

## Internal Aspects of the Right of Self-Determination: An Alternative to Secession

*Natalija Shikova*

### Abstract

Although it does not provide a “magic cure” against secession, internal self-determination, both in effect and in practice, diminishes the desire for external self-determination and softens the tendencies toward separatism. The recognized and internationally proclaimed right of self – determination of the people gets a new lease of life through the implementation of its internal aspects as a possible way for the accommodation of the differences of separate groups that exist in society. Although it has still not been established as a right, the legal grounds for practicing internal self-determination can be found in several international documents and the moral basis for identity and the need to practice it within a particular group or sense of group distinctiveness. Since there is insignificant support in the standards of international law for the accommodation of different expectations based on the need to protect and promote any so-called separate nationality, in our efforts to endorse security and peaceful coexistence it may be better to look at the internal aspects of the right of self-determination from a different angle and try to find solutions through measures that are part of the state’s democratic traditions. The internal aspect of self – determination offers a wide range of options that need to be taken into account. Although, these are far from perfect, they are still based on presumptions and have many limitations, the costs of the realization of internal self- determination comprise solutions that are worth trying out. Building on theoretical research, this paper addresses the modalities for the realization of internal self – determination. An overview of the necessary tools for addressing the right of self-determination envisages the possible ways that can provide the means for accommodating differences between the existing communities within the established states. The effectiveness and efficiency of these models, depends as well on commitment, and the strong and clear efforts of national and international institutions for using democratic means in the process of conflict settlement.

**Keywords:** self-determination; secession; identity; culture; sociocultural groups; differences; society; internal self-determination; right; tools; options.

## Introduction

The UN, which exists to develop friendly relations among nations, has set self-determination as a right for all people. Although the UN Charter (1945) and the international documents containing this right provide certain guidelines for its practice, there are different challenges with regard to the understanding and implementation of the concept and the right of self-determination connected with its title (who are the people with the right to self-determination?), the procedure, as well as the modalities for its realization. In its efforts to establish and maintain international peace and order, the UN system has been paralyzed on many occasions because of differences between the law and politics and has only an *ex post* explanation of events connected with the realization of the right to self-determination.

This problem is not new. We are, yet again, faced with its consequences within several regions of conflict in the world (such as Ukraine and Palestine). Following decolonization, East Timor was the only case accepted by the international community as a case of self-determination and until the dissolution of the communist federations (Yugoslavia, the USSR, and Czechoslovakia) during the 1990s, there was a general notion that the cases for self-determination had been closed. Because of the set precedents in the dissolution process, the claims for separation and the creation of new independent states from different types of communities within existing states are far from calm. Some of those quests are severe and bloody (witness the recent case in the Ukraine), some of them are trying to find a democratic path for separation and independence (such as Scotland) and some of them are in a loophole, stuck between the desire for separation, yet without any possibility of realizing it through democratic procedures and standards (such as the Basque Country and Catalonia..).

This paper addresses the modalities for the realization of internal self-determination as an aspect of the right to self-determination and as a possible way for providing the means for accommodating the differences between the existing communities within the established states and therefore serving as an alternative to secession.

## The Legal Basis of The Right for Self-Determination

The concept of self-determination - as the need to govern in accordance with the will of the governed plays a part in the major upheavals of human history, but the idea takes on a more recognizable form after the First World War - in President Wilson's 14 points - the concept for post-war peace presented in 1919 at the Versailles Peace Conference. However, it should be noted that this concept of possessing one's own

government had also been part of the ideas envisaged during the Enlightenment and during the French Revolution (Franck, 2000). The concept of self-determination certainly passed through different phases and forms and was fully integrated into the UN system where the right to self-determination was recognized and guaranteed to all people (UN Charter, 1945).

