Revista de Estudos Constitucionais, Hermenêutica e Teoria do Direito (RECHTD)
11(3):341-353, setembro-dezembro 2019
Unisinos - doi: 10.4013/rechtd.2019.113.03

Self-Determination of Peoples in the Charter of the United Nations

Autodeterminação dos povos na Carta das Nações Unidas

Petr Kilian[1]
Masaryk University (República Tcheca)
petrkilian@gmail.com

Resumo

Este ensaio analisa o princípio da autodeterminação dos povos contido na Carta das Nações Unidas. Usando os métodos tradicionais de interpretação de tratados, argumenta que a Carta, por si só, não garante o direito à autodeterminação de entidades específicas de uma maneira particular. A Carta apenas consagra um princípio jurídico que posteriormente foi traduzido em normas específicas por tratados sucessivos e pelo direito consuetudinário. Por outro lado, a Carta não limita o escopo da autodeterminação ao contexto colonial ou a populações inteiras de Estados soberanos. Portanto, e como o princípio não implica independência, a autodeterminação poderia muito bem ser aplicada a vários grupos não estatais, como já aconteceu no caso dos povos indígenas.

Palavras-chave: Autodeterminação, Povos, Carta das Nações Unidas.

Abstract

This essay analyses the principle of self-determination of peoples as contained in the Charter of the United Nations. Using the traditional methods of treaty interpretation, it argues that the Charter does not in itself guarantee the right to self-determination of specific entities in a particular way. The Charter merely enshrines a legal principle that has subsequently been translated into particular norms by successive treaties and customary law. On the other hand, the Charter does not limit the scope of self-determination to the colonial context or to entire populations of sovereign states. Therefore, and since the principle does

[1] Assistant to the Vice-President of the Constitutional Court of the Czech Republic / Masaryk University. Faculty of Law. Street Veveří 158/80, 611 80. Brno, Czech Republic.

not imply independence, self-determination could well be applied to various non-state groups, as has already happened in the case of indigenous peoples.

Keywords: Self-Determination, People, Charter of the United Nations.

Introduction

Peoples have the right to self-determination. A principle invoked by the winners of both world wars when considering the post-war arrangement of the world (Wilson and Shaw, 1918; Atlantic Charter, 1941). A principle that contributed to the collapse of colonies (UNGA Resolution 1514). A principle behind the bloodiest European war conflict in the second half of the twentieth century (Detrez, 2003). And recently also a principle associated with the rights of indigenous peoples (UNGA Resolution 61/295).

There is no doubt about the existence of the principle of self-determination of peoples in international law. It is enshrined in international treaties and other documents and is taken into account by states in both international relations and national matters. It is also dealt with by international tribunals and academic texts. Yet the subject of self-determination of peoples is one of the most controversial ones.

In the first place, this is because it contains two vague terms: "self-determination" and "people". This alone may not be an insurmountable obstacle; after all, lawyers are commonly confronted with vague terms and deal with them using traditional interpretation methods. In the case of the principle of self-determination of peoples, however, the situation is more difficult because the principle has become part of international law without a general consensus on its meaning. It can even be said that self-determination has become part of international law not despite its uncertainty but thanks to it because it has always allowed interpretations that limit the interests of states concerned as least as possible. It is not surprising, therefore, that international treaties and other instruments that enshrine the right of peoples to self-determination do not contain any definition of 'people' and merely elaborate on what self-determination means.

The practice of states is not much better. It is quite clear in the colonial context[2] or in the case of occupied territories (International Court of Justice, 2004, paras. 115 et seq.). However, in relation to the right to self-determination of the population (or part of it) of a sovereign state, states are far less consistent.

Self-Determination of Peoples and the Role of United Nations

In 2008, the International Court of Justice (hereinafter also referred to as the "Court") was asked by the UN General Assembly to assess whether the declaration of independence by Kosovo representatives was in accordance with international law, which provided an exceptional opportunity for states to present their interpretation of the right to self-determination in a non-colonial context (although the Opinion itself avoided interpretation of self-determination; paras. 82-83). A look at the various submissions sent to the Court by various states showed an incredible

[2] The International Court of Justice defines colonies as territories "*geographically separated and ethnically or culturally different*" from the countries that govern them. This mainly applies to territories as defined in Chapters XI and XII of the UN Charter (International Court of Justice, 2019, para. 156).

fragmentation of opinions.[3] Different attitudes were held not only with respect to what follows from the right to self-determination but also with respect to who can enjoy that right.

