External self-determination beyond the colonial context: The theory of remedial secession and the potential emergence of a corresponding duty to remedial recognition

Dreptul la autodeterminare externă dincolo de contextul colonial: Teoria secesiunii remediu şi posibilitatea stabilirii unei obligaţii corelative de recunoaştere remediu

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Abstract

This article examines the potential crystallisation of a right to remedial secession and a corresponding duty of remedial recognition within international law. It argues that while unilateral secession traditionally lacks legal endorsement, certain situations involving oppression or grave human rights violations might determine the exceptional emergence of a qualified right to external self-determination. The analysis further considers whether the acknowledgment of a remedial right to secession could open the path for establishing a corresponding duty to engage in „remedial recognition". In support of this inquiry, the article examines relevant State practice, with particular emphasis on the international responses to Kosovo's declaration of independence, as well as on the remedial rhetoric used to persuade the recognition of secessionist entities.

Keywords: *the right of peoples; to self-determination; unilateral secession; remedial secession; remedial recognition.*

Rezumat

Acest articol analizează posibilitatea cristalizării în dreptul internaţional a noţiunii de „secesiune remediu" şi a obligaţiei corelative de „recunoaştere remediu". Deşi secesiunea unilaterală nu beneficiază, în mod tradiţional, de susţinere juridică, anumite situaţii de încălcare gravă a drepturilor fundamentale ale omului pot să justifice, cu caracter excepţional, exercitarea unui drept calificat la autodeterminare externă, în forma secesiunii remediu. Articolul examinează, totodată, dacă

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recunoaşterea unui drept la secesiunea remediu ar putea conduce către stabilirea unei obligaţii corelative de recunoaştere. În sprijinul acestei analize este examinată practica statelor, cu accent pe reacţiile faţă de declaraţia de independenţă a Kosovo, precum şi pe caracterul remedial utilizat pentru a susţine recunoaşterea entităţilor secesioniste.

Cuvinte-cheie: *dreptul popoarelor la autodeterminare; secesiune unilaterală; secesiunea-remediu; recunoaşterea-remediu.*

1. INTRODUCTION

The right of peoples to self-determination is described as „one of the essential principles of contemporary international law”[1], enjoying an „*erga omnes* character”[2]. During the decolonisation process, more than 90 new independent entities were successfully created under this ideal, making the right to self-determination „one of the most important driving forces in the new international community”, setting in motion „a restructuring and redefinition of the world community's basic «rules of the game»”[3]. For peoples aspiring to break away from their parent State and shape their own future, the recognition of a right to self-determination marked a historic turning point, being the first time that international law contained a rule which reinforced the possibility of gaining independence.

However, beyond the colonial context, States are no longer willing to accept separation (secession) as a valid expression of the right to self-determination, justifying that such an action would be incompatible with the principle of territorial integrity[4]. Instead, the contemporary approach on the principle of self-determination appears to be oriented towards its internal dimension, as the ongoing right of all people living within a State to be represented and to participate freely in the governmental process of decision-making[5]. Thus, any type of action that might involve territorial alterations and might conflict with the principle of territorial integrity is excluded.

The opposition of the current international legal framework towards secessionist actions appears to be reinforced by the „safeguard clause” found in Principle 5 of the Friendly Relations Declaration[6], which affirms the primacy of territorial integrity and seeks

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[1] *Case Concerning East Timor (Portugal v Australia) Merits, Judgment*, I.C.J. Reports 1995, p. 102.

[2] *Ibidem.*

[3] A. Cassese, *Self-determination of peoples: A legal reappraisal*, Cambridge University Press, Cambridge, 1995, p. 1.

[4] S.F. van den Driest, *Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law*, în Netherlands International Law Review, vol. 62, 2015, pp. 329-363.

[5] A. Cassese, *op. cit.*, 1995.

[6] Principle 5, paragraph 7 of the Friendly Relations Declaration states as follows: „Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or

to prevent any attempts to alter the territorial boundaries of sovereign States from happening. But despite the recognised centrality of the principle of territorial integrity, secessionist movements continued to emerge in the current international framework, often seeking validation for their independence by relying on the invocation of a right to external self-determination[7]. Furthermore, the possibility that a right to remedial secession arises in situations where serious violations of human rights were committed by the government against a certain group of people within a State appears to have been gathering more traction in the last period of time.

This article aims to address the potential emergence of a right to remedial secession under customary international law. The starting point of this analysis is the inverted reading of the „safeguard clause", which suggests that a right to remedial secession might be applicable in situations where the right to internal self-determination of a people living on the territory of a State is gravely breached by their government. In this context, it has been argued that the protection offered by the principle of territorial integrity would wear off, leaving States susceptible to actions which could lead to alterations of their boundaries[8]. The cases of Bangladesh and Kosovo will be assessed, in order to identify whether a possible support for remedial secession in State and judicial practice might exist. Furthermore, the impact of the remedial rhetoric on State recognition practices will be briefly addressed.

2. THE THEORY OF REMEDIAL SECESSION

Theory of remedial secession relies on the inverted reading of the „safeguard clause" contained by Principle 5, paragraph 7 of the Friendly Relations Declaration and, later, by the Vienna Declaration. Basically, this provision guarantees the territorial integrity of all independent States which are „conducting themselves in compliance with the principle of equal rights and self-determination of peoples"[9] and which possess „a Government representing the whole people belonging to the territory without distinction of any

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 as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour", UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV).

[7] E. Chadwick, *Post-World War 2 Exercises of Self-Determination: „Peaceful", „Friendly", and „Other"*, în J. Summers, *Kosovo – A precedent?: The declaration of independence, the advisory opinion and implications for statehood, self-determination and minority rights*, Koninklijke Brill NV, Leiden, The Netherlands, 2011, pp. 213-214.

[8] J. Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*, Bloomsbury Publishing, 2013, pp. 158-159.

