Chapter III

Self-Determination: From the Peace of Westphalia (1648) to the End of the Cold War

1. Dynastic Legitimacy (1648-1815)

There are three periods through which self-determination has gone during the history of its own development. First period starts with the Peace of Westphalia and ends up with the Congress of Vienna (1648-1815). This phase is better known as the period of dynastic or monarchic legitimacy[89]. The other two phases shall be discussed in the following sections. They are: the period of the balance of power (1815-1914) and the period between the two wars (1918-1939). In this second phase, self-determination served more or less as a guide for the conduct of international relations rather than as a revolutionary principle.

The Peace of Westphalia marks the starting point in the development of the modern state system. From this time until the American and French revolutions respectively, the international society was made ripe for ushering in the phase of nation states as we know today. At the same time, scholars prepared the intellectual setting for this modern-type self-determination. It covered not only the concept of the nation state but as well the realm of individual human rights. Self-determination in this

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[89] Hedlley Bull, *The Anarchical Society. A Study of Order in World Politics.* (London: Macmillan, 1977), especially the section 'European International Society', pp. 33-38. A similar typology is expressed by Martin Wight in his book *Systems of States* (London: Leicester University Press and London School of Economics, 1977), especially Chapter 6. According to Wight, there have been three main epochs in the modern states system. In its early history, the dynastic principle determined membership of the system and established the rights and duties of sovereign rulers. In the following period, the idea of national self- determination revolutionarized the rules of membership with the result that the political boundaries of multinational states in Europe were substantially redrawn. In a thirds phase, which succeeded the struggle for self-decolonization, Third World regimes defended the colonial frontiers against attempts to secede from the newly independent states.

period was a logical consequence of these two aspects of the intellectual work, that is, the recognition of individual human rights and the idea of the nation state. These ideas of the thinkers of the 17th and 18th centuries found their application in the above-mentioned revolutions. 'Bill of Right' (1776) and the 'Declaration of Man and Citizen' (1789) were the first (legal) documents that had a great impact on the outside countries. The 1789 Declaration in particular has had a universal impact and influenced the ensuing events elsewhere.

During the *ancien regime*, the monarch was equated with the state. They were absolute rulers, both domestically and on the international plane. No right was recognised in favour of citizens or the population because the monarchs ruled in the name of God. This practice dominated until the American and French revolutions. This does not mean that there were not opposite views. Some intellectuals opposed the way the monarchs ruled. The opposition grew especially after the Reformation. Following the Reformation many thinkers openly challenged the divine right of Kings to rule in absolute terms. Among these, John Locke and Jean Jacques Rousseau deserve special merit and credit[90].

In practice, it was the French Revolution that proclaimed self-determination as a revolutionary principle against despotism and monarchic rule. According to this principle all citizens were declared equal before the law The divine right ceased to serve as the basis of legitimate rule. The above-mentioned French document on human rights was later supplemented by the Declaration on the Rights of Peoples. The Declaration asserted the inviolability of all peoples, respect for their independence and sovereignty, the condemnation of war and aggression, and the principle of non-intervention. These were to be the foundations

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[90] S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*. (Bruxelles: Bruylant, 1973) pp.16-17. This synthesis between the nation state and individual human rights was conspicuous in particular in the scholarly work of Locke and Rousseau. See, also, John Locke, *Two Treatises of Government*, ed., P.Laslett (Cambridge: Cambridge University Press, 1964), pp. 430-431; Jean Jacques Rousseau, 'The Social Contract'. In Jean Jacques Rousseau, *Political Writings*, trans. and ed., F. Watkins (Edinburgh: Nelson, 1953), pp. 3-4.

of the new society[91]. Inter-dynastic law was replaced by interstate or positive law. No divine law was recognised as the source of law. Every law stemmed from the will of the people which acted through the state and its organs. The dream of a universal monarchy was abandoned, the authority of the Church matched by that of state, and the human beings became conscious of their destiny.

The nationality principle, proclaimed by these two revolutions, proved to be troublesome and very soon made room for the state principle. Following revolutionary heydays, it became difficult, as it is at present, to recognise the nationality principle as a basis of international law and order in its original form. The modification of its initial form made it possible for the new rulers to see their own nationals through the lenses of state whose citizens enjoy the right to freely chose the government they desire. For nations without state and under foreign rule the appeal of the original nationality principle has remained valid. This meant that they were entitled to have their own state organisation. It is precisely in this context that the principle of nationality has emerged as a destabilizing factor. The principle of nationality did not relate any more to the denial of dynastic or divine rule but to the refusal of being under foreign rule or control, no matter the nature of political organization. The cases of Greece and Belgium, as well as some of the 1848 revolutions in Europe, single out in this regard. This extension of the principle of nationality beyond the state borders is a merit of the French Revolution and Napoleonic Wars, as it is the transformation of the balance of power system following Napoleon's defeat. It is the conflict between the principle of nationality and the balance of power that permeated the period between 1815-1918. However, the balance of power, not the principle of nationality, had been the rule in interstate relations in this period of time. To this issue we turn next.

[91] S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, pp.18-19.

2. The Balance of Power (1815-1914)

Next period in the development of self-determination starts with the Congress of Vienna, which introduced a new philosophy and the concept of self-determination in power management. This period ended around the years 1917-1918.

The Congress of Vienna (1815) suppressed the nationality principle and installed the balance of power based on dynastic legitimacy as an order of the day. This meant that territories could be traded for the sake of stability notwithstanding the wishes of the population. For the stake of preserving the balance of power, the Congress allowed the application of the previous methods of ceding and partitioning the territories of sovereign states without consulting the populations concerned. Attempts at secession were ruthlessly suppressed. Throughout this period the opposition to the nationality principle was institutionalised and linked to the political alliances and their structures (such as the Congress of Vienna), contrary to the modern opposition which centres on the fear that uncontrolled exercise of self-determination may seriously threaten and destroy the international peace and stability[92]. This institutional opposition, linked to the Congress of Vienna and its mechanisms, was the rule and the philosophy on which the application of self-determination was based until 1917-1918. However, there were exceptions to this, either regarding the complete secession or the expression of the will of a given population. Among these exceptions the most notable were the cases of Greek and Belgian independence, the 1840s revolutions, Italian plebiscites leading to Italy's unification and, finally, the German and Italian acts of unification.

The Greek and Belgian cases represent a complete secession and a triumph of the principle of nationality against the alien dynastic rule, whereas the plebiscites held in some areas in Italy leading ti its unification were an exception to the rule and did not entail the formation of new states. The Italian and German acts of unification, though, match

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[92] Elizabeth Chadwick, *Self-Determination, Terrorism and International Humanitarian Law of Armed Conflict* (The Hague: Martinus Nijhoff Publishers, 1996) pp.20-21.

the American and French revolutions respectively. In all cases, however, the balance of power was an order of the day. It was designed to protect certain states (dynasties) from internal upheavals (revolution). Since the balance of power is a system designed for power management on the international stage, in the above cases as well this system had no choice but to pursue power configurations as they formed at the international level, as an end result of the struggle for power developing among states. This means that in the cases under discussion (the Greek and Belgian successful secessions, Italian plebiscites, and the Italian and German unifications), the balance of power ran against the principle of dynastic rule, be it domestic or alien. This rendered necessary the need for a limited or controlled application of the nationality principle. This further means that the peacemakers of 1815 never allowed the principle of nationality to become a rule in interstate relations. The same balance of power that exceptionally promoted the principle of nationality in the above-mentioned cases, in a later stage, such as the 1848 revolutions in Europe, had been used to ruthlessly suppress the wishes of other nations. So was the rule.

Self-determination in its secessionist form, in the case of Greece demonstrated how correct were those who argued that 'states that end up supporting secessionist movements do so either primarily or exclusively for economic, political and other instrumental motives', meaning that 'rarely, if ever, do so for affective reasons such as ideological, ethnic, or religious affinity'[93]. Despite sentimental sympathy for Greeks nourished at the outset of the armed struggle against the Ottomans, it never overwhelmed the calculations of the European great powers who were far more concerned with the political implications of the Greek uprising. This Greek revolt against the Ottoman Empire (in the 1820s) was far more dangerous than earlier cases in Spain and Italy because Greece had a geostrategic value in the eyes of the Great Powers. The suppression of the revolution in Greece was seen from the beginning as an essential step foreword to preserve the general stability and peace in Europe[94]. As

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[93] Alexis Heraclides, 'Secessionist Minorities and External Environment'. *International Organization* Vol. 44 Issue 3 (Summer 1990) pp. 341-378 at 343.

[94] Norman Rich, *Great Power Diplomacy: 1814-1914*, p.49.

things dragged on, the Great Powers were unable to unite to suppress the Greek revolution as *Metternich* of Austria had advocated. To preserve the balance of power and prevent the Russian influence over Greece, the allied British and French forces even fought the *Battle of Navarino* against the Ottomans (September 1827). The recognition of the Greek independence (February 3, 1830) marked the major first change in the map of Europe since 1815, but this change did not unleash major European war as *Metternich* feared it would. However, the Greek successful secession shook the international system in another sense. It exposed the weaknesses of the Ottoman Empire so that even Sultan's own subjects started to challenge his supremacy. Thus, *Mehmed Ali Pasha*, the ruler of Egypt, encouraged by the success of Greece and Russia, attacked his nominal overlord, the *Sultan* of Turkey, to make some territorial gains of his own. Apart from this, Greece's independence brought to the surface Russia's threat to security, interests and stability of all states of Europe[95].

Lasting almost for a decade, the Greek uprising led some scholars to argue that secession's long duration is in general one of the precondition for success, legality and legitimacy of this form of self-determination[96]. We do not share this view because political calculations in connection with a given balance of forces, rather than the long duration of secession are the decisive factors in the success, legality and legitimacy of the secessionist forms of self-determination. The pattern of Greece repeated itself in many cases but no success story was recorded in terms of duration of the secessionist movements. These are some of the issues we discuss later throughout the next chapters.

The following case where the nationality principle prevailed over that of dynastic legitimacy is the case of Belgian independence of 1830. Of the 1830s revolutions, the Belgian uprising proved the most single serious threat to the general peace of Europe. The Union with Holland, erected

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[95] Ibid. pp. 50-57; A.I. Macfie, *The Eastern Question, 1774-1923* (London and New York: Longman, 1996) pp.14-26; Frederich B. Artz, *Reaction and Revolution, 1814-1832* (London and New York: Harper Torchbooks, 1934) pp.250-262.

[96] S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, pp. 189-190.

in the peace settlements of 1814-1815 (with the view of creating a bulwark against France), now stood as a new test of the principle of legitimacy[97]. In this case, it was not the Russian fear that counted for the great powers caution towards the intervention into Belgian crisis. France and Britain were not so much concerned about Russia as about each other. The British for their part feared that France would take advantage of the crisis to annex Belgium and therewith gain a springboard for further expansion in Western Europe – or for an invasion of England[98]. To avoid shifts in the balance of power caused by the Belgian independence, great powers decided to establish an independent and neutral Belgium. This was done on November 15, 1831, when the great powers and Belgium signed the Treaty of London[99]. This neutrality proved to be a good replacement for Belgium's role as a bulwark against France, but at the same time it proved as well to be a seductive lure for Napoleon III in the 1860s. However, it was Germany's violation of Belgian neutrality in 1914 that propelled Britain into World War I. This history demonstrates that fears of the peacemakers of 1814-1815 were not without justification in the Belgian case.

The 1848 revolutions were of two sorts: liberal and national. Greater threat to the international peace and stability was posed by the national revolutions in the Hapsburg Empire (Bohemia, Hungary and Italy) and those that developed in *Schleswig-Holstein* duchies. The revolutions in France and Germany (Prussia) were of liberal nature, that is, they aimed at changing the internal constitutional order of these countries forcing them to be liberal democracies. It was due in large to what might be called a rump Concert of Europe, in which Britain and Russia played a principal role, that none of the 1848 revolutions set off a general European war, and that the widespread domestic upheavals did not destroy the international order established in 1815 or upset the European balance of power[100]. However, after 1848 only Russia had remained the

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97 Norman Rich, *Great Power Diplomacy*, pp.59-61; Frederich B. Artz, *The Eastern Question*, 270-276 and 289.

98 Norman Rich, *Great Power Diplomacy*, p. 59-60.

99 Ibid. p. 61; Frederich B. Atrz, *Reaction and Revolution*, p. 275.

100 Norman Rich, *Great Power Diplomacy*, pp.78-100, at 99.

staunch supporter of the 1814-1815 peace settlements because the national consciousness that developed out of the 1848 revolutions proved to be much stronger than it was thought of at the time of their occurrence. First unifications (of Italy and Germany) owed very much to the spirit created during the 1848 revolutionary upheavals.

Before we turn to other issues, it is a proper place to give here an overview of other manifestations of self-determination. Apart from the above forms, the plebiscites represent a very common form of self-determination used for the expression of the popular will. As in the case of secessions, the plebiscites were used only as an exception to the rule as foreseen by the peacemakers of 1814-1815. They were certainly not a proper expressions of the popular will as the term would imply. Their development and realisation occurred within the limits of the conventional (international) law at the time. The basics of this law were set up by the great powers as a means to maintain the international peace and stability (mainly through congresses and conferences).

First plebiscites were held in the Italian provinces of Nice and Savoy (then Sardinian provinces). The agreement on their cession was reached between Napoleon III of France and Victor Emmanuel of Italy in the city of Turin on March 12, 1860 (in fact, Napoleon III signed the Treaty two days earlier in Paris)[101]. Although they were formally handed over to France following the plebiscites, their cession represents a clear-cut example of the victory of the balance of power over the nationality principle[102]. As soon as the unification of Italy was completed (June 30, 1871), Italian nationalists laid their claim to the above provinces on the basis of nationality principle.

Italian unification, made possible at its final stages by the French defeat at the hands of Prussians, was a long process. But it did not seriously affect the European equilibrium set up in 1814-1815 (and adjusted thereafter). Even after unification, Italy proved unable to mobilise its

[101] Ibid. p. 139.

[102] Ibid. pp. 136-139.

own resources to join the ranks of the great powers[103]. This equilibrium and this potential will be threatened and mobilised respectively only after the German unification. In this case, the nationality principle would manifest itself in a total opposition to the previous cases since the French Revolution. The policy of the 'iron fist', or from top-down, associated with *Bismark*, proved as well to be yet another manner for the implementation of the nationality principle.

German unification was the major shift in the balance of power in Europe since 1815. It was proclaimed rather tactlessly by the Prussian leadership on January 18, 1871, in the Hall of Mirrors of Versailles[104]. The proclamation of German independence in the French territory showed in a symbolic way the emergence of the new European balance of forces. Germans got united, their pride was restored, but not their security. The 'nightmare of coalitions', to use Bismark's wording for the system of alliances, faced new German statesmen who ruled after Bismark. The Iron Chancellor's inability to institutionalise his policies forced Germany onto a diplomatic treadmill it could only escape, first by an arms race, and than by war. By the end of the twentieth century, the Concert of Europe, which had maintained peace for a century, had for all practical purposes ceased to exist.

Territorial arrangements of Europe after Napoleon's wars (1814-1815) were designed to prevent any political, economic and military shifts from going to whichever great power that might threaten the already established balance of forces. These arrangements left no room for the popular wishes. The latter had to follow the territory, not the opposite. The principle of nationality, successful in some exceptional cases that we already discussed, was made use of only for practical exigencies of politics of the balance of power that emerged with the rise of national consciousness and the industrial revolution of the 19th century. These events proved to be a powerful forces for change in the international system in the century. However, the forces under discussion proved no match for the old thinking in the foreign policy of the existing states at

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[103] Ibid. pp. 123-146.

