THE EVOLUTION OF THE PRINCIPLE OF SELF-DETERMINATION AND THE ICJ ADVISORY OPINION ON THE DECLARATION OF INDEPENDENCE OF KOSOVO

Taron Simonyan
Docent at the YSU Chair of Theory and History of State and Law,
Candidate of Lecal Sciences

Introduction

The International Court of Justice was asked by the General Assemble of the UN to answer the question whether the declaration of independence of Kosovo in 2008 was in accordance with international law, or not. After the Court decision, which had been waited to make a very important changes and clarifications in modern international legal order, some activation was seen in the academic and political spheres. In the result it is hard now to make very clear conclusions in the sphere of the right of self-determination and in the right of remedial secession.

In this paper I presented at first the notion of the principle of self-determination in current developments of international law, having in mind the evolution and changes in its scope. In the second part I discussed the new emerging right of remedial secession, represented some new approaches, and in the third part I indicated, in my view, important reasoning in the Advisory opinion on Kosovo concerning the extending nature of the right of self-determination and the fact that it includes also the right of remedial secession.

The notion of the principle of self-determination in international law

The notion of self-determination is not novel in modern international law.It stems back to the beginning of the 20th century, when world leaders in the wake of World War I realized that national peoples, groups with a shared ethnicity, language, culture, and religion, should be allowed to decide their fate—thus, to self-determine their affiliation and status on the world scene[1].

It has been matured throughout the last three centuries. The origin of the principle can also be traced back to the American Declaration of Independence (1776) and the French Revolution (1789). In the last one "self-determination was first propounded as a standard concerning the *transfer of territory"*[2].

As early as 1918–19, leaders like Vladimir Leninand Woodrow Wilson advanced the philosophy of self-determination:the former based on violent secession to liberatepeople from bourgeois governments, and the latter based on thefree will of people through democratic processes[3], though the approach was not accepted with pleasure. US State secretary in 1919 wrote that the principal of self-determination is like dynamite, and "national borders, national commitment and political stability will disappear if this principle is equally applicable"[4].

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[1] **Michael J. Kelly,** *Pulling at the Threads of Westphalia: "Involuntary Sovereignty Waiver"? Revolutionary International Legal Theory or Return to Rule by the Great Powers?*, 10 UCLA J. INT'L. L. & FOREIGN AFF. 361, 387–88 (2005).

[2] **Antonio Cassese,** Self-Determination of peoples, A legal reappraisal, Cambridge University Press, at 11, (1995).

[3] **Michael J. Kelly,** supra note 1, 387–88.

[4] **R. Lansing,** The Peace Negotiations – A Personal Account, Boston and New York: Houghton Mifflin Co. 1921, p. 96-97.

From the beginning of the 20th century the principle has evolved going through the new international legal order from 1945, being established as a measure of decolonization process, and after the recent breakup of the Soviet Union and Yugoslavia. Since the recent cases the principle has seem to involve also the remedial secession as a last measure against grave breaches of basic human rights.

Today, the principle of self-determination is embodied in multiple international treaties and conventions, and has "crystallized into a rule of customary international law, applicable to and binding on all states."[1]

Article 1 of United Nations Charter speaks of the "principle of equal rights and self-determination of peoples." Declaration on the Granting of Independence to Colonial Countries and Peoples also refers to the term "self-determination" and provides: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[2] Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations that reflects the customary international law[3] stipulates: "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination by that people."[4] This line is not limited; it can be added with the International Covenants on Civil and Political Rights (Article 1) and Economic, Social and Cultural Rights (Article 1), etc.

The developments in this field have made the International Court of Justice to stress in East Timor case that the right of people to self-determination "has an *ergaomnes*character."[5]

All these make us believe that "[t]he best approach is to accept the development of self-determination as an additional criterion of statehood, denial of which would obviate statehood."[6]

It has also been defined that self-determination must be understood inits internal and external forms[7], taking into account the subject of the right and the environment, where gives the subject necessary requirements. But one must remember that "there are not two different rights to self-determination, one internal and the other external, but two aspects of a single right."[8]

If the application of the principle in the context of colonial or foreign rule is no longer controversial, the essential point for the discussion on secession is whether the principle has any relevance in existing States. It is wildly accepted that a narrow conception of self-determination prevails in international law.