For example, China, Romania, Serbia, Cyprus, Argentina and, to some extent, Bolivia and the United Kingdom of Great Britain and Northern Ireland stated that Kosovo did not have the right to self-determination. In contrast, Switzerland, Finland, Slovenia, Ireland, Denmark, Maldives, Egypt, Germany, Poland, Estonia, Latvia, Albania and the Netherlands were of the opposite opinion (and even these countries did not agree on particulars). Russia, Slovakia, Spain and Japan openly admitted that the applicability of the principle of self-determination to the case of Kosovo was questionable.

The divergence of views on the right to self-determination was reflected in the Opinion itself and in the separate opinions of the Court's judges. As the Court pointed out, "radically different views" were expressed with respect to the question whether the right to self-determination confers upon part of the population of an existing state a right to separate from that state (para. 82). Judge Cançado Trindade has stated in this respect that the meaning of the term "people" in the context of the right to self-determination has been subject to several debates that have not lead to unambiguous conclusions.[4] Judge Yusuf criticised the Court for missing the opportunity to interpret the right to self-determination and thereby prevent many disputes around the world (para. 17).

Every case is unique and it is precisely the specificity of Kosovo that many states have pointed out. Law, however, does not operate on an *ad hoc* basis. The differences in the interpretation of law and its application to a particular case are natural. However, in the case of the right to self-determination—as presented in the above-mentioned written opinions—one can no longer speak about an ordinary dispute about law but almost about chaos.

This leads the author to the conclusion that there is a need to subject the principle of self-determination to new examination, focusing gradually on its original enshrinement in international law and on the subsequent development. This examination should not be based on political or other considerations on the topic of appropriateness of the principle of self-determination but strictly on the relevant (especially primary) sources of international law as enshrined in Art. 38 (1) of the Statute of the International Court of Justice.[5]

The author considers the Charter of the United Nations to be a starting point, which integrated this principle, previously merely political,[6] into its Art. 1 (2).[7] It was precisely the principle of self-determination as contained in the Charter that was subsequently followed by state practice, including international treaties.[8] The primary and crucial question for this article is what the Charter actually enshrined. Its clarification will make it possible to follow up with further research, focused especially on customary law as it developed based on the Charter in the second half of the twentieth and early twenty-first centuries.

---

[3] All written submissions are available at *ICJ-cij.org*.

[4] Trindade even asked all the "parties to the proceedings" a question in this regard, i.e., what preconditions have to be met for a certain entity to be considered people in the meaning of the right of the peoples to self-determination (para. 225).

[5] Strictly speaking, Art. 38 merely lists the sources the Court should work with. However, it is clear from the nature of the matter (pursuant to the same provision, the Court's function is to "*decide in accordance with international law*") that Art. 38 (1) of the Statute lists all the relevant sources of international law (Shaw, 2008, pp. 70–71).

[6] For the pre-war analysis of the principle see the Report presented in 1921 to the Council of the League of Nations by the Commission of Rapporteurs.

[7] And also into Art. 55, which, however, adopts the terminology of Art. 1 (2) and does not bring any added value in terms of interpretation. The analysis will, therefore, focus primarily on Art. 1 (2).

[8] For example, common Art. 1 of the International Covenants on Human Rights, which expressly contains the right of all peoples to self-determination, was integrated in the texts of both treaties in accordance with General Assembly Resolution 545 (VI) of 5 February 1952, which called upon guaranteeing the right of peoples to self-determination "*in reaffirmation of the principle enunciated in the Charter*". The principle of self-determination as defined in the Charter is similarly invoked in the Preamble of the Declaration on the Rights of Indigenous Peoples adopted by General Assembly Resolution 61/295 of 13 December 2007.

Art. 1 (2) of the Charter reads as follows.

> The Purposes of the United Nations are:
> 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

The UN Charter is an international treaty and as such must be interpreted by means of traditional methods codified in the Vienna Convention on the Law of Treaties ("Vienna Convention"; cf. International Court of Justice, 1962, p. 157). Pursuant to Art. 4, the Vienna Convention applies only to treaties concluded between states after it has entered into force with respect of them, however, a significant part of it constitutes codification of existing customary law (International Court of Justice, 1997, para. 46), which also applies specifically to Art. 31 through 33 dealing with interpretation of international treaties (International Court of Justice, 1994, para. 41). Therefore, interpretative rules set out in the Vienna Convention are applicable, and when references are made to specific articles of the Vienna Convention, this is done for the sake of clarity, and the customary law codified therein is meant.