[9] UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, 24 October 1970, A/RES/2625(XXV), Principle V par. 7.

kind"[10]. But by upturning this formula, the non-compliance of States with these requirements appears to determine the loss of territorial integrity guarantees, which could potentially be translated into a right to secession. Basically, this interpretation of the „safeguard clause" would make territorial integrity contingent on the respect for internal self-determination, a conclusion highlighted by Antonio Cassese, who interpreted this clause in the key of the *Lotus* doctrine. He stated that „[c]lose analysis of both the text of the Declaration and the preparatory work warrants the contention that secession is not ruled out but may be permitted only when very stringent requirements have been met. The basis for this conclusion is that in the «saving clause» under discussion, the reference to the requirement of not disrupting the territorial integrity of States was placed at the beginning, in order to underscore that territorial integrity should be the paramount value for States to respect. However, since the possibility of impairment of territorial integrity *is not totally excluded*, it is logically admitted"[11].

One of the first acknowledgements of the idea of a potential emergence of a right to remedial secession as a method to sanction the oppressive or discriminatory behaviour of a State over a part of its population belongs to the League of Nations' Commission of Rapporteurs, in its famous *Åland Islands* case[12]. While the outcome of the case has been the denial of the right of the Aalander people to secede, justified by the fact that the exercise of such a right would „destroy order and stability within States and inaugurate anarchy in international life" and would mean the infringement of the territorial integrity and unity of a State[13], the Commission nevertheless recognised that a right to remedial secession could potentially emerge in cases where a people is persecuted or discriminated against by its government. However, the Commission underlined the restricted applicability of this theory, stating that such a situation would only occur under „exceptional circumstances", being a solution of „last resort when the State lacks either the will or the power to enact and apply just and effective guarantees [of religious, linguistic and social freedom]"[14].

The Supreme Court of Canada also endorsed a similar view. In its *Secession of Quebec* case, the Court acknowledged that outside the colonial context, the right to external self-determination „arises in only the most extreme of cases and, even then, under carefully defined circumstances"[15]. Such cases have been identified as situations „when a people is blocked from the meaningful exercise of its right to self-determination

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[10] UN General Assembly, *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23.

[11] A. Cassese, *op. cit.*, pp. 118-119.

[12] John Dugard argued that the theory of remedial secession goes even further back, having its roots in the writings of Grotius and Vattel. He also highlighted that the American Declaration of Independence proclaimed that the American colonists were entitled to exercise the right to remedial secession. J. Dugard, *The Secession of States and Their Recognition in the Wake of Kosovo*, Recueil des cours, vol. 357, Hague Academy of International Law, Editura AIL-POCKET, 2013, pp. 141-142.

[13] The Aaland Islands Question (On the Merits), Report by the Commission of Rapporteurs, League of Nations Council Document B7 21/68/106 (1921) (excerpted and reprinted), p. 318.

[14] *Ibidem.*

[15] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, par. 126.

internally" [16]. It can be observed therefore that one of the defining elements of such a right is its „remedial" character, which denotes the fact that it is necessary for the actions of the State to meet a threshold of gravity in order to trigger its application, otherwise the right to self-determination remaining anchored in its internal dimension. Moreover, as observed by the Commission of Rapporteurs in the *Åland Islands* case, the Court also recognized that the right to remedial secession possesses a „last resort" character[17].

A more detailed view over the requirements that would need to be met in order for a right to remedial secession to emerge was provided by Karl Doehring, in a commentary on the United Nations Charter which linked the emergence of this right with the development of the right to self-determination in the human rights framework. He stated that: „[i]t is therefore well arguable that discrimination against ethnic minorities could potentially give rise to a right of secession. (…) a right of secession could, however, nevertheless be recognized if the minority discriminated against is exposed to actions by the sovereign state power which consist in an evident and brutal violation of fundamental human rights, e.g. through killing or unlimited imprisonment without legal protection, through destroying family relations, through exploitation without any regard for the necessities of life, through special prohibitions against following religious professions or using one's own language and, lastly, through executing all these prohibitions with brutal methods and measures. Consequently, one could argue that the right of self-determination laid down in Art. 1 of the Covenants includes the right to resist such violations as a form of self-defence, and that secession, even through the use of force, might offer the only possible defensive relation to brutal oppression"[18].

The possible emergence of a right to remedial secession in situations where peoples are subjected to oppression and grave violations of their fundamental rights has also been examined on a regional level. In the European Court of Human Rights case *Loizidou v. Turkey*, Judges Wildhaber and Ryssal argued in their concurring opinion that „[i]n recent years a consensus has seemed to emerge that peoples may also exercise a right to self-determination if their human rights are consistently and flagrantly violated or if they are without representation at all or are massively under-represented in an undemocratic and discriminatory way"[19]. Similar acknowledgements can also be found in several documents of the African Commission on Human and Peoples' Rights. In the *Katangese Peoples' Congress v. Zaire* case, the Commission recognised the potential existence of a right to remedial secession based on Article 20 of the African Charter of Human and

[16] *Ibidem*, par. 131

[17] *Ibidem.*

[18] K. Doehring, *Self-determination*, în B. Simma (ed.), *The Charter of the United Nations: A Commentary*, Oxford University Press, Oxford, 1995, p. 66, *apud* M. Weller, *Escaping the self-determination trap*, Martinus Nijhoff Publishers, 2009, p. 61.

[19] *Loizidou v. Turkey*, 40/1993/435/514, Concurring Opinion of Judge Wildhaber, Joined by Judge Ryssdal, Council of Europe: European Court of Human Rights, 23 February 1995.

Peoples' Rights[20]. However, it noted that such a right could only emerge if there is „concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question". It then continued stating, „in the absence of such evidence that the people of Katanga are denied the right to participate in Government (…) Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire"[21]. The *Kevin Mgwanga Gunme* v. *Cameroon* case holds a similar conclusion on the circumstances in which remedial secession might arise. It recalls the need for „concrete evidence of violations of human rights to the point that the territorial integrity of the State Party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by Article 13 (1)"[22]. As in the previous case concerning Katanga, the Commission highlighted that the right to self-determination can only be applicable if there is proof of massive violation of human rights under the Charter[23].