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[1] **Michael P. Scharf,** *Earned Sovereignty: Judicial Underpinnings*, 31 DENV. J. INT'L L. & POL'Y 378 (2003).
[2] **G.A. Res.** 1514 (XV), ¶ 2, U.N. Doc. A/64 (Dec. 24, 1960).
[3] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 101-103, paras. 191-193.
[4] **G.A. Res.** 2625 (XXV), ¶ 1, U.N. Doc. A/64 (Oct. 24, 1970).
[5] ICJ Reports, 1995, pp. 90, 102; 105 ILR, p. 226.
[6] **Malcolm N. Shaw,** International Law, Fifth Edition, Cambridge, p. 185, (2003).
[7] *In re* Secession of Quebec, [1998] 2 S.C.R. 217 (Can.), *The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B7/21/68/106 (1921)
[8] **Margelo G. Kohen,** Secession: International Law perspective, ed. Margelo G. Kohen, Cambridge University Press, March, p. 9 (2006).

The internal form of self-determination potentially applies to all peoples, and signifies that all peoples should have a set of respected rights within their central state.[1] Minority groups should have cultural, social, political, linguistic, and religious rights and those rights should be respected by the mother state. As long as those rights are respected by the mother state, the "people" is not oppressed and does not need to challenge the territorial integrity of its mother state.[2] The latter form of self-determination applies to oppressed peoples, whose basic rights are not being respected by the mother state and who are often subject to heinous human rights abuses.[3]

Such oppressed peoples, in theory, have a right to external self-determination, which includes a right to remedial secession and independence.[4] But international law is not clear in this sphere and "[n]ot surprisingly, existing States have shown themselves to be "allergic" to the concept of secession at all times."[5]

Remedial Secession and grave violations of Human rights

A starting point for any attempt to find the definition of secession is the recourse to the two Vienna Conventions which deal with state succession, butthey are silent on the topic of secession: the preferred formula "separation of parts of a State" does not distinguish between a separation made with or without the accord of the predecessor state.[6] The concept of secession is not an object of agreement among the legal scholarship, with different authors interpreting the boundaries of the notion in a broader or narrower sense. There are significant implications of this lack of uniformity: whereas according to one definition a case is considered as secession, according to a narrower understanding the same case can be regarded as dissolution.[7]

In doctrine there are various definitions of secessions: "[t]he issue of secession arises whenever a significant proportion of the population of a given territory, being part of a State, expresses the wish by word or by deed to become a sovereign State in itself or to join with and become part of another sovereign State,"[8] or more generally "[s]ecession is the creation of a State by the use or threat to use force without the consent of the former sovereign."[9] Another definition, which can be regarded more specific, defines: "the creation of a new independent entity through the separation of part of the territory and population of an existing State, without the consent of the latter. […] [also] in order to be incorporated as part of another State."[10]

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[1] *In re* Secession of Quebec, [1998] 2 S.C.R. 217 (Can.).

[2] *The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B7/21/68/106 (1921).

[3] **Milena Sterio,** On the Right to External Self-determination: "Selfistans", Secession and the Great Powers' Rule, Minnesota Journal of International Law, Vol. 19:1, p. 138, (2010).

[4] **Michael P. Scharf,** *Earned Sovereignty: Judicial Underpinnings*, 31 DENV. J. INT'L L. & POL'Y 381, (2003).

[5] **M. Kohen,** "Introduction", in M. Kohen (ed.), *Secession. International Law Perspectives* (2006), 1, 3.

[6] Vienna Convention on Succession of States in Respect of Treaties, 23 August 1978 Art.34, 1946 UNTS 3; Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 8 April 1983, Art. 17, 30, 40.

[7] **Ioana Cismas,** Secession in Theory and Practice: the Case of Kosovo and Beyond, Goettingen Journal of International Law 2 (2010) 2, 537.

