew Coleman, "The Right to Self-Determination: Can It Lapse", *Journal of the Philosophy of International Law*, Vol. 5, No. 1, 2014, p. 30. "Many referenda have been held to determine the free will of a people seeking self-determination. They can be problematic because they can be held quickly, and organised so that the outcome is controlled or is part of a political strategy, particularly when the choice is integration with another State." Ibid., p. 33. "The most up-to-date current lists have identified roughly 230 sovereignty referendums, starting with the oft-discussed 'first' sovereignty referendum of the modern era in Avignon and Comtat Venaissin held in 1791 ..." Fernando Mendez, Micha Germann, "Contested Sovereignty: Mapping Referendums on Sovereignty over Time and Space", *British Journal of Political Science*, Vol. 48, No. 1, 2018, p. 143.

[73] The specificity of Bosnia and Herzegovina (as a country with the three peoples having constituent status) and the circumstances of the crisis and war are ignored. The author (who justifies the opinion of the Badinter Commission), finds it completely irrelevant that the Serbian people in Bosnia and Herzegovina in November and December 1991 declared themselves for the "common Yugoslav state". The fact that the Serbs were not participating in the referendum of February 29 and March 1, 1992 (organized by the central government) author minimizes through the formulation that many Serbs boycotted the vote. Antonio Kaseze, op. cit. p. 311, etc. Applying uti possidetis, ("initially applied in settling decolonisation issues in America and Africa, ... today recognized as a general principle, as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between Burkina Fase and Hali") the members of one nation (Serbs) are proclaimed as members of minority and ethnic groups with rights as minority and ethnic groups. Serbs become "minority" on the territory where they have never been a "minority" in modern history, and thanks to whose victims (mostly), Yugoslavia was

Jagica states that "in its essence, the right to self-determination suffers from at least two deficiencies: the first is embodied in the impossibility to determine in a coherent and scientifically consistent way its nature, while the other is embodied in the unclear subject of the holder of this right."[74] Moore mentions three questions that can be raised and they concern "the principle of national self-determination". These are as follows: who are the peoples, what is the relevant territorial unit within which self-determination should be carried out and what is the nature of secession in relation to self-determination.[75] Pomerance, commenting on the opinion of Badinter's Commission, raises similar questions.[76] Harris points out to two types of controversies of the principle of self-determination (status in international law and its meaning).[77] Teson points

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created as a common state. For more information on the Opinions of the Badinter Arbitration Committee, see: Opinion of the Badinter Arbitration Committee, No. 2, point 4. In Alain Pellet, The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples, *EJIL*, 3, 1992, p. 184. Thus, Commission glorifying "referendum" and applying decolonisation rules starts from the assumption that the term "peoples" refers to the territory (not to the peoples). Thus, Commission opens many questions with the possible confusing consequences regarding interpretations of the right to self-determination as the right to the territory (not right to the peoples).

[74] Ferenc F. Jagica, *Međunarodno-pravni aspekti jugoslovenske krize* (International Legal Aspects of the Yugoslav Crisis), Ph.D. thesis, Pravni fakultet, Univerzitet u Beogradu, Beograd, 2016, p. 182.

[75] Margaret Moore, "Introduction: The Self-Determination Principle and the Ethics of Secession", in: *National Self-Determination and Secession*, Published to Oxford Scholarship Online: November 2003, p. 3.

[76] "What was the unit of self-determination? How was the 'self' of self-determination to be defined, by whom, and on what grounds? Whose territorial integrity was deserving of preservation, and why? If the secession of the republics from the SFRY was permissible because the Federation was disintegrating, on what legal grounds could further secession from those republics be legitimately opposed? Why was one unit's self-determination more sacrosanct than that of another? Why was the territorial integrity of the whole federation less holy than that of the sub-units? ... And if the rationale behind insistence on the universal application of *uti possidetis* was the belief that greater chaos and fragmentation would thereby be averted, that assumption would seem to have been disproven by the evolution of the conflict in Yugoslavia." Michla Pomerance, "The Badinter Commission: The Use and Misuse of the International Court of Justice's Jurisprudence", *Michigan Journal of International Law*, Vol. 20, No. 1, 1998, p. 55, 56. However, it is not quite clear whether the principle *uti possidetis* applies also in cases of secession, in addition to cases of dissolution of a state, and is it actually a rule of international law or not. See: Peter Radan, "Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission", *Melbourne University Law Review*, Vol.24, No. 1, 2000, pp. 54–57.

