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Abstract

This master's thesis addresses the interaction of the concepts of state sovereignty and self-determination of peoples within the framework of international law. An analysis is carried out on the topic of the influence on the balance of these concepts, based on the principles of international law as well as the legislation that can be derived from the Quebec case. To demonstrate the applicability of the legal principles, they are applied to the cases of Taiwan and Kosovo and analysed in their respective political and legal contexts. Furthermore, this thesis analyses the selective recognition of autonomy of self-determining sub-state entities against the background of the influence of geopolitical factors. By analysing the comparative application of the examples of Kosovo and Taiwan, the discrepancy in the reactions of the international community is revealed. As a proposed solution, a unified legal framework is called for, which should reduce the scope for interpretation of the law and thus contribute to greater fairness through more standardized responses to similar framework conditions.

Abstract

Die vorliegende Masterarbeit behandelt die Thematik des Zusammenspiels der Konzepte der staatlichen Souveränität und der Selbstbestimmung von Völkern innerhalb der Rahmenbedingungen des Völkerrechts. Es wird eine Analyse über den Einfluss auf die Balance dieser Konzepte, basierend auf den Prinzipien des Völkerrechts, sowie der Gesetzgebung, die sich aus dem Quebec Fall ableiten lässt, durchgeführt. Um die Anwendbarkeit der Rechtsgrundsätze zu demonstrieren, werden sie auf die Fälle Taiwan und Kosovo angewendet und in ihrem jeweiligen politischen und rechtlichen Kontext analysiert. Zusätzlich dazu untersucht diese Arbeit die selektiven Anerkennungen der Autonomie von selbst bestimmenden sub-staatlichen Entitäten, vor dem Hintergrund des Einflusses geopolitischer Faktoren. Durch die Vergleichsanalyse der Anwendungsbeispiele Kosovo und Taiwan wird die Diskrepanz der Reaktionen der internationalen Gemeinschaft verdeutlicht. Als Lösungsvorschlag wird ein einheitlicher rechtlicher Rahmen gefordert, welcher den Interpretationsspielraum der Gesetze verkleinern soll und somit durch einheitlichere Antworten auf ähnliche Rahmenbedingungen zu mehr Fairness beitragen soll.

Pledge of Honesty

On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.

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Introduction

Background and Rationale

The concepts of state sovereignty and the self-determination of sub-state entities and peoples pose a complex topic in the discourse of international relations and international law. The construct of sovereignty represents a set of rights and obligations - it provides all recognized countries with an exclusive power over their own territory and autonomy over the governance within their own sovereign jurisdiction. Sovereignty is supposed to be a safeguard that shields from the interference from other external actors, such as states and other entities. This principle ensures the equality between states and establishes the right of non-interference in internal matters.¹

Central to this topic is the question: To what extent is it possible to achieve a balance within the established international legal framework that both upholds state sovereignty and accommodates the self-determination aspirations of sub-state entities? In order to include the political aspect of this thematic field, the following question will also be addressed in the course of this work: How do geopolitical factors and strategic interest of global players within the international system influence the selective acceptance of independence of certain sub-state entities?

The concept of today's nation states can be traced back to the peace treaties of Münster and Osnabrück from 1648, which are also known as the Peace of Westphalia.² In a more recent perspective, the concept of sovereignty is in general covered by customary international law and agreements. The United Nations Charter explicitly emphasizes sovereignty as a fundamental principle. Article 2 (1) of the UN Charter recognizes the sovereign equality of all members of the international system, while article 2 (7) of the UN Charter introduces the principle of non-intervention, which is an important basis for sovereignty, as it prohibits external actors from intervening

¹ United Nations. (1945). United Nations Charter, art. 2.

² The Treaty of Westphalia. (1648), arts 3-8.

in the internal affairs of other states, and therefore from violating sovereignty.³ An important example of case law in this context is the International Court of Justice's Nicaragua v. United States of America case. It was decided by the ICJ in 1986, that the assistance of another country, in this case the USA, to one of the conflict groups in Nicaragua, against another group on the same territory, constitutes a violation of the principle of non-intervention and therefore of sovereignty.⁴

International treaties and agreements are also a relevant instrument - states can exercise their sovereign power by actively entering into commitments with other entities, for example in the form of agreements with other countries or membership in various International and Supranational Organizations. They voluntarily adopt the conditions, obligations, and restrictions of these legal documents - the EU treaties are an example of this form of execution.⁵ Another legal source for the sovereignty of states is customary international law, in this case, the norms emerge through constant practice and *opinio iuris*.⁶

Significance of the Research Question in the Contemporary International Legal Landscape

The understanding and insight into the concepts of sovereignty and self-determination of people and sub-state entities is an important subject in the contemporary legal context. Understanding the dynamics between the two concepts and evaluating the interdependence between them, as well as whether their parallel legitimacy is possible or if they are mutually exclusive, is of high importance for politicians, policymakers, scholars, and legal practitioners equally. It addresses delicate issues that influence and shape global international relations.

The question is central in the context of conflict resolution in cases of separatist movements. A wide-ranging analysis of these concepts could resolve this issue to a

³ Wood, M. (2023). Non-Intervention (Non-interference in domestic affairs). The Trustees of Princeton University.

⁴ International Court of Justice. (1986). Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports, pp. 136-139.

⁵ Frigot, F., & Bonadonna, E. (2016). Europe and sovereignty: Reality, limits and outlook. Conference of 29th September 2016 – Report. Fondation Robert Schuman. European issues n°410.

⁶ Dahlman, C. (2012). The function of *opinio iuris* in customary international law. Nordic Journal of International Law, 81(3).

degree and inspire the establishment of uniform legal and political rules that would lead to a more balanced approach. International society is continuously witnessing conflicts that have their roots in separatist ideas and implementation attempts - in many cases today's active wars and aggressions are due to a battle for territory. The conflicts currently most represented in the Western media, the Russian aggression against Ukraine and the war between Israel and Palestine, also represent to a certain extent a struggle for territory. Finding a balance on a legal level is the key to preventing such conflicts. Gaining more understanding and clarity in this area would provide better conflict prevention and resolution strategies and contribute to greater international stability.⁷

However, a mere legal clarification is not sufficient. In order to be able to provide a realistic solution to problems of this nature, concepts for implementing the legal basis must also be offered and the question of enforcement in the event of non-compliance must be clarified. However, it must be noted that the law, although crucial, also has its limits. Laws are important tools, but they are not always sufficient, especially when it comes to conflicts. The Russian invasion of Ukraine is a useful example, because it shows that despite clear legal norms, war could not be prevented. It is necessary to complement the legal instruments with political, diplomatic, and economic tools and to develop strategies, that incorporate all these aspects, and also have the ability to be implemented, in order to provide sustainable security and peace.

Research Problem and Importance

The central issue of this research is the navigation of the international legal framework to effectively find a balance, which can establish a parallel legitimacy of state sovereignty and the self-determination aspirations of peoples and sub-state entities. The key aspect in this context is the selective recognition and non-recognition of independence by the actors of the international system, based on different interpretations of the given framework, which leads to the discrepancy in the global community.

⁷ Mankoff, J. (2022). Russia's War in Ukraine : Identity, History, and Conflict. Center for Strategic and International Studies, pp. 1-11.

The topic of the relationship between self-determination and sovereignty of states is always of great importance, especially now, at a time when conflicts related to these issues are widespread throughout the world. This situation raises several relevant questions: Why are there no standardized legal regulations for such conflicts? Standardized legal regulations would help ensure fairness and consistency in international decision-making, reducing the influence of geopolitical interests. They would also provide clearer guidelines for international courts, ensuring that decisions are based on legal principles rather than political considerations. Why are concepts applied selectively or inconsistently? Does the international community have a basis for recognizing an entity like Kosovo as independent while deciding that other regions like Quebec are not, or not addressing the issue officially at all? Although pure legal regulation would not solve all problems, it would create more congruence and clarity.

Objectives of the Study

The primary aim of this thesis is to determine whether and in which ways a balance can be achieved between the self-determination of peoples and to that extent also of sub-state entities and the sovereignty of states. This evaluation is carried out from an international law perspective. In addition, the political aspect will also be considered. The influence of the political climate in connection with the geopolitical situation and other factors is analysed in this context. The question of the selective acceptance and non-acceptance of independence by members of the international community will be examined as well. The protection of human rights is also closely linked to this issue, and the evaluation and determination of how to deal with cases of self-determination and sovereignty provides a good basis for safeguarding individual human rights and the human rights of minorities.

Literature Review

The concepts of sovereignty of states and self-determination of sub-state entities and their balance is a constant component of academic research. Various perspectives are addressed, ranging from international law and political science to ethics and human rights. The enclosed bibliography will be organized thematically in the subsequent paragraphs.

The fundamental texts include Brownlie (2008), "Principles of Public International Law", which provides an overview of international law and addresses issues of

sovereignty and its principles, which are relevant in the context of self-determination. Cañas et al. (2022) "The Self-Determination of Peoples" describes self-determination at the individual level and the interaction between society, nation, and state. The selected cases are described, for example, by Chu (2000) "Nationalism and Self-determination: The Identity Politics in Taiwan" - this work deals with regional insights into the interplay between nationalism and self-determination. Another work that describes the example of China and Taiwan is Allen (2003) "Recreating 'One China' Internal Self-Determination", in which the internal problems of Taiwan's self-determination in the context of the "One China" policy are shown. Bayefsky (2000) "Self-determination in international law, Quebec and lessons learned: legal opinions." describes the legal analysis of the Quebec case, which is furthermore applicable to other comparable cases. For the case of Kosovo, the works Economides (2013) "Kosovo, Self-Determination and the International Order", Hilpold (2012) "Kosovo and International Law" and Milanovic (2015) "The law and politics of the Kosovo Advisory Opinion" were consulted. These provide a critical analysis of self-determination in the international system as well as an evaluation of the legal and political implications of the Kosovo Advisory Opinion.

Research gap and contribution to the field

Based on the literature analysis conducted, it can be stated that the concepts of state sovereignty, self-determination of people and their balance are a widely researched field. Nevertheless, there are areas that have been less explored. The two most important research gaps highlighted, are concrete legal mechanisms for achieving balance and the inconsistency in international recognition and geopolitical influences on it. The contribution of this master's thesis will be to further elaborate on these two areas with the presented research questions.

The two case studies analysed in this thesis, Kosovo and Taiwan, show the differences in the rate of recognition of independence by the international community. As of 2024, 99 countries worldwide recognize Kosovo as an independent state. Overall, there have been more recognitions per se, but some have been withdrawn over the years. Among the recognizing actors in the international system, are major powers such as the United States of America, the United Kingdom, Germany and

France, while powers such as Russia, China and India consider Kosovo to be a part of Serbia.⁸ Assuming that there are 195 states and recognized nations worldwide, the percentage of states that recognize Kosovo worldwide is 50.77%.⁹ This discrepancy between countries shows the complexity of the issue and the scope for different interpretations of the law and guiding theories.

Looking at the case of Taiwan, it is noticeable that only 12 countries worldwide recognize Taiwan as an independent state. These include countries such as Haiti, Guatemala, Paraguay, and Vatican City.¹⁰ If the percentage of recognition is calculated here, the result is that only 6.5% of countries worldwide support Taiwan's independence.¹¹

⁸ World Population Review. (2024). Countries that Recognize Kosovo 2024.

⁹ Britannica (2022). How Many Countries Are There in the World?. Encyclopedia Britannica.

¹⁰ World Population Review. (2024). Countries that Recognize Taiwan 2024.

¹¹ Britannica (2022). How Many Countries Are There in the World?. Encyclopedia Britannica.

Statehood and *uti possidetis iuris*

The connection between the state and *uti possidetis* is that the principle of *uti possidetis iuris* accompanies the transition from a territory to a sovereign state and secures the borders that have been created.

State

The definition of a state is laid out in the Montevideo Convention on Rights and Duties of States from the year 1933, where an entity is recognized as a sovereign state if it has a defined territory, a permanent population, a government and the ability to interact internationally with other actors of the international system.¹² A sovereign state is described as a political entity with the authority to organize and determine its own internal affairs and the ability to adopt its own laws, without the interference of external entities. A defined territory indicates that a state has absolute control over a certain geographical area and can enforce laws. Furthermore, the territory is also important to limit the state's area of jurisdiction. The permanent population of a state is only declared as such if it resides permanently within the borders of the territory and forms the foundation of the society that is subject to the government. The government of the state has to be able to exercise authority within the borders and over the population. The government should have the authority to pass and implement laws, and to represent the state to the external communities, without external interference. The ability of the state to enter into relations with other states and entities requires the capacity to establish diplomatic relations, participate as part of international organizations and enter into treaties. The last criterion therefore implies the recognition of sovereignty by other states and actors in the international system.¹³

¹² Pan-American Union. (1933). Montevideo Convention on the Rights and Duties of States., art. 1.

¹³ Raič, D. (2002). Statehood and the law of self-determination (1st ed.). The Hague ; New York :: Kluwer Law International, pp. 58-64.