Apart from the „gravity threshold" that has been invoked on various occasions, another recurrent element that can be identified in the examples above is the character of „last resort" of the right. This means that remedial secession can only be exercised after people have exhausted all peaceful means of securing the respect of their rights whilst respecting the territorial integrity of their State[24]. This element was described by the Chairman of the former UN Working Group on Minorities as a prerequisite for a potential emergence of a right to remedial secession, meaning that „[o]nly if the representatives of the group concerned can prove, beyond reasonable doubt, that there is no prospect within the foreseeable future that the Government will become representative of the whole people, can it be entitled to demand and to receive support for a quest for independence"[25].

Therefore, remedial secession can be described as meaning the right of a people located on an identifiable part of the State's territory to exercise external self-determination and secede from their State as a last resort to address gross violations

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[20] Article 20 has the following content: „1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. 2. Colonised or oppressed people shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community. 3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural", Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights („Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

[21] *Katangese Peoples' Congress v Zaire*, Merits, Communication No 75/92, IHRL 174 (ACHPR 1995), October 1995, African Commission on Human and Peoples' Rights [ACHPR], par. 6

[22] *Mgwanga Gunme v. Cameroon*, Comm. 266/2003, 26th ACHPR AAR Annex (Dec 2008 – May 2009), par. 194.

[23] *Ibid.*, par. 199.

[24] J. Dugard, *The secession of states and their recognition in the wake of Kosovo*, Recueil des cours, vol. 357, Hague Academy of International Law, pp. 146-147.

[25] A. Eide, *Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities*, UN doc., E/CN.4/Sub.2/1993/34, 10 august 1993, par. 84.

of human rights perpetrated against them by the government[26]. Moreover, a series of requirements have been identified in order for such a right to arise in international law. Firstly, the right to remedial secession is understood as a mode of manifestation for post-colonial external self-determination, which implicitly means that it can only belong to a people qualifying as a „self" for the purposes of the right of self-determination[27]. This means that neither minorities, nor other groups can be entitled to a right to remedial secession, since they are not holders of a right to self-determination. Secondly, there needs to be a clear delineation of the territory inhabited by the people entitled to remedial secession and they must hold a majority within that certain territory.[28] Thirdly, the people entitled to remedial secession must have priorly been denied their exercise of the right to self-determination internally. This requirement emanated from the *a contrario* interpretation of the „safeguard clause" and was consolidated by the *Quebec* case.[29] Lastly, the gravity threshold and the „last resort" character discussed above need to be met. It must be observed however that the gravity threshold is composed of two elements: on one side, a systematic denial of governmental representation must exist and, on the other, there must also be evidence of gross breaches of fundamental human rights. As for the „last resort" character, there must be an obvious exclusion of any likelihood for achieving a peaceful solution within the existing State structure[30].

At a first glance, one might conclude that the crystallisation of a right to remedial secession in international law is supported both by doctrine and on a judicial and quasi-judicial level. However, there have also been voices criticising such a development, claiming that although remedial secession might be appealing on a moral level, its theoretical foundations are fragile[31]. The support mentioned above for the crystallisation

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[26] K. del Mar, *The myth of remedial secession*, în D. French, *Statehood and self-determination reconciling tradition and modernity in international law*, Cambridge University Press, 2013, pp. 79-108, 79.

[27] J. Dugard, *op. cit.*, p. 147.

[28] *Ibidem.*

[29] The Canadian Supreme Court emphasised that „[a] state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity". *A contrario*, if the State denies a people its right to internal self-determination, its territorial integrity is no longer protected by international law, *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, par. 130.

[30] A. Cassese, *op. cit.*, pp. 119-120.

[31] Malcolm Shaw argued that „[s]uch a major change in legal principle cannot be introduced by way of an ambiguous subordinate clause, especially when the principle of territorial integrity has always been accepted and proclaimed as a core principle of international law and is indeed placed before the qualifying clause in the provision in question", M. Shaw, *Peoples, territorialism and boundaries*, în Eur J Int Law, 8:478-507, p. 483. In a similar note, Marcelo Kohen opinionated that it is not possible to interpret the „safeguard clause" as allowing secession as a remedy because the purpose of the clause was to restrict the scope of self-determination, not to expand it, M.G. Kohen, *Remarks by Marcelo G. Kohen*, *Proceedings of the Annual Meeting (American Society of International Law)*, vol. 107, 2013, pp. 216-219. Also, Rosalyn Higgins argued that accepting the emergence of a right to remedial secession in international law would lead to „post-modern tribalism" for the international community, R. Higgins, *Postmodern tribalism and the right to secession*, în

of such a right has targeted mostly hypothetical situations or situations where secession did not ultimately come through. Moreover, in those cases where a separation from the parent-State was actually pursued and it has determined to the formation of a new statal entity, remedial secession did not enjoy the same level of apparently unanimous support. The next section will show that although remedial secession has gathered a certain degree of theoretical definition and support, such a right cannot be considered to have emerged in the current international framework due to the lack of compelling practical evidence of its existence[32].

3. DOES INTERNATIONAL PRACTICE SUPPORT THE EMERGENCE OF A RIGHT TO REMEDIAL SECESSION?

As mentioned above, evidence on the existence of a right to remedial secession in State practice is rather scarce. One of the few relevant cases that take the existence of a right to remedial secession into consideration, as a manifestation of external self-determination beyond the theoretical realm, is the independence of Bangladesh from Pakistan, which is recognised by some scholars as the only case of successful secession.[33] Later, the case of Kosovo was considered by some scholars to be the „coming of age for remedial secession as a component of the law of secession"[34], the potential emergence of a right to remedial secession being one of the aspects brought into discussion by States during the proceedings of the International Court of Justice. The theory of remedial secession re-entered international focus in the context of the annexation of the Crimean Peninsula in 2014, with Russia implicitly supporting the emergence of such a right in international law in order to justify its belligerent actions.[35] However, as it will be argued below, these cases cannot be considered to provide the necessary framework to confirm the crystallisation of the concept of remedial secession into a norm of customary international law.