[104] Henry Kissinger, *Diplomacy*, pp. 103-136 at 119.+

the turn of the century. Centuries old conduct of foreign affairs remained the same well into the years proceeding the Balkan Wars (1912-1913) and WW I (1914-1918)[105]. In and around the Balkans particularly, this state of affairs in the conduct of foreign policy proved to be a prelude to the Great War and, after that, to the defeat of the nationality principle: not even an inch of territory of the former Ottoman Empire in Europe was divided along previous administrative lines existing in the Ottoman time, or based on the nationality principle. Territorial gains were treated as a war spoil to be divided only on the basis of strategic and national security considerations. These aspects, not the national composition of a given territory, were considered as conducive to the peace and stability of the Balkans and wider[106]. The same disregard for the previous administrative borders and, to some extent, to the nationality principle, was shown after the collapse of the Austro-Hungary in 1918.

[105] Andreas Osiander, 'Re-reading Early Twentieth Century IR Theory:Idealism Revisited'. *International Studies Quarterly* Vol. 42 No. 3 (September 1998) pp. 409-432 at 417.

[106] Norman Dwight Harris, 'The Effect of the Balkan Wars on European Alliances and the Future of the Ottoman Empire'. *Procedeengs of the American Political Science Association.* Vol. 10, Tenth Annual Meeting (1913), pp. 105-116 at 107- 111; Arthur W. Spencer, 'The Balkan Question -The Key to a Permanent Peace'. pp. 569-570; Michael Roux, *Les Albanais en Yugoslavie. Minorite Nationale, Te rritoire et Development* pp. 175-185; 187-191.

3. The Principal Manifestations of Self-Determination between the Two Wars (1918-1939)

The end of the First World War marks the beginning of the third phase in the development of self-determination. After this war, self-determination does not appear any more as a revolutionary principle but as a guide to the conduct of day-to-day international relations. Through this guiding aspect of self-determination, it was made possible the restoration of the previously lost political and international status of states and/or nations, such as Poland, Czechoslovakia, Romania, Yugoslavia, Baltic States, Ukraine and Finland. The expression of the free will of the populations, as a basic premise of the genuine self-determination, was either presumed (in most cases) or it was foreseen by the Versailles Conference as one of the means of political settlement but only for certain territories (Danzing, Memel, and Saar Territory). This in no way means that strategic, security, political and economic considerations withered away during this period[107]. These considerations were instead to serve as a guidance in the application of self-determination between two wars. However, its application was confined, as a rule, only to the cases expressly stipulated by the Versailles Peace Arrangements. In a similar way to that pursued after the Second World War (the process of decolonisation), self-determination served as a concept accepted by major powers as a basis for negotiating the details of the competing claims in the name of the new arrangements and patterns of sovereignty. It had a multilateral character and the analysis of self-determination's application in this as in earlier periods was bound to have multiple character. This multilateral character of the self-determination claims, which must be given due attention in its actual implementation of self-determination, is often ignored in the rhetoric that asserts the self-determination itself[108]. Neither the balance of power, nor the principle of self-determination itself, could in their own be sufficient to maintain the international peace and stability. The latter has always relied on the operation of two or more principles or factors

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[107] S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, p.41.

[108] See, Charles R. Nixon, 'Self-Determination: The Nigeria-Biafra Case'. *World Politics* Vol. 24 Issue 4 (July 1972) pp. 473-497 at 494.

(strategic, economic, political, and security), which may modify one another in their practical effects[109]. This complex character of self-determination was expressed both through theoretical observations made during this time and via the practice of self-determination's implementation (which, as we noted, was strictly confined to the contractual provisions stipulated by the Versailles Peace Settlements). The following is the discussion of theory (Lenin's and Wilson's views on self-determination), followed by the international practice as pursued in the Aaland Islands Case. The Aaland Case reflects both theoretical approaches of the time[110]. Lenin and Wilsonian conceptions on self-determination and the message conveyed by the international practice in the Aaland Islands case are indispensable for an understanding of self-determination as it stands at present. Pursuing this line of argument will enable us to trace back and grasp the basic manifestations of self-determination during this period. One of them is the so-called presumed expression of the free will (the cases of Poland, Czechoslovakia, Baltic States, Ukraine and Finland), while the other concerns the allegedly express manifestations of the free will in order to make minor territorial

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[109] See, Andreas Osiander, *The States System of Europe, 1640-1990. Peacemaking and the Conditions of International Stability* (Oxford: Clarendon University Press, 1994) Chapters 4 and 5.

[110] Very unusual approach to self-determination is the interpretation and the practice pursued by the Nazi Germany. To Hitler and the Nazi scholars, self- determination was based on blood (race). It meant the self-determination of the superior race (so-called aryan race). The Nazi conception of nation refused the recognition of the will (of a people) or the right of an individual to determine their 'self'. It was the same conception as that preached by Communists. The main difference is that in the former case, self-determination was based on blood (race) while in the latter it rested with the working class (proletariat). See, S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, pp. 20- 21. Apart from this, Hitler used minorities' self-determination as an excuse to militarily intervene against the sovereign states of Europe. This had as a consequence the enforcement of the belief about the validity and the international legitimacy of the state-centred approach to self-determination following Second World War. This means that ethnic self-determination was seriously compromised by Hitler and its war campaign against sovereign states of Europe. Nevertheless, no territorial changes made by Hitler were recognised after Second World War.

arrangements. In the latter cases, it is assumed that economic factors have played an important role (the cases of Saar Territory, Memel and Danzing, although in some of these cases, it should be noted, no expression of the free will ever took place). The issue of 'Munich self-determination' demonstrated how an entire nation could be sacrificed for the sake of international stability.

3.1. Lenin and the Soviet Conception of Self-Determination

The speed with which Lenin agreed to recognise the independence of Baltic States and Finland before and after Brest-Litovsk arrangements, led to a belief at that time that he was a German spy[111]. A closer look at the events preceding the October Revolution and its success reveal entirely different reasons behind the Soviet behaviour before and after the Brest-Litovsk peace process and the years following it. The reasons of power politics were the main factor that explain Soviet (Communist) attitude towards self-determination and its forms of manifestation (the so-called Socialist Federations of the Soviet style). Internal dynamics and the structure of the Soviet Russia lay behind Lenin's policy of self-determination and his policy of appeasement towards the Poles, the Finnes and other nationalities of the Tsarist Empire. This appeasement policy was dictated by the internal conditions prevailing in the first years following the Soviet (October) Revolution and lasted only for a certain period of time, that is, until Lenin consolidated his power base.

Besides a long autocratic tradition, three years of war absorbed most of Russia's available resources and brought the country to the brink of financial and economic ruin. The discontent became widespread, famine in many parts of the country imminent. Little wonder that, after the overthrow of autocracy, the poor and the suffering, the cold and the hungry, were willing to accept any regime that promised them relief. And, Bolsheviks of Lenin promised that. The Revolution of 1917, unlike many abortive attempts during the 19th century and beginning of the 20th century, found sober Russia ready to follow her liberators[112]. Foreign policy of the Soviet Russia had to reflect this political, economic, financial and military collapse of the Russian society. Separate peace at Brest-Litovsk with Germany (March 1918) was first test and the

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[111] Simon Litman, 'Revolutionary Russia'. *The American Political Science Review* Vol. 12 Issue 2 (May 1918) pp.181-191 at 190; Charles G. Fenwick, 'The Russian Peace Treaties'. *The American Political Science Review* Vol. 12 Issue 4 (November 1918) pp.706-711 at 711. Others, though, have tried to find the reasons behind such behaviour of Lenin in the ideological fabric of the new Soviet regime.

[112] Simon Litman, 'Revolutionary Russia', pp. 182-183, 185, 188.

challenge to Lenin's diplomacy of the Proletarian Dictatorship[113]. As soon as they came to power in Russia, Bolsheviks announced the principle of self-determination in favour of the nationalities living within the former Russian Empire. This was not a matter of principle but a sign of deep weakness of the new regime and a tactical move undertaken by Lenin. Within a few months of recovery (November 1918), Lenin denounced the Brest-Litovsk Peace Treaties and, in the case of Ukraine and Finland, he even sent his troops to retake them again[114]. Lenin now argued that self-determination was a useful revolutionary slogan which would lose its force once the revolutionary class had seized power and multinational states merged into a unitary socialist order, e.g., socialist (communist) federation[115]. However, these countries, including Romania, would gain their independence on the basis of the nationality principle (presumed expression of the will through the Versailles Settlements).

As a means to foster Russian political and strategic goals, Lenin resorted to a new form of political organization. This form, known as 'the Soviet Federalism', would in later years serve as a model for the rest of the Communist world. The Soviet Federalism was in a contradiction with the principle of self-determination and human freedom. It made possible a huge concentration of power at the hands of Moscow and the Communist Party. Moscow was to become, as one author has rightly put

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[113] Political Events, 'V. Continental Europe'. *Political Science Quarterly.* Vol. 33 Issue 3 (Supplement, September 1918) pp. 48-64.

[114] Amos S. Hershey, 'Legal Status of the Brest-Litivsk and Bucharest Treaties in the Light of Recent Disclosures and of International Law'. *American Journal of International Law* Vol. 12 Issue 4 (October 1918) pp. 815-820; Charles G. Fenwick, 'The Russian Peace Treaties', pp. 706-711; Charles G. Fenwick, 'The Ukrainian and Finish Peace Treaties'. *The American Political Science Review*, Vol. 12 Issue 4 (November 1918), pp. 711-713; Jurij Borys, *The Sovietisation of Ukraine: 1917-1923. The Communist Doctrine and Practice of National Self- Determination* (Edmonton: The Canadian Institute of Ukrainian Studies, 1980) pp.12-51; 195-206.

[115] Bernard Morris, 'Soviet Policy Toward National Communism: The Limits of Diversity'. *The American Political Science Review* Vol. 53 Issue 1 (March 1959) pp. 128-137 at 130.

it, 'a new international Rome'[116], a mission that was possible to accomplish only through persistent propaganda. Moscow became a home country to the Proletarian Revolution and propaganda exercised for this matter became successful only after Moscow gained full control over the means to push it throughout the world[117]. Lenin and his Bolsheviks managed within a short period of time to subordinate the Communist International to the Soviet Union's national policy, which soon became a deep continuity rather than break in Russian foreign policy[118].

Ukraine was the first ill fated attempt to achieve its political independence while other states recognised by Lenin's Russia would very soon either be annexed or become satellites of the Soviet Union (save Finland). Lenin's or Soviet Russia, commenced its life as a state with four Union Republics[119] to end up with fifteen and with as much

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[116] Alfred C.P. Dennis, 'Soviet Russia and Federated Russia'. *Political Science Quarterly,* Vol. 38 Issue 4 (December 1923) pp.529-551 at 540.

[117] E.H. Carr, *Twenty Years' Crisis: 1919-1939,* pp. 132-145.

[118] Alfred J. Rieber, 'Persistent Factors in Russian Foreign Policy: An Interpretative Essay'. In Hugh Ragsdale (ed.), *Imperial Russian Foreign Policy* (Cambridge: Woodrow Wilson Centre Press and Cambridge University Press: 1993) pp. 314- 360 at 319-320.

[119] In fact, the 'Fundamental Law of the Russian Socialist Federated Republic', adopted on July 10, 1918 by the Resolution of the Fifth All-Russian Congress of Soviets, foresaw a federal union of an extremely loose type composed of rural areas (volost), counties (uyezo), and provinces (gubernia). There was also a region (oblast) as a part of this federation. See, Raymond Garfield Gettell, 'The Russian Soviet Constitution'. *The American Political Science Review* Vol. 13 Issue 2 (May, 1919) pp. 293-297 at 294-295. That the soviet-style of self- determination would mean nothing but a tight centralisation and despotism in administration of the new state, it became clear only after the signature of a treaty between the Soviet Russia, Soviet Ukraine, the Trans-Caucasian Soviet Republics and the White Russian Soviet Republic on December 30, 1922. This treaty stipulated the supremacy of Moscow in all crucial matters regarding the state-running. No power was left for the constituent units of the new state so that the Communist self-determination faded away in the face of the new power base, already on a way to full consolidation. See, Alfred L.P. Dennis, 'Soviet Russia and Federated Russia', pp. 529-

'autonomous republics' and other entities invented and reinvented by Communists in the run up to the dictates of *realpolitik*[120]. Border drawings and the population transfers were a frequent phenomenon in former Soviet Union, especially in the course of the Second World War.

In the cases of Soviet Union and the Nazi Germany, it is apparently seen the role the 'theory as practice', to use Jim George's words, plays in the shaping and reshaping of state behaviour. This sort of state behaviour would later be externalised to reach vast areas and populations of the world. Without studying the basic tenets of the concepts of self-determination in these two countries, the 'dictatorship of the proletariat' and the 'race superiority', no successful understanding of the events between the two wars can be achieved. The Soviet and Nazi Germany manifestations of self-determination reflect the internal dynamics of these countries, their theory and practice[121]. The basic premises of both cases are based on the concept of nation, its definition and conceptualisation made to serve pure exigencies of power politics.

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551 at 549-550; Dragan Medvedovic, *Nastanak Sovjektske Federacije* (Zagreb: Informator, 1980) pp. 107-170.

[120] Article 71 of the 1977 Soviet Constitutions (in force when the state dissolved in 1991), enumerates fifteen Union Republics. Article 85 of the same constitutions spoke of a system of the so-called Autonomous Socialist Soviet Republics. Finally, articles 87 and 88 of that constitution mentioned eight Autonomous Regions and scores of Autonomous Areas (the number is not marked in the Constitution). See, *Ustav SSSR iz 1977* (Beograd: Institut za Uporedno Pravo, 1978).

[121] From an International Relations perspective, the behaviour of the Soviet Union and the Nazi Germany are best explained if their respective political culture is taken into account rather than focusing exclusively on the logic of realism. See, Michael Desch, 'Culture Clash: Assessing the Importance of Ideas in Security Studies'. *International Security* Vol. 23 No. 1 (January 1998), pp. 141-170; Jeffrey Checkel, 'Constructivist Turn in International Relations Theory'. *World Politics* Vol. 50 (January 1998), pp. 324-348; Ted Hopf, 'The Promise of Constructivism in International Relations Theory'. *International Security* Vol. 23 No. 1 (Summer 1998) pp. 171-199; Roland L. Jepperson, Alexander Wendt, and Peter J. Kazenstein, 'Norms, Identity, and Culture in National Security. In Peter J. Kazenstein (ed.), *The Culture of National Security. Norms and Identity in World Politics* (New York: Columbia University Press, 1996) pp. 33-74.