Art. 31 (1) of the Vienna Convention gives primacy to grammatical interpretation of international treaties, which is also consistent with the case law of the International Court of Justice, according to which other methods of interpretation should be used if grammatical interpretation would lead to ambiguous or pointless conclusions (1991, para. 48). However, grammatical interpretation alone will not suffice in the case of self-determination of peoples under Art. 1 (2) of the Charter. Primarily, it is difficult because of vague terminology. Moreover, the Charter has five authentic language versions,[9] which differ from each other more than would necessarily arise from the nature of different languages. Inevitably, more "sophisticated" methods of interpretation will have to be adopted. These also serve as the basis for three conclusions. First, the Charter does not in itself guarantee the right to self-determination of specific entities in a particular way but merely enshrines a principle that has been translated into particular norms by successive treaties and customary law. Second, the principle enshrined in the Charter was not limited to the colonial context or to the entire population of sovereign states. Third, self-determination under the Charter did not mean independence.

The first conclusion is clear from the very text and the systematic inclusion of Art. 1 (2). Art. 1 of the Charter lists the objectives of the United Nations, while paragraph 2 does not even focus on self-determination as it primarily deals with developing friendly relations among nations. Such relations should be based on respect for equal rights and peoples' self-determination. Therefore, self-determination is not even present in Art. 1 as an independent value but merely as a means of achieving another value (friendly relations among nations). It is difficult to imagine that the parties would intend to establish in this way a specific right of specific entities, especially when the only other reference to self-determination is in Art. 55, again as a prerequisite for friendly relations among nations. Moreover, self-determination is not even mentioned in Art. 2, which lays down the guiding principles according to which the organization and its members are to act. Some authors state that the principles mentioned in Art. 1 are more aspirational than those enshrined in Art. 2, which are the cornerstones of the functioning of the organization (Paulus, 2012, pp. 127–128). However, the distinction based on fact in which of the first two articles the principles have been included cannot be overestimated. As is clear from the San Francisco Conference,[10] the decision whether the principles should be included in Art. 1, Art. 2

[9] Art. 111 of the Charter.
[10] During which the Charter was being prepared.

or even in the Preamble to the Charter did not appear to be crucial and was not based on criteria that could be clearly grasped (Cristescu, 1981, p. 21 et seq.).

In any case, it is inevitable to insist on the conclusion that self-determination of peoples in the Charter is merely a legal principle that should be further specified by the activities of the organization bodies and its members. This is also confirmed by information from the preparatory works. It shows that initially, self-determination of peoples was not to appear in the Charter at all, which changed only at the insistence of the Soviet Union (Cassese, 1995, p. 38). Some states continued to demand that it be removed because of its ambiguity, but the principle ultimately remained in the final text; however, without further specification or finding a certain consensus over what it should express. As the San Francisco conference report says, "*states were unable to positively define self-determination*". Allegedly, it was only agreed that self-determination under Art. 1 (2) did not mean the right of minorities and ethnic groups to separate from a sovereign state, the right of colonies to gain independence, or the right of residents of a sovereign state to choose their rulers through regular, democratic and free elections (Cassese, 1995, p. 42). If it was ultimately agreed to retain the mention of the principle of self-determination in the Charter without having reached agreement on its contents, it is clear that it was done so with the knowledge of absence of particular rights arising out of it.

For these reasons, the author considers irrelevant the difference between the English version (and also, for example, the Spanish version) and the French version consisting in the fact that while the English version does not present self-determination of peoples as a right ("*…based on respect for the principle of equal rights and self-determination of peoples…*"), the French version does when stipulating the principle of *right* to self-determination ("*…sur le respect du principe de l'égalité de droits des peuples et de leur* droit *à disposer d'eux-mêmes…*"). The use of the word "right" in the French version does not in any way alter the nature and meaning of Art. 1 (2) of the Charter and the principle of self-determination enshrined therein.

As regards the second and third conclusions referred to above, under Art. 31 (1) of the Vienna Convention, terms in a treaty are given their ordinary meaning. It should be noted here that there are significant differences in the use of terms between the English and French versions. Not only are these versions authentic, but English and French were (unlike other authentic versions) working languages at the San Francisco conference (Kotzur, 2012, p. 2257). The author has chosen the English version, which is more similar to other authentic versions, as the default one for this article. However, he subsequently confronts his conclusions with the French version, applying Art. 33 of the Vienna Convention.

