

## Subjects and character of self- determination.

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### Abstract:

The binding, treaty and customary norms of international law give all peoples the right to freely determine, without external intervention, their political status and the pursuit of social, economic and cultural development, and every country is compelled to respect this right in accordance with the provisions of the Charter of the United Nations Charter<sup>1</sup>. Even with such a reduction in the principle of self-determination, it is possible to derive a normative sentence from it - expressing the prohibition of internal interference or the order of acting in accordance with the law of "nations" for self-determination. according to the provisions of the Charter of the United Nations<sup>2</sup>. It seems possible to accept the normative character of the principle of self- determination<sup>3</sup>.

The self-determination today is one of the most important challenges, which the world faced, because it is closely linked with the implementation of the idea of human rights. For fear of destabilizing the situation on their territory or continent, nations use restraint in relation to attempting to accomplish self-determination<sup>4</sup>. Fighting against the freedoms simultaneously contributes to violations of human rights, terrorism and armed struggle, because for the peoples unable to fully enjoy the prospect of self-determination, the words of Shayali Basayev, Chechnya Field Commander- *Better to be hungry than to be slaves*- are more useful than the words of Dalai Lama XIV -*It is better to be a slave than to kill innocent people in the name of freedom*<sup>5</sup>.

The notion of the principle of self-determination implies, that its subjects are

<sup>1</sup> M. Perkowski: *Samostanowienie narodów w prawie międzynarodowym*, Wydawnictwo Prawnicze, Warszawa 2001, p.116.

<sup>2</sup> See more in: *Charter of the United Nations*, [in:] Official website of the United Nations: <http://www.un.org/en/charter-united-nations/> (access: 19.09.2017)

<sup>3</sup> M. Perkowski, *op. cit.*, p.116.

<sup>4</sup> M. Massala, *Narody bez państw*, [in:] Official website of Polish, informational, portal Puls Świata: [http://www.puls-swiata.subnet.pl/artykul.php?id=8&id\\_art=292](http://www.puls-swiata.subnet.pl/artykul.php?id=8&id_art=292) (access:19.09.2017)

<sup>5</sup> Ibidem.

prima facie peoples<sup>6, 7</sup>. Nevertheless, the sources of international law, that apply to the principle of self-determination, regard its entities as "peoples". Probably the recognition of the expression of self-determination for the self-determination of peoples has been determined by non-linguistic considerations<sup>8</sup>. When the Charter of the United Nations Charter was adopted, Poland was in the sphere of influence of foreign policy of the USSR, which propagated the term "self-determination of nations". On the other hand, the practice of decolonization has created the notion of "colonial peoples", which has

contributed to restricting the notion of people by commentators of international law<sup>9</sup>. Language interpretation of the Charter of the United Nations<sup>10</sup>, the Covenants of Human Rights<sup>11</sup> and other international acts explains with a different effect the priority of the notion of "nation" as well as the primacy of the concept of "people"<sup>12</sup>. The jurisprudence of the International Court of Justice, unquestionably using the term "peoples", does not help solve this dilemma<sup>13</sup>.

The doctrinal definition of subjects entitled by the principle of self-

<sup>6</sup> In essay *What is a nation?* Ernest Renan explains that: "[...] the nation is a great solidarity as a result of the process of sacrifice and the result of a sense of willingness to sacrifice. The nation demands for its existence a tradition ... The existence of a nation is a daily plebiscite ... The nation is a spiritual principle, the result of profound historical influences, a spiritual family [...]"

E. Renan, *Co to jest naród ?*, [in:] L. Zdybel (ed.) *Być w narodzie: Szkice o idei narodu, narodowej kulturze i nacjonalizmie*, Wydawnictwo Uniwersytetu Marii Curie- Skłodowskiej, Lublin 1998, p. 209-210.

<sup>7</sup> For sociologist Antonina Kłoskowska, the nation is [...] in the context of great social structures: the state and society but is not identified with them ... Weber describes the nation as a "Gemeinschaft" as a community of values. This is inseparable in relation to attitudes that establish these values..... The nation, unlike the state, is a social community of a cultural community [...]"

A. Kłoskowska, *Kultury narodowe u korzeni*, Wydawnictwo Naukowe PWN, Warszawa 1996, p. 24 i 85.

<sup>8</sup> M. Perkowski, *op. cit.*, p.44.