[77] David John Harris, *Cases and Materials on International Law*, Thomson, Sweet & Maxwell, London, 2004, p. 112.

out at least three deficiencies and weaknesses of the existing concept of the right to self-determination. First, for the principle of efficiency, it is not possible to *ex ante* determine if a certain group has the right to self-determination. Taking as an example Estonia and the USSR the author recognises that this could be determined only on the battlefield or in the sphere of politics.[78] Second, in spite of the amazing rhetoric of its supporters, the right to self-determination is in its essence the right to state. Supporters of the right to self-determination are often not interested in legal and ethical rights of individuals but they induce new spheres of political power – which is more oppressive from what has been left. These debates often disguise the ambitions of the political entrepreneurs who claim that they represent the people no matter whether they have been elected regularly or not. They also disregard the positions of minorities and individuals who do not want to secede from the state or become independent. The third problem is that supporters of self-determination often conceal the fact that their true goal is related to territorial claims. The rhetoric of self-determination points out religion, races, common history, past injustices and similar factors which support their claims. In reality, the claim to self-determination is permeated by the objectives related to control of a territory and means by which that goal could be attained.[79] Making a difference between internal and external self-determination draws special attention. Referring to the opinion of the Supreme Court of Canada (in the Quebec case), Shaw points to the significance of making a difference between internal and external self-determination. By all this, the right to internal self-determination is related to a whole corpus of human rights whose respect should be the basis of "democratic governance" of the state, while the right to external self-determination (the claim for unilateral secession, "remedial" right to secession) is related to extreme cases only and in that case under "carefully defined conditions" only.[80] Ryngaert, and Griffioen "do not defend an absolute right to secession".[81] However, they "argue that despite the lack of extensive and virtually uniform State practice, there is a strong *opinio juris* in the international community to support the existence of a customary right of

[78] Fernando R. Teson (ed), *The Theory of Self-Determination*, Cambridge University Press, Cambridge, 2016, p. 8, etc.

[79] Ibid., p. 10.

[80] Shaw, op. cit., p. 212. The author points to the case of Kosovo. Ibid., p. 187.

[81] Cedric Ryngaert, Christine Griffioen, "The Relevance of the Right to Self-determination in the Kosovo Matter: In Partial Response to the Agora Papers", *Chinese Journal of International Law*, Vol. 8, No. 3, 2009, p. 580.

unilateral secession based on the right of self-determination, although this right is subject to very strict conditions and may only be used for remedial purposes."[82]

The interpretation of the contents and elements of the right to self-determination is also the subject of various criticisms which are also present in the analyses dealing with the case of former Yugoslavia. Generally speaking, directly or implicitly, the position on arbitrariness in the interpretation of some elements, domination of the criteria of political opportunity and interests of global factors in international relations, etc. are pointed out.[83]

The case of the ex-Yugoslavia has been analysed by a number of foreign authors as well. The conflict of the secessionary self-determination and principle of territorial integrity remains unsolved.[84] Craven emphasizes the circumstances of violating human rights as a reason that justifies the secession. At the same time, the author points to some open questions in the opinions of the Badinter Commission."What the Commission signally refused to say was that the 'nationalities' within Federation had a right of secessionary self-determination. They could plausibly have linked such a claim to the provision of Constitution

[82] Ibid., pp. 580–585. Authors analyze the following: the Aaland Islands dispute, the Friendly Relations Declaration, the Katangese Peoples' Congress v. Zaire decision of the African Commission on Human and Peoples' Rights, the Reference re Secession of Quebec of the Supreme Court of Canada, and negative practice in relation to secession.

[83] See, for example, Momčilo Subotić, "Srbija i srpske zemlje sto godina posle velikog rata" (Serbia and Serbian Lands a Hundred Years after the Great War), *Političkarevija*, No. 4, 2014, p. 4. Ljubiša Despotović, Živojin Đurić, "Razgradnja nacionalne države, nacionalna država u procesima denacionalizacije, deteritorijalizacije i desuverenizacije" (Dissolution of the National State, National State in the Processes of Denationalisation, Deterritorialization, and Desovereignization), *Srpska politička misao*, No. 2, 2012, p. 45. etc. Mirjana Radojčić, "Srbija i Evropskaunija – etika jednog međunarodno-političkogodnosa" (Serbia and European Union – The Ethics of an International Political Relationship), *Srpska politička misao*, No. 4, 2011, p. 156, etc.