[8] **J. Dahlitz,** 'Introduction' in J. Dahlitz (ed.), *Secession and International Law: Conflict Avoidance – Regional Appraisals* (2003), 6.

[9] **J. Crawford,** *The Creation of States in International Law*, 2nd ed. (2006), 375.

[10] **M. Kohen,** "Introduction", in M. Kohen (ed.), *Secession. International Law Perspectives* (2006), 3.

When applying these definitions on the process of decolonization, one can notice that that process is not a case of secession as "[t]he territory of a colony or other Non-Self-governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it"[1] And as Honorable R. Higgins wrote, having in mind the etymological roots of the word secession,the Latin verb *secedere*, *se* meaning "apart" and *cedere*"to go", hence the meaning to withdraw. [2] Thus, decolonization does not imply that the people "withdraw" their territory, but "that the colonial rulers were the ones who had to leave."[3]

So the secession in the right of self-determination is another step of development, the expressions of which can be seen in international law through the judicial precedent and case law. The new emerging norm in this sphere is remedial secession. It is very hard to find practically the rule of remedial secession, which was created by *consensus ominium.* That is why approaches of states are very controversial in this regard.

If in the case of external self-determination the main problem is to define the "people" who has the right; and when the term "people" is defined, there are no any other requirements for the right to be realized.

But in the case of remedial secession the main problem is whether a group of people (indigenous, cultural or other) that shares common cultural, historical or other values, besides the internal form, can exercise also the external form of self-determination.

There have been constant attempts to redefine peoples in non-territorialterms;however these attempts have not beenembraced by states.[4]

As respect for human rights has become a pillar-principle of today's world, in addition to the principles of sovereignty and non-intervention in the affairs of other states, the main function of the statehood becomes the obligation to respect and ensure those rights. And as "[s]tates are no more sacrosanct. […] [T]hey have a specific *raison d'être*. If they fail to live up to their essential commitments they begin to lose their legitimacy and thus even their very existence can be called into question."[5]

And it is this general principle that gradually emerged which prohibits gross and large scale violations of human rights and fundamental freedoms.[6] In this context, if a state excludes or persecutes parts of its population, then that population might legitimately secede to form a more representative government. [7] But remedial secession sets a high threshold for those groups invoking the right to secession, since the human rights violations perpetrated by the state in discriminatory fashion against the specific group must be "grave and massive" [8] but also there can be "rare circumstance when the physical existence of a territorially concentrated group is

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[1] GA Res. 2625 (XXV), 24 October 1970 [Friendly Relations Declaration].

[2] **R. Higgins,** "Self-Determination and Secession", in J. Dahlitz (ed.), *Secession and International Law: Conflict Avoidance – Regional Appraisals* (2003), 21, 35.

[3] **Ioana Cismas,** Secession in Theory and Practice: the Case of Kosovo and Beyond, Goettingen Journal of International Law 2 (2010) 2, 539.

[4] **A. Cristescu,** *Le droit à l'autodétermination: développementhistoriqueetactuelsur la base des instruments des Nations Unies*(1981), 37, para. 271.

[5] **C. Tomuschat,** 'Self-Determination in a Post-Colonial World', in C. Tomuschat (ed.), *Modern Law of Self-Determination* (1993), 52.

[6] **A. Cassese,** *International Law*, 2nd ed. (2005), 59.

[7] **J. Summers,** *Peoples and International Law. How Nationalism and Self-Determination Shape a Contemporary Law of Nations* (2007), 343-344.

[8] **C. Tomuschat,** 'Self-Determination in a Post-Colonial World', in C. Tomuschat (ed.), *Modern Law of Self-Determination* (1993),

threatened by gross violations of fundamental human rights."[1] All these circumstances are considered as giving rise to remedial secession, as the last resort "which can be called upon only after all realistic and effective remedies for the peaceful settlement have been exhausted."[2]

Thus, "[A] group has the right to secede (in the absence of any negotiations or constitutional provisions that establish a right) only as a remedy of last resort to escape serious injustices. […] only position, injustices capable of generating a right to secede consist of persistent violations of human rights, including the right to participate in democratic governance, and the unjust taking of the territory in question, if that territory previously was a legitimate state or a portion of one (in which case secession is simply the taking back of what was unjustly taken)."[3]

Hence, it is hardly believably for modern international legal order not to let a group of people to exercise their inherent right to life (physically and spiritually (culturally)). And if there is no norm of remedial secession in positive law, and if one can say that it may only be deduced from the "amount of soft law,"[4] it does not mean that no rule of custom, which is also a source of international law[5], express it. And it is tried to showit here.