C. Brölmann, R. Lefeber, M. Ziek (eds.), *Peoples and Minorities in International Law*, Martinus Nijhoff Publishers, Dordrecht, 1993, pp. 29-35, 35, *apud* K. del Mar, *op. cit.*, p. 105.

[32] S.F. van den Driest, *Crimea's separation from Ukraine: An analysis of the right to self-determination and (remedial) secession in international law*, în Netherlands International Law Review, vol. 62, 2015, pp. 329-363, 342.

[33] J. Dugard, D. Raič, *The role of recognition in the law and practice of secession*, în M.G. Kohen, *Secession. International law perspectives*, Cambridge University Press, Cambridge, pp. 94-137, 120-130.

[34] J. Dugard, *op. cit.*, p. 149.

[35] Russia referred on several occasions to the „very worrying situation" for the Russian-speaking populations of Crimea and eastern Ukraine, also speaking of „an unconstitutional armed coup d'état carried out in Kyiv by radical nationalists in February, as well as by their direct threats to impose their order throughout Ukraine" and who made „threats of violence […] against the security, lives and legitimate interests of Russians and all Russian-speaking peoples". Thus, Russia claimed it was an issue of „defending [its] citizens and compatriots, as well as the most import[ant] human right – the right to life", Security Council, 69th year: 7125th meeting, Monday, 3 March 2014, New York, S/PV.7125.

i. The case of Bangladesh (East Pakistan)

Formerly known as East Pakistan, the territory of nowadays' Bangladesh was part of the State of Pakistan until 1971, when it unilaterally declared its independence. The territory of East Pakistan was separated by approximately 1,000 miles from the Indian territory and was inhabited by a Bengali population which did not possess a common language, culture, economy or history with the people of Western Pakistan, but were united by a common religion, Islam[36]. Throughout the years, the people of East Pakistan suffered systematic discrimination from the central authorities of Islamabad. In this context, the elections for the National Assembly of Pakistan held in December 1970 resulted in the overwhelming victory of the Awami League, a party established as the Bengali alternative to the domination of the Muslim League and militating for greater autonomy for East Pakistan. However, following these results, the central government of Islamabad suspended the Parliament and introduced martial rule on the territory of East Pakistan, culminating with acts of repression which resulted in over one million Bengalis being killed and ten millions seeking refuge in India[37]. On 17 April 1971, the independence of East Pakistan was proclaimed, but the violences and brutal oppression of the Bengalis escalated into an armed conflict which determined the intervention of India on 3 December 1971. On 6 December 1971 India recognized the independence of East Pakistan under the name of Bangladesh, with the Pakistani armed forces surrendering soon after[38].

In light of these events, Bangladesh's proclamation of independence from Pakistan seems to have been rooted in the theory of remedial secession, as a reaction to the grave oppression to which the people of East Pakistan were subjected. However, several arguments can be put forward to demonstrate that the outcome of the Bangladesh situation was driven not by the remedial secession doctrine, but rather by political decisions. Firstly, despite declaring independence, Bangladesh's international status remained uncertain for the following two years. It only achieved universal recognition and UN membership in September 1974, after Pakistan formally accepted the separation[39]. This course of events was seen to imply that although reports of oppression and human rights violations had circulated worldwide, this reason alone did not lead to widespread recognition of the newly proclaimed State[40]. Secondly, during the debates in the UN General Assembly and Security Council, few States had analysed the question in terms of self-determination and secession. Among those who did so, most had explicitly denied

[36] J. Dugard, D. Raič, *op. cit.*, pp. 94-137, 120.

[37] *Ibidem*, p. 121.

[38] *Ibidem.*

[39] *Ibidem*, pp. 122-123.

[40] S.F. van den Driest, *op. cit.*, pp. 329-363, 345-346.

the idea that East Pakistan had any right to secede[41]. Furthermore, China and Argentina considered that an intervention in this case would constitute an intervention in the internal affairs of a member state and would compromise the territorial integrity of Pakistan[42]. Only two States, India[43] and the USSR[44], supported the independence of Bangladesh on the grounds of a right to secession derived from the people's right to self-determination.

Therefore, it was argued that the State of Bangladesh did not emerge automatically from remedial secession, as a result of the grave violations conducted by the Pakistani central authorities. Instead, its statehood was consolidated by the acceptance granted by its parent State and the rest of the international community. Moreover, it was argued that the lack of any reference to a right to remedial secession or self-determination during the UN debates on the armed conflict and on the admission of Bangladesh as a member-State can be interpreted as a clue that a right to remedial secession was not considered to exist in customary international law at the time[45].

ii. State practice in the case of Kosovo

Another relevant case in term of State practice regarding the potential emergence of a right to remedial secession in contemporary international law is the secession of Kosovo[46]. Declaring independence from Serbia on 17 February 2008, Kosovo invoked the „years of strife and violence […] that disturbed the conscience of all civilised people" [47]. This included various forms of discrimination, culminating in grave violations of human

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[41] These States were Chad, Guinea, Saudi Arabia, Sri Lanka and Togo. UNGA Verbatim Record paras 295, 203, 30, 34 (7 December 1971) UN Doc A/PV.2003; UNGA Third Committee Summary Record para 3 (24 November 1971) UN Doc A/C.3/SR.1882; UNSC Verbatim Record paras 225-231 (6 December 1971) UN Doc S/PV.1608, *apud* G.J. Abhimanyu, *Bangladesh and the right of remedial secession*, p. 9, în J. Vidmar, S. McGibbon L. Raible (eds), *Research Handbook on Secession*, Edward Elgar, 2022.

[42] UNSC Verbatim Record paras 20-1 (China), 25 (Argentina) (4 December 1971) UN Doc S/PV.1606, *Idem*.

[43] India referred to a number of factors which entitle East Pakistan to secession: the denial of the democratic mandate of the Awami League, the violations of human rights in East Pakistan, the colonial nature of the exploitation of East Pakistan by West Pakistan, the status of East Pakistan as a non-self-governing territory, its geographical separation, the fact that the people of East Pakistan constituted the majority of the people of Pakistan, the irrevocable loss of the allegiance of the East Pakistani people by West Pakistan and, the inevitability of East Pakistan's resort to a demand for independence in these circumstances, *Ibidem*, p. 9.