[84] On this issue see also: Stefan Wolff, Annemarie Peen Rodt, "Self-Determination After Kosovo", *Europe-Asia Studies*, Vol. 65, No. 5, July 2013, pp. 799–822. Joakim Berndtsson, Peter Johansson, "Principles on a collision course? State sovereignty meets peoples' right of self-determination in the case of Kosovo", *Cambridge Review of International Affairs*, Vol. 28, No. 3, 2015, 445–461. Helen Quane, "A Right to Self-determination for the Kosovo Albanians?", *Leiden Journal of International Law*, Vol. 13, No. 1, 2000, pp. 219–227. Cedric Ryngaert, Christine Griffioen, "The Relevance of the Right to Self-determination in the Kosovo Matter: In Partial Response to the Agora Papers", *Chinese Journal of International Law*, Vol. 8, No. 3, 2009, pp. 573–587. Gnanapala Welhengama, Nirmala Pillay, "Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", *Nordic Joumal of International Law,* Vol. 82, No. 2, 2013, 249–282.

that spoke of self-determination ...”[85] The assessment that the state (Yugoslavia) is in the process of dissolution was taken as a fact by itself sufficient to avoid answering the core question. In this sense, the author states the following: “The Commission’s determination that the Federation was in the process of dissolution was an extraordinarily dextrous act. Its effect was to provide a necessary analytical space for the recognition of emerging Republics (whether or not on the basis of the principle of self-determination) ... without running the risk of undermining respect for the principle of territorial integrity.”[86] However, in its second opinion, the Commission tried to base its positions on the principle of territorial integrity (principle *uti possidetis*), albeit territorial integrities of the republics, members of the ex-Yugoslavia. Administrative boundaries of the Republics (within the ex-Yugoslavia) have been proclaimed as state boundaries of the newly formed states. The question of the right of people to self-determination (Serbian people in Croatia and Bosnia and Herzegovina) was ignored and proclaimed as the question of the position of the minorities. According to Freeman the first Western reaction (in the Yugoslavia case) “was to reaffirm the territorial integrity of the Yugoslav state, which implied that the relevant people with the right to self-determination were the Yugoslav people as such. Then Germany led the European Union into the recognition of Slovenia, Croatia and Bosnia-Hercegovina.”[87] “The principle of the territorial integrity of states, the restrictive interpretation of the right to self-determination, and extreme caution in recognising new self-determination claims were all normally justified by appeal to the values of peace and the stability of the international order.”[88] International Court of Justice Advisory Opinion on Kosovo’s Declaration of Independence (2010) additionally complicates the discussion. “...[T]he International Court came to the surprising conclusion that there was nothing in international law that prohibited the declaration of independence of this kind.”[89]

The role of the international community (different organizations and bodies) is subject to specific analysis. It may be interesting to note that the role of

[85] Matthew Craven, Statehood, Self-Determination and Recognition, in: Malcolm D. Evans (Ed). *International Law*, Oxford University Press, 2010, p. 231.

[86] Ibid., p. 231, 232.

[87] Michael Freeman, The right to self-determination in international politics: six theories in search of a policy, op. cit., p. 356.

[88] Ibid. p. 357. “The disintegration of Yugoslavia showed that the self-determination policy of the international community could not achieve its own objectives.”

[89] Matthew Craven, Statehood, Self-Determination and Recognition, op. cit., p. 232. “It did so, however, by carefully avoiding the issues of real contention.”

international bodies in the case of the ex Yugoslavia (Peace Conference, Arbitration Committee) Cassese interprets as the one that acted as a "powerful" filter that ensured that separatist aspirations were recognized only if the strict requirements were met.[90]

In the case of freedom of disposal of natural wealth and resources, limits are determined by the obligation to restrain from "endangering obligations arising from international economic co-operation" whatever it, speaking more specifically, means.[91] The principle of "mutual benefit" is also mentioned as well as international laws upon which international co-operation should be based, while the lower limit of law is determined by the prohibition to "deprivation (of the people) of its own means of subsidence". In any case, the relationship between the right to self-determination and sovereignty over natural resources may be regarded as the one that is explicitly established. However, the question related to a detailed elaboration of these relationships within the context of human rights and especially of elements of rights to sovereignty over natural resources remains open.[92] One may also put a question of the limit of survival of the people to which "its own means" are related. In the contemporary circumstances, this discussion should be put in the context of the possibilities and limits of the right to development[93] and other similar rights of the so-called

[90] Antonio Kaseze, op. cit. p. 404. However, on the "strictness" of the requirements set by the European Community (December 16, 1991) it can be judged in different ways. For the text of the European Community document with these requirements see (s/23293 17 December 1991). https://digitallibrary.un.org/record/135135/files/S_23293-EN.pdf (Anex 1. Declaration on Yugoslavia).