Statehood

While the acquisition of statehood includes the fulfillment of the criteria of the state, this concept differs from the concept of the state insofar that statehood refers to the legal and political status of a territory as a sovereign state. Statehood of a territory is achieved, by fulfilling the criteria as laid down in the Montevideo Convention, as well as the requirement that the territory is recognised by other states and actors in the international system as an autonomous and independent entity.¹⁴

The Constitutive and Declaratory theory of the recognition of states

The question of state recognition by the actors of the international system is, to a certain extent, an important part of the legitimacy of sovereignty in international law. There are two leading theories that describe the recognition of states, the constitutive and the declarative theory.

The constitutive theory states that an entity seeking independence and sovereignty only can be legally considered a state if it is formally recognized as such by existing states. In this context, the criteria of the state, as laid out in the Montevideo Convention of 1933, except for the capacity to establish relations, is irrelevant in the context, and only the formal and official act of recognition is decisive in the legality of the entities' sovereignty.¹⁵ This recognition becomes binding under international law and is governed by Article 26 of the Vienna Convention of the Law of Treaties, with the principle of "*pacta sunt servanda*", which states that any agreement entered into should be fulfilled in good faith.¹⁶

However, there is no obligation for recognition, so the problem arises that an entity can exist as a sovereign state for recognizing members, while for non-recognizing members of the international community it exists at the same time as another sovereign state, or more precisely, a part of it. If such a decision is not linked to specific objective legal provisions but is rather based on the political will of the states,

¹⁴ Raič, D. (2002). Statehood and the law of self-determination (1st ed.). The Hague ; New York :: Kluwer Law International, pp. 451-542.

¹⁵ The University of Chicago Law Review. (1967). Recognition in International Law: A Functional Reappraisal. The University of Chicago Law Review, 34(4), pp. 859-861.

¹⁶ United Nations. (1969). Vienna Convention on the Law of Treaties, p. 11, art. 26.

there is a risk of it being misused for strategic reasons. The act of recognition per se offers ground to lead to an opportunity for military intervention. The proclaimed legitimacy of an entity as sovereign could offer room for interpretation and reduce the legal consequences for military interventions by other states, as they can use the support of a state they consider legitimate as an argument for an intervention, and thereby avoid taking responsibility.¹⁷ An example of this strategy is the recognition of Crimea as a separate sovereign state by the Russian Federation in 2014, in order to present the deployment of Russian troops on the island as a support for the new regime, rather than as a military intervention that violates the principle of non-intervention and the sovereignty of Ukraine.¹⁸

The second theory is the Declaratory Theory of the Recognition of States, which argues that an entity gains the status of a state as soon as it fulfils the criteria of statehood. With the fulfilment of all the requirements for a state, the entity effectively becomes a sovereign state and acquires the status of an independent subject under international law. Although sovereignty as such is only dependent on the fulfilment of the criteria, the ability to exercise this sovereignty is dependent on the recognition of other states.¹⁹ Article 13 of the Charter of the Organization of American States supports this assumption, in that it considers the political existence of a state to be independent of the recognition of the international community.²⁰ However, it is necessary to consider which legal principles are applied: if the criteria of the Montevideo Convention are accepted as guiding principles, then, strictly speaking, Article 1 (d) may very well imply that the recognition by other states is one of the fundamental characteristics of a state.²¹

¹⁷ The University of Chicago Law Review. (1967). Recognition in International Law: A Functional Reappraisal. The University of Chicago Law Review, 34(4), p. 861.

¹⁸ Russian Federation, Decree on the Recognition of the Republic of Crimea.

¹⁹ The University of Chicago Law Review, Recognition in International Law: A Functional Reappraisal, 861-862.

²⁰ Organization of American States, Charter of the Organization of American States, art. 13.

²¹ Pan-American Union. (1933). Montevideo Convention on the Rights and Duties of States, art. 1.

Uti possidetis

While statehood defines and establishes the legal and political aspects of the state, there are principles such as uti possidetis, that address the issue of defining the borders of emerging states. It is an area of overlap between the legal status of a sovereign entity and the territorial integrity of established states.

External and internal borders

In order to approach the explanation of the concept of uti possidetis iuris, the purpose of borders in a general sense needs to be addressed first. In this context, a distinction between external and internal borders is necessary. While external borders, which are also known as international borders, serve to separate peoples and states from one another, internal administrative borders have the purpose of improving governance and advancing political unity within the territories.

States use various features to draw borders, for example natural factors such as mountains or bodies of water, but also artificially drawn lines. The main function of borders is to determine and limit the jurisdiction of states. According to international law, these jurisdictions include all obligations and rights relating to policies, laws, persons, and property. Another important function in this context is the decision on movement across national borders. This involves controlling the movement of people, goods, financial assets, and services. Movement across national borders is subject to the decision of the state and may, for example, be agreed through bilateral or multilateral agreements with other states or entities. These so-called internal borders, which separate the administration within the state, have the goal of dividing responsibility. This allows the internal administrative borders to be shifted, for example to improve co-operation in various areas such as executive, healthcare, or the economy. The willingness for more autonomy for individual sub-territories of the state and the expansion of their borders depends mainly on the structure of governance and the willingness for decentralization. The spectrum of decentralization is broad and ranges from federal states such as the United States of America and Switzerland, which have very stable autonomous sub territories, to very central examples. These arrangements can also be clarified and limited in the constitutional framework of the state, for example constitutional clauses that set the rules when it

comes to the power of the central government to shift the internal borders of autonomous territories.²²

Decentralization and Federalism

In the context of internal borders, it is important to distinguish between examples of decentralization and federalism. Decentralization within a state is a concept that describes the process by which the central government delegates responsibility in certain areas of application to lower levels. A distinction is again made between three sub-categories: political, administrative, and fiscal decentralization. Political decentralization involves the transfer of political power, for example through political offices at local level, and enables autonomous administration and decision-making in the individual regions - although these offices are subject to the central government. In the context of administrative decentralization, the central government assigns administrative responsibilities to institutions at the local level and allows them to manage independently as long as they are in line with national guidelines and directives. The fiscal decentralization includes the monetary aspect of administration and through this the local institutions at regional level are allowed to manage their budgets. This could, for example, be in the form of management of regional revenues for regional projects without the intervention of the central government.²³

Federalism is another important concept that describes internal borders well. The classical theory of federalism describes the concept as a division of sovereignty within a federal state between the central government and local governments. In this concept, the governments have the power to act independently of each other, as the local governments have their own autonomy. The basic prerequisite for such a system is that the entities have their own constitutions that clearly identify their rights and

²² Ratner, S. R. (1996). Drawing a Better Line: UTI Possidetis and the Borders of New States. *The American Journal of International Law*, 90(4), pp. 602-604.

²³ Center for Constitutional Transitions, International Institute for Democracy and Electoral Assistance, & United Nations Development Programme. (2014). *Decentralization in unitary states*, pp. 23-25.

responsibilities and that cannot be changed unilaterally. Furthermore, it requires the co-operation of all governments for effective implementation.²⁴

From these definitions of the two systems, it can be observed that the differences can initially be found in the structure. In a federal system, power is shifted from the central government to autonomous regions of the country, which are constitutionally protected, whereas in a unified state, which applies decentralization, power and decision-making is transferred to lower levels of government, all of which are subject to the constitution and the directives of the central government. The field of application of federalism thus appears to make sense in multi-ethnic and multi-cultural states, while the concept of decentralization seems to contribute to efficiency of the processes of the state.²⁵ While each type of federation is a concept of decentralization, decentralization itself does not necessarily imply federation.

The origin and modern doctrine of *uti possidetis iuris*

The origin of the concept of *uti possidetis* can be found in Roman law of the Republican era. In this context, during a legal dispute in which several parties asserted their claim to a property, provisional possession was granted to the party in possession of the land at the time of the dispute. There were exceptions to this rule in relation to how the ownership was obtained, as there were cases of secretly obtained land, land obtained by force or other forms which allowed the other party to revoke the ownership. However, the concept did not regulate the final acquisition of ownership but served as a means of proof during the trial. The owner of the land at the time of the trial, in which they were often the defendant, had a clear advantage. The concept was summarized in the following sentence: "*Uti possidetis, ita possideatis*", equivalent to: "As you possess, so may you possess".²⁶

²⁴ Paleker, S. A. (2006). *FEDERALISM: A CONCEPTUAL ANALYSIS*. The Indian Journal of Political Science, 67(2), pp. 303-305.

²⁵ Center for Constitutional Transitions, International Institute for Democracy and Electoral Assistance, & United Nations Development Programme. (2014). *Decentralization in unitary states*, pp. 25-28.

²⁶ Ratner, S. R. (1996). *Drawing a Better Line: UTI Possidetis and the Borders of New States*. The American Journal of International Law, 90(4), p. 593.

In the transformation of the concept *uti possidetis* from Roman law to international law, two important aspects emerged: the change of the area of application and status. Firstly, the scope of application of the concept was extended and modified, in Roman law it was applied to private property claims while in international law it was connected to the territorial sovereignty of states. Furthermore, the status was reformed - the *uti possidetis* in Roman law had only a temporary meaning, whereas in international law the concept acquired a permanent status and thus had the competence to define permanent borders of states.²⁷

Over time, the application of the principle evolved - it was first used in the context of international law at the beginning of the 19th century. This application was in the area of decolonization, more precisely in the successor states of the colonies of the Spanish empire. One of the main reasons for the use of *uti possidetis* in this context was to exclude the application of the concept of *terra nullus*, which allows the acquisition of title over unclaimed or uninhabited territory. In addition, main intention of the application of *uti possidetis* was to maintain the borders of the successor states on the basis of the Spanish colonial law which had been in effect at the time of the establishment of the independence.²⁸

In the 20th century, it was again applied in the decolonization of Africa, where it was used to ensure that the liberated new states would maintain the colonial administrative borders. The content of this principle was also adapted by the Organization of African Unity in the context of preventing territorial disputes in the post-colonial period and maintaining borders that were created at the time of the independence.²⁹ In general it can be said that the principle supports the preservation of the existing legal conditions in the context of the territory that a state has acquired at a point in time. It can be understood in a way that the *uti possidetis iuris* principle defines the territory of a state, which is then protected by the principle of territorial integrity.

²⁷ Ratner, S. R. (1996). Drawing a Better Line: *UTI Possidetis* and the Borders of New States. *The American Journal of International Law*, 90(4), pp. 592-593.

²⁸ Sarvarian, A. (2015). "*Uti Possidetis Iuris*" in the Twenty-First Century: Consensual or Customary? *International Journal on Minority and Group Rights*, 22(4), p. 515.

²⁹ Organization of African Unity. (1964). AHG/Res. 16(I).

The International Court of Justice also uses the principle in many decisions and thus applied it in contemporary cases. For example, in *Burkina Faso v. Republic of Mali*, the ICJ argued that the *uti possidetis* principle in international law ensures that the territorial status quo is maintained.³⁰ The concept of *uti possidetis iuris* was not only used in decolonization, but also in the case of the disintegration of states, such as in the secessions of the federal republics of Yugoslavia. Here, the Badinter Arbitration Committee decided that, based on this principle, the internal borders of the former federal state must be preserved in the creation of the external borders of the new emerging individual states, that were federal republics before, which is explained in more detail in the Kosovo case study.³¹

³⁰ International Court of Justice. (1986). *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, pp. 17-19.

³¹ Pellet, A. (1992). *The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples*. 3EJIL(1992)178, p. 185.

State Sovereignty in International Law

The sovereignty of states falls within the area of political science and international law and offers a basis for the existence of states and their ability to act as such. It is the supreme authority a state possesses in order to control its internal and external affairs independently³² The word “sovereignty” originates from the Latin word “superanus”, meaning “higher”, “highest”, and “supreme”. It stands for a constellation in which the position of an authority or subject is described in relation to the other entities within the same system. The sovereign state enjoys the highest form of power and decision-making autonomy within the territory of jurisdiction. It has the authority to act autonomous and independent, while all other entities and subjects are subordinate to it. The state holds the highest authority compared to all other entities, like for example social groups and organizations, that are under its control. It also has exclusive control over the use of physical force. While different groups and associations within the state exert their powers and fulfill their obligations according to their scope, their authority is less significant when compared to the actions on behalf of the state.³³ Therefore, the sovereignty of a state means the ability to exercise unlimited power within its borders and over subjects under its jurisdiction. This power is superior to all other powers of all entities operating within and for the state. The scope of activity of entities operating within the country that are subordinate to the state, as well as the expansion and limitation of their power, is also determined and controlled by the sovereign state. This is a mechanism that maintains the supremacy of the state's power, therefore there are designed rules that serve as security for the maintenance of this superior function.³⁴ The only entity that is not subordinate to a sovereign state is another recognized sovereign state. In this context, it should be noted that all sovereign states within the international system enjoy the principle of sovereign equality of states guaranteed by international law in the UN Charter.³⁵

³² Korowicz, M. S. (1961). Some present aspects of sovereignty in international law. In *Collected Courses of the Hague Academy of International Law* (Vol. 102). Brill | Nijhoff, pp. 7-9.