Communist conceptions of nation are based on Stalin's definition who excluded from the definition all subjective or individual elements ('expression of the free will'): the Communist Party, as an avant-guarde of the proletarians, should decide on behalf of a given population about the territory this people shall inhabit, the economy they shall live from and, above all, the language, culture and psychology they shall belong to[122]. This conception stemmed from the fact that Communism in its early stages (original Marx/Engels version of Communism) did not recognise the role the nations play in state formation and, in this context, the place the state itself takes in international relations[123]. It was the Jewish section of the Second Internationale that raised the nationality question in theoretical sense (the end of the 19th century)[124]. From this time onwards, Lenin analysed the issue of nationality more seriously and ordered Stalin to draft a proposal about the definition of the term nation to serve strategic and practical aims of the new revolution to come. The main thrust of Lenin's order was that the future definition to be made by Stalin and the practice to come shall have to take into full account the then existing national question in Russia. Stalin's definition, therefore, was based on the already mentioned elements[125]. This was contrary to

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[122] Michael Krykov, 'Self-Determination from Marx to Mao'. *Ethnic and Racial Studies* Vol. 19 No. 2 (April 1996) pp. 352-377; Zoltan D. Barany, 'The Roots of Nationalism in Postcommunist Europe' *Balkan Forum* (Skopje: Macedonia) Vol. 2 No. 2 (March 1994) pp. 111-122; See, also, G.I. Tunkin, *Theory of International Law* (Cambridge and Massachusetts: Harvard University Press, 1971) pp. 7-13 and 68-69.

[123] Cf. Joseph A. Petrus, 'Marx and Engels on the National Question'. *The Journal of Politics* Vol. 33 Issue 3 (August, 1971) pp. 797-824 at 718; 801; 804; 810-811; 818-819; 824; R.N. Berki, 'On Marxian Thought and the Problem of International Relations'. *World Politics* Vol. 24 Issue 1 (October, 1971) pp. 80-105. Both Marx and Engles were very hostile to the nationality question, especially regarding, as they termed, 'unhistorical nations' (small nations). They later made concessions only to Irish and Polish questions. See, Jurij Boris, *The Sovietisation of Ukraine: 1917-1923. The Communist Doctrine and Practice of National Self- Determination.* pp. 12-51.

[124] Andrew Linklater, *Beyond Realism and Marxism. Critical Theory and International Relations.* (London: Macmillan, 1990) pp. 55-75.

[125] Cf. E.J. Hobsbaum, *Kombet dhe Nacionalizmi që nga 1780-a. Programi, Miti, Realiteti* (Tiranë: Toena dhe Fondacioni Soros, 1996) pp. 1-13; 15-45.

Lenin's opinion about the dominant role of the working class and the mode of production. This attitude of Lenin slightly changed when WW I broke out in 1914. Then, the working class, contrary to Lenin's expectations, sided with the national capitalist classes and their leaders. This fact seriously challenged basic premises of Communism as to the nationality and state issues. This left no room for Lenin but to further use self-determination for strategic purposes of his foreign policy until he saw the disintegrating force of nationality. The principle of self-determination in Lenin's foreign policy meant the right of colonial people to throw off alien rule, not coincidentally, capitalist domination[126]. In addition to this, Lenin invented one another form of this strategic use of self-determination. This was consisted in Lenin's resort to the idea of the 'Socialist (Communist) Federalism' as a means to foster Russian national interests. In this way he promised a local autonomy to the Russian nationalities because Russian tsars had extended their influence and power over a wide range of other non Russian nationalities. The sole purpose of Lenin's 'Federalism' was to territorially expand along the frontiers of Tsarist Russia, an aim achieved with an enormous speed. By the end of WW II, the Soviet Union managed to put under its control around 178, 000 square miles of European territory[127]. This was nothing but the realisation of Stalin's ambitions presented by his foreign minister, Molotov, to the Germans on the eve of WW II[128]. These ambitions exceeded by far Russia's pre-1914 frontiers[129]. At the same time, political influence of the Soviet Union became even greater than physical control.

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[126] Leo Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation'. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 451-476 at 455.

[127] Russel H. Fifield, 'International Affairs: The Postwar World Map-New States and Boundary Changes'. *The American Political Science Review*. Vol. 42 Issue 3 (June 1948) pp. 533-541 at 536.

[128] Henry Kissinger, *Diplomacy*, pp. 350-368; 394-446.

[129] Hajo Holborn, 'The Collpase of the European Political System: 1914-1945'. *World Politics* Vol. 1 Issue 4 (July 1949) pp. 442-446 at 461.

Until its demise in 1991, the Soviet Union had to struggle between reconciling two principles: that of self-determination and federalism. Federation had been emphatically rejected by Marx, Engels and Lenin himself. But, this was done only in earlier stages of the revolutionary developments. After the 1917 Revolution in Russia, the federal concept of the new state emerged as the post-revolutionary antidote to the pre-revolutionary doctrine of self-determination. Federalism was designed to absorb national self-determination as the latter was redefined within the framework of the former[130]. The immediate aim of the Soviet Federalism was twofold: first, to prevent further separation and, second, to entice the already seceded border areas back into the Russian state[131]. The so-called right to secession was a myth, not reality[132]. Its only purpose was to serve as an ideological bromide to lull the various nations into believing that the Union was a 'voluntary amalgamation'. Although foreseen in Article 4 of the 1924 Soviet Constitution, any attempt to assert that right would be regarded *ipso facto* an act of counter-revolution[133]. This attitude towards secession remained unaltered until the Soviet dissolution. No federalism in its Western sense have ever existed in former Soviet Union. Perhaps the term cultural autonomy for the non-Russian republics and nations would better describe the situation that prevailed in this state: Soviet Union never managed to develop a political and state organization capable of satisfying non-Russians. National inequalities presided all along. Apart from the unequal status of the non-Russian republics (Union/or Federated Republics), there were

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[130] Vernon V. Aspaturin, 'The Theory and Practice of Soviet Federalism'. *The Journal of Politics* Vol. 12 Issue 1 (February, 1959) pp. 20-51 at 20-21; 25.

[131] Ibid. p. 26; See, also, Paul Gronski, 'The Soviet System of Federalism'. *The American Political Science Review* Vol. 23 Issue 1 (February, 1929) pp. 159-167 at 159, 165, 167.

[132] Article 4 of the 1924 Soviet Constitution said that 'the rights to self-determination up to secession belongs to Soviet Republics'. However, this right could be 'implemented only if it means that the rights of the working class and Communism are best served and protected'. Only under these conditions the secession could be valid. See, *Ustav SSSR iz 1924* (Beograd: Institut za Uporedno Pravo, 1958). The same formulation was stipulated in Article 16 of the 1924 Agreement on the Establishment of the USSR and later repeated in the 1933 Soviet Constitution (Article 17).

[133] Vernon Aspaturin, 'The Theory and Practice of Soviet Federalism', p. 27.

other aspects of this discriminatory situation. The most conspicuous discriminatory situations were those regarding the status of the so-called 'political and territorial autonomies' granted to the various non-Russian nationalities living within the Soviet Union.

The concept of 'political and territorial autonomy' was introduced in the Soviet system in order to neutralise the idea of cultural autonomy, first put foreword by Austro-Hungarian Marxists in 1899 by their Jewish section of the Second Socialist Internationale. This 'political and territorial autonomy' served as a means to deny to the well established national communities the status of a nation. These communities usually belonged to nations not loyal to the Soviet regime. This kind of autonomy was a punitive measure applied almost during the whole Soviet Union's existence[134]. Internal administrative borders, as noted earlier, were very often drawn and re-drawn to fit the punitive needs of this kind of autonomous status and to meet the exigencies of the Soviet dictatorship. The denial of the status of a Union Republic to certain categories of national communities and the imposition on them the 'political and territorial autonomy' was always accompanied with the internal border drawings and population shifts. This practice was entirely arbitrary and depended on the will of the Soviet dictators, Stalin being the most notorious among them[135].

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[134] Paul Globe, 'The End of the Nationality Question'. *RFE/RL NEWSLINE*, December 20, 1999 (http://www.rferl.org/newsline).

[135] This as well applied to the creation of the Soviet Republics, but only in some cases when it was meant to dilute or obfuscate a given nationality. Apart from the Republic of Belarus (Byelorussia), in literature the case of the Republic of Moldova singles out as an example of the Tsarist-Stalinist obfuscation of a Molodavian nationality with a 2.5 million majority population ethnically, linguistically and to a large extent historically, linked with Romania. See. Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice'. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 77-140 at 71.

3.2. Wilson and his Views Regarding Self-Determination

Another statesman who greatly contributed to the theory and practice of self-determination is the US President Woodrow Wilson. He is associated with the content and the form of self-determination as it stands today. The attitude he adopted and the Aaland Islands case (1921) reflect the contemporary understanding of self-determination, both internal and external. However, his views on self-determination were not in conformity with the international practice of the time, especially the practice that developed within the League of Nations (not to mention the already discussed Soviet practice).

Wilson's espousal of self-determination as a central element of the post-WW I peace was reactive to both Bolshevik initiatives and wartime exigencies[136]. However, Wilson did not use in public the term self-determination until February 11, 1918 (contrary to popular believe, the term itself does not appear nowhere in his fourteen points). Before that date he had used the 'consent of the governed' meaning democracy (internal self-determination). This was covered by his notion of 'self-government'. As for external self-determination, Wilson was very much

[136] Michla Pomerance, 'The United States and Self-Determination: Perspectives on the Wilsonian Conception'. *American Journal of International Law* Vol. 70 Issue 1 (January 1976) pp. 1-27 at 2; 12. 'Wilson proposed a new international system in which all nations might share in the benefits of war and ultimately bear together the burdens it had imposed. Wilsonism meant a sort of United States of Western Civilisation'. See, William E. Dodd, 'Wilsonism'. *Political Sciences Quarterly* Vol. 38 Issue 1 (March 19123) pp.115-132 at 131. Wilson seems to have been convinced that only through the espousing of full self-determination there can be avoided the practice of the balance of power in international system. To avoid this, he declared in his famous Fourteen Points and during the first days of the Paris Conference that the respect for the consent of the governed was one of the basic conditions for world peace and stability. His idea of the League of Nations was to serve this purpose as well. Cf. Arthur Walworth, *Woodrow Wilson. Book Two: World Prophet* (New York: W.W. Norton and Company, 1978) pp.176-198; Ruth Cranston, *The Story of Woodrow Wilson*. (New York: Simon and Schuster, 1945) pp.280-292.

against the dismemberment of Austro-Hungarian Empire[137]. External form of self-determination evolved in Wilson's discourse later and meant two things: the right of people to choose their own sovereignty and their own allegiance and not to be handed about from sovereignty to sovereignty as if they were property[138]. The complexities of Europe, though, were too great to allow for an outright application of self-determination along nationality lines. At the same time, Wilson was rebuffed not only by Europeans but also by his own colleagues and advisers[139]. His Secretary of State, Robert Lansing, characterised self-determination propounded by Wilson as a dynamite, that is, a principle with enormous destabilising force when faced with practical realization[140]. He rightly saw the difficulties faced in the process of determining who the 'selves' should be: race, territory, community, or all of them cumulatively?

There should be no wonder then that great powers of the time did not endorse Wilson's proposal to include self-determination within Article X of the Covenant of the League of Nations. This article in its final form referred only to the respect for territorial integrity and existing political independence of the Members of the League[141]. Self-determination was diverted from its universal application. It applied only in the cases expressly foreseen by the peacemakers of the Paris Peace Conference and, as far as plebiscites and minority rights were concerned, their implementation could be enacted only through a procedure provided for by the Covenant of the League of Nations. Although the League was not to Wilson's ideal and his vision, he still regarded the League and

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[137] Derek Heather, *National Self-Determination: Woodrow Wilson and his Legacy* (New York: St. Martin Press, 1994) pp. 42; 47-52.

[138] Michla Pomerance, 'The United States and Self-Determination', p. 18.

[139] Cf.Thomas J. Knock, *To End All Wars. Woodrow Wilson and the Quest for a New World Order* (Princeton: Princeton University Press, 1995) pp. 123-147; 167-193.

[140] Derek Heater, *National Self-Determination: Woodrow Wilson and his Legacy*, p. 53.

[141] Inevitably, in the course of the concreting the abstract principle of self- determination during the Paris Peace Conference, pragmatic economic and strategic considerations were taken into account. Derek Heather, *National Self- Determination: Woodrow Wilson and his Legacy*, pp. 53-77.

minority protection (plebiscites included) as a progress towards the realisation of the nationality principle. Apart from this, the no-annexation clause for the Mandate System was Wilson's merit. While the Mandates System paved the way for the realisation of self-determination in certain cases, Minorities System of the League proved to be ineffective and was used by Hitler as an excuse for aggression against other states. Two reasons stand for latter's ineffectiveness: the System had no universal application (great powers were not bound by the minority protection arrangements) and no implementation mechanism to render effective internationally recognised minority rights. Nevertheless, the plebiscites (used more than ever before, albeit not so extensively), the Mandates System and the Minority Rights, despite all imperfections, facilitated the subsequent universalisation of self-determination (to embrace colonial areas following WW II).

On June 28, 1919, the representatives of Germany and the Allied and Associated Powers signed the Peace Treaty at a ceremony in the Hall of Mirrors in the Palace of Versailles. Part II of the Peace Treaty with Germany (Arts.27-30) describes the new boundaries of Germany. Six former German areas, apart from the territories ceded to France (Alsace-Lorraine), Poland (West Prussia and Posen), Czechoslovakia (a very small portion of Upper Silesia), Lithuania (Memel) and other colonies handed over to the League of Nations (including the Free City of Danzing), were to be decided by plebiscite. These areas were Allenstein and Marinwerder portions of East Prussia, Eupen and Malmedy, the Saar Basin, Schelswig and Upper Silesia. Plebiscites, along with the minority provisions and the mandate system, were a compensating devises for inadequacies and the imperfect application of the post-WWI self-determination. They were mostly directed against former German/Austro-Hungarian and, in the case of Mandates, Ottoman territories. In these cases, quite apparently, economic and strategic considerations prevailed over the nationality principle. The cases of Upper Silesia and the Saar Basin were the most significant and controversial ones[142]. In the case of Upper Silesia in particular, it was obvious how difficult is it to define self-determination through

[142] Ibid. p. 80.

plebiscite. In a plebiscite, held on March 1921, majority voted for union with Germany. Since the area was mixed and there were allegations of fraud during the plebiscite, clashes between German and Polish peasants followed. In the end, the League gave to Germany the bulk of Upper Silesia but most of the rich coalmines to Poland. Both sides remained unsatisfied and civil war ensued. The message of the Saar Basin case is that it demonstrated as to what happens if a given area is not handed over to the country it belongs to. The results of plebiscite in Saar, held in January 1935, only demonstrated something that had been known for long: the unification with Germany.

In other parts of Central and Eastern Europe no plebiscites were foreseen. Vast minorities existed within the states established on the basis of the self-determination principle after WW I: Yugoslavia, Austria, Czechoslovakia, Romania, Poland and Hungary. Their rights were supposed to be protected by the minority regime of the League of Nations which, as noted, was ineffective. This weak protection of minorities proved a good excuse for Hitler to test his version of self-determination as described earlier. The new State of Czechoslovakia was his first test and the Munich Settlement his preliminary success in the way to WW II[143].

[143] The British appeasement policy towards Hitler, pursued by Chamberlain, is usually blamed in scholarly work for the success of Nazi Germany in the realisation of its racist-type self-determination that started with the victimisation of the Czechoslovak nation and ended up in WW II. See, more, in Jacques de Launay, *Les Grand Controverses du Temps Present: 1914-1945. Premier Partie* (Lausanne: Edition Rencontre, 1967) pp. 194-200; William L. Shirer, *The Rise and Fall of the Third Reich. A History of Nazi Germany* (New York: Crest Book, 1963) pp. 485-611.