ICJ opinion on the declaration of independence of Kosovo

As far as it concerns the case of Kosovo and the ICJ Opinion, one can say there is nothing new said there, and the Court took passive approach and the traditional theory of state formation, according which "the function or disappearance of a State is a pure fact, a political matter, remaining outside the realm of law (which does not create States but presupposes their existence as *de facto* sovereign entities)."[6] But if we look through the Court reasoning of the legal facts, we can deduce some interesting approaches to the right of self-determination and especially to extending of its scope.

The Court was asked by the General Assembly to assess the accordance of the declaration of independence of 17 February 2008 with "international law" (resolution 63/3 of the General Assembly, 8 October 2008).

The Court first turned its attention to certain questions concerning the lawfulness of declarations of independence under general international law, against the background of which the question posed fell to be considered, and Security Council resolution 1244 (1999). Once that general framework had been determined, the Court turned to the legal relevance of Security Council resolution 1244 (1999), and determined whether the resolution created special rules, and ensuing obligations, under international law applicable to the issues raised by the request and having a bearing on the lawfulness of the declaration of independence of 17 February 2008.

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[1] **H. Hannum,** "Rethinking Self-Determination", 34 *Virginia Journal of International Law* (1993) 1, 46-47.

[2] **J. Dugard& D. Raič,** 'The role of Recognition in the law and practice of secession' in M.G. Kohen, (ed.) *Secession.International Law Perspectives* (2006), 109.

[3] **Allen Buchanan,** *Democracy and Secession*, *in* NATIONAL SELFDETERMINATION, AND SECESSION 1, 1 (Margaret Moore ed., 1998), at 25.

[4] **Ioana Cismas,** Secession in Theory and Practice: the Case of Kosovo and Beyond, Goettingen Journal of International Law 2 (2010) 2, 547.

[5] Statute of International Court of Justice, Article 38, 1/4.

[6] **AntonelloTancredi,** *A Normative "Due Process" in the Creation of States Through Secession*, *in* SECESSION, SECESSION: INTERNATIONAL LAW PERSPECTIVES 94, 120 (Marcelo G. Kohen ed., 2006)., at 171, 171-72.

Interestingly the Court expressed the fact of the scope extending of self-determination right: "During the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State from which independence was being declared. Sometimes a declaration resulted in the creation of a new State, at others it did not. In no case, however, does the practice of States as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law. On the contrary, State practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence. During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation.[1][…] The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases."[2]

Although some states invoked resolutions of the Security Council condemning particular declarations of independence: see, *inter alia*, Security Council resolutions 216 (1965) and 217 (1965), concerning Southern Rhodesia; Security Council resolution 541 (1983), concerning northern Cyprus; and Security Council resolution 787 (1992), concerning the RepublikaSrpska, the Court stipulated that "in all of those instances the Security Council was making a determination as regards the concrete situation existing at the time that those declarations of independence were made; the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character *(jus cogens)*."[3] But there is another situation in the case of Kosovo, and the Security Council has never taken this position. Hence the Court found out that "[t]he exceptional character of the resolutions enumerated above appears to the Court to confirm that no general prohibition against unilateral declarations of independence may be inferred from the practice of the Security Council."[4]

As far as it concerns the right of self-determination, the Court took an avoiding approach and considered that it was "not necessary to resolve these questions in the present case."[5] However, the Court made an interesting declaration, which did say a very important clarification: "one of the major developments of international law during the second half of the twentieth century has been the evolution of the right of self-determination."[6] The evolution of the right of self-determination is the extending nature of its scope, which at first included Wilsonian and Leninian approaches for people to express their will and form separate political organizations, states, then - the

[1] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 31-32, paras. 52-53; *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 171-172, para. 88).