³³ Watts, A. (2023). *Sovereignty*. The Trustees of Princeton University.

³⁴ Ferreira-Snyman. (2006). *The evolution of state sovereignty*, p. 3.

³⁵ United Nations General Assembly. (1970). *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (A/RES/2625(XXV), p. 3.

Sovereignty can be exercised in two ways, internally and externally. The internal sovereignty of states focuses on the internal processes of the state, specifically the ability to fulfil the rights and obligations towards the population within the country's borders. External sovereignty addresses the issue of the state's ability to represent itself externally and to appear independent.

Internal and external sovereignty

Internal sovereignty describes the superior and independent capacity of a ruling entity to operate within its sovereign territory. It indicates power in an unrestricted manner, which refers to the ability of a government within a state to exercise its rights and duties in the form of enacting laws, making political decisions, and controlling processes of all kinds. This approach can be summarized as a form of internal legal authority and the power and ability to implement the established objectives. In addition to legislation and the monopoly over political decisions, the internal aspect of sovereignty also refers to the areas of administration, in which the government has the power to determine the internal processes and carry out controls. Furthermore, the security and defense of the population and territory is also part of internal sovereignty in the sense that the government has control over the armed forces and security processes. The internal aspect of sovereignty is the basis of democracy and the self-determination of the people, as it enables the government of a state to make decisions in the interests of the population in relevant areas as long as they do not violate given rights.³⁶

External sovereignty describes the independent power over the state's relations and interactions with other states and entities in the international system. This concept is primarily about independence, and in the context of the state describes the ability to govern as preferred without interference of external entities. It deals with the competence of a state to establish diplomatic relations with other states, to be recognized by the international system in such a way that the conclusion of treaties and agreements is possible, without other states being able to interfere and influence the decision-making process. The territorial integrity is also an important factor in the context of the external aspect of sovereignty. The recognition by other states and

³⁶ Lee, S. (n.y.). 20th WCP: A Puzzle of Sovereignty. Paideia. Boston University, I.

actors in the international system plays a major role, as the acceptance of borders and sovereign rights of the state, and the ability of a state to represent itself to the outside world through agreements, negotiations and similar are some of the main essential features of sovereignty.³⁷

The two aspects of sovereignty differ from each other in the sense that, internal sovereignty describes the government's control over internal affairs, while the external aspect of sovereignty is concerned with the independence of the state in its interactions with other states and actors in the international system. The focus in the internal aspect is mainly on the legitimacy of sovereignty domestically and among subjects that are under the jurisdiction. While the external perspective of sovereignty addresses the ability of the state to represent its own interests in the international system and to enter into autonomous relations with others without the intervention of other states. Another point of differentiation is also the relationship between the actors, as internal sovereignty is about the interaction between the government, internal organizations, and the population, while external sovereignty is about the relationship between the state, other states and global actors.³⁸

De jure and de facto sovereignty

The concept can be further divided between de jure sovereignty and de facto sovereignty. In the case of de jure sovereignty, the formal recognition of legal authority over a territory under international law and therefore the recognition by other states as an independent legal subject is involved. This describes the official recognition of the autonomous ability to decide on internal and external processes. The concept is a legal construct and is grounded in both customary international law and bilateral and multilateral legal co-operation. This goes hand in hand with the possibility of participating in international organizations. Furthermore, the independent organization of politics is an important factor, as a sovereign state has to be able to adopt laws and make political decisions independently. The right to territorial integrity is also relevant, in this sense, as other states are required to accept the borders.

³⁷ Lee, S. (n.y.). 20th WCP: A Puzzle of Sovereignty. Paideia. Boston University, II.

³⁸ Lee, S. (n.y.). 20th WCP: A Puzzle of Sovereignty. Paideia. Boston University, I-II.

De facto sovereignty is mainly concerned with the actual control over the territory and the population in practice. The legal aspect and recognition by the international community are not relevant here. One of the relevant facts of the de facto sovereignty is primarily the exercise of the government function. This involves the effective implementation of legislation and the general administration of the territory. Independent action and decision-making for a territory and over its population can also take place without legal recognition. However, the aspects of the absence of recognition under international law involves challenges. The establishment of international relations with other actors in the international system is difficult but could be essential for the maintenance of the power over the territory, such as access to international financial markets or the conclusion of agreements.³⁹

The differences between de jure sovereignty and de facto sovereignty are mainly found in the realm of legal recognition. While de jure sovereignty is based on legal recognition, de facto sovereignty is characterized by effective control and the capacity to exercise action.⁴⁰

The problem in this context arises when there is no congruence between de jure and de facto sovereignty. This again raises the question of the superiority of the theories of the recognition of states. In this context, the constitutive theory of the Recognition of States can be used, as it describes de jure sovereignty to a certain extent. However, it cannot be established that the mere proclamation of a sovereign state and the acceptance of its independence by the international community is indicative of whether the entity is able to exercise sovereignty in practice. Furthermore, the autonomous administration of an entity does not necessarily provide any information about its independence and the implied sovereignty.⁴¹

³⁹ Lee, S. (n.y.). 20th WCP: A Puzzle of Sovereignty. Paideia. Boston University, I-III.

⁴⁰ Colangelo, A. J. (2009). "De facto Sovereignty": Boumediene and Beyond. The George Washington Law Review. Article, Issue 77:3, Vol. 77.

⁴¹ The University of Chicago Law Review. (1967). Recognition in International Law: A Functional Reappraisal. The University of Chicago Law Review. 34(4), pp. 859-861.

Legal foundations of sovereignty

The legal foundations of sovereignty can be found in several legal principles of international law. Article 2 of the UN Charter lays out that all member states are sovereign and have the freedom to decide on their own internal and external processes. In the sections (1), (4) and (7) of Article 2 of the UN Charter it is written down, that states have all of the authority within their borders, which means that they are allowed and expected to pursue their jurisdiction, that they are protected from the jurisdiction of other states and independent to decide on all matters regarding their territory without the intervention of others, except in cases where they wish so and give consent.⁴² Another legal basis that has as its purpose the protection of sovereignty is the principle of non-interference, which prohibits states from influencing the domestic affairs of other sovereign states and forcing them to make decisions that are contrary to their will and interests. Therefore, it provides the legislature for the right of states to implement their own political, economic, cultural, and social agendas, without the interference of other entities of the international. Even though interventions are strictly forbidden, as per the sections (4) and (7) of Article 2 UN Charter, there are some exemptions, like the application of the UN Charter Chapter VII measures, which cannot be hindered. It is challenging to determine the extent of the application possibilities of this principle as it is older than the UN Charter itself and was placed only under customary international law before the creation of the charter.⁴³ Territorial integrity is just as much associated with sovereignty - this notion implies that the territory of a state and the borders that are associated with it, should be recognized as such by all the actors of the international system. The concept is an integral part of international law that ensures the sustaining of the security and stability of the international system.

The Nicaragua v. United States of America ICJ case is also an important part of the legal basis of sovereignty. The background to Nicaragua's indictment is military and paramilitary attacks by the USA on Nicaraguan territory. After the government of the

⁴² United Nations. (1945). United Nations Charter, art. 2.

⁴³ Wood, M. (2023). Non-Intervention (Non-interference in domestic affairs). The Trustees of Princeton University.

dictatorial president Anastasio Somoza was overthrown in Nicaragua in 1979, a new government was set up by the Frente Sandinista de Liberación Nacional, which was committed to national reconstruction. To counter the socialist Sandinista regime, the USA began to support the opposition called the Contras with monetary means, military training, and weapons. In addition to that, the US was involved in mine-laying missions on various essential infrastructures in Nicaragua. Nicaragua used this as a basis to accuse the USA of direct military interventions on its territory before the ICJ.

Nicaragua made the following allegations:

"Nicaragua, reserving the right to supplement or to amend this Application and subject to the presentation to the Court of the relevant evidence and legal argument, requests the Court to adjudge and declare as follows :

(a) That the United States, in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Nicaragua, has violated and is violating its express charter and treaty obligations to Nicaragua, and in particular, its charter and treaty obligations under : Article 2 (4) of the United Nations Charter ; Articles 18 and 20 of the Charter of the Organization of American States ; Article 8 of the Convention on Rights and Duties of States ; Article I, Third, of the Convention concerning the Duties and Rights of States in the Event of Civil Strife.

(b) That the United States, in breach of its obligation under general and customary international law, has violated and is violating the sovereignty of Nicaragua by : armed attacks against Nicaragua by air, land and sea ; incursions into Nicaraguan territorial waters ; aerial trespass into Nicaraguan airspace; efforts by direct and indirect means to coerce and intimidate the Government of Nicaragua.

(c) That the United States, in breach of its obligation under general and customary international law, has used and is using force and the threat of force against Nicaragua

(d) That the United States, in breach of its obligation under general and customary international law, has intervened and is intervening in the internal affairs of Nicaragua.

(e) That the United States, in breach of its obligation under general and customary international law, has infringed and is infringing the freedom of the high seas and interrupting peaceful maritime commerce.

(f) That the United States, in breach of its obligation under general and customary international law, has killed, wounded and kidnapped and is killing, wounding and kidnapping citizens of Nicaragua. (...)"⁴⁴

After the USA unsuccessfully argued collective self-defense, the court decided the following: ⁴⁵

The court dismissed the claim of collective self-defense as an argument for the military and paramilitary attacks by the USA in Nicaragua. In addition to that, the court established that the US violated the principle of non-intervention under customary international law by providing training for the armed forces, financing, supplying arms and any other support to the Contras group. Furthermore, the US was found guilty of violating the principle of the non-use of force against another state under customary international law, by conducting several attacks on harbors and other relevant infrastructure facilities on Nicaraguan territory. The court also ruled that the USA had violated Nicaragua's sovereignty by planning and carrying out flights over Nicaraguan territory. Likewise, the ICJ also confirmed that the US violated its obligation under international law not to use force against other states, not to interfere in the internal affairs of other states and not to violate the sovereignty of another state by participating in the laying of mines in Nicaraguan waters.⁴⁶

This decision by the ICJ offers an important legal basis for the concept of the sovereignty of states, as it confirms that the use of force in other states, directly or indirectly, has, in this case, violated the territorial integrity and independence of the state. Furthermore, as per customary international law, the interference in internal

⁴⁴ International Court of Justice. (1986). Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports, pp. 8-9.

⁴⁵ Modabber, Z. (1988). Collective self-defense: Nicaragua v. United States. Loyola of Los Angeles International and Comparative Law Review, 10(2), Article 5, p. 450.

⁴⁶ International Court of Justice. (1986). Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports, pp. 8-9.

affairs, in this case, is against the law and therefore also violates sovereignty. These two principles protect the sovereignty of states in that they ensure that the state can exist without fear of external intervention and that its political autonomy is protected by international law.⁴⁷

⁴⁷ United Nations. (1945). United Nations Charter, art. 2 (4).

Self-Determination

The right of the peoples to self-determination is one of the fundamental rights of international law. It deals with the subject of the right of peoples to freedom, autonomy, and self-determination. This concept can be traced back to the era of decolonization and has the aim to contribute to the liberation of oppressed groups.⁴⁸

The subject of self-determination of peoples is one of the most controversial in the field of international law and international relations. The legal bases that have been laid out provide an opportunity to be interpreted in different ways and can therefore lead to contradictory conclusions. It is important to note that the debate between the right to self-determination of peoples and the territorial integrity of states not only has a legal and political aspect, but also deeply involves geopolitical, historical, and emotional elements.

Peoples

Before addressing the issue of self-determination, it is important to define what is understood as peoples in the context of international law. There is no uniform recognized definition that describes the term "peoples". However, international law states that only the peoples as a common and recognized unit have the right to self-determination. Both in the legal field and in the broader area, certain characteristics are used to declare groups as peoples.⁴⁹ The main characteristics of "peoples" are assumed to be language and culture, as well as other sources of differentiation, which leaves room for interpretation.⁵⁰

It can be deduced from this that there is initially a common identity. This is the most essential attribute and includes a common culture, ethnicity, language, history, or religion. Another important factor here is the sense of belonging to the group, a person can be part of a peoples even without the aforementioned characteristics if they intrinsically feel a sense of group identity. Furthermore, it can be stated that the

⁴⁸ United Nations General Assembly. (1966). International Covenant on Civil and Political Rights. Adopted by General Assembly resolution 2200A (XXI), art. 1.

⁴⁹ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 281-282, para. 123-125.

⁵⁰ UNESCO. (1989). Report and recommendations of International Experts Meeting on further study of the concept of the rights of peoples. Paris, p. 3.

common history can also be interpreted as a characteristic of peoples, as this shapes social and cultural development. A common territory can also be interpreted as the fundament of peoples, but it is a controversial feature as it can be seen in mixed territories or diaspora societies. The political aspect or political organization is equally important, as the common striving for autonomy and independent administration is an important aspect of the peoples.

