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The International Law Applicable to the Secession of a Territory. Territorial Integrity versus "Neutrality" of International Law and the Role of Self-Determination

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Abstract: *This article aims at addressing the legality of secession in public international law, building on the two opposing theories proposed regarding the international law applicable to secession. The principles of self-determination and territorial integrity are examined in order to determine their applicability in the context of each theory.*

Keywords: *unilateral secession, territorial integrity, self-determination, prohibition of secession.*

1. Introduction

After the end of the Second World War the international community has experienced the proliferation of sovereign States from 73 to 195 States today,[1] representing an almost threefold increase in the last 77 years. This has been attributed mostly to the exercise of external self-determination endorsed by the United Nations (hereinafter referred to as UN) in the second half of the 20th century, during the decolonization process. However, secessionist attempts have continued to emerge beyond the colonial context, so much so that by the year 2000 over three-quarters of violent conflicts

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[1] This total comprises 193 countries that are member states of the United Nations and 2 countries that are non-member observer states: the Holy See and the State of Palestine.

were fought either by groups seeking to establish a separate State or to change the ethnic balance within an existing State.[1]

From the international law point of view, unilateral secession is defined as the creation of a new independent entity through the separation of a part of the territory and population of an existing State, without the consent of the latter; or the separation of a part of the territory in order to be incorporated in another State, without the consent of the former.[2] Most of the time, the act of separation of a part of the territory without the approval of the sovereign State comes with collateral social and economic upset and an overall risk of escalating violence that disrupts the international order.[3] But while international instability arising from such cases is strongly impacted by the lack of an established legal framework regulating secession, the responses of States as well as international organisations and courts regarding the international law applicable to secession have been heterogenous. While some States have maintained a constant view upon the legality of secession, others, along with the International Court of Justice, have avoided clarifying the issue. In addition, a number of States have preferred to address each secessionist attempt as a *sui generis* case.

Nevertheless, the international law applicable to the secession of a territory beyond the colonial context has been a central topic of discussion in numerous scholarly debates, determining the outline of two opposite theories. One theory claims that an implied prohibition of secession is suggested by the extensive interpretation of the principle of territorial integrity. On the other hand, the "neutrality" of international law towards secession has been supported due to the lack of rules expressly prohibiting secession in the international legal system. The purpose of this article is to address the main legal theories applicable to the unilateral secession of a territory, trying to draw a conclusion on the international law applicable to secession. In addition, the dynamics between self-determination and secession will be looked upon in relation to each theory.

2. A territorial view on secession

The principle of territorial integrity has been the main counterargument against secessionist attempts, establishing a duty to refrain from any action that would disrupt or dismember the integrity of a State. In general, the

[1] Diego Muro, Eckart. Woertz, *Secession and Counter-secession. An International Relations Perspective.*, Barcelona Centre for International Affairs, 2018, p. 14.
[2] Marcelo G. Kohen, *Secession. International Law Perspectives, Cambridge University Press*, 2006, p. 3.
[3] Diego Muro, Eckart. Woertz, *Secession and Counter-secession. An International Relations Perspective.*, Barcelona Centre for International Affairs, 2018, p. 22.

dismemberment or loss of a part of a State's territory is seen as a violation of the principle of territorial integrity and in total contradiction with the provisions of several fundamental international documents.[1] Therefore, the crippling effects of secession can be associated with a breach of the unity and integrity of sovereign States and consequently be considered a potential violation of international rules. It is necessary however to distinguish between particular situations where the illegal character of secession emerges from the manner in which it has been conducted and the extensive interpretation of the principle of territorial integrity which may suggest a general prohibition of unilateral secession in all cases.

2.1. Unilateral secession addressed in Security Council resolutions

Secessionist attempts such as Katanga[2], South Rhodesia[3] or Northern Cyprus[4] have witnessed the UN Security Council's firm denial of secession and all its legal consequences, in the respective particular cases. It can be assumed that such denial was lined to peremptory norms of international law being violated.[5] In addition to considering the declarations of secession invalid, the Security Council's resolutions have called upon all Member States not to recognize the secessionist entities which conducted their separatist actions in violation of international law, thus deterring them from achieving viable statehood. Therefore, even if it would meet the statehood criteria, the Security Council resolutions have prevented States from

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[1] Christian Marxen, *Territorial Integrity in International Law – Its Concept and Implications for Crimea*, ZaöRV 75 (2015), Max Planck Institut für ausländisches öffentliches Recht und Völkerrecht.