The English version stipulates "self-determination of peoples". Let us start with the self-determining unit, i.e., people. A look in dictionaries from the period prior to the adoption of the Charter will reveal that the word "people" does not have one ordinary meaning, as referred to in Art. 31 (1) of the Vienna Convention, that could be said to have been meant by the parties. In common English, of course, it is most commonly used as a plural of "person" and simply means "persons" (Collins Dictionary, "people"). However the Charter uses the plural form "peoples", which is the plural of "people" as a plural-only noun. According to the second edition of Black's Law Dictionary (focused on American English) of 1910, the word "people" had a number of meanings, such as "state" or "nation". In constitutional law, it typically meant all citizens/residents of a state or nation gifted with political power, i.e., all voters (The Law Dictionary, "people"). In the Oxford English Dictionary—which contains records of the use of individual words over many centuries—the list of possible meanings is even broader, also containing all citizens of one state as a source of political power; the meanings also included nation, race or ethnicity (Oxford English Dictionary, "people"). The meanings in the web version of the Merriam-Webster dictionary, for which there is no

identifiable time at which the word was used in the present meaning, include, for example, all voters in a state or a body of persons that are united by a common culture, tradition, or sense of kinship, that typically have common language, institutions, and beliefs, and that often constitute a politically organized group (Merriam-Webster, "people").

A look at other provisions of the Charter shows that "nation" and "state" are used in addition to "people", sometimes even in the same sentence. Therefore, it should *a priori* be assumed that these words have different meanings (Scalia and Garner, 2002, p. 170). The word "people" has a total of thirteen mentions in the Charter,[11] in various, at first glance unrelated provisions. For the first time in the introductory sentence of the Preamble, which starts with the words "we the peoples of the United Nations". In the Preamble, "people" is used once more in the context of promoting the economic and social advancement of all peoples. In nine cases, "people" is used in provisions applicable to colonies and, finally, two cases of use are the currently discussed Art. 1 (2) and Art. 55.

The word "state" is used much more frequently in the Charter and there are no disputes over its meaning, it is a traditional subject of international law that has a permanent population, government and territory, and the ability to enter into diplomatic relations with other states.[12] Nor is there any major controversy that there are obvious differences between the concepts of "state" and "people". More problematic is the word "nation" and its differentiation from the other two terms. At first glance, "nation" is used most frequently in the Charter. A closer examination, however, reveals that these are mostly situations where the organization is mentioned as such. The word "nation" is used in a different context only in the Preamble (which expresses belief in the equal rights of nations large and small), in Art. 1 (enshrining the purposes of the organization) or in the phrase "friendly relations among nations" (in Art. 1, Art. 14 and Art. 55). The term "nation" generally has a different meaning than "state", for example in that it captures a certain "living" element as opposed to the concept of "state", which is a legal construction. According to the aforementioned Black's Law Dictionary, it is an organized people inhabiting a distinct portion of the earth, using the same customs, possessing historic continuity, and generally, but not necessarily, living under the same government and sovereignty (The Law Dictionary, "nation"). Here, therefore, it might seem to be a subset of "people", which does not, however, clearly explain why the word was used at all, since surely if it was only a subset, the purpose of the organization would be friendship among all peoples, not only nations. Another problem with the term "nation" is that it should be different from "state" but the organization is called "the United Nations", and according to Art. 3 and 4, only states can be members.[13] The explanation could be that the organization unites nations through states as their international representatives. Moreover, there are other than (only) linguistic requirements for names. Also important is certain symbolism (in this case the name follows up on the name of the winning coalition from the WWII) or unmistakeability (hence the name "the United States" would be unfit). This, however, does not eliminate other ambiguities.

States pointed out these shortcomings during the San Francisco Conference. Their representatives argued that the term "nation" was confusing and legally incorrect since only states are subjects of international relations, that the use of the terms "nation" and "people" in a single sentence indicates the possibility of separation, or that the terms "nation" and "state" are used interchangeably in some countries, whereas in Europe there is a difference between

[11] However, once—in Art. 83 (2)—as a plural of "person".
[12] These criteria correspond to those agreed by the Montevideo Convention on the Rights and Duties of States (26 December 1933).
[13] On the other hand, some original members did not meet the criteria of statehood pursuant to Art. 3 (Fastenrath, 2012, p. 337).

them (Cristescu, 1981, p. 38). For these reasons, the Coordinating Committee was asked to report on the use of the terms in the draft Charter. Its report shows that the meaning each word has was far from being the only criterion for its use.

As regards the word "state", the Committee stated the aforementioned, i.e., that it was used in a clear and irreplaceable sense for a subject of international law meeting the criteria of statehood. According to the Committee, "nation" is most often used in the Charter in a broad and non-political sense, in which it is more suitable than the word "state" since it includes, in addition to states, also colonies, mandated territories, quasi-states and others. Moreover, it allegedly has a "poetic flavour", which the word "state" lacks. Finally, the Committee identified the concept of "people" as problem-free. It is used whenever it is necessary to express the idea of all humanity. It was used with the principle of self-determination since it is such a common collocation that no other word can be present in it. The Committee did not find it confusing that Art. 1 (2) uses the words "nation" and "people" in one sentence because "nation" expresses a certain—whether state or non-state—entity, while "people" represents groups of people that may but need not constitute one state or nation (Cristescu, 1981, p. 38).