Although there are still debates about the legal nature of this concept – it can be concluded, from practical jurisprudence and a theoretical point of view, that self-determination is a collective right, part of the corpus of human rights and that it has been established in the most prominent international documents such as: the UN Charter (1945); Resolution 1514 “Declaration on the Granting of Independence to Colonial Countries and Peoples” (1960); Resolution 1541 “Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter”(1960); the International Covenant on Civil and Political Rights (UNGA Res. 2200 A (XXI)1960); the International Covenant on Economic, Social and Cultural Rights (UNGA Res. 2200 A (XXI)1960); UNGA Resolution 2625, and the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”( UNGA Res 2625, 1970) .

Despite the fact that it was developed in the period of decolonization, in reference to colonial countries and peoples, and upon which the whole process of decolonization was carried out (UNGA Res. 1514, 1960), the principle for self – determination is not just applicable to mandatory or non-trust territories, subject to decolonization, but to all peoples. In a UN context, the right to self-determination in its external shape is applicable to people (not to national minorities, ethnic and religious ones, whose rights are recognized in Article 27 of the ICCPR, 1966) or to the nations in the cases of: a) a colonial context; or b) in a situation of any foreign domination or occupation (UNGA Res 2625, 1970).

For many scholars and practitioners, the right to self – determination (at least in its external aspect) is related to the political phenomenon of secession. In this set of international documents, the UNGA Resolution 2625 from 1970, “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”, opens the door for so-called legitimate secession or implicit secession. Reading it in a certain context – secession is legitimate, if certain conditions are met, and the state acts contrary to the principle of equal rights and the self-determination of people, for example - if the government of the state does not represent the whole nation.

However, despite this presumed notion that the legitimacy of secession might serve to the detriment of the right to self-determination, the relationship between them is much more complex especially because the right to self-determination can be realized through many different forms, apart from just gaining independent statehood. For example, there are other factors, such as the right of people: to freely define their political status; their civil and political rights and to freely exercise their economic development. Similarly, there are other aspects such as: permanent sovereignty over natural resources; the right of people to freely practice their social development; and, the right of people to freely determine their cultural development (Cristescu, 1981).

Even though almost every quest for self-determination is connected with the question of secession, international law is clear on one point that, according to positive international law, the principle of the territorial integrity of the existing state remains superior and this includes the rejection of secession. However, international law neither allows nor prohibits secession. Since there are no legally established standards, some scholars of international law scholars propose that the focus of the debate should be transferred to the internal dimension of the right to the self-determination of peoples.

So far there is no established right of internal self-determination, but the legal basis for this concept can be found in ICCPR in Article 25 (1960); in Resolution 2625 (1970) and in regional documents such as: the Helsinki Final Act in Principle VIII (1975); the Concluding Document of the Vienna Meeting of Representatives of the Participating States of the CSCE (1989); the Paris Charter for a New Europe (1990); the Universal Declaration of the Rights of Peoples, and the Charter from Algiers (1970); alongside the moral basis in identity and the need to practice it within a particular group or through group distinctiveness.

### **Social Basis for Establishing the Concept of Internal Self-Determination**

Many theoreticians now see identity as the basis for establishing special rights. Identity is partially shaped by its recognition and partially through a lack of recognition. Non-recognition or erroneous recognition can cause great damage and can be perceived as a form of oppression (Taylor, 1994). However, experience has shown that recognition itself is not sufficient. Moreover, individual rights, such as the right to liberty, the right of association and the prohibition of discrimination do not necessarily guarantee the survival of cultures. That creates a dilemma and the need not only for the recognition of cultural forms of life and cultural traditions of different groups, but also legal guarantees for the status and survival of cultures through some form of collective rights (Habermas, 1994; Walzer, 1983).

Liberal nationalism (as an additional aspect of liberalism) does not perceive identity as a fixed category. Liberal nationalists believe that identity is linked to the self-esteem that comes from a sense of cultural belonging, that is from the respect that a national culture enjoys within a wider social framework (Kymlicka, 2000; Margalit & Raz, 1990; Tamir, 2002; Miller, 1995).