[2] In the case of Katanga, the Security Council resolution has *"[d]eclare[d] all secessionist activities against the Republic of Congo contrary to the Loi fondamentale and Security Council decisions and specifically demand[ed] such activities ... taking place in Katanga ... cease forthwith"*, UN Security Council, *Security Council resolution 169 (1961) [The Congo Question]*, 24 November 1961, S/RES/169 (1961), par. 8.

[3] In its resolution, the Security Council condemned the unilateral declaration of independence and called upon all States not to recognize the "*illegal racist minority regime in Southern Rhodesia*", UN Security Council, *Security Council resolution 216 (1965) [Southern Rhodesia]*, 12 November 1965, S/RES/216 (1965).

[4] Through resolution 541 of 18 November 1983, the Security Council has deplored the declaration of secession and declared it invalid, UN Security Council, *Security Council resolution 541 (1983) [Cyprus]*, 18 November 1983, S/RES/541 (1983).

[5] Referring to the practice of the Security Council in cases of secessionist attempts, Professor Malcom Shaw has highlighted the observations made by the ICJ in the *Kosovo* advisory opinion, noting that "*Security Council resolutions criticizing declarations of independence (...) were so acting (...) because they were or would have been associated with the unlawful use of force or some other egregious violations of the rules of international law.*", Malcom N. Shaw, *International Law*, Eighth Edition, Cambridge University Press, 2017, p. 389.

recognizing the secessionist entity. Furthermore, even in the absence of these provisions, states have an obligation not to recognize, based on the principle *ex injuria jus non oritur.*[1]

According to Malcolm N. Shaw, the Security Council's resolutions "*calling upon a particular group seeking to secede from a specific independent state to respect the national unity and territorial integrity of that state*" involved "*an international legal duty not to secede*" incumbent upon that particular group.[2] But when mentioning the "duty not to secede", translating into a prohibition to do so, Professor Shaw is referring to those situations sanctioned by the Security Council whose illegal character originates in the violation of peremptory norms. The question that arises however is whether outside these specific situations the principle of territorial integrity can be interpreted as imposing a general implicit prohibition to secede.

2.2. Territorial integrity – an interstate principle?

In the *Kosovo* advisory opinion, the International Court of Justice held that the principle of territorial integrity represents "*an important part of the international legal order*", being enshrined in Article 2(4) of the UN Charter,[3] which proclaims that*"[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*" [4]. The term "Members" or "States", as provided in the 1970 Friendly Relations Declaration and the 1975 Helsinki Final Act, referring to the beneficiaries of the principle, suggests that the applicability of territorial integrity might be limited to interstate relations. However, an extensive interpretation of the principle has been supported by several States in their written proceedings before the International Court of Justice in the *Kosovo* case, indicating that the protection of territorial integrity exceeds the interstate character. In this

[1] According to the United Nations Terminology Database, *ex injuria jus non oritur* is a principle of international law which sanctions acts contrary to international law deeming them unable to become a source of legal rights for a wrongdoer. It was applied in the US Government's Stimson doctrine, stating non-recognition of international territorial changes that were executed by use of force.

[2] Malcolm Shaw, *International Law*, Cambridge University Press, Cambridge 2014, p. 832, as cited in Simone F. van den Driest, *From Kosovo to Crimea and Beyond: On Territorial Integrity, Unilateral Secession and Legal Neutrality in International Law*, International Journal on Minority and Group Rights, vol. 22, no. 4, Brill, 2015, pp. 467–85.

[3] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion*, I.C.J. Reports 2010, p. 437

[4] United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

regard, it was argued that the stance taken by the Security Council in cases where the unity of a sovereign State was threatened, be it by an internal separatist movement, suggests that the principle of territorial integrity is opposable to States as well as non-state entities, prohibiting actions that would affect the territory of another State.[1] Therefore, the endorsement of a broader approach of the principle of territorial integrity has been advocated, protecting State unity and sovereignty not only from the actions of another State, but from any action that would determine a territorial impairment.