3.3. The Aaland Islands Case

When the *Aaland Islands* case emerged in 1920, self-determination meant full independence. This is the reason why in the scholarly work it is said that the refusal by the League of Nations to recognise the right of the Islanders to unite with Sweden was tantamount to the very denial of self-determination. Taking into account both internal and external aspects of self-determination the League of Nations confirmed Wilson's conception of self-determination instead. In this way, the League laid a solid ground for further development of modern self-determination. The Aaland Islands case would later serve as a basis for a wider and more liberal interpretation of self-determination, albeit not too often invoked in this sense. The following discussion is only as to the self-determination aspects of the case, leaving aside the constitutional issues of Aaland's autonomy[144], as well as the demilitarisation/neutralisation aspects of the Aaland Islands[145].

Deliberations on the Aaland Islands issue could be divided into legal and political parts. The problem itself arose during Finland's consolidation of its independence from Russia following the outbreak of October Revolution in 1917. Legal issues were dealt with by Commission of Jurists, while political ones by the Commission of Rapporteurs. Both issues concerned the issues of the Aaland's self-determination.

Finland declared its independence from Russia on November 15, 1917 and was finally recognised by the Soviet Government of Russia on the

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[144] See, more on this in Hurst Hannum and Richard B. Lillich, 'The Concept of Autonomy in International Law'. *American Journal of International Law* Vol. 74 Issue u4 (October 1980) pp. 858-889.

[145] More on the issue of Aaland's demilitarisation, see, Philip Marshall Brawn, 'The Aaland Islands Question'. *American Journal of International Law* Vol. 15 Issue 2 (April 1921) pp. 268-272 at 271-272; Charles Noble Gregory, 'The Neutralisation of the Aaland Islands'. *American Journal of International Law* Vol. 17 Issue 1 (January 1923) pp.63-76 at 70-74; Norman J.Padelford and K. Kosta Anderson, 'The Aaland Island Question'. *American Journal of International Law* Vol. 73 Issue 3 (July 1939) pp. 465-487 at 477-487.

January 4, 1918. The Swedish government recognised Finland on the same date. The United States extended its own recognition only after the establishment of the newly elected democratic government of Finland. France and Britain followed the suit, too. Upon the proclamation of Finland's independence, no representatives from the Aaland Islands took part in the Finish action. The Islanders were busy with their own bid for independence from Russia. For this matter, they had expressed their desire for a union with Sweden in a referendum held on December 31, 1917. Several representations were conducted before the King of Sweden showed a conciliatory mood towards Finland. Then came Brest-Litovsk, German invasion of the Islands, end of WW I and with it the annulment of the treaties concluded at Brest-Litovsk. The question was brought to the attention of the Council of the League of Nations by both the inhabitants of the Aaland Islands and the Swedish government. A resolution was unanimously adopted by the Council, with the assent of Sweden and Finland, on July 12, 1920[146]. When the question was brought before the Council, Finland objected. The Finish Government stated that: 'In opposing the Swedish Government's proposal to submit the question to the future status of the Islands to a plebiscite of the population, this government is following the principles according to which several territorial questions were decided by the Peace Conference, in cases of conflict, as here, between the wishes of a minority and the economic and military situation of a nation'[147]. Before the said resolution was adopted on July 12, 1920, the officials of the League of Nations circulated the materials of the case with a brief and simple note which said, among others, that the case was 'a matter affecting international relations' and that 'unfortunately threatens to disturb the good understanding between nations upon which peace

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[146] For a full account of the Aaland Islands question before the League of Nations, see, a mammoth work by James Barros, *The Aaland Islands Question: Its Settlement by the League of Nations* (New Haven: Yale University Press, 1968), especially Chapters I to III; Markku Suksi, 'The Aaland Islands in Finland'. In *Local Self-Government, Territorial Integrity and Protection of Minorities*. Proceedings of the UniDem Seminar in Lausanne, April 25-27, 1996. Science and Technique of Democracy, No. 16. *Council of Europe* (1996) pp. 25-50.

[147] Quoted in Philip Marshall Brawn, 'The Aaland Islands Question', p. 269.

depends'[148]. The Council of the League, acting as intermediary, stressed in its resolution of July 12, 1920 that 'an International Commission of three jurists shall be appointed for the purpose of submitting to the Council, with the least possible delay, their opinion, *inter alia*, as to wether, within the meaning of paragraph 8 of Article 15 of the Covenant, the case presented by Sweden to the Council with reference to the Aaland Islands deals with a question that should, according to International Law, be entirely left to the domestic jurisdiction of Finland.' The next issue to be dealt with by the Commission of Jurists referred to the demilitarisation/demilitarisation[149].

The Commission of Jurists, in dealing with other self-determination issues (apart from the above-mentioned ones) made some points which are of importance for the present. Thus, in its conclusions of September 5, 1920, the Commission made a distinction between domestic and international jurisdiction, giving the reasons behind this distinction as well[150]. Second, the Commission announced that self-determination was not an absolute right but a right that is realised on a case by case basis

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[148] Quoted in full, in Charles Noble Gregory, 'The Neutralisation of the Aaland Islands', p.63.

[149] *Official Journal, League of Nations, Special Supplement* No. 1 (August 1920) p.5. For comments, see, Philip Marshall Brawn, 'The Aaland Islands Question', p. 269.

[150] The Commission stressed the following reasons behind its conclusion: 1) The dispute between Finland and Sweden does not refer to a definitive political situation, depending exclusively upon the territorial sovereignty of a State; 2) On the contrary, the dispute arose from a *de facto* situation caused by the political transformation of the Aaland Islands, which transformation was caused by and originated in the separatist movement among the inhabitants, who invoked the principle of national self-determination, and certain military events which accompanied and followed the separation of Finland from the Russian Empire at a time when Finland had not yet acquired the character of a definitively constituted state; 3) It follows from the above that the dispute does not refer to a question which is left by international law to the domestic jurisdiction of Finland; 4) The Council of the League of Nations, therefore, is competent under paragraph 4 of Article 15, to make any recommendation which it deems just and proper in the case'. *Official Journal, League of Nations.Special Supplement* No. 3 (October 1920) p. 14. For comments, see, Philip Marshall Brawn, 'The Aaland Islands Question', p.270.

and upon an agreement. This further means that, apart from the will of the population, other factors such as economic, political and security ones, should be taken into account[151]. Finally, the Commission made a distinction between the consequences of self-determination that arise from the mere fact of state-formation and during that process and those emerging after a state has definitely established itself[152].

The Council of the League, meeting in September 1920, heard the report of the Commission of Jurists, declared itself competent to consider the question, and decided to appoint a Commission of Rapporteurs to visit the Islands, investigate the problem and make recommendations for its solution. The Commission of Rapporteurs had to tackle only the political

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[151] 'The fact must, however, not be lost sight of that the principle that nations must have the right of self-determination is not the only one to be taken into account. Even though it be regarded as the most important of the principles governing the formation of states, geographical, economic and other similar consideration may put obstacles in the way of its complete recognition. Under such circumstances, a solution in the nature of a compromise, based on an extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace'. *Official Journal, League of Nations. Special Supplement* No. 3 (October 1920) p. 6.

[152] The Commission of Jurists held in its report that ordinarily a state could decide for itself whether it should cede territory to another state and that such a matter was purely a domestic question under international law. But, stressed the Commission, 'the formation, transformation, and dismemberment of states as a result of revolutions and wars create situation of fact which, to a large extent, cannot be met by the application of the normal rules of positive law. The transformation from a *de facto* situation to a normal situation *de jure* cannot be considered as one confined entirely within the domestic jurisdiction of a state… This transition interests the community of states very deeply both from political and legal standpoints. Under such circumstances, the principle of self- determination of peoples may be called into play.' In this context, the Commission further held that it could not admit the fact that because the Islands had been unquestionably a part of Russian Empire, they should therefore automatically become a part of Finish State. *Official Journal, League of Nations, Special Supplement* No. 3 (October 1920) pp. 9 and 14. For comments, see, Norman J. Padelford and K. Kosta Anderson, 'The Aaland Island Question', p.474.

aspects of the issue. The report of the Commission of Rapporteurs, dated April 16, 1921, covers thirty-seven large printed folio pages and the annexes fourteen more pages. The Rapporteurs investigated the historical, political, strategic, and other facts having a bearing on the matter in dispute[153]. The Report certainly represents the most thorough and multidimensional treatment of self-determination ever made, the basis for its application and the consequences. Thus, after declaring, in its preambular part, that the Finish sovereignty stretches 'within the frontiers of the Grand Duchy of Finland, as it existed during the Imperial Russia', the Rapporteurs went on to say that:

'The principle is not, properly speaking, a rule of international law and the League of Nations has not entered it in its Covenant. This is also the opinion of the Commission of Jurists… It is a principle of justice and of liberty, expressed by a vague and general formula which has given rise to most varied interpretations and differences of opinion… To concede to minorities, either of language or religion, or to any fraction of a population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within states and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the state as a territorial and political unity… The separation of a minority from the state of which it forms a part and its incorporation in mother State can only be considered as an altogether exceptional solution, a last resort when the State lacks whether the will or the power to enact and apply just and effective guaranties'[154].

After consideration of the Report of the Commission and further hearing of the parties, the Council of the League of Nations adopted a resolution on June 24, 1921, recognising Finland's sovereignty over the Islands. In addition to this, in the following meeting of the Council, upon the

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[153] More on this, Charles Noble Gregory, 'The Neutralisation of the Aaland Islands', pp. 64 - 65.

[154] *League of Nations*, Document *B7.21/68/106/VII* at pp. 22-23. For comments, see, James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) pp. 85-86.

Belgian proposal, Finland and Sweden reached an agreement guaranteeing the rights of the local populace as recommended by the Rapporteurs. This agreement was unanimously approved by the Council and terminated the consideration of the case[155].

Although there was little development in the realm of self-determination before 1945, this case along with the plebiscites and the Mandates System (conventional application of self-determination in only exceptional cases, or the presumed expression of the free will as discussed earlier) demonstrated the political force of self-determination in the inter-war period. The Aaland Islands case does represent in particular a precedent and the very basis around which has revolved and the momentum gathered concerning the practice and theory of self-determination as its stands at present. Even in the cases of the anti-colonial self-determination that developed in the years after 1945, the institutions that emerged during the Aaland Islands precedent, such as *carence de souverainete*, took prominent place in the so-called *premature recognition*, applied by some states during the decolonisation process. This issues are discussed later again[156].

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[155] Cf. *League of Nations, Official Journal* (September 1921), at pp. 694-695; 701- 702.

[156] Scholars who wrote on the issue of the Aaland Islands in its early days argued that the case was salutary on one point, that is, 'on the limitation of the right of free self-determination, a toxic principle, which, unlimited and unrestrained, threatened the integrity and menaced the welfare of all nations and thus all men'. See, Charles Noble Gregory, 'The Neutralisation of the Aaland Islands', p. 76. However, we cannot accept this view because the League of Nations did not limit self-determination. It rather set up some basic criteria along which self- determination should be pursued in the future for the sake of peace and stability in the international system. The Aaland precedent has in later years up until now served as a guide to the UN and its organs, the practice of states and, not rarely, scholarly work. In terms of the respect for human rights and freedoms, implicitly present at the last paragraph quoted above ('…a last resort when the State lacks whether the will or the power to enact and apply just and effective guaranties'), the precedent is certainly a harbinger to the *Badinter Commission's* (and international community's) rulings over the Yugoslav self- determination and its connection to the corpus of human rights and freeddoms.

4. Self-Determination after the Second World War

The evolution of self-determination from a revolutionary and guiding principle into a legal entitlement following the end of WW II has not been a small process. This evolution in the post-1945 era has occurred within the opposing frameworks of sovereign state rights and state equality (juridical statehood). This opposition, in turn, resulted in alterations of the basis of international relations[157]. A new international standing was acquired and recognised to former colonies and their people. At the same time, no new states were created following the immediate aftermath of the Second World War (apart for controversial cases of East Germany, Korea and Vietnam). This is not to say that there were no changes in the territorial map of the world. They mainly related to border adjustments, sometimes stretching over vast areas. In these WW II border rearrangements, former Soviet Union achieved the most (both in Europe and in Asia)[158]. However, the end result was not the creation of new states.

The post-WW II international order resembled more than anything else the order created by the Congress of Vienna: it was a system based on the state sovereignty, that is, on the concept of state self-determination[159]. The Atlantic Charter of August 14, 1941, ascribed to by twenty-six Allied States as of January 1, 1942, bears no mention of self-determination. So does not the documents drafted in 1944 during the negotiation on the UN Charter held at Dumbarton Oaks in Washington. In the Atlantic Charter the focus of the Allies has been to declare null and void territorial changes made during the war and restore sovereign rights and self-government to those who had been forcefully deprived of

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[157] Elizabeth Chadwick, *Self-Determination, Terrorism and International Humanitarian Law of Armed Conflict.* (The Hague: Martinus Nijhoff Publishers, 1996) pp. 20-21.

[158] Russel H. Fifield, 'International Affairs: The Postwar World Map. New States and Boundary Changes'. *The American Political Science Review* Vol. 42, Issue 3 (June 1948) pp. 533-541 at 536-541.

[159] J. Sammuel Barkin and Bruce Cronin, 'The State and the Nation: Changing Norm and Rules of Sovereignty in International Relations'. *International Organisation* Vol. 48 No. 1 (Winter 1994) pp. 107-130 at 122-125.

them[160]. This attitude was later changed through regional proposals. Subsequent consultations at San Francisco, however, led to a further development which was ultimately to benefit the notion of self-determination: the consultations in San Francisco in 1946 saw an amendment tabled by the Soviet Union, which resulted in the insertion of the words 'based on respect for the principle of equal rights and self-determination of peoples' in the text of Articles 1 (2) and 55 of the UN Charter. Given the multiethnic character of the Soviet Union, its support for self-determination has been cautious and selective since Lenin's era and has served political purposes of Soviet expansion as discussed earlier. In an effort to forestall Soviet territorial expansion after WW II, the Western countries suggested the trusteeship system. Nevertheless, the role played by the socialist (Communist) theory in the formation and subsequent development of the UN Charter system has been crucial to an increase in the number of the issues of 'international concern' connected with self-determination: although the Charter's self-determination has been and remained state-centric, the Preambular words 'we the Peoples of the United Nations' have led to non-state-centric, cultural and other interpretations of the UN Charter and to demands for the redress of historic wrongs.

Provisions of the UN Charter (Articles 1/2 and 55) laid down the essence of self-determination but only at the level of a principle. Articles 1/2 and 55 of the UN Charter neither point to the various specific areas in which self-determination should apply nor to the final goal of self-determination. The drafters of the UN Charter did not have in mind the later forms of self-determination that emerged during the Cold War

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[160] The Allies declared that they 'desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned' and that they 'respect the right of all peoples to choose the form of government under which they live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them'. Cf. 'The Atlantic Charter', reprinted in *American Journal of International Law 35* (Supplement 1941). As for the Dumbarton Oaks negotiations, the British representatives rejected the inclusion of the self-determination phrase in the UN Charter because of the fears of her colonial possessions. Cf. Bengt Broms, *The United Nations* (Helsinki: Suomalainen Tiedeakatemia, 1990) pp. 41-48, 639-710.

period. What they had in mind, though, was the inclusion of self-determination's application within the concept of the existing states. Self-determination in the UN Charter was state-centric and this was a result of the fact that this time self-determination, as opposed to WW I, was not a war aim[161]. The forms of self-determination that evolved later, as we shall see, were the result of political pressure stemming from socialist countries, later joined by increasing number of newly independent Third World countries. In all its forms, before it reached the level of a legal right through various international instruments, self-determination's practical implementation was taken over by the events on the ground. In its first years of development, self-determination was equated with anti-colonialism. Apart from this initial form, self-determination took some other forms of manifestations in later years: the 'selves' were now considered as well the territories under alien military occupation and territories where the majority of coloured population were victims of institutionalised apartheid at the hands of Europeans. All these manifestations of self-determination were mostly a product of the diplomatic and other efforts of Afro-Asian-Eastern Bloc countries. The final form, that of the 1975 Helsinki approach, did not consider self-determination to be relevant only in colonial situations, foreign military occupation and racist regimes. The 1975 Helsinki Final Act, following the spirit of the 1966 Pacts on Human Rights, provided for a definition of self-determination that broke new grounds in international relations. The innovative part of this approach related primarily to internal self-determination with a distinct anti-authoritarian and anti-democratic thrust, thus putting the relationship between human rights and self-determination into a qualitatively different perspective. This perspective gave its fruits only after long period of time, that is, with the collapse of Communism and the end of the Cold War. Before this, the single-party system was regarded as compatible with the concept of representative democracy; in particular, pluralism and the rule of law were not always, if ever, considered as indispensable elements of the true democracy. In this period, internal self-determination meant freedom from outside interference.This was the constant practice of the UN Human Rights

[161] Antonio Cassese, *Self-Determination of Peoples. A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995) pp. 37-43.