"(...) identity is subjective, an individual phenomenon; shaped by the constantly repeated question of ego - "Who am I?" with all its consequences; and the question: "Who is he?" Generalized to the extent of collectivism, the question becomes: "Who are we?" and "Who are they?" But that subjective identity is influenced by labels that others apply to it, and no matter that "(...) identity is subjective, multidimensional and a situationally fluid concept, it is not infinitely elastic. Cultural characteristics of the individual limit the possible range of choices of its social identities" (Young, 1976, p.20).

In that way, identity based on a set of individual characteristics and a sum of subjective elements is transformed into a collective group identity. The need for the integration of a group and the various techniques and strategies for its accommodation arise precisely from the uniqueness of the group (Rothbart & Korostelina, 2006). In fact, "parochial" sentiments are deeply rooted in human psychology and they formatively influence attitudes, judgments and preferences. Therefore, any demands for self-determination are deeply rooted in the need for comfort, security and the self-government that the parochial environment offers (Buchheit, 1978).

One of the important questions is – to which cultural identities should priority be given in the process of ethnic accommodation? For many theorists these are societal identities, identities based on societal cultures, or to identities rising from historic communities (Frckoski, 2012).

The process of globalization, *inter alia*, has enabled the spread of the ideas of democracy, human rights and the rights of minorities that encourage demands for secession within mostly multi-ethnic states (Kymlicka, 2002). National regimes can respond to these challenges in a timely and adequate manner through the democratization and liberalization of society and with various mechanisms, such as - linguistic rights, autonomy, and federalism. In addition to this, methods for the maintenance of the system include decentralization, financial subventions for those regions that show signs of discontent and - finally, a carefully managed referendum, that could "redirect the wind" from secessionist aspirations (Birch, 1991).

In contrast, the most frequent response to secessionist movements is suppression, although with the development of the mass media it is almost impossible for a state to try to suppress any separatist movement without any kind of reaction from the international community.

Contrary to suppression, there are many ways for the integration of different groups within the nation state. These include: an individual "crossing" into the other group; joining those groups; developing a positive definition or strengthening the position of the group as a whole. The first two options are a form of assimilation and have been proven to be an inadequate solution to ethnic problems. The third way has been the highlighting of various features of the group, such as cultural superiority and refinement, and it allows the group to develop its pride and reinforce ethnocentrism. The fourth method involves mobilization and politicization. That is a two-way process of integration which can offer multiple engagements that can simultaneously protect the identity and the uniqueness of the group. Political solutions to the problem can include: proportional representation, disproportionate representation as a consensus model, changing roles, non-territorial autonomy, territorial autonomy, multinational or bi-national federation, confederation and various forms of semi-independence or outright independence (Heraclides, 1991).

The policy chosen by the Political Center is particularly important for resolving conflict and for avoiding secession and violent separatism. Of course, the processes are not without risk, as for some of the minorities this can mean taking a step closer to separation, but on the other hand, the denial of such requests is no less risky (Kymlica, 1996). Therefore, new ways for the accommodation and integration of various groups in society are needed in order to avoid the dangers of secession and the disintegration of nation states. It is generally accepted that the right to internal self-determination can greatly improve the protection of minority rights in a way that improves their chances of integration without assimilation, but also helps in resolving ethnic conflicts (Henrard, 2001).

The persons that belong to any community, no matter what its size may be, can enjoy the benefits of this right (Tamir, 2002). The internal aspect of the right to the self-determination of the people can only be restricted by the needs of the members of the other groups to practice the same rights in the same way. Internal self-determination, despite external influences, supports the system which allows the members of the different groups to accept the institutions as their own whilst at the same time improving the public sphere where the national culture can be fully realized and recognized.

In this regard its importance is growing, since today there is almost no nationally homogeneous state, there is no more overlapping between the “nation” and the “state” (Hobsbawm, 1993). Consequently, self-determination does not have any more collectivistic and exclusive meaning and it is no more a tool for the realization of a unique national character. On the contrary, democratic self-determination has an inclusive meaning that can be realized through the legislative process that includes all citizens equally. The real meaning of this right is not just inclusive, but also an integrative one – not just for those who are suffering from discrimination, but also for those who are marginalized and maltreated by uniformity or by the domination of the majoritarian community (Habermas, 1998).