Despite the arguments being presented before the Court, its findings in the *Kosovo* Advisory Opinion have not been the breakthrough anticipated by most. The ICJ has maintained the traditional view of its previous rulings, reaffirming that "*the scope of the principle of territorial integrity is confined to the sphere of relations between States*",[2] therefore, in the view of the Court, the applicability of territorial integrity does not extend to non-state actors. However, in the 2019 Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius, the International Court of Justice has reviewed its opinion over the scope of the principle of territorial integrity, extending its applicability to non-self-governing territories (a non-state actor), holding that *"[b]oth State practice and opinio juris at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self- determination. (...) The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power. It follows that any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination.*"[3]

The Chagos case represents a step forward towards the legal recognition of a broader protection offered by the principle of territorial integrity against any action that endangers the unity and sovereignty of a State, regardless of its author. As Professor Crawford wrote, "*[i]nternational law has always*

[1] See the Written Statements of Serbia, Argentina, Iran, Cyprus and Spain, *Accordance with International Law of the Unilateral Declaration of Independence on Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*.

[2] *Accordance with International Law of the Unilateral Declaration of Independence on Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 437.

[3] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, par. 160.

favoured the territorial integrity of states"[1]. An aspect that highlights this practice is the fact that no State created through non-consensual separation from its parent State has been granted membership into the United Nations.[2] Thus, an extensive application of the principle comes as an expected confirmation of the reluctance of the international community towards unilateral secession.

3. The neutrality of international law towards secession

The theory of neutrality[3] supports the idea that international law does not permit, nor prohibit unilateral secession; in its view, secession is simply a matter that does not fall under the regulations of international law. While it is undeniable that there is no positive right to secede outside the colonial context and while State practice has shown a generally cautious approach regarding secession, in lack of explicit rules, the legality of secession is open to opposable interpretations. Moreover, scholars have argued that international rules should not be applicable to secession because the formation or disappearance of a State is a pure fact, a political matter[4] that cannot be explained by legal rules.[5] However, if secession is not a question of international law, but a mere fact, it means that international regulations are not opposable to secessionist movements. They are simply a group of people fighting against their government in hopes of achieving external recognition and, if they succeed, a new entity will be created without breaching any rules because, as Hersch Lauterpacht affirmed, "*international law does not condemn rebellion or secession aiming at the acquisition of independence*".[6]

3.1. The Lotus principle

One of the main arguments invoked in support of the neutrality of international law is the Lotus principle, considered to be a foundation of international law established by the Permanent Court of International Justice. According to the judgement of the Court, "*[i]nternational law governs relations between independent States. The rules of law binding*

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[1] James Crawford, *State Practice and International Law in Relation to Unilateral Secession - Report to the Government of Canada concerning unilateral secession by Quebec*, para. 8.
[2] James Crawford, *The Creation of States in International Law*, Second Edition, Oxford University Press, 2006, p. 390.
[3] Marcelo G. Kohen, *Secession. International Law Perspectives, Cambridge University Press*, Cambridge University Press, 2006, p. 103.
[4] *Ibidem*, pp. 171-172.
[5] *Ibidem*, p. 138.
[6] Hersch Lauterpacht, *Recognition of States in International Law,* The American Journal of International Law, vol. 35, no. 4, American Society of International Law, 1941, pp. 605–17.

upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."[1] In other words, whenever an express prohibition does not exist in international law, States are free to adopt any conduct they may consider appropriate. As such, whatever is not expressly prohibited is implicitly permitted.

Commuting the application of this rule to secession reveals that since there are no explicit rules prohibiting secession, the assumption that secession is permitted in international law would be correct. Not having a proper legal framework governing secession works to the advantage of applying the Lotus principle rather than to its detriment. The State practice on the matter is inconsistent proving that a lack of express rules might allow States to adopt any attitude they deem appropriate, which is exactly the scope of the Lotus principle.

Referring to the alleged prohibition of "declarations of independence" (not necessarily "secession") Judge Simma considered, in his declaration to the ICJ Advisory Opinion on *Kosovo*, that it was not the *Lotus* case that made international law not applicable to the declaration of independence, but the fact that "*international law can be neutral or deliberately silent' on the lawfulness of certain acts and whether the toleration of certain concepts could possibly break away from the traditional permission/prohibition duality"*.[2]

3.2. Relevance of domestic law

In *Reference re Secession of Quebec*, the Supreme Court of Canada held that "*international law contains neither a right of unilateral secession nor the explicit denial of such a right"*. Instead, it "*leaves the creation of a new state to be determined by the domestic law of the existing state of which the seceding entity presently forms a part". [3]* In other words, the ruling of the Court might suggest that international law gives effect to internal law: if

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[1] *Lotus (France v. Turkey)*, Permanent Court of International Justice, P.C.I.J. (ser. A) No. 10 (1927), para. 44.