Depending on the interpretation, several examples can be found in reality, in the context of the self-determination of peoples. Groups that have their own strong cultural identity and have been tied to a territory for a long time, on which they now differ strongly from the ruling majority, can be categorized as Indigenous Peoples.⁵¹

Internal Self-Determination

The internal right of self-determination of peoples is a principle secured by international law and describes the right of peoples within an established sovereign state to autonomously decide on their own political, economic, social, and cultural affairs. It is important to note that this requested autonomy per se does not jeopardize the sovereignty and territorial integrity of the state in which the peoples request it.⁵² This form of self-determination is usually applied in multi-ethnic states that are composed of different national, cultural, or linguistic groups. This execution of self-determination may take the form of autonomous regions, for example, which have a certain degree of autonomy and self-government.⁵³ The Åland Islands in Finland enjoy individual rights of independent administration under the Åland Statute.⁵⁴ Federal structures are another example of the internal right of self-determination.⁵⁵ Here, the regional governments of the constituent states or cantons are allowed to pass their own laws in certain areas and take over their administration. This also allows the

⁵¹ United Nations. (n.d.). Indigenous Peoples: Fact Sheet.

⁵² Van der Vyver, J. D. (2000). Self-Determination of the Peoples of Quebec under International Law. Emory University School of Law, pp. 11-20.

⁵³ Cats-Baril, A. (2018). Self-determination. The International Institute for Democracy and Electoral Assistance, 3.

⁵⁴ The Åland Parliament. (1991). Act on the Autonomy of Åland. 1991/1144, pp. 1-30.

⁵⁵ Cats-Baril, A. (2018). Self-determination. The International Institute for Democracy and Electoral Assistance, p. 3.

population to appeal to the individual regional institutions. The United States of America is an example of such a federal system. Federalism can already be recognized in the preamble to the US Constitution, where the words "to form a more perfect union" imply that there should be both a strong central power and state governments.⁵⁶ Article I of the Constitution of the United States of America describes the legislative branch of the country, divides the powers between federal government and states and refers to the Congress, which is made up of the Senate and the House of Representatives. In the context of Congress, the powers are delegated from the states to the federal government. Specifications can also be found here that allow the states to pass laws if these do not fall within the scope of the overarching government.⁵⁷ Article VI provides insight into the supremacy and shows possible points of conflict between the legislature of the two instances. Article IV describes the area of cooperation of federalism through the immunities that states must grant to the populations of other states and the areas of application of the government and the states.⁵⁸ Furthermore, the Tenth Amendment refers to the federal division of power in the country by dividing the powers between the federal government and the states.⁵⁹ The use of indigenous peoples' rights can also fall under the internal right to Self-Determination. In these cases, indigenous peoples have the right to establish their own institutions within the state and to determine their own development in certain areas. The example of Bolivia shows how these rights can also be authorized under constitutional law. In 2009, Bolivia implemented the recognition of the rights and autonomy of indigenous peoples in its constitution, thereby allowing indigenous groups in the country to preserve their social, political, and economic structures and to govern by themselves.⁶⁰

⁵⁶ U.S. Const. pmbl.

⁵⁷ U.S. Const. art. I, §8.

⁵⁸ U.S. Const. art. IV, §1-§2.

⁵⁹ U.S. Const. amend. X.

⁶⁰ Constitution of the Plurinational State of Bolivia (2009)., arts. 2-3, arts. 30-32, arts. 289-296, art. 304, art. 403.

External Self-determination

The form of external self-determination of peoples describes a concept that allows peoples the right to establish an independent sovereign state and freely determine their political status. This often involves unilateral secessionist movements, which in principle jeopardize the territorial integrity of existing states and are therefore in principle contrary to the principle of territorial integrity. However, these may be justified in special cases with adequate grounds.⁶¹ These exceptional cases are described as follows: *"(a) those under colonial domination or foreign occupation; (b) peoples subject to "alien subjugation, domination or exploitation outside a colonial context;" and, possibly, (c) a people "blocked from the meaningful exercise of its right to self-determination internally."*⁶²

The creation and application of this process originated in the period of decolonization after World War II, when United Nations Resolution 1514 granted all colonial countries and peoples the right to self-determination and independence.⁶³

This aspect of external self-determination has various ways in which it can be exercised.

The integration into another state is one nuance of the external self-determination of peoples.⁶⁴ In this context, the annexation of Goa by India can be seen as such a process. Goa was ruled by Hindu and Muslim empires until the colonization by Portugal in the 16th century. Despite the resistance of the population, which is an indication of self-determination, Goa remained a Portuguese colony for a long period of time. In 1961, India launched a military attempt to, according to them, liberate Goa from the occupiers and was successful. As a result, Goa was incorporated into India.⁶⁵

⁶¹ Van der Vyver, J. D. (2000). Self-Determination of the Peoples of Quebec under International Law. Emory University School of Law, pp. 11-20.

⁶² Van der Vyver, J. D. (2000). Self-Determination of the Peoples of Quebec under International Law. Emory University School of Law, p. 12.

⁶³ United Nations. (1960). The General Assembly. Resolution 1514 (XV). Declaration on the granting of independence to colonial countries and peoples.

⁶⁴ Howse, R., & Teitel, R. (n.d.). Humanity bounded and unbounded: The regulation of external self-determination under international law. NYU Law School, p. 15.

⁶⁵ Rule of Law Education Centre. (2016). The annexation of Goa.

This process was initially accompanied by the Goa, Daman and Diu Administration Act, which handed over the administration of the territory to India and laid out the necessary structures. Goa, Daman and Diu were declared union territories of India and therefore put under the administration of the Central Government of India.⁶⁶ An important aspect was the regulation of laws, which was also addressed, specifying how Indian laws were to apply in the new territories and that laws in force prior to integration would remain in force until replaced.⁶⁷ With the Goa Statehood Act of 1987, Goa was officially recognized as the 25th state of India. This recognition provided greater autonomy and better political integration. With this, Goa officially got a state government, legislative body, and executive power.⁶⁸

Another way to exercise and implement the right to self-determination of peoples is through the act of secession.⁶⁹ Secession is the process by which a part of a sovereign state can become independent and transform into a separate state. It is laid down in international law that such a process is only possible in cases of decolonization and the self-determination of peoples.⁷⁰ This topic will be discussed in more detail in the chapter on Kosovo and through the Quebec ruling.⁷¹

Quebec Case

The case of Quebec is a very important issue in this context, as it poses as legislation for self-determination in international law. Quebec is a province in Canada that has a majority of French-speaking people and therefore has gained its own linguistic and cultural sense of identity. The community has made several demands for more autonomy, which led to the realization of two referendums, one in 1980 and one in 1995. The Quebec referendums represent an important basis for Quebec's secession efforts. These referendums were held with the aim of finding out the opinion of the Quebec population regarding further autonomy and the potential independence of the province. The first referendum was held on 20 May 1980, and it dealt with the question

⁶⁶ The Goa, Daman and Diu Administration Act. (1962). Act. No. 1 of 1962., §3.

⁶⁷ The Goa, Daman and Diu Administration Act. (1962). Act. No. 1 of 1962, §5.

⁶⁸ The Goa, Daman and Diu Reorganisation Act. (1987)., §3.

⁶⁹ Howse, R., & Teitel, R. (n.d.). Humanity bounded and unbounded: The regulation of external self-determination under international law. NYU Law School, p. 15.

⁷⁰ Pons Rafols, X. (n.d.). Secession in international law. Universitat de Barcelona, p. 1.

⁷¹ Kosovo. (2008). Declaration of Independence.

of whether Quebec should demand more autonomy through an agreement with Canada. The intention here was to start negotiations for more autonomy, not to request the independence per se. The exact wording of the question was as follows: *"The Government of Québec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Québec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad – in other words, sovereignty – and at the same time, to maintain with Canada an economic association including a common currency; no change in political status resulting from these negotiations will be effected without approval by the people through another referendum; on these terms, do you give the Government of Québec the mandate to negotiate the proposed agreement between Québec and Canada?"*⁷² The result was 50.56% for a no vote and 49.44% for a yes vote, which showed the division of the society on the territory of Quebec, regarding this matter.⁷³

After the pro-separatist party "Parti Québécois" was voted into the government of Quebec in 1994, the second referendum was implemented.⁷⁴ The following referendum, that was held in 1995, posed a much more concrete question that implied an aspiration for independence of the region. The specific wording of the referendum question read as follows: *"Do you agree that Québec should become sovereign, after having formally offered Canada a new economic and political partnership under the bill respecting the future of Québec and the agreement signed on June 12, 1995?"*⁷⁵

The agreement which was mentioned in this question was a law draft that was proposed earlier in the year in which the referendum was held. The Quebec government drafted a legislative proposal called the "Act Respecting the Future of Quebec", which was created with the intention to provide the legal basis for independence of the territory in the event that the population voted in favour of it. This law was designed to regulate the transition of Quebec from a part of the territory of

⁷² Élections Québec. (n.d.). Referendum on the 1980 sovereignty-association proposal for Québec, Question.

⁷³ Élections Québec. (n.d.). Referendum on the 1980 sovereignty-association proposal for Québec, Results and statistics.

⁷⁴ Élections Québec. (1994). Results of September 12, 1994 general election.

⁷⁵ Élections Québec. (n.d.). 1995 referendum on Québec's accession to sovereignty, Question.

Canada to an independent entity. The document included regulations regarding the framework for Quebec as a sovereign state.⁷⁶ In addition, this document also regulated the potential future relationship between Quebec and Canada, as well as economic, political, and social plans.⁷⁷ Furthermore, it stated that Quebec would take over the existing agreements that it had as part of Canada and would have the right to negotiate them again as a separate state.⁷⁸ The citizenship of Quebec, the issues of the rights and duties of the population and immigration were also included in this document.⁷⁹ The act also provided the plans for the establishment of a Quebec constitution.⁸⁰ Similarly, the interpretation of the law addresses the issue of current laws that should remain the same as they are in Quebec as a part of Canada until there is an amendment or change.⁸¹ In this referendum, 50.58% of the population voted against independence and 49.42% voted in favour.⁸²

In order to test if the potential unilateral separation of Quebec from Canada is legal, the Canadian federal government took the issue to the Supreme Court of Canada. In this so-called "Quebec Secession Reference", the Court was asked whether Quebec had the right to carry out unilateral secession, without the approval of the other provinces. It should establish if it would be in line with the principles of the domestic Canadian and international law. The court recognized the right to self-determination of peoples under international law but ruled that this right does not allow regional

⁷⁶ National Assembly of Quebec. (1995). An Act respecting the future of Quebec. Quebec Official Publisher, §2, §10.

⁷⁷ National Assembly of Quebec. (1995). An Act respecting the future of Quebec. Quebec Official Publisher,, §3-§5.

⁷⁸ National Assembly of Quebec. (1995). An Act respecting the future of Quebec. Quebec Official Publisher,, §15.

⁷⁹ National Assembly of Quebec. (1995). An Act respecting the future of Quebec. Quebec Official Publisher, §11-§13.

⁸⁰ National Assembly of Quebec. (1995). An Act respecting the future of Quebec. Quebec Official Publisher, §6-§9.

⁸¹ National Assembly of Quebec. (1995). An Act respecting the future of Quebec. Quebec Official Publisher, §18.

⁸² Élections Québec. (n.y.). 1995 referendum on Québec's accession to sovereignty, Results and statistics.

governments of provinces to make a decision of secession on their own, without the agreement of the state and other parties that have a right of co-decision. The Court came to the conclusion that under Canadian constitutional law, no province, including Quebec, has the right to unilaterally decide to secede from Canada.⁸³ The constitution itself does not have any concrete resolutions on the subject, but the process that would have to be set in motion prohibits this type of action. This potential process would require a constitutional amendment, which in turn would require multiple additional processes and approvals at multiple levels of the state.⁸⁴ The court also ruled that in the event of a majority vote of the population of the province of Quebec in favor of secession, there is no automatic right to secession. The Canadian government would not have an obligation to agree to the secession, but they would be obliged to enter into negotiations in this regard. However, these negotiations would have to be in accordance with the Constitution and the rights of all Canadians.⁸⁵

In response to the Supreme Court reference, the Canadian government issued the document "An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference" in 2000. This document addresses the requirements for a future decision on the secession of one of the provinces. The government argued that in such a context, firstly, a specific question about the secession must be asked, leaving no room for implying any relationship with Canada.⁸⁶ Furthermore, the response of the population to the question and the referendum would have to be clear. It was not specifically mentioned what by a concrete answer is meant and whether a minimum of over 50% would be enough to be decisive. This offers room for interpretation for each individual application. It is decided based on the following criteria whether it is the will of the majority: *"In considering whether there has been a clear expression of a will by a clear*

⁸³ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 292-293, para. 149.

⁸⁴ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, p. 293, para. 150.

⁸⁵ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 293-294, para. 151-153.

⁸⁶ Parliament of Canada. (2000). An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. Bill C-20, art.1, §4.