The term "people" was, therefore, not unambiguous in the Charter. It was used with the knowledge of its very broad scope and because of the established character of the phrase, not in an attempt to clearly identify certain groups as self-determining units. Therefore, it cannot be argued that it would cover, for example, only the entire population of sovereign states. This is evident already from the fact that it is used in the Charter also in relation to the population of colonies. Furthermore, if self-determination only applied to the population of an entire state, it would be difficult to look for its independent meaning and justification in a situation where the Charter protects, pursuant to Art. 2 (4), "political independence of states". Finally, self-determination of peoples as a political concept, as formed in international relations in the first half of the twentieth century and upon which the Charter draws, was not limited to the entire population (Cassese, 1995, p. 18; Wrede, 1920, p. 313-314). At the same time, it follows from the latter that despite its most frequent use in relation to colonies and despite the subsequent practice (see below), the term "people" (and, therefore, self-determination as such) was not targeted at colonies as the pre-war self-determination undoubtedly went beyond the colonial notions. Indeed, if the term "nation" was to include both states and colonies while the term "people" was perceived even more broadly, this indicates a possible inclusion of non-colonial non-state groups.

This conclusion is further sustained by the fact that the Soviet Union sought to include self-determination of peoples in the Charter. That initiative was certainly influenced by efforts to weaken colonial powers but there is no doubt that the Soviet doctrine of self-determination of peoples had a broader scope (Cassese, 1995, p. 18). This is indirectly supported by the preparatory works on the adoption of the Universal Declaration of Human Rights. Although self-determination of nations did not make its way to that document, the Soviet Union attempted at least to include the collective rights of minorities (Draft International Declaration of Human Rights, 1948), arguing that cultural autonomy was guaranteed to 60 peoples and hundreds of nationalities in the USSR. As an USSR official also stated, internationalism may be achieved in two ways: first, by respecting the rights, independence and sovereignty of all peoples, which was allegedly a method followed by the Soviet Union; second, through assimilation of various peoples, which was, however, a method the Soviet Union rejected (Schabas, 2013, pp. 2837 et seq.).

It is, therefore, clear that the Soviet Union, as the main proponent of the addition to the Charter of the principle of self-determination of peoples, interpreted the concept of "people"

similarly as the Coordination Committee perceived it. The declaration of the Soviet Union official is from the preparation of the Universal Declaration of Human Rights, but work on it began shortly after the adoption of the Charter and the speech of the Soviet official was made on 27 November 1948. Nothing suggests that the Soviet perception of the term "people" shifted somehow in the short time between the adoption of the Charter and the consideration of the Universal Declaration.

An opposite interpretation, based on the French version of the Charter, can be found in the literature (Rodríguez-Santiago, 2017, p. 218). In that version, the word "people" (or French "peuple"), as used in Art. 1 (2) is replaced by the word "population" in relation to colonies (for example, in Art. 73 and 76). The French version thus allegedly reveals the true meaning of self-determination, which does not apply to colonial or other groups of the population but only to the entire population of states as the bearers of state authority. This argument is somewhat weakened by the fact that, for example, the Spanish and Russian versions use the same word in Art. 1 (2) and Art. 73 and 76—although it may be argued that the ambiguity of several versions does not mean that the language version that eliminates the ambiguities should not be taken into account.

Pursuant to Art. 33 (4) of the Vienna Convention, however, differences between language versions should be removed using the interpretative methods under Art. 31 and 32. Pursuant to Art. 31, interpretation of terms in a treaty should take into account the overall context and any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. The practice of states within UN bodies suggests a broader sense of the word "people" as it follows from the English or Spanish versions, not the restrictive French wording. For example, General Assembly Resolution 637 of 16 December 1952 expressly applied the principle of self-determination pursuant to Art. 1 (2) to the territory stipulated in Art. 73 and 76 of the Charter. The French version of that resolution retained the original French terminology and used the term "populations" in relation to colonies. However, it is clear from the context that the population of the colonies is also "people" because they have been granted the right of peoples to self-determination. This practice was subsequently reflected in French terminology as well. For example, the French version of General Assembly Resolution 1514 of 14 December 1960 (and many others) already use the term "peuples coloniaux". It may be argued that this was a retroactive amendment to the Charter as a result of developments in international law. However, this practice corresponds to the texts of the non-French authentic versions and to the records of the preparatory works as described above. It follows from these and the related state practice that the concept of "people" was not clearly defined and was not limited to the entire population of sovereign states or to the population under colonial rule. That, as has already been said, corresponds to the nature of self-determination as a principle that has yet to be translated into particular rights.