Committee, a body set up by the 1966 Pact on Human Rights. Above all, this was practice in East-West relations[162].

In all manifestations, though, self-determination meaning full independence was strongly connected to the principle of territorial integrity of the existing sovereign states.

[162] See more on this in Ibid.pp. 62-65.

4.1. The Process of Decolonisation: Territorial Integrity as a Means of Preserving Territorial Integrity

Self-determination, as a right and a principle, did not appear in the 1948 Universal Declaration of Human Rights[163], although its article 21 did set forth some rights later identified with internal self-determination, without labelling them as such[164]. The rights contained in the Declaration were more of an individual and general character rather than referring to the specific claims to self-determination. In this latter form it appeared in the General Assembly's 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* (hereinafter referred to as Colonial Declaration)[165] to be incorporated as a human right in both of the 1966 UN Covenants on Human Rights[166]. In political terms, the turning point in this development was the *Bandung Conference* (1956). The emphasis of this conference was shifted from peaceful relations among sovereign states to independence from colonial rule. The final legal instrument in this respect was the 1970 *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations*

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[163] See, *United Nations General Assembly Resolution* No. 217A, UN Doc. A/810 (1948).

[164] Article 21 of the *Universal Declaration* says that:

'(1) Everyone has the right to tale part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in period and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.' See, UN Doc. A/811. For comments, see, Bengt Broms, *The United Nations*, pp. 574-584.

[165] See, *United Nations General Assembly Resolution* No. 1514 (1960), Supplement No.16 UN Doc. A / 4684 (1960).

[166] *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, Article 1, 993 United Nations Treaty Series (UNTS) 3; *International Covenant on Civil and Political Rights*, December 16, 1966, Article 1, 999 United Nations Treaty Series (UNTS) 171.

(Hereinafter referred to as Friendly Relations Declaration)[167]. This document was the first to recognise a growing consensus concerning the extension of self-determination other than to colonial areas.

[167] See, *United Nations General Assembly Resolution* No. 2625 (XXV), October 24, 1970. The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples foresaw the formation of a Special Committee of 24 to supervise its implementation. In the period until 1970, the work of this committee was sterile as a result of Soviet Union's use of this organ for Communist propaganda. This attitude was also obvious in the Mexico and New York City sessions of the Special Committee on Friendly Relations, held in 1964 and 1966 respectively. In later cases, though, Soviet Union and its satellites, with the support of some Third World countries, tried to limit the implementation of self- determination to colonial possessions only. This was without success because the 1070 Friendly Relations Declaration recognised the right to internal self- determination to other groups living within sovereign states and paved the way for further development of internal self-determination based on the rule of law, democracy and the respect for human and minority rights. The above groups included black majority in Southern Rhodesia and South Africa whose right to government was denied by the white minority. See, more on these issues, as well as the *travaux preparatoirs* of the Special Committee of 24, the Special Committee on Friendly Relations and the comments on the 1970 Friendly Relations, in Robert Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey'. *American Journal of International Law* Vol. 65 Issue 4 (October 1972) pp. 713-735 at 719-720, 724-726, 729-733; Seymour M. Finger, 'A New Approach to Colonial Problems at the United Nations'. *International Organization* Vol. 26 Issue 1 (Winter 1972) pp. 143-153; Elliot E. Goodman, 'The Cry of National Liberation: Recent Soviet Attitudes Toward National Self-Determination'. *International Organization* Vol. 14 Issue 1 (Winter 1960) pp. 92-106 at 93, 96-97, 101-102, 106; Eduard McWheeney, 'The 'New' Countries and the 'New' International Law: The United Nations' Special Conference on Friendly Relations and Cooperation Among States'. *American Journal of International Law* Vol. 60 Issue 1 (January 1966) pp. 1-33 at 9-11, 15, 19-22, 26, 30-33; Piet Hein Houben, 'Principles of International Law Concerning Friendly Relations and Cooperation Among States', *American Journal of International Law* Vol. 61 Issue 3 (July 1967) pp. 703-736 at 704, 709-710, 723- 724, 729, 731, 734-735; Antonio Cassese, *Self-Determination of Peoples*, pp.124-125.

The forms of self-determination enshrined in the above documents had previously been backed up by the practice of states and the events on the ground. No ethnic self-determination appeared within them and the states did nor endorse it either. Ethnic self-determination became a feature of Cold War's end. Only after this time onwards the states had to face the fact of dealing with ethnic claims to self-determination. This does not mean that these claims were recognized in practice. They were given due attention though. This was done in 1993 when the OSCE Vienna Declaration recognized the right to self-determination for ethnic groups under certain circumstances (see, infra page 40, footnote no. 84). This document, too, put a strong emphasis on the territorial integrity[168].

Until the mid-1950s, the issue of self-determination was not a pressing one. The UN focused mainly on the Cold War tensions and the role the Soviet Union played was a minor one compared to the later periods[169].

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[168] Compare the Preamble of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, and the paragraphs 4 and 6, the Preamble and the 'principle of equal rights and self-determination of peoples' of the 1970 Declaration on Friendly Relations. Along these lines, the Vienna Declaration on Human Rights, adopted by consensus on June 15, 1993 by 160 Member States of the UN, takes up the saving clause of the Declaration on Friendly Relations concerning conditions under which the territorial integrity of states shall be protected. However, the 1993 Vienna Declaration does not include the qualification relating to 'race, creed or colour'. It is now stated that a 'representative government' is a government 'representing the whole people… without distinction of any kind'. This means that territorial integrity of states is protected by saving clause only for those states whose governments represent the whole belonging to the territory without distinction of any kind.

[169] The US and the Western states considered the UN in this period as one of the aims and priority activities of their foreign policy. The famous 'X' article of George Kennan, published in *Foreign Affairs* in 1947 (serving as a groundwork for the future Western policy of containment towards the Soviets), ascribed the same role and importance to the UN in the US foreign policy. This was a normal consequence of Western policy during the Cold War tensions existing in interstate relationships. Cf. Quincy Wright, 'American Policy Toward Russia'. *World Politics* Vol. 2 Issue 4 (July 1950) pp. 463-481 at 466, 469-713. As soon as the colonial self-determination emerged threatening the stability of the international system during the 1950s, the Western countries gradually lost their

In this period, even a resolution was passed by the General Assembly to circumvent the veto power of the Soviet Union (the Uniting for Peace Resolution of November 3, 1950). It looked as if two-pronged and evolutionary strategy of the West on colonialism would work[170]. The accumulation of the anti-colonial sentiment as a result of the WW II events[171] gave to the Soviets by 1955 an upper hand expressing more radical views on self-determination of colonies as opposed to Western evolutionary views on this issue[172].

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interest and the faith in the UN as an instrument of their national policy. The UN became, especially its General Assembly, the propaganda tool in the Soviet Union's hands.

[170] In this regard, the UN Charter seemingly offered a strategy in its chapters XI, XII and XIII. First, in chapters XII and XIII the trusteeship system is discussed, the direct successor of the League of Nations' mandate system. This system covers: territories now held under mandate, territories which could be detached from enemy states as a result of the Second World War, and territories voluntarily placed under the system by states responsible for their administration *(UN Charter, article 77/I).* The Trusteeship Council, operating under the authority of the General Assembly and composed of governmental representatives, was set up to exercise the functions of the UN with respect to trust territories. It was given the power to consider reports submitted by administering power, to accept petitions without prior submission to the administrative power, to accept petitions without prior submission to the administering authority, and to make periodic visits to trust territories. Ibid. *Article 87*. As a counterpart to the trusteeship system, the Charter in Chapter XI (the Declaration Regarding Non-Self-Governing Territories), embodied a commitment by the Members controlling territories not placed under the trusteeship system to 'accept as a sacred trust the obligation to promote to the utmost… the well-being of the inhabitants of these territories'. Ibid. Article 73.

[171] Of this nature were the shattering of the colonial empires in the Far East after 1941, the mobilisation of the economies and recruitment of the manpower of the dependent territories as the war developed, the ideological influence of the Atlantic Charter, and the decline of Europe. All these events combined to release the forces for change in what by the 1950s was being called the Third World. Paul Kennedy, *The Rise and Fall of the Great Powers* (London: Fontana Press, 1988) p. 506; Brian Lappig, *End of Empire* (London: Paladin Books, 1989) pp. 25-42.

[172] Bernard Morris, 'Soviet Policy Toward National Communism: The Limits of Diversity'. *The American Political Science Review.* Vol. 53 Issue 1 (March, 1959) pp. 128-137 at 128, Rupert Emerson and Inis L. Claude, Jr., 'The Soviet Union and the United Nations.

The 1955 *Bandung Conference* was the first major political event in the process of decolonization[173]. This conference pressed more than any other organ before it for a speedy realization of decolonization process, for the UN to focus more on issues other than the usual Cold War's 'peace and security matters', and for 'measures to change a world which was still economically dominated by white men'. The movement started in 1955 and culminated in 1960 with the admission to the UN of seventeen ex-colonized states, sixteen of them African, and Cyprus. Five years later, the UN membership rose to 114 to which Africa no longer

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An Essay in Interpretation'. *International Organization.* Vol. 6 Issue 1 (February 1952) pp.1-26 at 21-23; Rupert Emerson, 'Colonialism, Political Development and the United Nations'. *International Organization* Vol. 19 Issue 3 (Summer, 1965) pp. 484-503 at 490-493. Following Second World War, leading Soviet lawyers (Korovin, S.B. Krylov, Tunkin, etc.) laid the doctrinal groundwork for the Soviet politics on anti-colonial self-determination. The essence of the Soviet doctrine was a gradual shift from state sovereignty as provided for in the UN Charter to the sovereignty of the dependent peoples and territories. Thus, sovereignty became a slogan of anti- colonial self-determination and lost its legal meaning as an attribute of statehood: the colonial peoples and their territories were accepted as subjects of international law and relations. Cf. W.W. Kulski, 'The Soviet Interpretation of International Law'. *American Journal of International Law* Vol. 49 Issue 4 (October, 1955) pp. 518-534 at 521, 525- 526.

[173] By this time, Asia had achieved its independence and Africa was at its most militant phase in the quest of its own. The final communiqué of the *Bandung Conference* expressed this quest of Africa: 'The Asia-African Conference declared its full support of the fundamental principles of human rights as set forth in the Charter of the United Nations and took note of the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations. The Conference declared its full support for the principles of self- determination of peoples and nations as set forth in the Charter of the United Nations and took note of the United Nations resolutions on the rights of peoples and nations to self-determination, which is a pre-requisite of the full enjoyment of all fundamental Human Rights'. Full text reprinted in Robert A. Goldwin, Ralph Lerner and Gerald Sourzh (eds.), *Readings in World Politics.* (New York: Oxford University Press, 1959) p. 539.

contributed four or five states but 35, while the Asian members had risen to fifteen and Middle Eastern to eleven[174].

The year 1960 marks the turning point in the development of the international system as we know it today[175]. With the adoption by the General Assembly of the *Colonial Declaration* (December 14, 1960), a new era in inter-state relations ushered in. The concept of juridical statehood, as opposed to the empirical one which had prevailed since the 1930s[176], based on full territorial integrity of former colonial borders

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[174] Rupert Emerson, 'Colonialism, Political Development, and the UN'. *International Organization* Vol. 19 Issue 3 (Summer 1965) pp. 484-503 at 485.

[175] Alexis Heraclides, 'Secessionist Minorities and External Involvement'. *International Organization* Vol. 44 Issue 3 (Summer 1990) pp.341-378 at 344; Robert H. Jackson, 'Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World'. *International Organization* Vol. 41 Issue 4 (Autumn, 1987) pp. 519-549 at 524.

[176] The usual point of departure for empirical statehood is Article 1 of the Montevideo Convention on Rights and Duties of States (1933), which declares as follows: 'The State as a person of international law should posses the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states'. As quoted in Ian Brownlie, *Principles of Public International Law*, p. 74. The principle of effectiveness meant that international statehood was empirical, not juridical. That is to say, a state had to prove unambiguously that it fulfilled all of the above criteria for international statehood before it gained international recognition of its statehood. This practice prevailed well until 1945. See, Gaetano Arangio Ruiz, *L' Etat dans le sens du Droit des Gents et la Notion du Driot International* (Bologna: Cooperativa Libraria Universitaria, 1975) pp. 265-281. This, in essence Westphalian concept does not mean that after 1945 there were changes in the realm of international statehood as described here. All it means is that by this time the principle of effective government was not that important regarding colonies. This further meant that outside the colonial context the principle of effective government would apply in full. The basic tenets of this Westphalian or realist concept remained unaltered, meaning that states retain their responsibility to mutually recognize each others autonomy and juridical equality. Cf. Daniel Deudney and G. John Ikenberry, 'The Nature and Sources of Liberal International Order'. *Review of International Studies.* Vol. 25 No. 2 (April 1999) pp. 179-196 at 187.

affected the interstate relations in time of peace but also in times of war by recognizing an international standing for non-state actors. Sovereignty now belonged to self-determination units (former colonies), not the state per se. This was an invention of the Soviet doctrine[177]. Democracy, the rule of law, respect for human and minority rights were not a precondition for the international realisation of (juridical) statehood[178]. The jurisdiction of these new states stretched, as noted (see, infra pp. 14-16), along former colonial administrative borders and over highly heterogenous populations[179]. This 'new territorial nationalism' in Africa and elsewhere took the existing colonies as setting the frame of

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[177] For the development of this idea in practice, see also, Heather Wilson, *The Use of Force by National Liberation Movements*, Chapters II and III; Elizabeth Chadwick, *Self-Determination, Terrorism*, Chapters I to III.

[178] In some cases, Africa being the worst case, bad record on human rights and the non-fulfillment of the above postulates were tolerated instead. This was done for the sake of international stability. The juridical statehood meant that new African leaders had to take care only about their external or foreign relationships. See, Robert H. Jackson, *Quasi States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990) pp. 139-163; Rupert Emerson, 'The Fate of Human Rights in the Third World'. *World Politics* Vol. 27 No. 2 (January 1975) pp. 201-226.