*majority of the population of a province that the province cease to be part of Canada, the House of Commons shall take into account (a) the size of the majority of valid votes cast in favour of the secessionist option; (b) the percentage of eligible voters voting in the referendum; and (c) any other matters or circumstances it considers to be relevant.”.*⁸⁷ Furthermore, the role of the Canadian government is also described here, as it has the task of investigating and determining whether the referendum meets the requirements of the specific question and answer. The government also has the responsibility to review the legal compliance of all other aspects of the referendum.⁸⁸

Law

In order to describe the legal basis for secession, that derives from this case, the findings regarding the secession of Quebec by the Supreme Court of Canada, will be summarized. In this context, the Canadian court argued that the unilateral secession of Quebec would not be legal as it would violate Canada's constitutional framework. A separation from Canadian territory would require a constitutional amendment, which in turn is not enforceable without the consent of the majority of the provinces of the federal state. There are clearly defined rules that must be followed for such a change, and these require the approval of such a proposal at several levels.⁸⁹ Changes to Canada's fundamental political systems have to be made in accordance with the laws of the constitution. Therefore, in the context of the secession of a province, a minimum of two-thirds of all provinces in the country, representing at least 50% of the population, as well as the federal parliament, would have to agree to a separation in order to start the process.⁹⁰

In addition to that, the court established that a unilateral secession would violate many principles of the constitution, such as democracy, federalism, constitutionalism, and the rule of law. Likewise, a clear referendum decision would not be directly

⁸⁷ Parliament of Canada. (2000). An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. Bill C-20, art. 2, §2.

⁸⁸ Parliament of Canada. (2000). An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. Bill C-20, art. 2, §1-§4.

⁸⁹ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 263-264, para. 84.

⁹⁰ Minister of Justice of Canada (2021). The Constitution Acts 1867 to 1982, art. 38 (1).

decisive for the implementation of the process of secession because it would not be legally binding, but would oblige the state to enter into negotiations in this context.⁹¹

⁹¹ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 293-294, para. 151-152.

Application to Kosovo

Historical Background

In order to understand today's developments and conflicts in Kosovo and Metohija, several centuries of history have to be analysed. Starting in the Middle Ages, during the 12th and 13th centuries, Kosovo became the center of the Serbian monarchy under the Nemanjić dynasty. Stefan Nemanja took over the power of numerous dukes and established a centralized state. With the coronation of his son Stefan II. Nemanja, who was also known as Stefan the First-Crowned, by the Pope Honorius III., the monarchy was formally established in the year of 1217. As the new system was officially formed, Kosovo became the political, religious, and cultural center of the Serbian monarchy, with Prizren as the main residence of the rulers. Meanwhile, the patriarchal monastery in Peć, which was founded in the mid-13th century, became the religious center of the Serbian Orthodox Church, together with the monasteries of Visoki Dečani, Gračanica, and the diocese of Raška, which at the same time reflected medieval Serbian culture and architecture. The territory of the empire expanded to the south and therefore the Nemanjić dynasty ruled over almost the entire Western Balkans. As a result of that, the Kosovo region gaining even more importance as one of the two centers of the monarchy, besides Skopje.⁹²

The Battle of Kosovo polje is a historical event that is a cornerstone of Serbian identity to this day. It poses as a symbol of the resistance against occupation and the fight for the preservation of Serbian independence and identity. In this battle, that took place on 28 June 1389, the Serbian Empire fought against the Ottoman Empire under the leadership of Prince Lazar Hrebljanović on the Serbian side and Sultan Murad I. on the Ottoman side. No real winner emerged from this battle per se, as both rulers were killed during it. Nevertheless, the Serbian army was weakened by this military conflict and the Serbian-ruled regions fell under Ottoman rule.⁹³ After the battle, the Ottoman Empire gradually conquered the Kosovo region and changed the political, economic, and social environment. The cities of Priština, Peć and Prizren turned into important cultural and trading centers for the Ottomans and changed their appearance under

⁹² The Royal Family of Serbia. (n.d.). The Nemanjić's era.

⁹³ Alvarez, S. (2014). The Battle of Kosovo: Early Reports of Victory and Defeat. *De Re Militari*. The society for medieval military history.

their rule. The Ottoman rulers transformed the region through their legal and administrative system, as well as the landscape through the construction of mosques and bridges. However, the biggest change that happened during the Ottoman occupation was the demographic one. The majority of the population converted to Islam under the occupying power, which had a huge impact on religious and cultural developments in the area. In addition to that, the Ottomans encouraged migration from present-day Albania and thereby had an influx that even further influenced the demography of Kosovo and Metohija. By the end of the Ottoman rule an ethnic change had taken place in this region and the majority of ethnic Serbs had been replaced by a majority of ethnic Albanians.⁹⁴ Starting in the 16th century, Serbian resistance movements began to rise in the Ottoman Empire, these were followed by resistance from the ethnic Albanian population in the 19th and 20th centuries⁹⁵. Even though these resistances were suppressed by the rulers, they helped to strengthen the national consciousness of the various ethnic groups within the empire.⁹⁶ After the Empire lost power and weakened towards the end of the 19th century, nationalist aspirations in the Kosovo region rose sharply. Serbia wanted to regain the lost power and authority over the Kosovo and Metohija territory, while the ethnic Albanian group wanted autonomy and independence for the region. The Balkan wars between 1912 and 1913 led to the end of the Ottoman Empire reign in the Balkans.⁹⁷ In the First Balkan War, Serbia regained its authority over Kosovo and Metohija, which later on led to ethnic conflicts between the Serbian and Albanian groups in the region, as the Albanian population resisted Serbian rule.⁹⁸

During the interwar period and in the course of the World War II, Italy under Mussolini became interested in the Western Balkans region and wanted to be involved in Albania by supporting the creation of a Greater Albanian Empire. The intention behind this

⁹⁴ Britannica. (n.d.). Encyclopedia Britannica. The Ottomans of the Balkans.

⁹⁵ Tallon, J. N. (n.d.). A review of The failure of Ottomanism: The Albanian rebellions of 1909-1912. Dissertation Reviews.

⁹⁶ Savin, M. (2019). Ustanak Srba u Banatu 1594. godine. Kulturni centar Novog Sada.

⁹⁷ Despot, I. (2012). Balcan wars in the eyes of participants. Perceptions and interpretations. Doctoral thesis. Faculty of Philosophy, University of Zagreb, pp. 68-104.

⁹⁸ Despot, I. (2012). Balcan wars in the eyes of participants. Perceptions and interpretations. Doctoral thesis. Faculty of Philosophy, University of Zagreb, pp. 138-141.

idea was to counter Hitler's occupation of the Balkans. In 1939, Italy under the fascist regime took over Albania and extended its power over the territories of Yugoslavia and Greece. The Italian government supported Albanian institutions and national aspirations in Kosovo with the intention of integrating it into a Greater Albanian state. The western parts of North Macedonia, which have a large ethnic Albanian population, were also included in the plan. Some parts of Montenegro and Greece, that had ethnic Albanian minorities were also meant to help Italy to dominate the Western Balkans. In the areas of Kosovo and Metohija occupied by Italy, however, the ethnic conflicts did not diminish. The question of ownership of houses and land in the region became an increasing issue. In the course of the conflicts, many southern Slavs fled the region, and their properties were taken over by the Albanian population, with the remark that they had belonged to them in the past. After the Italian administration refused to accept these takeovers and wanted to set up legal proceedings to clarify ownership, the Albanian population accused them of being pro-Slavic. This led to an Albanian-Italian conflict within the region in addition to the Serbian-Albanian conflict. After only two months, the Italian military leaders who ruled the Albanian region realized that integrating the Kosovo and Metohija region was not a good idea. But as they supported the Greater Albanian Empire, withdrawal was not an option. As a result, Italy supported the establishment of Albanian institutes and Albanian culture in Kosovo and Metohija in order to promote the immigration of ethnic Albanians. Kosovo was therefore integrated as part of the Greater Albanian Empire under the authority of fascist Italy. A part of the Albanian population accepted the Italian power, while a part accused them in some cases of having a pro-Slavic attitude. At this time, major conflicts were caused by the anti-fascist uprisings on the part of the ethnic Serbs. Both the Yugoslav partisan units fighting against the occupation, as well as the chetniks fighting the Albanian and Italian forces, were based and active in the Kosovo region, which further complicated the situation. After the capitulation of Italy, Germany took over Kosovo and Metohija and the fighting between Albanian, German, and Serbian units continued until the end of the war.⁹⁹

⁹⁹ Micheletta, L. (2013). Italy, greater Albania, and Kosovo 1939-1943. *Nuova rivista storica*. 97, pp. 522-542.

The constitution of Yugoslavia from 1974 was an important piece of legal foundation of the rights and obligations of the so-called autonomous provinces of Yugoslavia, including the Kosovo region. The autonomous provinces of Kosovo and Vojvodina were given more rights to independence, as the constitution made it clear that the federal state of Yugoslavia consisted of the socialist republics, Bosnia and Herzegovina, Montenegro, Croatia, Macedonia, Slovenia, and Serbia, as well as the autonomous provinces of Kosovo and Vojvodina, which were part of the Republic of Serbia.¹⁰⁰ According to this constitution, these autonomous regions are self-governing democratic units that are subject to the constitutions of Serbia and the SFRY. It is interpreted in the constitution that the federal republics are based on national sovereignty, while the population of the autonomous provinces has the freedom to exercise their sovereign rights as long as this is in accordance with the interests of the federal republic.¹⁰¹ The process of changing the borders of the respective republics, the autonomous provinces and the federal state of Yugoslavia as such, would be only possible if all the federal republics and autonomous provinces agree unilaterally on it.¹⁰² On the one hand, the preamble to the 1974 constitution clearly states that all peoples have a right to self-determination and are even granted the right to secede. On the other hand, it refers to the federal republics of Yugoslavia and not specifically to the autonomous provinces. Furthermore, this right is rather symbolic, as the consensus of all states would be necessary to initiate its implementation.¹⁰³

In 1989, the constitution was amended, which contributed to reducing the decision-making power of the autonomous provinces of Kosovo and Metohija and Vojvodina. Among other things, the “amendment 47” changed the right that the autonomous

¹⁰⁰ Socijalistička Federativna Republika Jugoslavija. (1974). Ustav Socijalističke Federativne Republike Jugoslavije, art. 2.

¹⁰¹ Socijalistička Federativna Republika Jugoslavija. (1974). Ustav Socijalističke Federativne Republike Jugoslavije, art. 3 – art. 4.

¹⁰² Socijalistička Federativna Republika Jugoslavija. (1974). Ustav Socijalističke Federativne Republike Jugoslavije, art. 5.

¹⁰³ Socijalistička Federativna Republika Jugoslavija. (1974). Ustav Socijalističke Federativne Republike Jugoslavije, pmbl. I.

provinces would have a say in constitutional change and introduced that from then on only their opinion had to be consulted.¹⁰⁴

The Battle of Kosovo is important to the extent that on the 600th anniversary of the battle, the President gave a speech at the site of the battle, which is seen by some as the catalyst for the violent disintegration of Yugoslavia. Due to the autonomous ethnic Albanian government in Kosovo, there were repressions and expulsions of Serbs from the Kosovo region during the 70s and 80s. On 28 June 1989, Milošević gave a speech in which he spoke of the unification of the Serbian state and liberation, in connection with the constitutional amendment.¹⁰⁵ Milošević's uprising began with his support for the working class in the autonomous province of Kosovo at the end of the 1980s. His nationalist agenda advocated for the ethnic Serbs in the now independent countries that had been displaced by the collapse of Yugoslavia. He supported his missions with his own militia groups such as "Arkanovi Tigrovi". The media were also under his control and thus the propaganda was widely spread. Under his regency, ethnic conflicts were widespread, especially in Kosovo in the late 1990s.¹⁰⁶ Here, an ethnic Albanian army called the Kosovo Liberation Army was formed and fought against the repressive Milošević regime. In response, Serbian military forces were sent in to suppress the uprising. In these conflicts, no consideration was given to civilian collateral damage. After peace negotiations failed, NATO decided to intervene militarily, until Milošević finally accepted an international administration of Kosovo.¹⁰⁷ Although this intervention is debatable under international law, as NATO had no authorization from the Security Council and thus violated the UN Charter, a 78-day land attack was carried out on the entire Serbian territory.¹⁰⁸ Based on these conflicts, Kosovo justified the right to external self-determination of peoples and unilaterally proclaimed independence in 2008.¹⁰⁹ In the years following the unilateral declaration,

¹⁰⁴ Institute for War & Peace Reporting. (n.d.). Dva gledista o oduzimanju autonomije Kosovu 1989.godine.

¹⁰⁵ Gazimestan speech: Background to the speech, p. 1.

¹⁰⁶ Aronov, N. (2023). From nationwide leader to The Hague: Viewing Milošević's history through the eyes of opposition. The Insider.

¹⁰⁷ International Criminal Tribunal for the former Yugoslavia. (n.d.). Conflicts.

¹⁰⁸ Morton, J. S. (n.d.). The legality of NATO's intervention in Yugoslavia in 1999: Implications for the progressive development of international law. ILSA Journal of International & Comparative Law, p. 76.