[44] The USSR affirmed the right of secession as inherent in the right of self-determination, and suggested that the elected representatives of the people of East Pakistan were eligible to exercise the right of self-determination and secession on their behalf, UNSC Verbatim Record paras 167-70 (13 December 1971) UN Doc S/PV.1613, *Idem.*

[45] Simone F. van den Driest, „Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law", *Netherlands International Law Review*, volume 62, 2015, pages 329–363, p. 345-346.

[46] John Dugard described the case of Kosovo as the „coming of age for remedial secession as a component of the law of secession", J. Dugard, *op. cit.*, p. 149.

[47] Assembly of Kosovo, *Kosovo Declaration of Independence*, 17 February 2008, par. 7.

rights against ethnic Albanians by the Yugoslav government[48]. Furthermore, Kosovo's declaration of independence noted that, prior to secession, negotiations had been held with Serbian representatives, but „no mutually-acceptable status outcome was possible." In this context, it is important to highlight that Kosovo has been predominantly inhabited by an Albanian Muslim population, residing in the region since the 19th century [49]. Considering the aforementioned aspects, on a first look, it appears that Kosovo's claim for independence ticks all the boxes necessary for the remedial secession theory to become applicable. However, although it has been invoked as a justification and surely had a contribution to the current international status of Kosovo, there are several reasons why the theory of remedial secession cannot be held as the sole argument upon which Kosovo sought to build its independence claim.

While the Kosovar people were indeed subjected to discrimination and violations of their fundamental rights, these actions took place in 1998-1999, under the regime of Slobodan Milošević. Consequently, the separation from Serbia could have been seen as having a remedial character if independence were proclaimed in 1999. Since such an action was pursued some ten years after the violences took place, the acquisition of statehood appears to not have the character of „last resort" for ending oppression, especially since in the following nine years Kosovo had enjoyed substantial autonomy under the administration of the United Nations while Serbia itself had undergone deep political changes, becoming a democratic State where the rights of the Albanian population of Kosovo were protected[50]. Thus, the reliance on the doctrine of remedial secession to justify Kosovo's breakup from Serbia is questionable, this separation being rather a situation which escalated up to the point of no return[51].

The proceedings before the International Court of Justice in the request for an Advisory Opinion for the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* have provided an opportunity for States to express their view on the theory of remedial secession. While the Court avoided analysing the issue itself[52], remedial secession was featured in many of the States' written statements as well as in the oral proceedings, mostly being used as a justification for recognising the

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[48] K. del Mar, *op. cit.*, pp. 79-108, p. 81.

[49] http://worldpopulationreview.com/countries/kosovo-population/.

[50] J. Dugard, *op. cit*., p. 211.

[51] Special Envoy of the UN Secretary-General Martti Ahtisaari wrote: „[t]he establishment of the United Nations Mission in Kosovo […] has created a situation in which Serbia has not exercised any governing authority over Kosovo. This is a reality one cannot deny; it is irreversible. A return of Serbian rule over Kosovo would not be acceptable to the overwhelming majority of the people of Kosovo. Belgrade could not regain its authority without provoking violent opposition. Autonomy of Kosovo within the borders of Serbia – however notional such autonomy may be – is simply not tenable.", UN Doc S/2007/168 (16 March 2007), para 7.

[52] „Debates regarding the extent of the right of self-determination and the existence of any right of «remedial secession», however, concern the right to separate from a State. As the Court has already noted […] that issue is beyond the scope of the question posed by the General Assembly", *Accordance with International Law of the Unilateral Declaration of Independence on Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 39, par. 83.

independence of Kosovo. The States who favoured the applicability of the theory of remedial secession were Albania[53], Estonia[54], Slovenia[55], Finland[56], Germany[57], Ireland[58], the Netherlands[59], Poland[60] and Switzerland[61], most of them claiming that separation was necessary due to the oppression to which the Kosovar population has been subjected before and during the 1998-1999 conflict. It was however admitted that the period of time between the cessation of the violations that targeted the Kosovar population and the proclamation of independence was unusually long for an action which supposedly has a remedial character, but the delay was attributed to prolonged negotiations with the Serbian government, without being able to reach an internal solution. Besides, it was argued that the passage of time does not diminish the applicability of remedial secession, given the severity of the violations targeting the Kosovar people.

At the opposite end, several States rejected the possibility that the Kosovar people possessed a post-colonial right to external self-determination through remedial secession. Among them were Serbia[62], Argentina[63], Spain[64] and Cyprus[65]. The main arguments supporting this point of view were that the „safeguard clause" does not, in fact, allow the emergence of a right to remedial secession in international law and that, even if the existence of a right to remedial secession was accepted, it would not be applicable to the case of Kosovo. Other States, such as the Russian Federation[66] and Romania[67] have argued that international law may allow the emergence of a right to remedial secession, but only under very special circumstances, in extreme cases of oppression „such as an outright armed attack by the parent State, threatening the very existence of the people in question"[68]. However, it was underlined that, at that moment, the theory of remedial secession was „not yet fully established in international law and still wanting of meaningful State practice"[69].

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[53] *Accordance with International Law of the Unilateral Declaration of Independence on Respect of Kosovo*, Written Statement of Albania, pp. 42-43, par. 79-83.

[54] *Ibidem*, Written Statement of Estonia, pp. 6-11, sections 2.1.1-2.1.3.

[55] *Ibidem*, Written Comments of the Republic of Slovenia, pp. 6-7, par. 8.

[56] *Ibidem*, Written Statement by Finland, p. 7, par. 12.

[57] *Ibidem*, Written Statement by Germany, pp. 32-37, Chap. VI.2.

[58] *Ibidem*, Written Statement of Ireland, pp. 9-12, par. 29-34.

[59] *Ibidem*, Written Statements of Netherlands, April 2009, pp. 7-13, par. 3.5-3.21; July 2009, pp. 6-7, par. 3.10-3.11.