[179] For example, on the African continent only four sovereign states, - Swaziland, Lesotho, Botswana and Somalia, - certainly not among most powerful, contain ethnically homogeneous population. Asia is different in this regard. The juridical statehood was not applied because the European-based, empirical statehood, was in place even after the colonization and the border system and the regime for their maintenance were more or less based on Western concepts. In Asia the effect of the era of colonization was less marked because the ethnic identity of the peoples had already been established. Korea, for example, had an ancient heritage of independent existence under its own ruler so that Japanese domination served less as a unifying force than a stimulant to national awareness and political action. In Indochina, much the same was for the Vietnamese and the Cambodians, both of which peoples looked back, after becoming colonies, to long centuries of separate, if checked, existence. Cf. Rupert Emerson, 'Nationalism and Political Development'. *The Journal of Politics* Vol. 22 Issue 1 (February 1960) pp.3-28; Robert I. Solomon, 'Boundary Concepts and Practice in Southeast Asia'. *World Politics* Vol. 23 Issue (October 1970) pp.1-23 at 15-16.

political reference[180]. The ethnic mixture, combined with the lack of state traditions on the part of these states, could not but produce undemocratic regimes. The new multiethnic states, largely supported by the international rules, norms and institutions on territorial integrity and sovereign equality of states, tended to become less and less democratic in their response to the growing threat of nationalistic movements within them[181].

The invention of juridical statehood during the decolonization process was based on the international rules, norms and institutions on territorial integrity and sovereign equality of states. This development has been considered as one of the ways of the expansion of international society, which by 1960 took an universal character[182]. Independence of these new states, therefore, was not a result of the development of individual colonies to the point of meeting qualifications for statehood in its empirical sense. On the contrary, their statehood stemmed from a rather sudden and widespread change of mind and mood about the international legitimacy of colonialism which aimed at and resulted in its abolition as an international institution[183]. This is not to say that the process of

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[180] Rupert Emerson, 'Nationalism and Political Development', pp. 3-28 at 14. The role of the new states in Africa and elsewhere in former colonies has been to shape new nations composed of various nationalities. By the time of independence of these new countries, the nations existed only in the persons of the nationalists themselves since they were the only people who had beyond the tribal horizons and had come to a broader sense of the society in which they lived. Ibid. pp.14-17. Formally speaking, former colonies in Africa and Asia have been under a common government with its uniform economy and system of law and administration, but in practice they have lingered very largely within the framework of their traditional societies and have barely, if ever, been brought into any significant degree of association with their fellow colonisers.

[181] Walker Connor, 'Self-Determination: The New Phase'. *World Politics* Vol. 20 Issue 1 (October 1967) pp.30-53 at 51-52.

[182] For a remarkable collection of essays analysing this process of expansion, see, Hedley Bull and Adam Watson (eds.), *The Expansion of International Society*. (Oxford: Clarendon Press, 1984), especially Parts I and II.

[183] Robert H. Jackson, 'Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and Third World', pp. 519-549 at 524-526.

decolonization leading to this kind of new statehood in favor of former colonies developed within the United Nations *per se.* Or, at least, it was not a result of its initiative. The United Nations role in this period was to promote self-determination only in the sense of determining territorial independence[184]. At the same time, the UN served as a place where national policies on colonialism were reflected and, consequently, the views on the anti-colonial self-determination crystallised[185]. Among these views, those pertaining to the juridical statehood (negative, not positive/or empirical, sovereignty) based on the territorial integrity of former colonies took the most prominent place[186].

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[184] Ali A. Mazrui, 'The United Nations and Some African Attitudes'. *International Organization*, Vol. 18 Issue 3 (Summer 1964) pp. 469-520 at 519-520.

[185] Viewed in the large, the long struggle for self-determination in Africa, both north and south of the Sahara, came to eventual fruition outside rather than within the United Nations. In a very real sense the UN was instrumental in advancing the independence of Somalia, Togoland, the Cameroons, and Tanganyika by means of the stimulus, pressures and assistance brought to bear through the trusteeship system. The UN certainly aided Libya in achieving its independence and establishing its statehood. It would be foolhardy to say that the debates and resolutions in the General Assembly on the Tunisian and Maroccan questions in 1950-1951 did not play some part in hastening ultimate French agreement to their independence. And, at the time of Suez, the actions of the special emergency session of the General Assembly in calling by an overwhelming vote for a cease fire and the withdrawal of British, French and Israeli forces from Egyptian soil, together with the establishment of the UN Emergency Force to take over the Suez and then to police the Gaza strip, certainly were not an insignificant factor in preserving the independence and the territorial integrity of Egypt. For the vast majority of the newly independent states, nevertheless, actions taken by Britain, France, and Belgium outside the UN through the collaboration or at least agreement with nationalist leaders of the various lands were the decisive factor in their attainment of independence. However, not all scholars agree on this matter. Ali Mazrui, for example, goes so far as to blame the UN for having had a destructive and destabilising role in the process of decolonisation. He thinks that the UN was involved in the process of destroying the empires and that this process was 'a process of unconscious long-term self- destruction'. Cf. Ali A. Mazrui, 'The United Nations and Some African Political Attitudes', pp. 499-520 at 500 and 517.

[186] Negative sovereignty, as opposed to positive or empirical one, meant that independence would belong only to the former colonies and as such not be extended to nationalities or

Besides the first and the second, a third type of self-determination that emerged in this period was that of peoples living under military occupation. Compared with the Colonial Declaration, this self-determination was not based on territory but on the position of the peoples living under military occupation, a situation similar to that foreseen by the Friendly Relations Declaration. However, as opposed to the latter, self-determination pertaining to the peoples living under military occupation did not have an internal character (nature). This means that it was not related to the self-government of the peoples living within sovereign and independent states[187].

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ethnic communities or groups living within former colonies. See, more, in Robert H. Jackson, *Quasi- States: Sovereignty, International Relations, and the Third World*, pp. 50-81, especially at pp. 74-78. With the attainment of independence, the African states 'crossed the divide' from the dynamics of self-determination into the area of states – that is, the maintenance of independence and of frontiers – and the protection of territorial integrity became a meeting place of the old quest for self-determination and the new concern for the status quo. For many African states the problem had become transformed from the political issue of urging self-determination to the legal and political one of insisting on territorial integrity. Such a concept had no meaning in itself without the territorial definition supplied by the adoption of the existing boundaries drawn in the past by the colonial powers, however artificial they might have been in terms of ethnic, economic or geographic factors. Cf. John H. Spencer, 'Africa at the UN: Some Observations'. *International Organization*, Vol. 16 Issue 2 (Spring 1962) pp. 375-386 at 382; Robert O. Mattews, 'Interstate Conflicts in Africa: A Review', pp. 339-342; David Meyers, 'Interregional Conflict Management by the Organization of African Unity' *International Organization* Vol. 28 No. 3 (Summer 1974) pp. 345-373 at 364-365; Sarah Joseph, 'Resolving Conflicting Claims of Territorial Sovereignty and External Self-Determination: Part 1'. *The International Journal of Human Rights* Vol. 3 No. 1 (Spring 1999) pp. 40-61 at 42, 44, 47, 52.

[187] This form of self-determination concerns the cases of the Arab territories occupied by Israel, Cambodia and Germany after WW II. These cases are known in literature as a 'prolonged military occupation'. See, Adam Roberts, 'Prolonged Military Occupation: the Israeli-Occupied Territories Since 1967'. *American Journal of International Law* Vol. 84 No. 1 (January 1990) pp. 44-103; Eyal Benvenisti, *The International Law of Occupation* (Princeton, New Jersey: Princeton University Press, 1993) pp. 107-190.

From among the forms of self-determination discussed so far that concerning the institution of colonialism and its abolition was strongly connected to territory. As soon as self-determination was achieved, meaning full independence, no right to secession was recognized for other ethnic, religious or linguistic groups or communities living within newly independent states[188]. The UN itself and most of the members of the international community strongly supported the territorial integrity of former colonies, now sovereign and independent states. *U Thant*, in his capacity as the UN Secretary General, stated in February 1970 that the United Nations 'has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member State'[189]. This attitude was fully endorsed by the *International Court of Justice*[190], while the scholars remained divided over it.

Those scholars who predicted that the 'anti-colonial character of nationalist movements in colonial countries was likely to lend a deceptive sense of national unity' and that 'the fact that a people can stage a consolidated anti-imperial movement conveys no assurance that it will be able to maintain political coherence once the imperial enemy

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[188] Michael K. Addo, 'Political Self-determination within the Context of the African Charter on Human Rights'. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 257-278; Richard N. Kiwanuka, 'The Meaning of 'People' in the African Charter on Human and Peoples' Rights'. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 279-300.

[189] *7 United Nations Monthly Chronicle 36* (February 1970) p.1.

[190] In the practice of the International Court of Justice, the principle of the inviolability of the previous administrative borders (*uti possidetis juris*) was discussed in the *Western Sahara Case* (1971); *Burkina Faso v. Republic of Mali Case* (1986); and in the *Territorial Dispute Case: Libya v. Chad* (1994). Among them, only two previous cases are discussed in this dissertation. In the latter case, Libya and Chad submitted to the Court a long standing dispute over territorial claims in their border region, including the *Aouzu* strip. The Court allocated virtually all of the disputed territory to Chad, in accordance with the *uti possidetis* principle, not taking into account other historical, geographic, ethnic or other factors. Cf. *Territorial Dispute (Libya v. Chad)*, 1994 ICJ Reports (February 3), also reprinted in 33 *International Legal Materials* (ILM) 371 (1994).

has vanished' proved to have been correct[191]. In the aftermath of the first, the largest ever wave of decolonisation that occurred by the end of 1950s and the beginning of 1960s, national coherence of new states was challenged. However, in one case only the secessionist movement was successful (Bangladesh), while in other cases the movements were suppressed (Katanga and Biafra). The reasons behind this state of affairs rest upon the preservation of international (peace) and stability, which in scholarly work has been explained through different perspectives and concepts.

These reasons can be divided into two groups, subjective and objective ones. Some authors believe that in Africa new leaders accepted the former colonial borders as international frontiers, like in Latin America a century earlier, due to personal inclinations of the new African elite towards the metropolis[192]. As for the objective or external reasons, scholars most frequently mention the spheres of interest. That is, new African states accepted as valid those abstract lines (borders) that were set up in 1844-45 in the Berlin Colonial Conference without any account given to the internal factors and their dynamics already under way within these states. Ethnic diversity and highly diversified social structure of African societies fitted well to the concept of colonial borders. The other way around would have only caused consecutive wars of secession and bloodshed, as seen in the cases of *Katanga* and *Biafra*, or in protracted interstate conflicts as in the Horn of Africa[193]. In other cases, the territorial integrity of the former colonial borders

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[191] Rupert Emerson, 'Nationalism and Political Development', p. 8.

[192] Alejandro Alvarez, 'Latin America and International Law', pp.269-353 at 288; Steven R. Ratner, 'Drawing a Better Line: *Uti Possidetis* and the Borders of New States'. *American Journal of International Law* Vol. 90 Issue 4 (October 1996) pp. 590-624 at 592; Jeffrey Herbst, 'The Creation and Maintenance of National Boundaries in Africa', pp. 676-678.

[193] Ravi L. Kapil, 'On the Conflict Potential of Inherited Boundaries in Africa', pp. 656-673; Particia Berko Wild, 'The Organization of African Unity and the Algeria- Maroccan Border Conflict: A Study of New Machinery for Peacekeeping and for the Peaceful Settlement of Disputes Among African States', pp.18-36; Friedrich Kratochwil, 'Of Systems, Boundaries, and Territoriality: An Inquiry Into the Formation of the State System', pp. 36-41.

delimiting the jurisdiction of the new states turned out to be a source of ethnic conflict leading to the largest ever commitment undertaken by the international community (the case of Cyprus). The remaining cases, unsettled as yet, such as Western Sahara and Kashmir, to mention just a few, are maverick examples of the colonial heritage. In the case of Sahara, a large body of practice worth of further theoretical elaboration has been produced. This case exercised an impact on the frame and basic texture of self-determination, in particular concerning the manner of manifestation of the wishes of the potential 'selves' (the expression of the free will of the population). This is the reason behind our decision to examine the Western Sahara case further before taking up the cases of *Bangladesh, Biafra* and *Katanga*[194].

[194] The case of Cyprus, not discussed here in details, is from a formal (legal) standpoint very similar to that of today's Bosnia-Herzegovina. The Dayton solution for Bosnia (1992) and the solutions agreed upon at the *Zurich Talks on Cyprus* (February 10-11, 1959) between the representatives of Turkey, Greece and the Turkish and Greek communities of Cyprus and additional agreements signed at the *Cyprus Conference* (London, February 19, 1959) equally protect the territorial integrity and sovereignty of these two states based on the principle of *uti possidetis juris.* The solutions for both cases during the crisis in these two countries were based on the above principle. The situation on the ground, though, differs very much. While in the case of Cyprus the areas inhabited by its constituent nations, Greek and Turkish Cypriots respectively, correspond to the pre-1962 situation, in the case of Bosnia the territories inhabited by its constituent nations were carved up by violent means leading to the commission of crimes against peace and humanity (the Serb and Croat areas respectively). Full texts on the Cyprus case, see, *the Conference on Cyprus, British Parliament Papers, NO. 4/Misc. Cmnd. 679* (London, 1959). For comments on this, see, also, Meir Ydit, *Internationalised Territories* (Leyden: A. W. Sythoff, 1961) pp. 77-83; Zaim M. Necatigil. *The Cyprus Question and the Turkish Position in International Law* (Oxford: Oxford University Press, 1989), especially Chapter 1, pp. 1-28 and Chapter 13, pp. 272-288; For the Bosnian case, see, The Dayton Peace Accords (http://www.State.gov/www/current/bosnia/daytable.html). For comments on the status of Bosnia according to the Dayton solution, see, Noel Malcolm, Bosnia. A Short History. (London: Macmillan, 1997); P. Rubin, Dayton, Bosnia and the Limits of Law'. *The National Interest* No. 46 (Winter 1996/97) pp.41-46.

4.1.1.The Case of Western Sahara

Western Sahara is a small country, rich in mineral resources but scarcely populated. In regard to the self-determination issue, the case of Western Sahara represents a unique case, not only because it remains unsettled as of today but also due to the fact that it conclusively confirmed newly emerged rules on colonial self-determination as discussed here. This confirmation came first from the International Court of Justice[195] and was already endorsed, with few exceptions, by the OAU and most of the members of the international community[196]. There were two major

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[195] See, *Advisory Opinion on Western Sahara* (1975) ICJ Reports 12. This opinion was asked by the *UN General Assembly Resolution No. 3292, 29 GAOR, Supplement 31, UN Doc. A/9631 (1974)* at 103-104. See, also, Santiago Martinez Caro, *International Law and Organization: Cases and Materials* (Ankara: Meteksan, 2000) pp. 69-70. *The questions put to the Court by this resolution were as follows:*

'I. Was Western Sahara (Rio de Oro and Sakiet El Hamara) at the time of colonisation by Spain a territory belonging to no one (terra nullius)? If the answer to the first question is in the negative,

II. What were the legal ties between this territory and the Kingdom of Marocco and the Mauritanian entity?'

[196] Cf. The Assembly of the Organization of African Unity, *AHG/Res.17 (I)*, Cairo Ordinary Session, July 17 – 21, 1964. See, also, the *Charter of the Organization of African Unity*, Article 3 (3), which pledges respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence. As for the universal level of support, the first of a stream of resolutions calling on Spain to implement the Sahara's right to self-determination was passed in the UN Special Committee on the Situation with Regard to the Implementation of the Declaration on Granting of Independence to Colonial Countries and Peoples. (General Assembly *Resolution 1654*, 16 GAOR *Supplement* 17 at 65, UN Doc.A/5100 (1961), October 16, 1964; 19 General Assembly, GAOR, Annexes, Annex No. 8, Part I, at 290-291, UN *Doc.A/5800/Rev.1* (1964); the General Assembly followed suit one year later. Cf. General Assembly *Resolution No. 2072*, 20GAOR, *Supplement* 14, at 59-60, UN Doc. A/6014 (1965). Despite a rare and repeated display of public unanimity aiming among all the key states at the beginning of 1960s, the clear and normative prescriptions of the Charter of the OAU and the UN resolutions were nor followed. Instead, what occurred during the second half of the 1960s was the acceleration of efforts by all parties to arrange their preferred outcome behind a

issues in this case. First, the Court did not allow states, or did not recognize their right, to help themselves to adjacent territories on the basis of historic claims or titles: self-determination must be exercised within the confines of former (colonial) borders as of the time of independence[197]. Second, in line with the first point, boundary

façade of support for self-determination. At present, though, only Morocco sticks to historic title over Western Sahara while Spain and Mauritania have given up their claims over that territory. Cf. Thomas M. Franck, 'The Stealing of Sahara'. *American Journal of International Law* Vol. 70 Issue 4 (October 1976) pp. 694-721 at 703-707.