¹⁰⁹ Kosovo. (2008). Declaration of Independence.

up to the present time, the conflicts have continued, albeit not to the same extent as before, and unity in this context is still a distant prospect.

Quebec Case Law

The Canadian Supreme Court ruled that a unilateral secession is not possible under international law. The legal basis states that a referendum can take place in the context of external self-determination which demonstrates the need for secession, but that this people's will alone, cannot lead to a legitimate secession but rather requires negotiations between both sides.

If the model of the Quebec case is applied in the context of Kosovo, it can be stated that Kosovo unilaterally declared an independence that is not in accordance with the constitutional framework and international law. According to the Canadian supreme court, the declaration should have taken place through a referendum and subsequent negotiations between Kosovo and Serbia.¹¹⁰ However, the question of the possibility of conducting democratic and fair negotiations arises before a history full of ethical conflicts. In addition, there is the question of whether the Balkan conflicts of the 1990s can serve as a basis for an exception to the violation of territorial integrity.

Uti possidetis iuris

The principle of uti possidetis is most frequently used in the context of decolonization or the restoration of sovereignty after occupation. This implies that states maintain the borders they receive when regaining independence. According to the constitution, Kosovo and Metohija had the status of an autonomous province within the sovereign state of Serbia for a period of time within Yugoslavia but was never a recognized federal republic in its own right and was always subordinate to the Serbian and Yugoslav constitutions.¹¹¹ After borders have been established according to the principle of uti possidetis iuris, the territorial integrity applies. The UN Charter is one of the legal bases that are relevant for uti possidetis. Article 2 (4) of the UN Charter states the following: *"All Members shall refrain in their international relations from the*

¹¹⁰ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 263-294, para. 84-153.

¹¹¹ Hasani, E. (2003). Uti Possidetis Juris: From Rome to Kosovo. The Fletcher Forum of World Affairs. VOL.27:2 SUMMER /FALL 2003, pp. 85-94.

*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.”*¹¹²

The concept of *uti possidetis iuris* can therefore be interpreted in a way that existing national borders must be maintained in order to ensure stability and progress within the international system. It emphasizes that the territorial integrity of Serbia should be secured by international law, in particular the UN Charter, and that any change to this given framework should be achieved through democratic negotiations.

In contrast, Article 1 (2) of the UN Charter states the following: *“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace,”*¹¹³

The right to self-determination of peoples is also guaranteed by the UN Charter. Here it is argued that based on the ethnic conflicts, especially in the course of the 1990s, the ethnic Albanian population in Kosovo and Metohija has gained the right to external self-determination. There is also room for interpretation here. A further argument in this context is that the right of peoples to self-determination does not offer an automatic right to secession, except in cases of extreme repression or decolonization, or the re-establishment of former borders. Proponents of this aspect argue that the right of peoples to self-determination should be exercised through autonomy within the existing state. UN Resolution 1244 is also relevant here. Resolution 1244 of the UN Security Council was passed in 1999. The intention of this resolution has been to regulate and stabilize the situation in Kosovo and Metohija after the conflicts of 1998 and 1999. It is a legal framework that confirms the territorial integrity of Yugoslavia and demands a clear autonomy of the autonomous province of Kosovo within Serbia. The General Assembly confirms through this resolution that, based on the principle of territorial integrity and in compliance with the Helsinki Final Act, all UN member states recognize the territorial sovereignty of Yugoslavia, which later became the Republic of Serbia, while demanding autonomy for Kosovo. The resolution also declares that the United Nations will take the responsibility of the administration and the

¹¹² United Nations. (1945). Charter of the United Nations, Art. 2 (4).

¹¹³ United Nations. (1945). Charter of the United Nations, Art. 1 (2).

development of the local institutions in Kosovo, which was later established through the UNMIK mission, while the security and the further prevention of the conflicts in the area will be carried out under the leadership of NATO, which later led to the creation of KFOR. Responding to the humanitarian challenges, the resolution demanded that all refugees and forcefully displaced population must be allowed to return to their homes. It also ensures the establishment and development of democratic institutions in the region and addresses the final status of Kosovo, mentioning that all sides must be involved in finding a solution.¹¹⁴

The principle was not applied in Europe until the disintegration of the communist countries and especially Yugoslavia in the 1990s. In the year 1991, the European Community created a board of jurists serving as an arbitration commission for the dissolution of Yugoslavia. This panel consisted of five judges from the Constitutional Courts of the European Community, with the President of the French Constitutional Council, Robert Badinter, after whom the Commission was later named, also as the president of the commission. The commission was set up already during the process of disintegration of the country and dealt mainly with the issues of the borders of the successor states, sovereignty, and related matters. There were three opinions that emerged from this arbitration process - the first opinion of the Commission addressed the issue of the disintegration of Yugoslavia *per se*. It was established that Yugoslavia no longer exists as a federal state and that the disintegration is already in progress. The federal republics of Bosnia and Herzegovina, Croatia and Slovenia carried out referendums and through that declared their independence in accordance with the Yugoslav constitution. The second opinion addressed the topic of the right to self-determination of the peoples within the newly independent republics. Even if it was not specifically about Kosovo and Metohija, this decision could be to some extent applicable in this case. The question of the right to self-determination of the ethnic Serbian population groups within Bosnia and Herzegovina and Croatia, in the so-called regions of Republika Srpska Krajina (Croatia) and Republika Srpska (Bosnia and Herzegovina), was raised. The commission found that these groups have a right for the recognition of their identity under international law but that based on *uti*

¹¹⁴ United Nations. (1999). RESOLUTION 1244 (1999).

possidetis iuris the right to self-determination cannot change already existing borders of states. The third opinion of the Arbitration Committee regulated the establishment of the borders between Bosnia and Herzegovina, Croatia, and Serbia. They established that the former existing borders of the federal republics, again based on the uti possidetis iuris principle, will become the new borders of the states, protected by international law, and that they may not be changed, except in the case of agreement between the actors.¹¹⁵

International Covenant on Civil and Political Rights

Article 1 of the International Covenant on Civil and Political Rights states the following: *“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*¹¹⁶

Based on this legal basis, it can be argued that, similarly to the uti possidetis case, there is the right due to repression. Even though this right was mostly used by African and Asian peoples to abolish decolonization, it is argued that it can also be applied other cases due to violations of human rights over the ethnic Albanian people, as seen in the Badinter Arbitration Committee findings. On the other hand, it can also be argued here again with UN resolution 1244 and the distinction between internal and external self-determination. In addition, Article 27 of the ICCPR states the following: *“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”*¹¹⁷

While supporters of Kosovo's independence use this article to argue that Serbia has violated it and therefore secession should be legitimate, opponents argue that this

¹¹⁵ Pellet, A. (1992). The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples. 3EJIL(1992)178, pp. 178-185.

¹¹⁶ United Nations. (1966). International Covenant on Civil and Political Rights. General Assembly resolution 2200A (XXI), art. 1.

¹¹⁷ United Nations. (1966). International Covenant on Civil and Political Rights. General Assembly resolution 2200A (XXI), art. 27.

very article calls for internal self-determination within the sovereign state and provides no basis for secession.

The General Assembly of the United Nations referred the question of the legitimacy of Kosovo's unilateral declaration of independence to the International Court of Justice. In 2010, the ICJ ruled that the unilateral declaration of independence of Kosovo and Metohija is not illegal per se, under international law, but made no statement on whether Kosovo is considered independent or whether a secession in this case is possible. They also evaluated that this declaration is not violating the Security Council resolution 1244 from 1999. As a result, only the fact that international law does not prohibit a unilateral declaration of independence was clarified. Although this decision is not binding, it is significant and often referred to in this matter.¹¹⁸

This decision also offers room for interpretation for both sides of the debate - supporters of independence may take the ICJ decision as the basis for the legitimacy of the Kosovo and Metohija secession, while opponents of the independence may take the view that the judgement only makes a statement about the proclamation per se and provides no information about the right to secession, as the opinion of the ICJ cannot change existing principles of international law.

In summary, this case study leads to the conclusion that the principles of territorial integrity of states and the right of external self-determination of peoples are in conflict with each other in this specific context.¹¹⁹ While both principles are supported by international law, complications arise in cases of unilaterally declared independence. On the one hand, the UN Charter supports the right to self-determination of peoples, which is also supported by the ICCPR, for example, especially in cases of repression of peoples. The ICJ also ruled that the act of proclaiming independence is not illegal under international law. On the other hand, the UN Charter and the principle of *uti possidetis* state that existing borders should be preserved and that any change to them can only be implemented through democratic negotiation and joint decision. In this context, the self-determination of peoples is not denied but interpreted as a right

¹¹⁸ International Court of Justice. (2010). Accordance with international law of the unilateral declaration of independence in respect of Kosovo. Advisory Opinion No. 2010/25, pp. 1-8.

¹¹⁹ International Court of Justice. (1986). Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, pp. 16-17, para. 25-26.

to autonomy within the existing state. This is also confirmed to a certain extent by the Quebec case decision, which states that the start of the process of secession requires negotiations with the so-called "parent state", except in cases of strong repression such as decolonisation processes. Although the legal framework conditions are given, it is difficult to establish which are superior.

Application to Taiwan

Historical Background

In order to understand this case in a better way, the historical background will be analysed first. The indigenous people of Taiwan, who settled on the island over 15,000 years ago, were the Austronesian ethnic group, who developed their own cultural and linguistic characteristics in different regions. Today, there are 16 recognized Taiwanese tribes with their own cultures, customs, and languages, which were originally mainly engaged in agriculture, hunting and fishing.¹²⁰ This ethnic group now accounts for only 2% of Taiwan's current population. In 1583, the Portuguese arrived in Taiwan and called it the "beautiful island" - Ina Formosa. At the beginning of the 17th century, the first travelers and migrants from China came to the island, but only for the purpose of trade and related activities. It was only after the Dutch colonized the island for trade purposes in 1624 and founded the Dutch East India Company that China itself began to compete for the territory. The first recognized Chinese battle against the West took place Taiwan in the 1650s, when Chinese settlers fought against the Dutch settlers. The Dutch presence on the island drew more and more attention to the territory from the Chinese side. After the collapse of the Ming dynasty, Zheng Chenggong, also known as Koxinga, fought with other Ming military officers against the Qing dynasty that took over. After the attempts failed, he withdrew his army from the mainland and tried to reorganize it on today's Taiwan Island. Zheng Chenggong chose the Dutch main base of Fort Zeelandia as his first point of attack. After the successful conquest, Koxinga founded his own kingdom called Dongdu, which supported the Ming dynasty. In 1662, Zheng Chenggong died, after which his successors made numerous failed attempts to retain power. They promoted Chinese influence on the island and wanted to introduce a system modelled on China. These processes led to an increased migration of the Chinese population to the island, so that the number of Chinese migrants outnumbered the indigenous population. In 1683, the Qing army attacked Taiwan, arguing that no ethnic Chinese state could exist outside the Chinese empire. A year after the attack, the Taiwanese troops, under the leadership of Zheng Chenggong's grandson, Zheng Keshuang, lost the battle

¹²⁰ Council of Indigenous Peoples. (n.d.). Introduction to the tribes.

against the Chinese army, which led to the integration of Taiwan into the Fujian province of the Chinese empire.¹²¹

In the next two centuries, during which Taiwan was under Chinese rule, there were many uprisings among the population, including these among the ethnic Chinese people on the island. There were strict immigration regulations imposed by the Quing Dynasty, for example family migration was prohibited and the emigrants were mostly unmarried men. The Quing Dynasty also cooperated with the Taiwanese native people and offered them money to suppress the uprisings. In addition, there were attempts by other countries such as Japan, Germany, France, Great Britain and the USA to conquer the island themselves, which the Quing Dynasty also had to resist. After the French managed to annex the island, China under Quing focused on the preservation of Taiwan. It was made a province of its own and numerous reforms in the areas of education, economy and military were implemented in Taiwan. After the idea of leasing Taiwan to Western powers emerged in China, Japan feared European and American dominance over parts of the Asian continent and started the Sino-Japanese War against China in the year 1894. After China lost the war, they handed Taiwan over to Japanese power, after which the Taiwanese people called for independence of the Republic of Taiwan. Under the Japanese colonial power, Taiwan was greatly modernized, the infrastructure was built, the healthcare system was improved, and institutions were established. Nevertheless, it was a repressive regime that murdered a high number of resisters. The native language was widely banned, and the schools, which were mainly Japanese, were hardly attended by the native population. The first demands for self-determination from the Taiwanese people emerged in the elite groups of Taiwanese scholars and students in Tokyo, who demanded not independence per se based on the principle but voting rights for their representatives in Japan. During the 1920s, the acceptance of the Taiwanese population as a more legitimate part of the Japanese population improved, although the enforcement of Japanese culture in the area still persisted and the language was imposed even more strongly. After the end of the World War II, Taiwan was liberated from the Japanese colonial power and handed back to the Republic of China, which was ruled by the Nationalist Party. The Chinese government immediately began to eliminate the

¹²¹ Morris, A. (n.d.). Taiwan's History. An introduction, pp. 1-10.

established Japanese influences and impose its own, which the native Taiwanese resisted.¹²² The resistance reached its climax in the conflict known as Incident 228 in 1947, in which Chinese forces killed between 18,000 and 28,000 resisters on Taiwan's side.¹²³ In 1949 the Martial Law was imposed by the Kuomintang, which started almost two decades of highly repressive agendas.¹²⁴ During the following years, the communist party rose within China and drove the nationalist party from the mainland through the civil wars, resulting in the nationalist government being forced to move over to Taiwan. During the cold war, Taiwan under the nationalist Chinese leadership was strongly supported by the US, as they were both fighters against communism. In the 1950s and 1960s, Taiwan, known as "Free China", was supported with over \$4 billion, with the aim of reconquering the Chinese mainland. Taiwan experienced an economic rise as a result of the investments, but the political situation and repressive policies against the native Taiwanese population did not change significantly. The number of political prisoners was high and even people in high positions who worked for the UN were arrested for acts of treason. Through various organizations representing the people, the Taiwanese had more opportunities to report their experiences, and so the nationalist government increasingly lost recognition as the representative of China in the international system. In order to isolate the Soviet Union, Henry Kissinger and US President Nixon opened more and more channels of dialogue with communist China, leading the UN General Assembly to finally decide in 1971 that the UN seat for China would be transferred from the nationalist government based in Taiwan to the communist government on the mainland. To seize the momentum, protests for Taiwan independence were organized worldwide, demanding an individual seat for Taiwan in the UN.¹²⁵ In the hope that the communist People's Republic of China would help the USA to end the Vietnam War, President Nixon signed the Shanghai Communiqué in 1972, which confirmed China's territorial integrity and Taiwan as a part of China.¹²⁶

¹²² Morris, A. (n.d.). Taiwan's History. An introduction, pp. 10-21.