[60] *Ibidem*, Written Statement of Poland, pp. 25-26, par. 6.4-6.10.

[61] *Ibidem*, Written Statement of Switzerland, p. 16, par. 62-3.

[62] *Ibidem*, Written Statement of Serbia, pp. 214-240, par. 589-653.

[63] *Ibidem*, Written Statement of Argentina, p. 34, par. 85.

[64] *Ibidem*, Written Comments of Spain, pp. 5-6, par. 8.

[65] *Ibidem*, Written Statement of the Republic of Cyprus, April 2009, pp. 36-39, par. 140-148.

[66] *Ibidem*, Written Statement of the Russian Federation, pp. 30-38, par. 86-104.

[67] *Ibidem*, Written Statement of Romania, pp. 39-45, par. 132-159.

[68] *Ibidem*, Written Statement of the Russian Federation, p. 32.

[69] *Ibidem*, Written Statement of Romania, p. 40, par. 138.

Out of the 43 States participating in the proceedings of the Court, 25 States did not address the matter of remedial secession. Also, out of the five permanent members of the UN Security Council, the only State that recognised the potential emergence of a right to remedial secession, though in an extreme scenario, was Russia. In opposition, China unequivocally rejected the doctrine, stating that „the so-called right to «remedial self-determination» clashes with the principle of State sovereignty and territorial integrity" and „[n]o support can be found either in State practice or *opinio juris* for such an alleged right under customary international law"[70]. Furthermore, while France, the United Kingdom[71] and the United States recognised the independence of Kosovo, they did not rely their decision on the existence of a right of the Kosovar people to remedial secession.

Therefore, during the *Kosovo* proceedings, the international community showed a divided attitude towards the existence of a right to remedial secession in customary international law and its applicability, the Court acknowledging the „radically different views" of the States on the matter[72]. In addition, the Court noted that the right to remedial secession was invoked „only as a secondary argument" to justify the independence of Kosovo[73]. However, apart from this brief mention, the Court limited its analysis to the opinion that „[d]ebates regarding the extent of the right of self-determination and the existence of any right of «remedial secession» (…) concern the right to separate from a State (…) and that issue is beyond the scope of the question posed by the General Assembly"[74].

Although the Court did not seize the opportunity presented by the *Kosovo* case to shed light on the status of remedial secession in customary international law, the matter was addressed by Judge Yusuf and Judge Cançado Trindade in their separate opinions. Both supported the possible emergence of such a right in customary international law in certain contexts. Judge Cançado Trindade resumed to underlining that „[t]he principle of self-determination has survived decolonization, in order to face nowadays new and violent manifestations of systematic oppression of peoples... It is immaterial whether, in the framework of these new experiments, self-determination is given the qualification of «remedial», or another qualification. The fact remains that people cannot be targeted for

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[70] The Oral Statement of China, ICJ Public Hearing on the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Governance of Kosovo*, Verbatim Record for Monday December 7, 2009, *CR 2009/29*, pp. 25-26, 36.

[71] On behalf of the United Kingdom, James Crawford argued that Article 1 of the Human Rights Covenants provides a general right to self-determination, not one limited to colonial cases, extending, in light of the Canadian Supreme Court findings in the case of *Quebec*, to *in extremis* situations. However, no relation was made to the declaration of independence. The Oral Statement of the UK, *Ibid.*, 10 December 2009, *CR 2009/32*, p. 54, par. 29-30.

[72] *Accordance with International Law of the Unilateral Declaration of Independence on Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 39, par. 82.

[73] *Ibidem*, par. 83.

[74] *Ibidem*.

atrocities, cannot live under systematic oppression. The principle of self-determination applies in new situations of systematic oppression, subjugation and tyranny"[75]. On the other hand, Judge Yusuf had a more extensive approach, affirming that a State's behaviour involving atrocities, persecution, discrimination and crimes against humanity „pierces the veil of sovereignty and confers certain internationally protected rights to peoples, groups and individuals who may be subjected to such acts (…) The right of self-determination, particularly in its post-colonial conception, is one of those rights"[76]. Judge Yusuf however reiterated the fact that such a right could only emerge in extreme conditions since a general recognition of a right to external self-determination beyond the colonial context would „reduce to naught the territorial sovereignty and integrity of States and would lead to interminable conflicts and chaos in international relations"[77].

4. DOES THE POTENTIAL EMERGENCE OF A RIGHT TO REMEDIAL SECESSION ENCOURAGE THE RISE OF A DUTY TO RECOGNISE?

Starting from the presumption that a right to remedial secession might arise in customary international law, such an outcome would also have consequences upon the practice of recognition, since recognition often serves as the authoritative affirmation of statehood for seceding entities[78]. Thus, applying the same logic as in the case of remedial secession, international law would also be conditioned to recognise a duty of States to engage in „remedial recognition" in response to oppression or gross human rights violations by a government. Otherwise, in the absence of recognition, the right to remedial secession would become rather meaningless, creating an isolated entity that would continue to struggle for independence in the absence of broader international support.

The remedial theory of secession could have been upheld by States to justify their recognition of the two entities mentioned in the previous section: in the case of Bangladesh, where the people suffered systematic discrimination from the central authorities before proclaiming their independence[79]; and in the case of Kosovo, whose population faced discrimination, culminating in grave violations committed against the ethnic Albanians by the Yugoslav government[80]. However, as it can be seen from the practice of states, in none of the situations was recognition granted based on a remedial narrative. In fact, in the case of Bangladesh only two States invoked self-determination as

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[75] *Accordance with International Law of the Unilateral Declaration of Independence on Respect of Kosovo, I.C.J. Reports 2010*, Separate Opinion of Judge Cançado Trindade, p. 53, par. 175.

[76] *Ibidem*, Separate Opinion of Judge Yusuf, par. 7.

[77] *Ibidem*, par. 10.

[78] It was emphasised in doctrine that since the international system is inherently social, any aspiring State's membership depends on the acceptance of its peers. B. Coggins, *Friends in high places: International politics and the emergence of states from secessionism*, în International Organization, vol. 65, nr. 3, 2011, pp. 433-467.