[197] By refusing to be narrowly bound to the questions asked by the UN General Assembly the Court was able to reframe the question essentially in the manner earlier proposed by Spain, i.e., how important in the final act of decolonisation is historic title as compared to the right of self-determination? Addressing its own question, the Court found that self-determination had become the rule and that independence, free association with another state, or integration into another state, while all legitimate forms of decolonisation, must come about only as a 'result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage'. Cf. *General Assembly 1541* (XV), 15 GAOR Supplement 16 at 29-30, UN Document A/4684 (1960), cited by the International Court of Justice with approval in its *Advisory Opinion*, pp. 1-120 at 32-30. The Court cited with approval various UN General Assembly resolutions setting out these prerequisites of popular consultation as ones specifically applying to the Sahara itself. Ibid. at 34-35. 'All these resolutions', the Court noted, 'were adopted in the face of reminders by Marocco and Mauritania of their respective claims that Western Sahara constituted an integral part of their territory'. Ibid. at 35. These claims were based on historic title. With that, the Court went on to consider the issue of historic title. After some examination of the evidence of political, military, religious, and fiscal practices in the region before Spain's arrival, the Court declared that 'the information before the Court does not support Marocco's claim to have exercised territorial sovereignty over Western Sahara'. While the information before it shows the display of some authority by the (Maroccan) Sultan' over some, but only some, of the nomadic tribes of the region, the evidence 'does not establish any tie of territorial sovereignty between Western Sahara and that State'. It does not show that Marocco displayed effective and exclusive State activity in the Western Sahara'. The 'inferences to be drawn from the information before the Court concerning internal acts of Maroccan sovereignty and from that concerning international acts are, therefore, in

readjustments must come as an expression of the democratically expressed will of those subject to the readjustment[198]. The occupation of Western Sahara by Morocco (and Mauritania for some time at the beginning), caused a continued bloodshed in Northern Africa which became an arena of Cold War's superpower rivalries, at the expense of the right to self-determination of the Sahrawi people. Moreover, the Saharan precedent has had an impact on the stability of the international system. The respect for existing boundaries and the rejection of the revisionist territorial claims based on allegations of historic rights were not taken into account in this case. This precedent showed the futility of

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accord in not providing indications of the existence, at the relevant period, of any legal tie of territorial sovereignty between Western Sahara and the Maroccan state'. Ibid. pp. 48-49; 56-57. In respect to Mauritania's claim, the Court's answer was essentially the same. Although there is evidence, said the Court, of the 'existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and territory of Western Sahara… the Court's conclusion is that the materials and information presented to it do not establish and tie of territorial sovereignty between the territory of Western Sahara and… the Mauritainan entity. Ibid. p. 68. In respect to Mauritania's claim, the Court's answer was essentially the same. Although there is evidence, said the Court, of the 'existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and territory of Western Sahara… the Court's conclusion is that the materials and information presented to it do not establish and tie of territorial sovereignty between the territory of Western Sahara and… the Mauritainan entity. Ibid. p. 68.

[198] The results of the Court were a sharp and essentially anonymous rejection both of Morocco's and Mauritania's historic claims. More important, the Court emphatically rejected the assertion that 'automatic retrocession' can take precedence over the inhabitant's rights to self-determination. Thus, the Court concluded that the rules applicable to decolonisation require respect for 'the right of the population of Western Sahara to determine their future political status by their own freely expressed will'. Ibid. pp. 36 and 120.

the UN and the domination of politics over law notwithstanding the destabilising effects of the Sahara's precedent[199].

[199] About the impact of the Sahara case on East Timor, Somalia's behaviour within the international system, the security of Israel, Gibraltar and the Falkland Islands, see, more in Thomas Franck, 'The Stealing of Sahara', pp. 694-721 at 719-721.

4.1.2.The Secession of Bangladesh

The case of Bangladesh is a unique one. This uniqueness stems from different factors: the case of Bangladesh has been and remains the only case of successful secession outside the colonial context, without having repercussions for other similar situations[200]. In literature on the subject of self-determination of East Pakistan, there have been given various reasons as to the international community's reluctance to forcefully prevent the secession of this country and its final independence from the West Pakistan as it did in the cases of Biafra and Katanga a decade earlier. Human sufferings due to military crackdown by West Pakistan's military, physical separation of East Pakistan from the West and their reciprocal ethnic, linguistic and cultural differences, the economic exploitation of East Pakistan from the West of the country and, finally, the fact that there was a majority determination by vote of independence

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[200] Conflict over Bangladesh began in March 1971 following the election victory by the Awami League of the East Pakistan (or Eastern Bengali as it used to be called) in December 1970. This league had been seeking an autonomous development and, by the end of 1960s, full scale independence from West Pakistan. To prevent this, West Pakistan sent into region huge military force which committed unseen atrocities against civilians, around ten millions of whom fled to neighbouring India. The latter was eventually dragged into conflict and won over military forces of West Pakistan. This military victory led to the establishment of an independent state of Bangladesh in December 1971. Despite widespread condemnation of the actions of the West Pakistan's military from Western, Eastern and Third World countries, the UN Security Council and the General Assembly did not discuss the situation until a full-scale war between India and Pakistan had started. See, *United Nations Security Council Resolution No. 307 (1971)*, adopted on December 21, 1971; *UN General Assembly Resolution No. 2793 (XXVI)*, adopted on December 1971. See, also, the UN Secretary General's Report on the situation, *UN Document No. S/10410 and Add.1,* December 3 and 4, 1971. For the genesis of this crisis, its development and the reaction of individual states, various NGOs and the UN organs and bodies, see, more in Ved P. Nanda, 'Self-Determination in International Law: The Tragic Tale of Two Cities-Islamabad (West Pakistan) and Dacca (East Pakistan)'. *American Journal of International Law* Vol. 66 Issue 2 (April 1972) pp. 321-336; Ivo Skrabalo, *Samoodredjenje i Otcepljenje. Pouke iz Nastanka Drzave Banglades.* (Zagreb: Skolske Novine, 1997).

for East Pakistan are among the reasons listed in literature in favour of the above stance of the international community towards this case[201].

Physical separation of East from West Pakistan, comprising miles of Indian territory, rendered the Eastern claims for independent statehood far more feasible in the eyes of international community than it did in the cases of *Katanga* and *Biafra*. An independent East Pakistan (Bangladesh) was not seen as a destabilising unit in Asia, nor did it threaten the economic viability and political stability of its mother (parent) country, circumstances clearly absent in the cases of Biafra and Katanga. Seen as a factor of stability in the eyes of the international community, rather than the opposite, the Bangladeshi government gained speedy recognition of its international statehood as early as the beginning of 1972[202]. The physical position of former Pakistan (East and West), along with the internal dynamics of that society following the separation from India in 1947, rendered the principle of territorial integrity useless, that is, its further preservation was seen as a continuous threat to the peace and stability in that part of Asia. In Africa, the situation was different: any major change in colonial borders would have led to a chain of domino effects throughout the countries bordering Biafra and Katanga respectively.

As we saw earlier in Chapter II, borders in Africa have had a different history. The ethnic diversity of the Continent is highest in the world and this makes costly any border redrawing. It would certainly have had wider implications for peace and stability in this part of the world[203]. Paradoxically, though, this fact stands at the same time for, and makes of, the very crux of the African stability. This situation explains the international community's reluctance and its strong opposition to Katanga's and Biafra's secessions. In Africa there was, compared with other situations, a striking contradiction between the right of 'all peoples'

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[201] See, more on this, in Ved P. Nanda, 'Self-Determination in International Law', pp. 321-336 at 328-324; 336; Ivo Skrabalo, *Samoodredjenje i Otcepljenje*, pp. 43-50.

[202] Ved P. Nanda, 'Self-Determination in International Law', pp. 334-336; Ivo Skrabalo, *Samoodredjenje i Otcepljenje*, pp. 65-71.

[203] Jeffrey Herbst, 'The Creation and Maintenance of Borders in Africa', p. 692.

to self-determination and the right of states to their 'territorial integrity'. It is the African context which led some notable authors, Rupert Emerson, James Crawford and Antonio Cassese, to see too little room left for self-determination, meaning independent statehood, apart from the pure colonial context[204]. The UN practice has supported the conclusions arrived at by these authors: the cases of Katanga (Zaire/Kongo) and Biafra (Nigeria) are the most conspicuous examples of the prevalence of the principle of territorial integrity over self-determination of peoples, no matter the popular wishes and the human costs engaged. The principle of territorial integrity proved to be a stabilising factor in the countries bordering Congo/Zaire and Nigeria respectively.

[204] Cf. Rupert Emerson, 'Self-Determination'. *American Journal of International Law* Vol. 65 Issue 3 (July 1971) pp. 459-475; James Crawford, *State Practice and International Law in Relation to Unilateral Secession.* (Cambridge: Cambridge University Press, 1997). (http://www.Canada.Justice.gc.ca/). But, Crawford has also labelled the principle of territorial integrity as 'undemocratic' in his earlier essay *Democracy in International Law* (Cambridge: Cambridge University Press,1994) pp. 8-10, thus extending the principle's application beyond original colonial context. In a similar fashion, Antonio Cassese, in his book *Self- Determination of Peoples. A Legal Reappraisal*, pp. 315-365, strongly supports the restrictive view of self-determination, not extending its application to sovereign and independent states. While discussing the dissolution of former co mmunist states (Soviet Union, Yugoslavia and Czechoslovakia), Cassese clearly compares them with former colonies thus excluding any right to self- determination in favour of non-federal (or non-Union) republics existing in these countries at the time.

4.1.3.Two Failed Attempts at Secession: Katanga and Biafra

Katanga, a province of Congo/Zaire, is an area with an enormous economic wealth in natural resources[205]. Its natural resources seems to have been the main cause of secession from Congo/Zaire[206]. In the years preceding the declaration of independence on July 11, 1960, there had been formed scores of political organizations representing various interest groups: settlers (*Federation des Associations de Colones du Congo et du Ruanda - Urundi - Fedacol*), tribes of Katanga (*Confederation des Associations Tribales du Katanga - Conakat)*, and 'alien' tribes, mainly Kasain immigrants (*Federation Kasaienne - Fedeka)*[207]. Apart from these political groupings there existed other Belgian-run, for economic and commercial purposes, corporations, such as the *Union Miniere du Haut Katanga (UMHK)* and *the Compagnie du Chemin de Fer du Bas Congo au Katanga (Beceka).* Ultimate control over the *UMHK* and *Beceka,* however, was exercised by the *Societe Generale de Belgique*, unquestionably the most powerful of the five corporate groups which dominated the Congo economy during its colonial days[208].

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[205] See, in details, on this in Rene Lemarchand, 'The Limits of Self-Determination: The Case of Katanga Secession'. *The American Political Science Review* Vol. 56 Issue 2 (June 1962) pp. 104-416 at 405-406.

[206] In literature, economic considerations are put foreword as one of the causes of secession. Liberal view supports this argument as well. Thus, *Buchanan* holds that the right to secession must be derived from variety of ethical considerations. Two features of his theory are particularly noteworthy. The first is that it emphasises *economic discrimination* as a relatively strong ground for secession. The second is the low value that it accords to the preservation of cultures, because cultures change over time; because liberal should value culturally plural states; because secession for the sake of cultural self-determination would lead to indefinite divisibility; and because culturally-based secessions are likely to lead to serious human-rights violations. Cf. A. Buchanan, *Secession: The Morality of Political Divorce from Sumter to Lithuania and Quebec* (Boulder: Westview Press, 1991) pp. 48-51.

[207] See, more, in Rene Lemarchand, 'The Limits of Self-Determination', pp. 410- 412; Ivo Skrabalo, Samoodredjenje i Otcepljenje, pp. 43-50.

[208] See, Rene Lemarchand, 'The Limits of Self-Determination', pp. 405-406.

Among the several factors which predisposed the Katanga leaders to claim full independence, at least three deserve emphasis. One is the sense of economic grievance which forged the attitude of the *Conakat* towards the inhabitants of the other provinces of Congo/Zaire. A second factor was the part played by the *Fedacol* in making the idea of secession both economically attractive and politically meaningful. A third explanatory factor lies in the outside support accorded by Belgian metropolitan interests to the advocates of secession. This by itself did not provoke the emergence of secessionist claims. But it provided the external stimulus which made the prospects of a secession increasingly attractive. And in the event, this is what made it feasible.

For the most part, individual states did not recognize the independence of Katanga[209], while the Belgian government itself made a declaration as far back as in January of 1959, making it quite plain that Belgium recognized the claims of the Congo/Zaire to self-government. Equally plain was the assumption that the entire Congo/Zaire was destined to remain a distinct geographical and political unit[210]. Nevertheless, its independence was not recognized internationally. Threats to the peace and stability in the African continent seems to have led the individual states' rejection of Katanga's independence[211]. By the same token, its collective recognition was also denied on the same ground. This was clearly expressed by the UN Security Resolution, adopted on November 24, 1961, 'completely rejecting the claim of the Katanga as a sovereign independent nation' and 'recognizing the government of the Republic of

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[209] United Nations (ed.), *The Blue Helmets. A Review of United Nations Peace - Keeping* (New York: UN Department of Public Information, 1990) pp. 239-340. In the Katanga affair, East-West cleavage, characteristic of the Cold War, come to the surface, with the West sympathetic to President *Tshombe* of the Katanga Province and the East supporting the central government of Congo/Zaire. Cf. John H. Spencer, 'Africa at the UN: Some Observations', pp. 375-386 at 377. However, on the issue of formal recognition, no serious steps were taken by the West or Western-oriented countries of the UN.

[210] As quoted in Rene Lemarchand, 'The Limits of Self-Determination', p. 410.

[211] Cf. Ibid. p. 416 ; Rupert Emerson, 'Pan-Africanism'. *International Organization* Vol. 16 Issue 2 (Spring 1962) pp. 275-290 at 277and 279.

Congo as exclusively responsible for the conduct of the external affairs of the Congo'[212].