After the word "people" it is necessary to comment also on the word "self-determination". Here, it is not very relevant to base our thoughts on dictionary definitions, and there are no problems among various language versions. It is not disputed that self-determination is related to decision-making about oneself; therefore, it is assumed that the entity (people) can decide or at least co-decide on its own future. Accordingly, the International Court of Justice has defined self-determination as "*the need to pay regard to the freely expressed will of peoples*" (1975, para. 59). The real question is whether the people's self-determination can only be carried out through independence. A look at the provisions of the Charter does not indicate this.

In addition to 'self-determination', the Charter uses the concepts of "self-government" and "independence". On the basis of the same thought process used for the word "people", it can be stated that self-determination is not the same as independence or self-government. Independence cannot be even considered the only possible way of self-determination. The word "independence" is used twice in the Charter; in the aforementioned Art. 2 (4) (referring to the threat for the political independence of a state) and especially in Art. 76, which stipulates that one of the objectives of the trusteeship system is "*to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned*". If, according to the Charter, there is a principle of self-determination of peoples (applicable, as shown, also to colonized peoples) but the task of the trusteeship system development towards self-government *or* independence, independence could not be the only possible starting point for self-determination.

Here is an interesting difference between Art. 73 and 76. Art. 73—which refers to territories under the administration of member states—does not mention independence at all, nor does it refer to Art. 1 of the Charter as does Art. 76, which concerns territories under the administration of an international trusteeship system. Art. 73 is limited to the phrase "full measure of self-government". In Fastenrath's view, there is a certain contradiction of Art. 73 with Art. 1 (2) and the principles of self-determination as territories under Art. 73 are allegedly denied (full) self-determination (2012, p. 1830 et seq.). However, as has already been said, Art. 76 did not establish independence as the only outcome. Therefore, if Art. 73 was contrary to the principle of self-determination, Art. 76 would be equally contradictory. Since these are the only provisions of the Charter that can be directly related to the principle of self-determination, in accordance with Art. 31 of the Vienna Convention, self-determination should be interpreted in the context of Art. 73 and 76 so as independence is not the only result of that principle. An interpretation to the contrary would mean an internal contradiction of the Charter.

It can be added that the independence of previously dependent territories is such a key issue and such a strong interference with the rights and obligations of states (at least with regard to territories under Art. 73) that it should be clearly defined, albeit merely as an objective. It is, for that matter, a principle of international law that the existence of states' duties or waivers of rights by states must be assessed restrictively (International Court of Justice, 2005, para. 293; International Court of Justice, 1974, para. 47). Therefore, since Art. 73 does not mention independence, we should depart from the fact that independence is not necessarily enshrined in it (and thus neither in the principle of self-determination). This is also reflected in the information from the San Francisco Conference, which suggests that states found no contradiction between Art. 73 and Art. 1 (2) because they did not associate self-determination with independence (Fastenrath, 2012, pp. 1830 et seq.). Reference may also be made to the report of the sixth meeting of the First Committee, according to which the principle of self-determination corresponds to the wishes and wills of all peoples but is consistent with the Charter's objectives as long as it "*implies self-governance, not independence*" (The United Nations Conference on International Organization, 1945).

It is true that the above is to some extent relativised by the subsequent practice of states and UN bodies, which no doubt implies that the objective of territorial administration under Art. 73 and 76 (and hence with the projection of self-determination in relation to these territories) has indeed become their independence. For example, in accordance with the aforementioned General Assembly Resolution 1541 (XV), the Charter, in its Art. 73,

introduced the concept of a gradual shift towards a full measure of self-government, which can be achieved in three ways: the creation of a sovereign independent state, free association with an independent state and integration into another independent state. The choice among these variants should be based on the freely expressed wishes of the people. Independence as an objective of territory administration under Art. 73 and 76 was also confirmed by the International Court of Justice (1971, para. 52).

However, contrary to the interpretation of the word "people", this practice cannot be regarded merely a clarification of the original meaning of the Charter. As shown above, independence was not originally the objective of colonial territorial administration. It is, therefore, only a reflection of the development of international law in the interpretation of the treaty. This development, furthermore, does not affect the interpretation of the principle of self-determination in general, but only the interpretation of the self-determination of colonial peoples. In relation to them, there is no doubt that self-determination requires independence. However, the distinction between self-determination and independence remains.