[2] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, ICJ, Advisory Opinion, 2010, July 22, para. 79.

[3] Ibid. para. 81.

[4] Ibid.

[5] Ibid. para. 83.

[6] Ibid. para. 82.

decolonization, and after the end of the 20th century – the emerging norm of remedial secession, though some cases of remedial secession could be find also before (for ex. The Case of Bangladesh). And even the Court said that: "[w]hether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances,"[1] it also mentioned the fact that"[t]here was also a sharp difference of views as to whether the circumstances which some participants maintained would give rise to a right of "remedial secession" were actually present in Kosovo."[2]

The court did not speak primarily about the existence of the norm of remedial secession in international law, but said that there was also difference of views whether there were circumstances, which could give rise to a right of remedial secession. This means that the matter of consideration and difference of views was not the existence of such a rightbut the circumstances, which were necessary to apply that right, which in my view has already been matured as customary law through relevant state practice (Bangladesh, East Timor, etc.) and*opinion juris*(which can also be "crystalized in practice"[3]).

One can say that the Court reasoning is not so important for the expression of customary international law, and those only *stare decisis*is obligatory for states, but it is hard to underestimate the Court's role in the development of international law. Some scholars even think that in the process of the development of international law the Court sometimes creates law.[4]

The Court itself has always denied in its cases that it could create law: "[i]t is clear that the Court cannot legislate … it states the existing law and does not legislate."[5] Judge Weiss in *Lotus* case also was against the creation of law by the Court: "[i]nternational law is not created by an accumulation of opinions and systems; neither is its source a sum total of judgments, even if they are agree with each other. … the only source of international law is the *consensus ominium*."[6] Judge Read declared in *Peace Treaties* case that the Court "is not a law-making organ."[7]But it is true that "in many cases it is quite impossible to say where the development of law ends and where its creation begins."[8] The other interesting view is that Judge Tanaka held in *South West Africa* case: "[w]e cannot deny the possibility of some degree of creative

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[1] Ibid.
[2] Ibid.
[3] *North Sea Continental Shelf Cases, Federal Republic of Germany/ Denmark; Federal Republic of Germany/ Netherlands,* (Judgment of 20 February 1969), I.C.J.para. 57.
[4] **Taron Simonyan,** The features of the impact of Civil and Common Law traditions vis-à-vis the sources of International Law, Bulletin of Yerevan University, "Social Sciences", "Jurisprudence", YSU, 2010, N. 131.3, pp.64-79.
[5] *Legality of the Threat and Use of Nuclear Weapons,* ICJ Reports, 1996, pp. 226, 237, para. 18. *in*TaronSimonyan, supra note 45.
[6] *The Case of The S.S. "Lotus", France v. Turkey,* Dissenting Opinion of Judge Weiss, P.C.I.J., September 1927, Series A, N. 10, pp. 43-44. *in* T. Simonyan, supra note 45.
[7] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania,* I.C.J., Advisory Opinion, Dissenting Opinion of Judge Read, 1950, p.244, *in* T. Simonyan, supra note 45.
[8] *Reparation for Injuries Suffered in the Service of the United Nations,Advisory Opinion, Individual Opinion by Judge Alvarez*, I.C.J., 1949, p. 190. *in* T. Simonyan, supra note 45.

element in the judicial activities" and the Court is permitted "to declare what can be logically inferred from the *raison d'etre* of a legal system, legal institution or norm" but is not permitted "to establish law independently of an legal system, institution or norm."[1]

The court, having in mind the "efficiency" of the rule of remedial secession and its "*raison d'etre"* took a position, which although primarily did not express the existence of such a rule in modern international law, but indirectly showed that it was very hard to oppose the emergence of that rule in the current dynamics of international legal order.