For these integrative purposes, in this modern era, it is necessary to make a move from the concept of “governing” to the concept of “good governance”; from the society and economy ruled by a centralized authority to the model of a state built on partnership and other forms of joint actions with governmental, pro-governmental and non-governmental organizations and other relevant actors in which the state only plays the role of being a coordinator (Jessop, 1995).

Certainly, in order to be successful in that, there is a need to establish solid democratic institutions, practice and procedures that will mainstream the diverse aspects and viewpoints of different segments in society and will serve as an arena where ideas, which have been set free because of the formal weakness of the state, will be faced, discussed, argued, defended and enforced.

Although internal self-determination can be realized by utilizing various ways and models, internal self-determination, according to most opinions means at least having a democratic form of government.

### **Tools for the Realization of Internal Self-Determination**

The external aspect of the right to self-determination has been broadly discussed. It is a subject of different types of analysis, misunderstandings and incorrect interpretations, but real power can be gained through the promotion of its internal form. In this regard, the right of self-determination is not only seen as a way to gain and obtain a new independent state (the external form), but also as a model for the protection and self – realization of a certain community within the existing state (the internal form). This can be done through different means and methods, political measures, forms and solutions.

The measures that can be part of the internal aspect of self-determination are also in line with the state's democratic traditions and can be applied in multicultural states within the democratic framework.

Within that framework, there are various options that a state can accept, adopt and apply, based on its own needs. Examples are provided below of the options which are most commonly used.

**Systems of power sharing** are the form of a wide-ranging policy options for dealing with ethnic conflicts. Their purpose is to ensure the optimum participation of various political groups in the decision making process. These options have their advantages and disadvantages that should be carefully calibrated to achieve the desired goals (Sisk, 2005).

Some of them, like **consensual democracy**, are very efficient since they maximise participation and power sharing and encourage the cooperation of elites from different cultural segments. Although they provide a fluid form of democracy and foster cooperation and participation, consensual democracy is a very expensive model and takes a lot of time and energy to be fully realized (Lijphart, 1999).

A less expensive way is to ensure an **effective participation** that enables the full realization of the rights and freedoms of members of different social groups. The crucial and necessary preconditions for this model are the holding of free and fair elections (Moris, 2004).

Apart from that, the increased political representation of different socio-cultural groups can be safeguarded by **special rights of representation**. The aim of these rights is to overcome any ethnic imbalance in the political and social sphere. Even more so, the **polytechnic rights** such as language rights and educational rights for minority groups provide the appropriate tools for addressing the particularities of larger minorities. These rights help in the transfer of cultural diversity between the different generations within the group. Moreover, they ensure the greater participation of group members within the dominant society. However, because the promotion of such measures as language rights and education policies within society can be competitive, the state (the government) must provide unified grounds and maintain social harmony. This is absolutely necessary and should go together with the recognition and protection of the differences between communities (Kymlica, 1995).

Cultural identities can also be protected through **regionalism** which connects communities that are geographically close. This can be done through the protection



of social and cultural practices and the accepting of different affinities, as well as the promotion of traditional ethnic relations (Chiti- Battelli, 1982).

The list of possibilities does not end here. All of these tools mentioned above are only a part of a very broad and flexible range of opportunities and measures that the state can use for the protection and promotion of diversity in a bid to overcome identity conflicts and provide the balance of social power.

The proposed political arrangements, though imperfect, help to avoid the options for secession thereby providing stability, harmony and prosperity for a society. Nevertheless, the functionality of all models depends on the satisfaction of certain conditions and political solutions. Within that framework, a basic precondition is the establishment and promotion of a democratic form of government that will respect all ethnic groups and national cultures that share the same country. However, that is not enough. In addition to the protection and promotion of diversity, there is the necessity for the creation and existence of one shared culture, strong enough to protect the nation of citizens from dissolution. In this aspect, besides the appreciation of great social and cultural variety, the members of all cultural groups have to find a common political language and codes for acting in order to be able to participate in the competition for resources that is on-going in a mutual political arena. For that reason, it is essential to find and promote the common values that one multicultural community needs to share and those can be: equality and justice; consultations and dialogue; support; tolerance; compassion; generosity; and acting for freedom, peace and non-violent changes (Citizens forum on Canada, 1991).