This is evidenced, for example, by recent practice in relation to the self-determination of indigenous peoples (see Anaya, 2009, p. 184). In 2007, the General Assembly adopted a resolution accompanied by the Declaration on the Rights of Indigenous Peoples as an annex (UNGA, Resolution 61/295). In the latter, indigenous peoples were granted the status of a people (which also confirms the wider meaning of the word above) with the right to self-determination (referring to the principle of self-determination under the Charter), but with an express exclusion of any impact on territorial integrity or political unity of states. The Declaration on the Rights of Indigenous Peoples is not binding, but has been adopted by 143 states (the 107th plenary session of the General Assembly, 2007),[14] thus presenting their views on the applicability of the principle of self-determination.

It follows from all of the above that the Charter included the principle of self-determination of peoples without specifying who has the status of a people and how specifically its self-determination should be achieved. It was a vague principle left to further development. In different contexts and in relation to different entities, it can be projected into different forms of its implementation. For example, in the case of colonies it was first a certain degree of self-government, subsequently independence. In relation to indigenous peoples, independence is, in contrast, strictly excluded. As mentioned at the beginning, self-determination of other entities is the subject to debate.

Conclusions

The conclusions drawn in this article make it possible to streamline these discussions. Just as self-determination in contemporary international law is based on the UN Charter, its applicability in individual contexts should be based on the conclusions of this article. This means taking into account that self-determination as a principle is not *a priori* limited to a clearly defined group of entities, nor does it assume that each people will achieve independence as part of self-determination. The latter fact should allow for the full development of self-determination as a principle supporting the right of persons to decide for themselves as the main obstacle has always been states' fear of territorial integrity violation.[15]

[14] Other states, such as Australia, stated their support for the Declaration later (Australian Human Rights Commission, 2009).

[15] A typical example are the aforementioned indigenous peoples, who have achieved explicit recognition of the right to self-determination only when states were provided with a guarantee that the right did not imply the right to independence. See

If it is accepted that self-determination is not identical to independence, there is in principle no reason for not allowing various national minorities (Catalans, Québécois and others) achieve recognition of the right to self-determination. This in turn will enable to materialize their self-determination for example in the form of a certain degree autonomy or self-government, as is the case with indigenous peoples. Disputes between states and national minorities would not cease from day to day but at least their possible international legal framework would be defined.

References

ANAYA, J. 2009. *In*: CHARTERS, C; STAVENHAGEN, R. (eds.). *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*. IWGIA, Copenhagen, pp. 184-199.

ATLANTIC CHARTER. 1941. United States Office of War Information. Division of Public Inquiries. United States. Government Printing Office. University of North Texas Digital Library. Available at: https://digital.library.unt.edu/ark:/67531/metadc581/. Accessed on June 17, 2019.

AUSTRALIAN HUMAN RIGHTS COMMISSION. 2009 Media Release: United we stand – Support for United Nations Indigenous Rights Declaration a watershed moment for Australia. Available at: https://www.humanrights.gov.au/about/news/media-releases/2009-media-release-united-we-stand-support-united-nations-indigenous. Accessed on June 17, 2019.

CASSESE, A. 1995. *Self-Determination of Peoples: A Legal Reappraisal*. 1 ed. New York, Cambridge University Press, 375 pp.

COLLINS DICTIONARY. People. Available at: https://www.collinsdictionary.com/dictionary/english/people_1. Accessed on June 17, 2019.

CRISTESCU, A. 1981. The Right to Self-Determination. Historical and Current Development on the Basis of United Nations Instruments. A study by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Aurelia Cristescu. UN doc. E/CN.4/Sub.2/404/Rev. 1.

DETREZ, R. 2003. *The Right to Self-Determination and Secession in Yugoslavia: a Hornets' Nest of Inconsistencies*. *In*: COPPIETERS, B. et al. *Contextualizing Secession: Normative Studies in Comparative Perspective*. Oxford, Oxford University Press, 112-132 pp.

DRAFT INTERNATIONAL DECLARATION OF HUMAN RIGHTS. Soviet Union's draft of 27 November 1948. UN doc. A/C.3/307/Rev.2!Corr.2.

FASTENRATH, U. 2012. *In*: SIMMA, B. et al. (eds). *The Charter of the United Nations. A Commentary.* Oxford, Oxford University Press, 2405 pp.

INTERNATIONAL COURT OF JUSTICE. Accordance with international law of the unilateral declaration of independence in respect of Kosovo (written proceedings). Available at: https://www.icj-cij.org/en/case/141/written-proceedings. Accessed on June 17, 2019.

INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 20 July 1962. Certain Expanses of the United Nations.

INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 21 June 1971. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970).

INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 16 October 1975. Western Sahara.

statements by some states during the adoption of the Declaration on the Rights of Indigenous Peoples (the 107th and 108th plenary session of the General Assembly, 2007).

INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 9 July 2004. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.
INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 22 July 2010. Accordance with international law of the unilateral declaration of independence in respect of Kosovo.
INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 22 July 2010. Accordance with international law of the unilateral declaration of independence in respect of Kosovo. Separate opinion of Judge Cançado Trindade.
INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 22 July 2010. Accordance with international law of the unilateral declaration of independence in respect of Kosovo. Separate opinion of Judge Yusuf.
INTERNATIONAL COURT OF JUSTICE. Advisory Opinion of 25 February 2019. Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965.
INTERNATIONAL COURT OF JUSTICE. Judgement of 20 December 1974. Nuclear Tests (Australia v. France).
INTERNATIONAL COURT OF JUSTICE. Judgement of 12 November 1991. Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal).
INTERNATIONAL COURT OF JUSTICE. Judgement of 3 February 1994. Territorial Dispute (Libyan Arab Jamahiriya/Chad).
INTERNATIONAL COURT OF JUSTICE. Judgement of 25 September 1997. Gabčíkovo-Nagymaros Project (Hungary/Slovakia).
INTERNATIONAL COURT OF JUSTICE. Judgement of 19 December 2005. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda).
KOTZUR, M. 2012. *In*: SIMMA, B. et al. (eds). *The Charter of the United Nations. A Commentary*. Oxford, Oxford University Press, 2405 pp.
MERRIAM-WEBSTER. People. Available at: https://www.merriam-webster.com/dictionary/people. Accessed on June 17, 2019.
OXFORD ENGLISH DICTIONARY. People. Available at: https://www.oed.com/view/Entry/140404?rskey=it5RYT&result=1&isAdvanced=false#eid. Accessed on June 17, 2019.
PAULUS, A. 2012. *In*: SIMMA, B. et al. (eds). *The Charter of the United Nations. A Commentary.* Oxford, Oxford University Press, 2405 pp.
REPORT PRESENTED TO THE COUNCIL OF THE LEAGUE OF NATIONS BY THE COMMISSION OF RAPPORTEURS. 1921. Available at: https://www.ilsa.org/Jessup/Jessup10/basicmats/aaland2.pdf. Accessed on June 17, 2019.
RODRÍGUEZ-SANTIAGO, E. 2017. *In*: TESÓN, F. R. (ed.). *The Theory of Self-Determination*. Cambridge, Cambridge University Press, 256 pp.
SCALIA, A.; GARNER, B. A. 2002. *Reading Law: The Interpretation of Legal Texts*. Thomson/West, 567 pp.
SCHABAS, W. A. (ed.). 2013. *Universal Declaration of Human Rights. The Travaux Préparatoires*, Volume III. New York, Cambridge University Press, 3376 pp.
SHAW, M. 2008. *International Law.* New York, Cambridge University Press, 1542 pp.
SUPREME COURT OF THE UNITED STATES. Decision of 1 March 1897. United States v. The Three Friends.
THE LAW DICTIONARY. Nation. Available at: https://thelawdictionary.org/nation/. Accessed on June 17, 2019.
THE LAW DICTIONARY. People. Available at: https://thelawdictionary.org/people/. Accessed on June 17, 2019.

THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION. Summary Report of Sixth Meeting of Committee I/1. 16 May 1945, doc. 343.
UN GENERAL ASSEMBLY. Minutes of the 107th plenary session of the General Assembly of 13 September 2007. UN doc. A/61/PV.107.
UN GENERAL ASSEMBLY. Minutes of the 108th plenary session of the General Assembly of 13 September 2007. UN doc. A/61/PV.108.
UN GENERAL ASSEMBLY. Resolution 545 (VI) of 5 February 1952.
UN GENERAL ASSEMBLY. Resolution 1514 (XV) of 14 December 1960.
UN GENERAL ASSEMBLY. Resolution 61/295 of 13 December 2007.
WILSON, W.; SHAW, A. 1918. *State papers and addresses by Woodrow Wilson*. President Wilson's Address to Congress, Analyzing German and Austrian Peace Utterances (Delivered in Joint Session, February 11, 1918). New York, George H. Doran company, The Review of reviews company.
WREDE, R. A. 1920. *The Aaland Islands: Finland's Case Against Sweden*, Advocate of Peace through Justice. **82**(9/10):313-314.

Submetido: 26/11/2019
Aceito: 05/02/2020