[91] It should be borne in mind that the sovereignty over natural resources is a matter that has been raised and formulated in the context of decolonization as well, i.e. protection of interests of foreign investors from the measures of nationalization. General Assembly Resolution 1803 (XVII) on the Permanent Sovereignty of States over their Natural Resources "has been regarded as a good compromise between developed and developing countries, stating the law acceptable to both sides." Surya P. Subedi, International Investment Law, in: Malcolm D. Evans (ed), *International Law*, Oxford University Press, 2010, p. 735. See, also Edward Guntrip, "Self-Determination and foreign direct investment: reimaging sovereignty in international investment law", *International and Comparative Law Quarterly*, Vol. 65, No. 4, 2016, pp. 829–657.

[92] Hans Morten Haugen, "Peoples' right to self-determination and self-governance over natural resources: Possible and desirable?", *Etikk i praksis–Nordic Journal of Applied Ethics*, Vol. 8, No. 1, 2014, pp. 3–21.

[93] For overview, see Karin Arts, Atabongawung Tamo, The Right to Development in International Law: New Momentum Thirty Years Down the Line?, *Netherlands International Law Reviw*, Vol. 63, No. 3, 2016, pp. 221–249.

rights of the third generation.[94] The concept of sustainable resource management (and sustainable development as a whole) raises specific issues regarding the theory of sovereignty of states and the debate on self-determination, too. Certain restrictions on the sovereignty of states over natural resources are also based on the international law of the environment.[95]

Conclusion

Within the framework of the international law, there have been developed certain rules relating to the right to self-determination and sovereignty over natural resources. These rules, for its major part, have been developed as a consequence of decolonization. As a collective human right, the right of the peoples to self-determination includes in itself the right to disposal of natural resources. However, the sovereignty of the states presupposes also their sovereignty over natural resources. The circumstances in the international relations in the post-colonial period affected the actualization of the self-determination issue in a new manner. Several open issues could be the subject of separate and detailed discussions. The literature usually and with many justifiable reasons points to the problems in defining the holder of the right to self-determination. The representativeness of the people and ways of expressing its will can be disputable. The contents and ranges of the right to self-determination are also indirectly relativized through the attempt to define criteria for distinguishing the so-called internal from external self-determination. By all this, internal self-determination is related to the development of democratic institutions in an individual state as well as to the respect for human rights, etc., while the so-called external self-determination is related to some rather specific circumstances. The fact that the establishment of conditions and circumstances for self-determination can be submitted to various

[94] Management of transboundary resources and global resources as well as specificities of the regulation in this field deserve specific attention. There are number of open questions in relation to this. In addition, the literature points to the position and number of problems of the developing countries in achieving the sustainable development goals.

[95] For basic information, see: Dragoljub Todić, "Načela međunarodnog prava životne sredine i EU integracije Republike Srbije" (Principles of the International Environmental Law and the EU Integration of the Republic of Serbia), *Evropsko zakonodavstvo,* Vol. 61-62, 2017, pp. 285-300. Dupuy and Viñuales emphasise tha the limitation of the "sovereign rights" has two dimensions: the obligation to be in accordance with the national environmental policy and the prohibition to cause damage to other states or territories beyond the national jurisdiction. See: Dupuy and Viñuales also emphasize restrictions arising from foreign investment agreements. Pierre-Marie Dupuy, Jorge E. Viñuales, op. cit., p. 7.

criteria of evaluation on the part of various factors, makes the relativisation of the discussion on these issues inevitable. Boundaries between the so-called internal and external self-determination contain very delicate elements. The arguments in favour of the so-called postcolonial remedial secession have been mostly tied (in the literature) to the existence of the circumstances for the serious violations of human rights, as well as the absence of the conditions for the realization of the so-called internal self-determination. However, more precisely defining the existence of these circumstances and conditions opens up a number of different dilemmas. It seems that the content of some other human rights has been neglected, whereas securing the mechanisms and conditions for their respect became a serious problem.[96]

Besides, the literature points to deficiencies and weaknesses of the existing concept of the right of the peoples to self-determination, whose nature can be somewhat broader. McCorquodale summarised that in applying the human rights framework to self-determination following limitations appear: limitations on its exercise, limitations to protect other rights, limitations to protect the general interests of society (territorial integrity, *uti possidetis juris*, and international peace and security).[97] The general context of international relations and interests of parties concerned strongly determine the approach in interpreting the conditions for the achievement and limits of the right to self-determination. In the conflict between the right of the peoples to self-determination and the principle of territorial integrity of states, the reasons for the political opportunity as well as the conditions in international relations can acquire a specific weight. The circumstances of globalization allow the reconceptualization of the principle of sovereignty over natural resources to develop in completely new directions with a number of open questions. The law is far from giving a response to this kind of challenge and can become means of manipulation.