¹²³ Shattuck, T. (2017). Taiwan's White Terror: Remembering the 228 Incident. The Foreign Policy Research Institute. Asia Program.

¹²⁴ Kagan, R. C. (1982). Martial law in Taiwan. *Bulletin of Concerned Asian Scholars*, 14(3), pp. 49-53.

¹²⁵ Morris, A. (n.d.). Taiwan's History. An introduction, pp. 21-27.

¹²⁶ Peoples Republic of China & United States of America. (1972). Joint Communiqué, p. 3.

As a result, Taiwan became politically isolated in the course of the 1970s. The "One China Policy" was introduced and upheld by the international system, above all the USA, which meant that the ruling People's Republic of China regime represented the entire country, including Taiwan. In the 1980s, the democratization process started in Taiwan - the Taiwanese diaspora in the US used their position to make members of Congress aware of the human rights situation in Taiwan. The internal and external pressure on the Chinese government became strong and led to the Martial Law being ended in 1987 after many decades. In the 1990s, the process of democratization within Taiwan and relations with the Chinese government improved. The first direct presidential election in Taiwan was held in 1996, in which Taiwan got its first elected president, Lee Teng-hui. The 1990s became the heyday of the development of Taiwanese identity among the population, with over 63% of the population currently declaring themselves to be purely Taiwanese. However, even at this time there were numerous ethnic differences within the population. While some saw themselves as Taiwanese, there were also large groups who saw mainland China as their homeland and felt that they were part of it.

The Chinese who settled on the island after the civil war regarded it as China under their Kuomintang regime, while the indigenous Taiwanese, who had inhabited the island for centuries, saw it as a separate state under the leadership of the Democratic Progressive Party.¹²⁷ In the course of these years, an agreement on communication between the two sides called "The 1992 Consensus" was also reached. It was decided that there is only one China, although it is interpreted differently by each side. For the People's Republic of China, it means that the mainland government represents the whole of China, including Taiwan, while for the Taiwan region it means that it is a sovereign state as the Republic of China. However, this agreement is not accepted by the Democratic Progressive Party of Taiwan, which has led to conflicts to this day.¹²⁸ In 1999, the DPP ratified the Resolution on Taiwan's Future, which proclaimed the island's sovereignty and rejected the One China policy.¹²⁹

¹²⁷ Van der Wees, G. (2024). Taiwan: The facts of history versus Beijing's myths. Council on Geostrategy. Geopolitics Programme No. GPPE02.

¹²⁸ Resar, A. (2017). The 1992 Consensus: Why It Worked and Why It Fell Apart. The Diplomat.

¹²⁹ Democratic Progressive Party of Taiwan. (1999). Resolution on Taiwan's Future. DPP Party Convention, II.

At the beginning of the new millennium, the Kuomintang regime was defeated by the DPP in the presidential election, leading to further demands for independence. Chen Shui-bian became the first president of the DPP in Taiwan and gave a speech in 2007 in which he introduced the "Four Wants One Without" agenda. The main aim of this initiative was for Taiwan to become independent and sovereign state, with a new constitution, while maintaining peace and not being integrated as part of China.¹³⁰ After Chen Shui-bian's mandate expired in 2008 and the regime was again taken over by the Kuomintang, he was arrested on charges of corruption after losing his diplomatic immunity.¹³¹ In the next few years, power alternated from election to election between the KMT and DPP. In 2022, the US reinforced cooperation with Taiwan with a visit by the speaker of the U.S. House of Representatives, Nancy Pelosi.¹³² This official visit increased the tension between China and Taiwan and led to China conducting various military exercises in the immediate proximity of the island.¹³³ Since January 2024, Taiwan has once again a president from the Democratic Progressive Party, which continues to fuel tensions and military actions by Mainland China.¹³⁴

Quebec Case Law

In the case of Taiwan, the same legal principles would apply. The process would first have to be in accordance with domestic, constitutional law.¹³⁵ As in the case of Quebec, Taiwan is constitutionally declared as a part of China and would require an amendment to the Chinese constitution under Article 64 in order to change this

¹³⁰ Romberg, A. (2007). Chen Shui-Bian's "Four Wants, One Is Not" Statement May Provoke Washington. The Henry L. Stimson Center.

¹³¹ Shattuck, T. (2017). Taiwan's Ex-Presidents: A Carousel of Legal Problems. The Foreign Policy Research Institute. Asia Program.

¹³² Pelosi, N. (2023). Pelosi Statement Marking One Year Since Historic Visit to Taiwan. Press Release.

¹³³ Kim, E. (2022). China starts biggest-ever military drills around Taiwan in wake of Pelosi's visit. CBS News.

¹³⁴ Ng, K., & Wingfield-Hayes, R. (2024). China holds military drills around Taiwan as 'strong punishment'. BBC News.

¹³⁵ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, p. 293, para. 150.

status.¹³⁶ In addition, in this context there is an "anti-secession law" unilaterally adopted by China, which only leaves open the possibility of national unification.¹³⁷ This legislation makes it extremely difficult to implement the Quebec requirements, as the will of the population must be clearly communicated through democratic forms in order to start the negotiations of the secession process.¹³⁸ For example, it would have to be implemented through a referendum, which could theoretically imply a proclamation of the intention to secede, which in turn could violate the anti-secession law. In theoretical further steps, implementation would also only be possible through negotiations with the central regime. A unilateral secession would not be possible under international law.¹³⁹ However, achieving these steps under the current legislation and political attitude, both in China and internationally, is unlikely. Given that Taiwan has not yet declared independence, however, this would be difficult to apply, and is therefore not of major relevance in this context.

¹³⁶ Chinese Government. (2019). Constitution of the People's Republic of China, pmbl.

¹³⁷ National People's Congress. (2005). Anti-Secession Law, p. 2.

¹³⁸ Parliament of Canada. (2000). An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. Bill C-20, art. 2, §2.

¹³⁹ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 292-293 para. 149.

Uti possidetis iuris

Whether the *uti possidetis iuris* principle is applicable in the context of China is debatable. In principle, it states that the borders established at the time of the creation of a state should be maintained in order to avoid conflicts in the context of territorial issues.¹⁴⁰ If this principle were to be applied in the example of Taiwan, it would tend to argue in favor of maintaining the status quo between the countries and, by consequence, hinder Taiwan's legal independence.

¹⁴⁰ Sarvarian, A. (2015). "Uti Possidetis Iuris" in the Twenty-First Century: Consensual or Customary? *International Journal on Minority and Group Rights*, 22(4), p. 515.

Comparative analysis

Based on the research carried out, it can be stated that the topic of territorial integrity, sovereignty, and the right of self-determination of peoples present a very complex issue in the spheres of international law and international relations. It is not only linked to legal principles and political decisions, but also involves just as much historical background, humanitarian, and emotional aspects. The topic is made up of a variety of legal tools that offer plenty of room for interpretation. These instruments are rooted in customary international law as well as in agreements such as the UN Charter and have been interpreted over time through extensive case laws. The legal provisions that are relevant in this context and were used for this analysis provide a good basis for comparison. In this chapter, the various principles and laws are summarized, and an analysis is conducted as to whether and how they are applicable to each other.

The most important to emphasize here are the principles of territorial integrity, sovereignty, and the right of peoples to self-determination. The evaluation of whether these principles can be applied in parallel in a single case is complex. The answer to this is that it depends on the individual case.

Firstly, a distinction must be made in this context between the two types of self-determination of peoples, the internal and external right to self-determination. The internal right to self-determination refers to the autonomy of an entity within the sovereign borders of an already established state, while external self-determination refers to the secession of an entity from the territory of the parent state. The most important source of case law on the issue of external self-determination is the decision of the Canadian Supreme Court in the context of the right of secession of the province of Quebec. In this case, the court ruled that unilateral secession without the consent of the parent state is illegal under international law. A change in territorial structures would require a constitutional amendment, which is not possible without the consent of the government of the parent state. The will of peoples within a state to separate from the state is not legally sufficient to enable secession. In this context, however, the court ruled that the expressed will, expressed democratically, for example through

a referendum, obliges the parent state to negotiate on this issue, which should potentially lead to an agreement in this case.¹⁴¹

The principle of territorial integrity assures states that their sovereignty, in the sense of territory and political independence, is protected from the influence of other states. This is protected by Article 2 of the UN Charter, as well as by other UN resolutions and agreements.¹⁴²

The sovereignty of a state is defined as the highest authority within its own territory. In the event of interference by an external power and the resulting violation of territorial integrity, the authority is called into question and thus sovereignty is also violated.¹⁴³ It can be stated that the principles of territorial integrity and external self-determination of peoples in general conflict with each other, which also leads to the conclusion that it violates sovereignty.¹⁴⁴ However, a secession, or the execution of the external right to self-determination, is certainly permitted in special exceptional cases such as decolonization or the obstruction of the exercise of internal sovereignty. However, the question arises as to how and who should evaluate the circumstances that confirm or disprove these exceptional cases.¹⁴⁵ Secession in accordance with international law is also possible through a democratic process involving negotiation and agreement as laid out in the Quebec case law. In this case, however, it is not a unilateral secession, but an agreement between two legal subjects.¹⁴⁶

¹⁴¹ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 263-294, para. 84-154.

¹⁴² United Nations General Assembly. (1970). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/RES/2625(XXV)).

¹⁴³ International Court of Justice. (1986). Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports, pp. 136-139.

¹⁴⁴ International Court of Justice. (1986). Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, pp. 16-17, para. 25-26.

¹⁴⁵ Van der Vyver, J. D. (2000). Self-Determination of the Peoples of Quebec under International Law. Emory University School of Law, p. 12.

¹⁴⁶ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 263-294, para. 84-154.

To illustrate this more clearly, the principle of *uti possidetis iuris* is used. This states that the borders of a state that were established at the time of its creation, i.e. independence, should not be changed in order to avoid territorial conflicts. This principle has been applied and interpreted in a number of relevant cases of international law, such as the Frontier Dispute between Burkina Faso and Mali.¹⁴⁷ The principle itself deals with the creation and maintenance of the borders of states. Once these borders are established, the defined territory is protected by the principle of territorial integrity. It does not deal with the legitimacy of the creation of states per se, but is used as a basis for the interpretation of questions of secession. This was also the case with the Badinter Arbitration Committee, which came to the conclusion that the dispersion of peoples after the disintegration of Yugoslavia was not a legal basis for the secession of the individual entities, but rather merely demanded a right to internal self-determination.¹⁴⁸

The internal self-determination of peoples is a concept that allows the exercise of the rights of peoples, as written down in Article 1(2) of the UN Charter and ICCPR, within an established state. In this context, the peoples are allowed autonomy within a sovereign state, usually through forms of decentralization such as federation.¹⁴⁹ The internal form of self-determination of peoples is specifically regulated in international law and does not violate the principles of international law that are related to the territorial integrity and sovereignty of states. Here the question could be raised as to how autonomy was achieved, whereby nothing would fundamentally change in terms of legitimacy. Has autonomy been established through negotiation, then it is not illegitimate. If autonomy was refused, although the basis for the claim to self-determination is given, then the denial of self-determination could be argued.

¹⁴⁷ International Court of Justice, Frontier Dispute (Burkina Faso/Republic of Mali) Judgment, 17-19.