[2] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*, Declaration of Judge Simma, General List No. 141, International Court of Justice (ICJ), 22 July 2010 par. 4-9; Bogdan Aurescu, Ion Gâlea, Elena Lazăr, Ioana Oltean, *Drept International Public, Scurta culegere de jurisprudenta pentru seminar*, Ed. Hamangiu 2018, p. 77.

[3] Reference re *Secession of Quebec*, [1998] 2 S.C.R. 217, par. 112.

secession is prohibited or accepted by domestic law, international law will incorporate that result.

The above mentioned idea has also been supported by the Venice Commission in its assessment of the compatibility with international law of the Russian Draft Federal Constitutional Law that brought amendments to the procedure of admission to the Russian Federation and creation of a new subject within the Russian Federation. The Commission shared the opinion of the Canadian Supreme Court and underlined that the annexation or unification of a State with a secessionist entity "*would however act in violation of several fundamental principles of international law, most notably the principle of non-intervention in internal affairs*"[1]. It highlighted that in order for a State to incorporate a part of the territory of another State it would require valid consent, as non-consensual annexation determines a violation of the principle of non-intervention in internal affairs.[2]

In its Report on Self-determination and Secession, the Venice Commission has analysed whether constitutional provisions of the States are expressly prohibiting secession. Referring to the importance of the principle of territorial integrity for State unity, the report suggests that secession is "*inimical to national constitutional law*", "*for it would result in the dismemberment if not the destruction of the state's very foundation*". The report went further arguing that although constitutions of States do not have express provisions regulating secession, "*keeping silence (...) may indeed suffice to outlaw it*".[3] In the Commission's view, constitutional provisions referring to values challenged by secession such as indivisibility, national unity or territorial integrity implicitly suggest that an attempt at separating a part of the territory from the State is prohibited by its domestic law.[4]

Therefore, an implicit prohibition of secession is suggested to emerge from the legal effect that international law is providing to the constitutional framework of States. In addition, the application of the principle of non-intervention in internal affairs has been suggested by a part of the doctrine,[5] underlining that secession might be a matter of domestic law.

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[1] Opinion no. 763/2014 on "Whether Draft Federal Constitutional Law No. 462741-6 on amending the Federal Constitutional Law of the Russian Federation on the Procedure of Admission to the Russian Federation and Creation of a New Subject within the Russian Federation is Compatible with International Law", CDL-AD(2014)004, Venice Commission, 2014, par. 28.

[2] *Ibidem,* par. 29.

[3] *Self-determination and Secession in Constitutional Law,* Report, CDL-INF(2000)002-e, Venice Commission, 1999, p. 3.

[4] *Idem.*

[5] Marcelo G. Kohen, *Secession. International Law Perspectives,* Cambridge University Press, 2006, p. 7.

4. Self-determination – a supplementary argument

Secession constitutes a concept situated at the crossroads of two cornerstones of international law, respectively territorial integrity and self-determination, bringing the two principles into collision, as territorial integrity safeguards the status quo of a State while any people attempting to secede seeks to change the situation that it currently finds itself in.[1] Self-determination has an impact in both theories exposed above, therefore, an analysis of the international law applicable to secession without taking it into consideration is not possible.

4.1. The role of self-determination in the theory of neutrality

In relation to the theory of neutrality, self-determination represents an additional argument in support of the possibility of certain groups of people to secede from their parent State. However, there is a different relation between self-determination and recognition from the one between secession (in the absence of the exercise of the right to self-determination) and recognition. In the case of secession (without the exercise of self-determination), the recognition of the newly formed entity depends on the discretionary power of each State.

However, in cases where self-determination is involved, recognition loses some of its discretionary power. There are situations where other States are simply called to acknowledge and legitimize the effective situation of exercising self-determination. While there is no right that entitles a group to secede, there is a positive right to self-determination. If a certain group of people could meet the requirements needed to become a holder of the right to external self-determination, the other States might be more eager, or even under a positive duty, to recognize the new entity.

Therefore, it is suggested that for the "neutrality theory" self-determination represents a supplementary argument in favour of achieving successful secession. Self-determination fights the opposing presumption of non-recognition that was established by the practice of States in case of unilateral secession, giving a people the best odds at achieving independence. However, this "empowering" effect of a separatist attempt is applicable only if the seceding group qualifies as a people under the international law entitled to exercise external self-determination.

4.2. The role of self-determination in the prohibition of unilateral secession

[1] Antonio Cassese, *Self-determination of peoples: a legal reappraisal,* Cambridge University Press, 1995, pp. 333-334.