Biafra (Nigeria) was the next test for the international community where the principle of territorial integrity clashed with the ethnic/regional self-determination. It is in many respects identical with the case of Katanga. However, this case is the most tragic event in post-colonial Africa as far as self-determination is concerned: the resulting war, which lasted two and a half years, produced over a million casualties from military action, disease, and starvation[213]. In the case of Biafra, it was proved continuously that the opening article of the *Covenants on Human Rights* to the effect that 'All peoples and all nations shall have the right to self-determination' carries much less weight in postcolonial Africa than the seemingly contrary principle of the 1960 *Colonial Declaration*, which stipulates that 'Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations'[214].

The independence of Biafra was declared on May 30, 1967, following the tragic events of July 29, 1966. On this latter date, *a coup* occurred in the Nigerian capital. The Northern troops systematically killed about 240 Southern officers and men, of whom at least three-quarters were Easterners. This action destroyed the Nigerian army as an effective agent of Nigerian unity[215]. A series of unilateral moves in the areas of economic and political relations by both the East and the centre of Nigeria undertaken between July 1966-May 1967, simply served to

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[212] See, UN Security Council Resolution S/5002 (S/4985/Rev.1, as amended).

[213] Charles R. Nixon, 'Self-Determination: The Nigeria/Biafra Case'. *World Politics* Vol. 24 Issue 4 (July 1972) pp. 473-497 at 473.

[214] Rupert Emerson, 'Self-Determination Revisited in the Era of Decolonisation'. *Occasional Paper No. 9* (Harvard: Centre for International Affairs of the Harvard University, December 1964) pp. 1-29 at 27-29.

[215] Charles R. Nixon, 'Self-Determination: The Nigeria-Biafra Case', pp. 473-497 at 475.

escalate the conflict which lasted until the collapse of Biafra in January 1970[216].

There are several factors that scholars have put foreword in their attempts to explain the causes of Biafra's attempt at secession. The leaders of Biafra (the Easterners) believed that the security of their lives and property could not be maintained if they were subject to the control of the Nigerian government as then constituted. Second, they believed that a negotiated solution had been effectively frustrated by the central government. Third, the Easterners also believed that the secession would be recognized as a legitimate step throughout Nigeria, if not actually supported and/or imitated by the rest of the Nigeria. Fourth, they believed that the move to independence had popular support in the Eastern region[217].

The recognition of Nigeria's independence on October 1, 1960, along with the discovery of huge amount of oil reserves, changed the internal dynamics of the Nigerian civil war. Other regions of the country turned united against the Biafra Region[218]. Only the internal support never

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[216] However, Biafra was recognized as a sovereign and independent state by Tanzania (April 17, 1968), Gabon (May 1968), Zambia (May 20, 1968) and, lately, Haiti. See, Chris N. Okeke, *Controversial Subjects of Contemporary International Law* (The Netherlands: Rotterdam University Press, 1974) pp. 158; See, also, David Meyers, 'Interregional Conflict Management by the Organization of African Unity'. *International Organization,* pp. 345-373 at 364- 365.

[217] Charles R. Nixon, 'Self-Determination', pp. 476-482.

[218] As the prospects of Eastern independence and secession became more likely, the detrimental consequences of this for other areas become clearer. These concerns, plus the already strong commitment of many leaders to the principles of Nigerian unity – which they viewed as being as vital to Nigeria's future development as the preservation of the American Union in 1861 was to America's future – served to build support within Nigeria for the conviction that Biafran independence was indeed incompatible with the development of Nigeria. Thus, neither a simple moral concept which an abused people (the Biafrans) can invoke unilaterally to impose its own solution on others, nor the strong support within the region claiming independence (Biafra itself), did suffice for the attainment of an internationally recognized statehood. It was the already established

seriously weakened. On the other hand, the individual states (apart from five African countries) were highly reluctant to recognize the independence of Biafra[219]. Even France and Portugal, who favoured very much the Biafran claims, did not recognize its independence due to the same reasons as those put foreword in the case of Katanga. At the regional level, the OAU, despite its divisions over the issue, firmly stood against the independence of Biafra. The UN followed the suit even more united than the OAU[220]. Fear that the success of Biafra would stimulate similar claims elsewhere was one important constraint on further recognition of Biafra: there prevailed assumption that the principle of self-determination applied equally to all colonial territories but that once independence was attained, the principle of self-determination was fulfilled. After this, the concept had no further applicability to subsequent political changes in former colonial areas.

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norm on territorial integrity of former colonial borders that proved stronger than the above facts.

[219] It has been suggested that there was no real consensus in Africa as to the opposition to the attempted secession of Biafra from Nigeria. In this regard, only Tanzania, Gabon, Ivory Coast, Zambia and Haiti formally recognized Biafra's independence. See, Alexis Heraclides, *The Self-Determination of Minorities in International Politics*, pp. 95, 103.

[220] See, in a more detailed manner, in Chris N. Okeke, *Controversial Subjects of Contemporary International Law*, pp. 158-177.

4.2. The Conference on Security and Cooperation in Europe: Its Background and Beyond

The Conference on Security and Cooperation in Europe represents a follow-up to the process of *détente* that emerged in the 1970s in the East-West relations. The OSCE process based on the Helsinki Final Act was of a dual nature, especially concerning its principles. On the one hand, it was an instrument of *détente* policy aimed at reducing tensions, building confidence, and strengthening cooperation. On the other, it could be used to challenge the status quo in the East of Europe and to promote a far-reaching system change, which in fact it did by the time the Cold War ended[221].

The Final Act of the Conference on Security and Co-operation in Europe (later renamed OSCE, hereinafter referred to as OSCE) was signed in Helsinki on August 1, 1975, by Chiefs of State and other high representatives of 33 European countries[222], the United States and Canada. The Final Act is divided into what has become known as three 'baskets'. Basket I deals with questions relating to security in Europe and comprises *Declaration on Principles Guiding Relations between Participating States*, some related texts concerning implementation of the principle of abstention from the threat or use of force, and a proposal for a new system for the peaceful settlement of disputes as well as some modest confidence-building measures entailing notification of military manoeuvres and voluntary exchange of observers at such manoeuvres.

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[221] See, more, in Stephan Lehne, *The Vienna Meeting of the Conference on Security and Cooperation in Europe, 1986-1989.* (Boulder, San Francisco, Oxford: Westview Press, 1991) pp. 1-55; Ljubivoje Acimovic, *Problemi Bezbednosti i Saradnje u Evropi* (Beograd: IMPP i Prosveta, 1978) pp. 31-68.

[222] European participants were: Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of the Soviet Socialist Republics, the United Kingdom, and Yugoslavia. For a complete sixty printed pages of the text of the Helsinki Final, see, 14 *International Legal Materials* (ILM) 1293 (1975).

Basket II deals in general terms with co-operation in the fields economics, science and technology, and the environment. Finally, Basket III deals with co-operation in humanitarian and other fields.

OSCE was initially a Soviet project dating at least a decade before its signature in August of 1975. The former Soviet Union aimed at security Western recognition of its post-war position in Eastern Europe, through some statement concerning inviolability of frontiers. At the same time, it wished to introduce the German Democratic Republic (GDR) into the community of nations through such a conference[223]. Work of the Conference began in Helsinki in September 1972 and was proceeded by a *rapprochement* in East-West relations[224]. Following a nine month of frequently difficult negotiations, that started in Helsinki in September 1972, a twenty-seven page mandate was produced under the title 'Final Recommendations of the Helsinki Consultations'. Foreign Ministers met in Helsinki in July 1973 for a week of speeches to 'adopt' the Helsinki Recommendations at stage 1 of the CSCE. Stage 2 met in Geneva from September 1973 until July 1975, producing the Final Act which was signed at stage 3 in Helsinki[225].

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[223] Harold S. Russel, 'The Helsinki Declaration: Brobdingang or Lilliput.' *American Journal of International Law* Vol. 70 Issue 2 (April 1976) pp. 242-272 at 244-246.

[224] The signing of the Non-Aggression Treaty between the USSR and the Federal Republic of Germany, *9 International Legal Materials 1026 (1970),* and the Treaty Concerning Basis for Normalizing Relations between Poland and the Federal of Germany, 10 *International Legal Materials 127 (1971),* represented initial steps towards the Conference. However, the signature of the Quadripartite Agreement on Berlin on September 3, 1971, *10 International Legal Materials 895 (1971),* although providing benefits to all parties, was considered by the three Western powers (Britain, France and the US) to be a sufficient Soviet step in easing of relations to justify Western attendance at a CSCE.

[225] See, more, on the dynamics of these stages and the difficulties in East-West negotiations throughout, in Arie Bloed, *The Conference on Security and Co- operation in Europe: Analysis and Basic Achievements, 1972-1993.* (The Hague: Kluwer Academic Publishers, 1993) pp. 4-11; 45-50.

Although legally unbinding[226], the Final Act, especially the Declaration on Principles, did have an impact on the overall political climate in Europe in the years after its adoption. Thus, for example, the third principle on the inviolability of frontiers, in particular the part containing a clause confirming that the 'participating States consider that their frontiers can be changed only in accordance with international law by peaceful means and by agreement', showed as much its validity after Cold War's end as it did during its full reign. The same holds true for two other principles from the Declaration on Principles which are of interest to our study, that is, respectively the principles on Territorial Integrity of States'[227] and the 'Respect for Human Rights and Fundamental Freedoms, including the Freedom of Thought, Conscience, Religion, and Belief'[228]. The 'Principle of Equal Rights and Self - Determination of Peoples' (Principle VIII) is a somewhat odd reproduction of the spirit of the 1970 UN Friendly Declaration[229], the

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[226] Upon the insistence of the Western countries, the Final Act was not registered with the Secretariat of the UN and published by it as foreseen by the Article 102 of the UN Charter. From the very earliest discussions in Geneva it became clear that virtually all delegations desired documents that were morally compelling but not legally binding. See, Harold S. Russell, 'The Helsinki Declaration', pp. 242- 272 at 248; Alfred Bloed, *From Helsinki to Vienna: Basic Documents of the Helisnki Process.* (Doderecht/London: Marinus Nijhoff Publishers, 1990) pp. 11- 12: Arie Bloed, *The Conference on Security and Cooperation in Europe*, pp. 22- 25.

[227] This principle, Principle IV, speaks of refraining from 'any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State…'. The final paragraph of this principle states that 'no occupation or acquisition of territory resulting from military occupation or other direct or indirect measure of force in contravention of international law will not be recognized as legal'

[228] This principle, along with the Principle X ('Fulfilment in Good Faith of Obligations Under International Law'), is the longest of the principles.

[229] The 'Principle of Equal Rights and Self-Determination of Peoples' of the UN Declaration on Friendly Relations has almost a similar wording noting, *inter alia*, that 'Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the

only difference being that in the former case the reference is made to 'all peoples'[230].

By referring to 'peaceful change' and 'international law' in the third principle, a language insisted upon by the Western States, the Final Act made possible for the Soviet Union to obtain a language it sought. That is, a language legitimising the forceful occupation of the Baltic States and the creation of the German Democratic Republic. The Soviet Union insisted upon, and sought, a similar concessions as those obtained in the treaties concluded by the FR of Germany with the USSR and Poland concerning normalization of borders[231]. This was a wise approach on the

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principle of equal rights and self- determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed and colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other States or country'.

[230] *Equal Rights and Self - Determination of Peoples* (Principle VIII): 'The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States. By virtue of the principle of equal rights and self-determination, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating States, reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle.'

[231] The *Warsaw Treaty* dealt with the inviolability of frontiers based entirely on the classical international law theory and practice. Thus, in its preambular part, the Warsaw Treaty confirms the classical formulae of international law on the awareness of the contracting parties as to 'the inviolability of frontiers and respect for the territorial integrity and sovereignty' in this case not only of the FRG and Poland but 'of all States of Europe within their present frontiers', which is considered, as elsewhere, as 'the basic condition of peace'. To achieve this objective of peace, two States had agreed, in Article 1, paras. 2 and 3, on the inviolability of their existing frontiers for the rimes to come and had

side of the Western countries that gave its results later. By the end of the Cold War, the fruits of this western approach regarding the frontiers will be seen in the cases of Baltic States' claim to self-determination. They based their claim mainly on the right to restore their lost sovereignty on the eve of WW II[232]. By the same token, the issue of succession of the former GDR was not even posed because the German issue was considered as a reunification of a divided nation rather than as a case of the state dissolution[233]. The Western insight and vision seems more clear when the above issues are considered from the vantage point of the territorial integrity of sovereign States.

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renounced any territorial claims against one another, also for all times to come. The *Moscow Treaty* contained similar language. Thus, after referring to Article 2 of the UN Charter (Article 2 of the Moscow Treaty), two countries made a commitment to the effect of recognizing that 'the peace in Europe can be maintained only if no one encroaches on the present-day frontiers'. Going further then the previous treaty, Article 3 of the Moscow Treaty stipulated that two States 'undertake scrupulously to respect the territorial integrity of all States in Europe in their present frontiers. They declare that they have no territorial claims whatever against anyone and will not advance such claims in the future. They regard as inviolable new and in the future the frontiers of all States in Europe as they are on the day of the signing of this treaty, including the Oder - Neisse line, which forms the western frontier of the Polish People's Republic, and the frontier between the Federal Republic of Germany and the German Democratic Republic'.

[232] Antonio Cassese, 'Self-Determination of Peoples and the Recent Break-up of USSR and Yugoslavia'. In Roland St. John Macdonald (ed.), *Essays in Honor of Wang Tieya*. (The Hague: Kluwer Academic Publishers, 1994) pp. 131-144 at 133-137; Michael Bothe et Christian Schmidt, 'Sur Quelques Questions du Succession Poses par la Dissolution de l'URSS et celle de la Yougoslavie'. *Revue Generale de Droit International Public*. Tome XCVI (1992, Paris) pp. 812- 841.

[233] Jean-Paul Jacque, 'German Unification and the European Community'. *European Journal of International Law* Vol. 2 No. 1 (1991), pp. 1-18; Kay Hailbronner, 'Legal Aspects of the Unification of the Two German States'. *European Journal of International Law* Vol. 2 No. 1 (1991) pp. 18-42; Dieter Popenfub, 'The Fate of the International Treaties of the GDR within the Framework of German Unification'. *American Journal of International Law* Vol. 92 No. 3 (July 1998) pp. 469-488.

The fact that the Soviet Union had even accepted a separate principle on human rights (Principle VII), laying down the basic principles for the maintenance of security and co-operation in Europe of the Cold War was one of the miracles of the OSCE. The text is not only the longest of the principles, a fact which troubled the Soviet negotiators, but also contains some of the most innovative concepts contained in the Declaration which gradually set up the stage for a free Europe and the collapse of Communism. Of the same visionary character was the principle regarding self-determination, introduced with the insistence of the Federal Republic of Germany and other Western countries. The FRG saw this principle as *a sine qua non* for its argument favouring the fact that the Declaration on Principles left open the possibility of reunification of the German nation, not two German states. The Soviet Union and other Eastern countries considered that this principle should not be inserted in the Final Act on the ground that self-determination had traditionally been associated with the right of colonial peoples to establish their independence. Inserting this concept only in the form of a principle said a great deal about the inability of some States in Europe to determine their own internal and external political, economic, social and cultural system during the Cold War times[234].

[234] Western countries had three reasons to push for as much ambitious as possible a formulation concerning the principle of self-determination. First, there was the German interest for reunification. Second, there was an interest to keep open the issue of the Baltic States. Finally, there was an intention to support the Eastern countries in their quest for emancipation from the Soviet Union. See, more, in Ljubivoje Acimovic, *Problemi Bezbednosti i Saradnje u Evropi*, pp. 195-196.