¹⁴⁸ Pellet, A. (1992). The Opinions of the Badinter Arbitration Committee A Second Breath for the Self-Determination of Peoples. 3EJIL(1992)178, p. 185.

¹⁴⁹ United Nations, International Covenant on Civil and Political Rights, art. 1, art. 27.

After clarifying the legal bases that protect sovereignty, the emergence of sovereignty should be considered in more detail.

The constitutive theory states that an entity only becomes a sovereign state when it is recognized by other states. If this is applied in the context of Kosovo, it can be concluded that the high rate of recognition strengthens Kosovo's position of independence. However, there is no other uniformly recognized statement about the degree of recognition at which *de jure* sovereignty is considered established, and furthermore, *de jure* sovereignty has no significance as to whether sovereignty itself can be exercised. In the case of Taiwan, the interpretation of the constitutive theory in connection with the low rate of recognition leads to a weakening of the position as an independent state, despite a potential *de facto* sovereignty.¹⁵⁰

The declaratory theory, on the other hand, describes that in order to be recognized as sovereign and independent, an entity must fulfil the criteria of a state. The Montevideo Convention describes these as physical attributes such as territory, permanent population, a government, but also non-material attributes such as the ability to establish relations with other states. This theory states that recognition or non-recognition by other states has no relevance to the independence and sovereignty of the entity.¹⁵¹

According to this theory, the fulfillment of the criteria would have to be tested in order to confirm or invalidate sovereignty. If this view is applied to the example of Kosovo, it can be established that the criterion of permanent population is met, as the population development in the period after the proclamation of independence was positive. The subject of territory is controversial, as on the one hand Kosovo defined its borders, but on the other hand the question arises as to how legitimate that was. Under the constitution of Yugoslavia, the borders that are today claimed by Kosovo were drawn as internal administrative borders for the autonomous province of

¹⁵⁰ The University of Chicago Law Review. (1967). Recognition in International Law: A Functional Reappraisal, *The University of Chicago Law Review*, 34(4), pp. 859-861.

¹⁵¹ The University of Chicago Law Review. (1967). Recognition in International Law: A Functional Reappraisal, *The University of Chicago Law Review*, 34(4), p. 861.

Kosovo, which never had the status of a federal republic. The criterion of government is equally complicated. Although Kosovo has a government that is composed through standard elections by the population, it is debatable whether Kosovo fulfils the requirement of having its own government, as many operations, such as the judicial system and similar, are under the control of the UN through UNMIK and NATO through KFOR. The ability to enter into relations with other states partly implies the recognition by other states, which can be seen as contradictory in the context of the declaratory theory of State Recognition. It should be noted that Kosovo fulfils this criterion depending on the recognition rate.¹⁵²

In the case of Taiwan, on the other hand, it can be argued that the criterion of territory is fulfilled; this argument is strengthened by the fact that Taiwan as a territory has its own army, the Republic of China Army.¹⁵³ It also has a permanent population and an independent government. Again, the criterion of ability to co-operate with other states is somewhat controversial in the context of the core arguments of this theory. Nevertheless, in the case of Taiwan, this ability is not necessarily dependent on the rate of recognition, as many countries, including the USA, maintain relations with Taiwan without formally recognizing it as an independent state.¹⁵⁴

In order to explain the influence of the different constellations of the principle of sovereignty and the right of self-determination of peoples on different spheres of sovereignty, the distinction between internal and external sovereignty should be clarified once again. The concept of internal sovereignty of states represents the competence of a state to exercise its authority within its territory without external influence.¹⁵⁵ The external sovereignty of states is equivalent to the recognition of the state as an independent entity by the other members of the international system.

¹⁵² Perera, S. (2018). Recognition of Kosovo with regard to international law. *International Journal of Advanced Research*, 6(5), pp. 1216-1218.

¹⁵³ Gregson, W. (2023). Taiwan's army and the future of the state. *Global Taiwan Brief*, 8(16).

¹⁵⁴ Fang, A. (2023). International legal frameworks for statehood and their relevance to Taiwan's defense. *Global Taiwan Brief*, 8(4), pp. 8-10.

¹⁵⁵ Lee, S. (n.d.). 20th WCP: A Puzzle of Sovereignty. *Paideia*. Boston University, I.

Conclusio

In conclusion, the research question “To what extent is it possible to achieve a balance within the established international legal framework that both upholds state sovereignty and accommodates the self-determination aspirations of sub-state entities?” can be answered with the following findings of this thesis:

Whether the right to self-determination of peoples and the territorial integrity of states can be implemented in parallel depends on the individual circumstances. In cases of the implementation of internal self-determination, the two principles are not in conflict with each other. If a group within a state has fulfilled the criteria for being people, and demands autonomy within the state, this is considered in accordance with the principles of international law that apply to sovereignty.¹⁵⁶ In such a case, decentralization can take place on the basis of an agreement on both sides. In cases where this is denied by the government, the question would again be raised as to whether and to what extent this denial would serve as a basis for an exception for the violation of territorial integrity in the context of external self-determination, should that be an option for the entity.

The implementation of the balance found here between the two principles can be implemented using forms of decentralization, such as a federal system. In a federal state, autonomous sub-state entities are established with their own rights and obligations.¹⁵⁷ It can be analysed how this structural change affects the different levels of sovereignty. In the context of internal sovereignty, the fact arises that certain regional authorities are given more powers.¹⁵⁸ Nonetheless, it can be argued that this does not violate the principles of territorial integrity and sovereignty, as fundamental national matters such as defense and foreign policy generally fall within the scope of the central government, which therefore still has the highest authority. A change of

¹⁵⁶ Cats-Baril, A. (2018). Self-determination. The International Institute for Democracy and Electoral Assistance, p. 3.

¹⁵⁷ Paleker, S. A. (2006). FEDERALISM: A CONCEPTUAL ANALYSIS. The Indian Journal of Political Science, 67(2), pp. 303-305.

¹⁵⁸ Lee, S. (n.y.). 20th WCP: A Puzzle of Sovereignty. Paideia. Boston University, I.

this kind has no effect on the external sovereignty, as the state continues to act as a unified and independent entity at the international level.¹⁵⁹

The external self-determination of peoples can also be applied in parallel to the principle of territorial integrity without violating the sovereignty of the established state.¹⁶⁰ For this to happen, there would have to be negotiations and agreement between the central government and the potentially seceding entity, as in the Quebec case.¹⁶¹ If, for example, the sovereign state itself were to decide by agreement to voluntarily enact a secession of the entity, that would not be in conflict with the principle of sovereignty, as the state would not lose its authority and therefore its sovereignty would not be violated.¹⁶² However, the question arises as to whether a voluntary permission of secession on the part of the sovereign state would violate the principle of *uti possidetis iuris* or whether, in such a case, the borders that are created at the time of secession would be accepted as the new basis for the *uti possidetis* principle. In this context, the argument could also be made that the objective of the *uti possidetis iuris* principle of avoiding conflicts in connection with territorial matters is fulfilled in a voluntary and conflict-free secession, regardless of the change in borders.¹⁶³ The dissolution of the union between Norway and Sweden could be taken as an example of this.¹⁶⁴

In turn, a unilateral exercise of external self-determination by peoples would be in conflict with the principles of territorial integrity, as it would violate the sovereignty of the established state. As interpreted in the Quebec case, unilateral secession is not

¹⁵⁹ Lee, S. (n.y.). 20th WCP: A Puzzle of Sovereignty. Paideia. Boston University, IL.

¹⁶⁰ Van der Vyver, J. D. (2000). Self-Determination of the Peoples of Quebec under International Law. Emory University School of Law, pp. 11-20.

¹⁶¹ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 293-294, para. 151-153.

¹⁶² Korowicz, M. S. (1961). Some present aspects of sovereignty in international law. In *Collected Courses of the Hague Academy of International Law* (Vol. 102). Brill | Nijhoff, pp. 7-9.

¹⁶³ Sarvarian, A. (2015). "Uti Possidetis Iuris" in the Twenty-First Century: Consensual or Customary? *International Journal on Minority and Group Rights*, 22(4), p. 515.

¹⁶⁴ Vedung, E. (2001). Why the secession of Norway in 1905 did not lead to war. In *When the light came from the North: Sweden, Norway, and Modernist Catalunya*. Fundació Berndt Wistedt, p. 149.

permitted, it needs to be carried out through negotiations with the parent state.¹⁶⁵ This does not apply to cases related to colonization, exploitation, or the prevention of the exercise of autonomy for groups that are entitled to exercise their right of self-determination. In addition to this potential violation, unilateral secession would also violate the *uti possidetis iuris* principle, regardless of the basis for the exception in the case of external self-determination of peoples.¹⁶⁶

The political aspect of the topic can be analysed by answering the question of: How do geopolitical factors and strategic interest of global players within the international system influence the selective acceptance of independence of certain sub-state entities?

The recognition rates of Kosovo and Taiwan are an essential point in the debate, as just over half of all recognized sovereign states worldwide recognize Kosovo as an independent state.¹⁶⁷ Meanwhile, the rate of recognition of Taiwan by the international community is extremely low. Although many countries maintain diplomatic relations with Taiwan, it is currently only about 6% of the sovereign states that recognize Taiwan as an independent state.¹⁶⁸ The difference between the constitutive and declaratory theory of the recognition of states partly explains why these deviations in recognition can occur.

If the two case studies of Kosovo and Taiwan are viewed, in the sense of the fulfilment of the prescribed criteria of the recognition of states, in connection with the declaratory theory of state recognition, it can be stated that they do not necessarily diverge from each other in the context of fulfilling these. Nevertheless, this is not reflected in the rate of recognition. If the states that recognize or do not recognize the individual entities, are taken into account, geopolitical influence can be implied as a

¹⁶⁵ Supreme Court of Canada. (1998). Reference re Secession of Quebec, [1998] 2 S.C.R. 217, pp. 292-293, para. 149.

¹⁶⁶ Sarvarian, A. (2015). "Uti Possidetis Iuris" in the Twenty-First Century: Consensual or Customary? *International Journal on Minority and Group Rights*, 22(4), p. 515.

¹⁶⁷ World Population Review. (2024). Countries that Recognize Kosovo 2024.

¹⁶⁸ World Population Review. (2024). Countries that Recognize Taiwan 2024.

reason of the discrepancy in the rate. Rather, it can be argued that it is an interplay between strategic objectives and the interpretation of the law that makes such divergences possible.

If the topic of the various factors that influence decision-making is analysed, it can be established that states act in their own interests in this context. These can be divided into personal and impersonal interests. An example of a personal interest would be the expansion of one's own power on the territory, for example through alleged military support for the new regime, as in the case of Crimea and Russia. However, impersonal interests, such as the preservation of human rights, can also be the reason.¹⁶⁹ In many cases, the domestic political situation also plays a significant part. States that are themselves at risk of secessionist movements will generally not support the independence of other secessionist entities, as this would imply legitimacy for these actions.

To state the obvious in the context of these two case studies, the correlation is the power of the country that is the opponent of the secession, and the number of countries that vote against the will of that country. After all, Serbia's position of power and influence in the international system is very different to that of China.

Future considerations

In order to achieve a better balance between the fundamental principles of international law in the context of territorial integrity and the right to self-determination of peoples, various strategies could be developed and implemented in the future. Given that law is certainly not the only part of the discourse, emphasis should also be placed on other tools that can help in this context.

The promotion of diplomacy in this context, using examples of successful implementations such as Sweden and Norway or Quebec, could contribute to the discourse. In the process of developing new potential strategies, both conflict-ridden cases and, more often, peaceful ones should be considered.

¹⁶⁹ Almqvist, J. (2009). The politics of recognition, Kosovo and international law.

However, since law is the most important aspect, it is necessary to expand the legal framework for the self-determination of peoples, secession, and territorial integrity. Expanding these rules could help to reduce the scope for interpretation of the law and enable fairer and more standardized decision-making. In addition, it would also make sense to promote the non-conflicting areas of application, such as internal self-determination, in the form of providing information and assistance in establishing decentralized systems.

With respect to geopolitical influences on legal decisions, it would be useful to ensure the transparency of decision-making processes in connection with decisions on the recognition of sub-state entities as states. Here, a request or obligation to disclose the decision-making process could be implemented. The introduction of independent commissions that deal exclusively with the issue of secession, modelled on the Badinter Committee, could serve as a pioneering and educational body, and therefore also contribute to the discourse. In addition to that, standardizing the criteria for state recognition would make a significant contribution to preventing discrepancies in decision-making and therefore also reduce the influence of geopolitical strategies on decisions. This could also counteract the fact that certain countries that enjoy more power in the international system have an influence on the recognition of states, which they implement by exerting pressure on other countries. Furthermore, the promotion and further development of the enforcement of international law and the jurisdiction of international courts is equally important for both aspects.

The development and implementation of measures along these lines would contribute to a fairer and more peaceful future. Both, the territorial integrity and the right to self-determination of peoples, are fundamental rights that must be protected and supported. By standardizing the legal framework, promoting transparency, and creating and facilitating independently established expert opinions, the complexity of the issue can be better addressed and sustainable solutions for establishing peace can be found in the long term.

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