In relation to the theory of prohibition, self-determination comes as an exception from the implicit obligation not to secede. In other words, international law does not allow a group of people to attempt the separation of a part of the territory from a State, unless that group of people holds, in certain conditions, a right to external self-determination. There are several differences between a group seeking independence by unilateral secession from their parent State based on the will of the group and its secession on the grounds of exercising external self-determination. Therefore, a distinction should be made between the holder of the right to self-determination and the groups of people who might claim secession.

In order for a group to be entitled to exercise self-determination, it needs to qualify as "a people"[1]. It is uncontested that minorities of a State do not fit into the category of holders of the right to self-determination. The beneficiaries of self-determination are peoples in the sense of "*all peoples of a given territory*".[2] The Venice Commission had a similar remark in this regard, stating that it is peoples who have the right to self-determination, not a minority or another group within the State, whereas secession is the instrument of a group of people looking to separate.[3]

[1] International law does not provide a legal definition of a "people", but a number of criteria have been in doctrine. In 1989 the International Meeting of Experts on Further Study of the Concept of the Rights of Peoples has established in its Final Report and Recommendations that in order to be acknowledged as a people, a group must have the will to be identified as such and fulfil some or all of the following features:

a. a common historical tradition;
b. racial or ethnic identity;
c. cultural homogeneity;
d. linguistic unity;
e. religious or ideological affinity;
f. territorial connection;
g. common economic life.

International Meeting of Experts on Further Study of the Concept of Rights of Peoples, *Final report and recommendations* (SHS.89/CONF.602/7), Paris, 1989.

[2] Rosalyn Higgin, *Problems and Process: International Law and How We Use It*, Oxford University Press, p. 124, as cited in John Dugard, *The Secession of States and Their Recognition in the Wake of Kosovo,* Recueil des cours, Vol 357, Hague Academy of International Law, 2013.

[3] *Self-determination and Secession in Constitutional Law,* Report, CDL-INF(2000)002-e, Venice Commission, 1999, p. 10.

The theory regarding the exceptional character of self-determination was pursued based on the "safeguarding clause"[1] which recognizes external self-determination only in cases when internal self-determination is not applicable. In light of the "safeguarding clause", international law seems to allow external self-determination in the case of a State that does not conduct itself in compliance with the principle of equal rights and self-determination of peoples.[2]

Going back to the case of *Quebec*, this view has been referred to by the Canadian Supreme Court, stating that while international law does not expressly prohibit secession, "*such a denial is, to some extent, implicit in the exceptional circumstances required for secession to be permitted under the right of a people to self-determination."*[3] It then continued by emphasizing that *"[a] right to external self-determination (...) arises in only the most extreme cases and, even then, under carefully defined circumstances*".[4]

Therefore, a State is protected from any internal or external disruption that could threaten the integrity of its territory as long as it respects the rights and freedoms of its peoples, prohibiting secession and any other action that could threaten the unity and sovereignty of the State. But if the State does not respect the internal self-determination of its citizens, the territorial protection yields in the face of external self-determination. In this case, external self-determination may have the character of a last resort measure. This extraordinary character strengthens the theory of the implicit prohibition of secession, as only an exceptional situation would prevail over the protection conferred by the territorial integrity. The argument would go that if self-determination, which is a positive right and a peremptory norm in international law,[5] requires

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[1] The "safeguarding clause" provides that: "*nothing (...) 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 principle of equal rights and self-determination of peoples (...) and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour*", UN Commission on Human Rights, *World Conference on Human Rights.*, 9 March 1994, E/CN.4/RES/1994/95.

[2] James Crawford, *The Creation of States in International Law*, Second Edition, Oxford University Press, 2006, p. 118 -119.

[3] Reference re *Secession of Quebec*, [1998] 2 S.C.R. 217, par. 112.

[4] *Ibidem*, par. 126.

[5] Regarding the status of the right to self-determination as a peremptory norm, see *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Separate Opinion of Judge Cançado Trindade, Sep. Op. of Judge Sebutinde, and Sep. Op. of Judge Robinson, *I.C.J. Reports 2019*. See also *Text of the draft conclusions and draft annex provisionally adopted by the Drafting Committee on first reading* on *Peremptory norms of general international law (jus cogens)*, A/CN.4/L.936, 2019.

extraordinary conditions in order to allow external self-determination, secession outside this context is prohibited.