Conclusion

In the light of abovementioned one can make some conclusions. Current developments and changes in International legal order make us clear that, what international law was in 1918 and in 1945 and what is now, are different levels of developments. It is impossible to judge international facts having in mind only the positive legal norms, which came to live decades ago. International law, as well as the principle of self-determination, is on the way of development; new norms of international law are in the process of emerging or have already been matured as far as it concerns customary international law. This concerns also the right to remedial secession that indirectly was expressed in the Advisory Opinion of the ICJ on Kosovo.These findings are very important for current international relations and law, because there are other cases (South Ossetia, Abkhazia, NKR, exc.) that are waiting to be resolved by using the right of remedial secession.

ԻՆՔՆՈՐՈՇՄԱՆ ԻՐԱՎՈՒՆՔԻ ՍԿԶԲՈՒՆՔԻ ԷՎՈԼՅՈՒՑԻԱՆ ԵՎ ԿՈՍՈՎՈՅԻ ԱՆԿԱԽՈՒԹՅԱՆ ՀՌՉԱԿԱԳՐԻ ՎԵՐԱԲԵՐՅԱԼ ԱՐԴԱՐԱԴԱՏՈՒԹՅԱՆ ՄԻՋԱԶԳԱՅԻՆ ԴԱՏԱՐԱՆԻ ԽՈՐՀՐԴԱՏՎԱԿԱՆ ԵԶՐԱԿԱՑՈՒԹՅՈՒՆԸ

Տարոն Սիմոնյան
ԵՊՀ պետության և իրավունքի տեսության ու պատմության ամբիոնի դոցենտ, իրավ. գիտ. թեկնածու

ՄԱԿ-ի Արդարադատության միջազգային դատարանի՝ Կոսովոյի անկախության հռչակման վերաբերյալ խորհրդատվական եզրակացությունը կարևոր դրույթներ է պարունակում ժողովուրդների իրավահավասարության և ինքնորոշման իրավունքի զարգացման ընթացքը վերահիմաստավորելու գործում: Արդի ժամանակաշրջանում և հատկապես XX դարի վերջին և XXI դարի սկզբին առանձնակի կարևորություն է ձեռք բերում ինքնորոշման իրավունքի բովանդակությունն ընդարձակող «անջատում փրկության համար» իրավունքը: Այս աշխատանքում ներկայացվում են ինքնորոշման իրավունքի էվոլյուցիայի առանձնահատկությունը, ինչպես նաև Կոսովոյի գործով Արդարադատության միջազգային դատարանի արտահայտած կարծիքի կարևորությունը՝ «անջատում փրկության համար» իրավունքի հետագա բյուրեղացման համատեքստում:

[1] *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Second Phase,* Dissenting Opinion of Judge Tanaka, I.C.J., 1966, p. 277.*in* T. Simonyan, supra note 45.

ЭВОЛЮЦИЯ ПРИНЦИПА ПРАВА НА САМООПРЕДЕЛЕНИЕ И КОНСУЛЬТАТИВНОЕ ЗАКЛЮЧЕНИЕ МЕЖДУНАРОДНОГО СУДА ПО ДЕКЛАРАЦИИ п НЕЗАВИСИМОСТИ КОСОВО

Тарон Симонян
Доцент Кафедры теории и истории государства и права ЕГУ,
кандидат юридических наук

Консультативное заключение Международного суда ООН по декларации о независимости Косово содержит важные положения в деле переосмысления процесса развития права народов на равноправие и самоопределение. В современной реальности, особенно в конце XX века и в начале XXI века, особое значение приобретает право на «отделение во имя спасения», которое расширяет содержание права на самоопределение. В этой работе представлена особенность эволюции права на самоопределение, а также важность высказанного мнения Международного суда по делу Косово в контексте дальнейшей кристаллизации права на «отделение во имя спасения».

Բանալի բառեր. ինքնորոշման իրավունք, անջատում փրկության համար, Արդարադատության միջազգային դատարան, Կոսովոյի գործ
Ключевые слова: Право на самоопределение, отделение во имя спасения, Международный суд, дело Косово
Key words: right to self-determination, remedial secession, the International Court of Justice, Kosovo case