So," [t]he concept of self-determination has outlived the particular historical period where it had most meaning."[98] The question of validity and

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[96] See, for example, John Morijn, "Reforming United Nations Human Rights Treaty monitoring reform", *Netherlands International Law Review*, LVIII: 2011, pp. 295-333. Carol M. Glen, Richard C. Murgo, "United Nations Human Rights Conventions: Obligations and Compliance", *Politics & Policy*, Vol. 31, No. 4, December 2003, pp. 596-619.

[97] McCorquodale, Robert, Self-Determination: A Human Rights Approach, op. cit., pp. 875-883.

[98] See: Gnanapala Welhengama, Nirmala Pillay, "Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", op. cit., p. 282. "To avoid the violence and destruction that continues for years until one side or the other wins out, it might be time to recognize that a conceptual dead-end has been reached."

the interpretation of rules on self-determination and/or debate on a "unique case" cause numerous discussions.[99] It is obvious that there is a need to look at the direction of future development of the rights in this area. The question is if one could agree with Anderson. However, it should not be controversial that there is a need for constructing systemic rules in this field. The evolution of the law of self-determination will "almost certainly" bear upon unilateral non-colonial secession.[100] "Two developments appear ineluctable in the post-millennial era." First, the existing customary law right of oppressed peoples to unilateral non-colonial secession "will be legally strengthened". Second, in the much longer term, unilateral non-colonial secession "will likely become less qualified and thus justified on more liberal philosophical bases." The need to redefine the concept of self-determination from the point of view of the challenges due to climate change is emphasised by Maguire and McGee.[101] Cassese considers the activities aimed at resolving open issues regarding the right to self-determination through advocating for the so-called four-pronged strategy, which includes the following: 1) harmonization of existing international legislation with some long-standing issues, 2) promotion of the crystallization of the rules that are *in statu nascendi* and which relate to the internal self-determination of the peoples of sovereign states, 3) development of new rules for internal self-determination of ethnic groups and minorities; and 4) the approval of external self-determination for ethnic groups and minorities (in exceptional circumstances) that would be subject to international consent and control.[102] At the same time, strengthening of the human rights at the expense of limiting the rights of states has a potential to become the common denominator for both the right to self-determination and sovereignty over natural resources. This certainly, involves building stronger mechanisms for the internal democratization of society, including the protection of

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[99] "The argument by those countries that recognize that Kosovo was a unique case may not persuade everyone, nor is the argument strong enough to prevent the spread of secessionist movements." Ibid.

[100] Glen Anderson, "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?", op. cit., p. 1254. Unilateral non-colonial secession "is likely to become a possibility not just in response to human rights abuses in extremis (ethnic cleansing, mass killings, or genocide), but also in moderato (political, cultural, or racial discrimination)."

[101] Amy Maguire, Jeffrey McGee, A Universal Human Right to Shape Responses to a Global Problem? The Role of Self-Determination in Guiding the International Legal Response to Climate Change, op. cit., p. 68.

[102] Antonio Kaseze, op. cit. p. 393–420.

minorities.[103] Nevertheless, in the absence of clearer rules, nothing will prevent the emergence of new "unique cases" of the self-determination of the peoples, as a consequence of the changes in the international relations in the international community.[104] This, in the present circumstances, resembles Freeman's attitude "that the right to national self-determination requires a complex analysis, and that each particular claim to the right should be judged on its particular merits."[105]

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[103] Klabbers recalls that courts and quasi-judicial tribunals have already reconfigured self-determination in principle, rather than rights related to secession. Instead, self-determination has been transformed into a procedural norm. "... a working theory of self-determination ought to focus not on the norm as one creative of judicially enforceable substantive rights but rather as a bundle of procedural rights: a right to be heard and be taken seriously." Jan Klabbers, "The Right to Be Taken Seriously: Self-Determination in International Law," op. cit., p. 202.

[104] For one of the well-founded and balanced attempts to advocate the so-called *sui generis* case, see: Stefan Wolff, Annemarie Peen Rodt, "Self-Determination After Kosovo", *Europe-Asia Studies*, Vol. 65, No. 5, July 2013, pp. 799–822.

[105] Michael Freeman, "The right to self-determination in international politics: six theories in search of a policy", op. cit., p. 368.

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