The paradox of the self-determination argument in the case of the "implied prohibition theory" is that the interpretation of external self-determination as having the character of a last resort and only in exceptional situations creates the premises for a potential establishment of a qualified right to secession, as an instrument of exercising self-determination in order to combat oppression and grave violations of a people's rights and freedoms.

Although in the case of *Kosovo* the International Court of Justice repudiated the call to analyse the issue of secession as a remedy for violations of peoples' rights committed by the government, a number of States have supported remedial secession in their written statements[1] submitted before the Court. In addition, this concept has gathered considerable support among scholars, so much so that a set of requirements for a people to resort to remedial secession have crystallized:

i. A "people" qualifying as the holder of the right to self-determination;
ii. The people must occupy a distinct part of the territory and constitute a majority in that territory;
iii. There must be a prior denial of the right to internal self-determination;
iv. The people must have been priorly subjected to widespread and gross violations of their fundamental human rights;
v. The remedial secession must come as a last resort, after the people have exhausted all peaceful means of securing the respect of their rights while respecting the integrity of the State.[2]

However, remedial secession is yet to be acknowledged as an established concept of international law outside the scholarly realm. The findings of the Independent Fact-Finding Mission on the Conflict in Georgia come to reinforce this statement. As one of the more recent cases where the matter of secession was addressed, the Mission's report argued that "*a limited, conditional extraordinary allowance to secede as a last resort in extreme cases is debated in IL scholarship*". However, "*such a remedial*

[1] See the Writing Statements of the Republic of Germany, Netherlands, Slovenia, Ireland, Poland, Finland, *Accordance with International Law of the Unilateral Declaration of Independence on Respect of Kosovo, I.C.J. Reports 2010*.
[2] John Dugard, *The Secession of States and Their Recognition in the wake of Kosovo*, p. 146-147.

right or allowance does not form part of IL as it stands. The case of Kosovo has not changed the rules".[1]

5. Conclusion

In trying to determine the international law applicable to the secession of a territory, one would feel compelled to solve a complex legal puzzle. The emergence of the two antagonist theories has made the task of determining the legality of secession very difficult. There are however circumstances in which both State practice and doctrine have been in mutual assent about the rules applicable.

In specific situations, the illegal character of unilateral secession has been uncontested. These are the cases where secession and all its legal consequences have been expressly prohibited by the Security Council resolutions. It may be argued that the Security Council acted in particular due to the manner in which secession has been conducted, by breaching the peremptory norms of international law. In this case, either the Security Council resolutions, or the principle *ex injuria jus non oritur,* prevent any State from recognizing the secessionist movement, determining the inability of that entity to become a viable State.

In other cases, however, establishing the legality of secession has been dictated by the arguments brought in support of the two antagonist theories, respectively the theory of neutrality and the theory of prohibition. Although no express prohibition of secession is provided by the international law, the practice of States as well as other relevant actors have showed that an implicit prohibition of secession might be deduced from the provisions of the principle of territorial integrity. In addition, the extensive interpretation of the scope of the principle of territorial integrity established by the ICJ in the 2019 *Chagos* case represents a step forward towards the legal recognition of a broader protection offered against any action that endangers the unity and sovereignty of a State, regardless of its author.

With reference to the application of the two fundamental principles of the international legal system, respectively territorial integrity and self-determination, the provisions of the "safeguarding clause" indicate that territorial integrity prevails over external self-determination in all cases where the State governs itself in respect to internal self-determination and provides all its people equal access to the political decision-making process and political institutions, along with the protection of their fundamental rights and liberties. However, a State which is not conducting itself in compliance with the principle of equal rights and self-determination of

[1] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, vol II, September 2009, p. 141.

peoples could lose the protection of its territorial integrity and political unity. Taking into consideration the extraordinary situations under which unilateral secession can be lawfully exercised enforces the conclusion that in any other situation unilateral secession is prohibited by the principle of territorial integrity

Concluding, international law has always recognized the fundamental importance of the unity and territorial integrity of States. 61 years ago, the former Secretary General, U Thant, addressed the legality of secession in international law, stating that "*as far as the question of secession of a particular section of a Member State is concerned, the United Nations' attitude is unequivocal. As an international organization, 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*." [1] This statement reflected the opinion of the international community at the time and remains until today one of the firmest positions taken regarding the matter of secession. Furthermore, observing the more recent reactions of States and international courts, as well as the overall outcome of secessionist attempts, it appears that the international community has remained consistent in this view.

[1] Transcript of Press Conference by Secretary-General at Dakar, Senegal, on 4 January 1970, Press Release SG/SM/1204, 26 January 1970.

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