[79] J. Dugard, D. Raič, *op. cit.*, pp. 94-137, 120-121.

[80] K. del Mar, *The myth of remedial secession*, în D. French, *Statehood and self-determination reconciling tradition and modernity in international law*, Cambridge University Press, Cambridge, 2013, pp. 79-108, 81.

a reason for legitimising secession, respectively India[81] and the USSR[82]. In the case of Kosovo, the majority of recognising States (which represent roughly 50% of the international community) justified their decision primarily on political grounds rather than relying on normative arguments[83]. Of the few ones who did refer, on some degree, to self-determination and hinted towards a „remedial" understanding of the norm, the declaration of Irland stood out, referring to „[t]he bitter legacy of the killings of thousands of civilians in Kosovo and the ethnic cleansing of many more [which] has effectively ruled out any restoration of Serbian dominion in Kosovo."[84] Other declarations worth mentioning are those of Albania[85] and Burkina Faso[86], which attribute the creation of Kosovo to the exercise of the right to self-determination, as well as that of the United Arab Emirates, who justified the recognition of Kosovo as an independent and sovereign State on the „accordance with its firm support for the principle of the legitimate right of people to self-determination"[87].

Aside from the declarations above, however, State practice acknowledging the remedial rhetoric has proven to be rather scarce. The concept of „remedial recognition" was recently invoked, without much success, in reference to the situation in Nagorno-Karabakh. Following violent attempts to reintegrate Nagorno-Karabakh into Azerbaijan, which led to a grave humanitarian crisis[88], the National Assembly of the so-called Republic of Artsakh adopted a statement pleading for United Nations member States to recognize its independence on the basis of the „remedial state" doctrine, and to prevent a genocide of Armenians by Azerbaijan. The National Assembly claimed that „the only way to prevent the impending tragedy is to recognize the independence of the Republic of Nagorno-Karabakh (Artsakh) based on the principle of RECOGNITION FOR

[81] India referred to a number of factors which entitle East Pakistan to secession: the denial of the democratic mandate of the Awami League, the violations of human rights in East Pakistan, the colonial nature of the exploitation of East Pakistan by West Pakistan, the status of East Pakistan as a non-self-governing territory, its geographical separation, the fact that the people of East Pakistan constituted the majority of the people of Pakistan, the irrevocable loss of the allegiance of the East Pakistani people by West Pakistan and, the inevitability of East Pakistan's resort to a demand for independence in these circumstances, *Ibidem*, p. 9.

[82] The USSR affirmed the right of secession as inherent in the right of self-determination, and suggested that the elected representatives of the people of East Pakistan were eligible to exercise the right of self-determination and secession on their behalf, UNSC Verbatim Record paras 167-70 (13 December 1971) UN Doc S/PV.1613, *Ibidem.*

[83] S. van den Driest, *Remedial secession: A right to external self-determination as a remedy to serious injustices*, în School of Human Rights Research Series, vol. 61, 2013, pp. 235-244.

[84] https://www.irishexaminer.com/news/arid-30349262.html.

[85] http://keshilliministrave.al/index.php?fq=brenda&m=news&lid=7323&gj=gj2.

[86]https://lefaso.net/spip.php?article26554#:~:text=Le%2017%20f%C3%A9vrier%202008%2C%20le,formellement%20la%20R%C3%A9publique%20du%20Kosovo.

[87] https://english.alarabiya.net/articles/2008%2F10%2F14%2F58241.

[88] https://unric.org/en/karabakh-un-humanitarian-response/.

SALVATION"[89]. Calls upon a „remedial recognition of independence" were also made by the Armenian Prime Minister. In an interview referring to the Azerbaijani-Turkish aggression in the region, Prime Minister Nikol Pashinyan declared that „[t]he international community should apply the principle of «remedial recognition of independence» for the people of Nagorno-Karabakh as otherwise they will be subjected to genocide"[90].

However, although some local initiatives of recognition occurred[91], the remedial rhetoric did not seem to have much traction among States and on their decisions to recognise. In fact, most States overruled the decisions of recognition of various local bodies, issuing statements which upheld the territorial integrity of Azerbaijan. Ultimately, the general non-recognition approach of the separation of Nagorno-Karabakh from Azerbaijan was followed by the regaining of the effective control over the territory of the Azeri government, which culminated with Armenia's formal recognition of Nagorno-Karabakh as part of Azerbaijan and the dissolution of the so-called Republic of Artsakh[92].

5. CONCLUSION

This article examined the evolution of the doctrine of remedial secession and its potential to reshape the application of external self-determination beyond the colonial context. It has argued that, while the principle of territorial integrity remains the central pillar of contemporary international law, a reverse interpretation of the „safeguarding clause" found in the Friendly Relations Declaration might open the possibility for groups of people that have been oppressed or whose fundamental rights have been blatantly violated to exercise their right to external self-determination. Such a perspective was endorsed by a consistent part of doctrine[93].

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[89] https://asbarez.com/artsakh-invokes-remedial-secession-call-on-un-member-states-for-recognition-to-prevent-genocide/.

[90] https://www.primeminister.am/en/interviews-and-press-conferences/item/2020/10/16/Nikol-Pashinyan-interview-RTS/.

[91] https://schiff.house.gov/news/press-releases/rep-schiff-introduces-resolution-to-recognize-artsakhs-independence-and-condemn-azerbaijans-aggression; https://en.armradio.am/2020/11/18/council-of-paris-calls-for-recognition-of-the-republic-of-artsakh/; https://armenpress.am/en/article/1034200; https://en.armradio.am/2020/11/03/italian-city-of-palermo-recognizes-the-independence-of-artsakh/.

[92] https://opiniojuris.org/2023/10/18/where-de-facto-states-come-to-rest-the-approaching-demise-of-the-so-called-republic-of-artsakh/; https://edition.cnn.com/2023/09/28/europe/nagorno-karabakh-officially-dissolve-intl/index.html.