### **Possible limitations to the Applicability of internal Self-Determination**

Although the models of internal self – determination are dominant in theory as effective ways of problem solving, the application of certain internal tools of self-determination - on some levels, can actually sharpen the quest for secession in different groups in society. That is because there is no natural point where the requirements for the protection and promotion of separate nationality stop. Moreover, it is generally thought that the national states which accept the rights that come from the models of internal self-determination seems to be inherently unstable (Kymlica, 1995).

Of all the different types of collective identities that individuals have to choose from, national identity has probably proven to be the one that is the most powerful, it therefore becomes quite obvious that globalization did not completely ruin the

concept of nationality, but just stopped the monopolistic position that it had held in the first half of the twentieth century (Smith, 1998).

Obviously, none of the options is completely satisfactory. In certain circumstances, the demands for secession can be avoided by the timely establishment of a regime for the protection of group rights, such as in the case of Macedonia, but alternatively, in certain circumstances, liberal policies are the ones that enable group rights, as in the case of Scotland. Therefore, internal self-determination effectively accommodates the demands for secession, but this does not necessarily provide the "magic cure" in every case. Practice shows that exceptional cases may be considered, where current conditions on the ground make the application of specific tools impractical for internal self-determination, and a good example of this is provided by the current power – sharing system in Bosnia which sometimes blocks institutional functioning. In some cases, due to various circumstances, internal self-determination fails to achieve the desired goal, such as in the case of the Basque Country or Catalonia. While in other cases the requirements for the separation of groups is so strong that internal self-determination fails in its efforts to accommodate separate group interests, as in the case of the Kosovo enclaves. However, there are some positive examples, such as Canada, Switzerland, Slovenia, and Northern Ireland, and there is a need to learn from them. Generally, for this aspect of self-determination to be fully realized and with success, it is important for national and international institutions to make a commitment for its implementation and to provide the necessary conditions for its realization.

### **Conclusions and Recommendations**

With the realization of the right to self-determination of the people through its internal aspect, the potential consequences of external self-determination can be mitigated or even avoided. By international law, there is still no established right to internal self-determination, at least the one that will include the right to a democratic, representative government, but the law related to this issue is - in *statu nascendi*. Unlike the right to external self-determination, that is a right that ceases to exist after its realization, the right to internal self-determination tends to be the "right in development" (Cassese, 1995). In this regard, there is a positive effort in international documents to broaden the scope of the right to self-determination, and this needs to be confirmed by state practice. With a number of tools and forms for the realization of internal self-determination within a democratic system of governance, the needs and particularities of specific socio-cultural groups can be accommodated and this will lead to the recognition, respect and protection of their special identity.

In this way, the use of models of the internal aspect of the right to self – determination of the people can decrease the pressure for secession. However, for these models to be effective and efficient in achieving the desired results there is a need for determination, and strong and clear efforts from national institutions for employing the democratic means for conflict settlement. Moreover, there is a need to strengthen international efforts for verifying the minimum legal standards for internal self-determination as a basis for constructive dialogue, and as the starting point, not the endpoint for the accommodation of diversity and ensuring the coexistence and clear arguments against secession (Kymlica, 2006). Furthermore, the entire complex of issues needs to be addressed, not only in the academic world but also in the UN system, which (although far from perfect) provides the general framework and must retain its role as an appropriate place for this type of debate.

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Principles which should guide Members in determining whether or not an obligation exist to transmit the information called for in Article 73 (e) of the Charter of the United Nations, Annex, 1960 (UNGA Res.1541).

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