[93] Professor Christian Tomuschat affirmed that „[w]ithin a context where the individual citizen is no more regarded as a simple object, international law must allow the members of a community suffering structural discrimination – amounting to grave prejudice affecting their lives – to strive for secession as a measure of last resort after all other methods employed to bring about change have failed", C. Tomuschat, *Secession and self-determination*, în M.G. Kohen, *Secession. International Law Perspectives*, Cambridge University Press, 2006, p. 41.

Doctrine also formulated a series of criteria considered to be necessary in order for right to remedial secession to emerge: (i) „a people" 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[94].

However, international practice establishing the application of a right to remedial secession has proven to be rather scarce[95] and has revealed the „radically different views"[96] on the matter, as the ICJ emphasised in its Advisory Opinion. Also, while it may seem that the emergence of a right to remedial secession has acquired the support of a large part of the doctrine, the matter also generated many dissensions and cannot be considered irrefutably „accepted as law". This point of view was endorsed during the oral proceedings in the *Kosovo* case by the Netherlands[97], whose representative pointed out that while there is an abundance of scholarly literature on the topic of remedial secession, it cannot have an authoritative character since there is a strong divergence of views that is preventing its use as a source of international law under Article 38(1) [98] of the Statute of the International Court of Justice. In this vein, the idea of a corresponding duty of remedial recognition, as a legal obligation to recognise secessionist entities emerged in response to grave injustices, remains even more questionable, especially since, despite the reported humanitarian crisis and the appeals to the remedial doctrine that took place in the case of Nagorno-Karabakh, States continued to firmly uphold the territorial integrity of the State of Azerbaijan.

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[94] J. Dugard, *The secession of states and their Recognition in the wake of Kosovo*, în Recueil des cours, vol. 357, Hague Academy of International Law, 2013, pp. 146-147.

[95] Part of doctrine does not accept the cases of Bangladesh and Kosovo as cases where remedial secession is applicable and claims that international practice in this aspect does not exist. See J. Vidmar, *Democratic statehood in international law: The emergence of new states in post-Cold War practice*, Bloomsbury Publishing, 2013; S.F. van den Driest, *op. cit.*; M.N. Shaw, *International law*, Eight Edition, Cambridge University Press, 2017, pp. 203-204.

[96] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 438, par. 82.

[97] The Oral Statement of the Netherlands, ICJ Public Hearing on the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Governance of Kosovo*, Verbatim Record for Thursday 10 December 2009, *CR 2009/32*, pp. 9-10.

[98] „Article 38. 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law", United Nations, *Statute of the International Court of Justice*, 18 April 1946.

But even against these situations that illustrate the fact that the remedial doctrine is not part of the current international legal framework, remedial secession has continued to be invoked on several other occasions. Such an example is represented by Russia, which relied on the doctrine of remedial secession to justify its recognition of Abkhazia and South Ossetia[99], the illegal annexation of the Crimean Peninsula[100] and the invasion of Ukraine[101]. While these situations were rather a display of the use of the right to self-determination as an instrument that seeks to legitimise Russia's illegal actions against Ukraine[102] and cannot be considered to have any influence on the development of customary international law, they show just how controversial the doctrine of remedial secession can be in the current international legal order. Furthermore, it highlights the risks to which the international peace and security are exposed.

In conclusion, although the theory of remedial secession appears to have garnered increasing normative attention, it remains a legally unsettled and politically sensitive doctrine. The absence of consistent State practice and *opinio juris* undermines the claim that either a right to remedial secession or a corresponding duty of remedial recognition might arise in customary international law in the near future.

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[99] „By the aggressive attack against South Ossetia on the night of 8 August 2008, which resulted in numerous human losses, including among the peacekeepers and other Russian citizens, and by the preparation of a similar action against Abkhazia, Mikhail Saakashvili has himself put paid to the territorial integrity of Georgia. Using repeatedly brutal military force against the peoples, whom, according to his words, he would like to see within his State, Mikhail Saakashvili left them no other choice but to ensure their security and the right to exist through self-determination as independent States.", Statement by the Ministry of Foreign Affairs of Russia, 26 August 2008, https://russiaun.ru/en/news/200808265799.

[100] „[W]e hoped that Russian citizens and Russian speakers in Ukraine, especially its southeast and Crimea, would live in a friendly, democratic and civilised [sic] state that would protect their rights in line with the norms of international law... [T]he new so-called authorities [of Ukraine] began by introducing a draft law to revise the language policy, which was a direct infringement on the rights of ethnic minorities... [W]e can all clearly see the intentions of these ideological heirs of Bandera, Hitler's accomplice during World War II. It is also obvious that there is no legitimate executive authority in Ukraine now, nobody to talk to. Many government agencies have been taken over by the impostors, but they do not have any control in the country, while they themselves... are often controlled by radicals... [T]hose who opposed the coup were immediately threatened with repression. Naturally, the first in line here was Crimea, the Russian-speaking Crimea. In view of this, the residents of Crimea and Sevastopol turned to Russia for help in defending their rights and lives. [N]aturally we could not leave this plea unheeded; we could not abandon Crimea and its residents in distress. This would have been betrayal on our part", Address by President of the Russian Federation, PRESIDENT OF RUSSIA (Mar. 18, 2014), http://en.kremlin.ru/events/president/news/20603.

[101] „Circumstances require us to take decisive and immediate action. The people's republics of Donbass turned to Russia with a request for help. In this regard… I decided to conduct a special military operation. Its goal is to protect people who have been subjected to bullying and genocide by the Kiev regime for eight years", Putin's declaration of war on Ukraine, 24 February 2022, https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine/.

[102] Russia used the right to self-determination „as a tool for a pan-socialist project to disenfranchise territories from bourgeois governance first, and from Western imperialism later", Andrea Maria Pelliconi, „Self-Determination as Faux Remedial Secession in Russia's Annexation Policies. When the Devil Wears Justice", January 2023, https://voelkerrechtsblog.org/self-determination-as-faux-remedial-secession-in-russias-annexation-policies/.