<sup>9</sup> *Ibidem*.

<sup>10</sup> See more in: *Charter of the United Nations. Preamble*, [in:] Official website of the United Nations:

<http://www.un.org/en/documents/charter/preamble.shtml> (access: 19.09.2017)

<sup>11</sup> See more in: *International Covenant on Civil and Political Rights*, [in:] Official website of The Office of the United Nations High Commissioner for Human Rights:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (access: 19.09.2017)

See more in: *International Covenant on Civil and Political Rights. Article 1.*, [in:] Official website of The Office of the United Nations High Commissioner for Human Rights: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (access: 19.09.2017)

<sup>12</sup> From the encyclopaedic point of view, *the people are the human community of ethnic relationships that develop on the ground of language, culture, region of residence or origin from common ancestors.*

See more in: *Lud*, [in:] Official website of Polish Encyclopedia PWN: <http://www.encyklopedia.pwn.pl/haslo/4009049/lud.html> (access: 19.09.2017)

<sup>13</sup> M. Perkowski, *op. cit.*, p. 44.

determination is different. There was a sort of dispute among the commentators of international law about the primacy of the term "nation" or "people"<sup>14</sup>. The foreign doctrine, mostly consistently, adheres to the term people, which causes, that the comparison of the controversial positions of commentators on international law plays a crucial role in the discussed problem. One may refer to the views of the Polish lawyer Lech Antonowicz, who, in reference to the subjects entitled by the principle of self-determination, relentlessly uses the term "nations"<sup>15</sup>. He stresses, that this principle applies to all "peoples", regardless of the degree of their development and the form of political being"<sup>16</sup>. Similar opinion is another Polish lawyer Piotr Łaski, who notes, that the notion of "nations" is a balanced description of subjects entitled by the principle of self-determination,

which is more favorable than the term "peoples"<sup>17</sup>.

Another view is represented by Polish lawyer Wladyslaw Czaplinski. He points out, that the subjects of the right to self-determination can be called "peoples", and the term "people" is much broader than that of "nation"<sup>18</sup>. In his view, the practice of states in connection with the legitimate side of self-determination certifies the primacy of ethnic factors above national ones, and the formula of national state is listed for a territorial state. The concept of "people" considered in the category of nation has been transformed into the term "people" recorded as a whole population of a particular territory<sup>19</sup>. Polish professor of law Anna Michalska presents the fact, that in the work of the UN Human Rights Committee one can observe the tendency to submit the adjective "ethnic" and to abandon the adjective "national",

<sup>14</sup> Ibidem.

<sup>15</sup> L. Antonowicz, *Podręcznik prawa międzynarodowego*, Wydawnictwa Prawnicze PWN, Warszawa 2000, p. 42-43.

L. Antonowicz, *Samostanowienie narodów jako zasada prawa międzynarodowego* [in:] *Annales UMCS*, Lublin 1996, No. 43, p.69-70.

<sup>16</sup> L. Antonowicz, *Samostanowienie narodów jako zasada prawa międzynarodowego*, [in:] *Annales UMCS*, Lublin 1996, No. 43, p.74.

<sup>17</sup> P. Łaski, *Dezintegracja Związku Radzieckiego i Jugosławii w świetle prawa międzynarodowego*, [in:] *Annales UMCS*, Lublin 1992, No. 39, p.57.

<sup>18</sup> W. Czaplinski, *Instytucja „Niemca” w rozumieniu art.1161 ustawy zasadniczej, obywatelstwo i prawo narodu niemieckiego do samostanowienia (na marginesie wyroku Federalnego Trybunału Konstytucyjnego w sprawie Teso)*, [in:] *Przegląd Zachodni*, 1990, No. 1, p.100.

<sup>19</sup> W. Czaplinski, *Aktualne problemy prawa do samostanowienia*, [in:] *Toruński Rocznik Praw Człowieka i Pokoju 1994-1995*, Toruń 1996, No.3., p. 89.

when formulating human populations in the light of collective human rights<sup>20</sup>.

Defining the notion of "nation" is not one of the easiest tasks, the term itself can effectively alienate commentators of international law, trying to find the right words to express it<sup>21</sup>. The concept of „nation,“ used in the principle of self-determination, can now be treated as any geopolitical community, not just ethnic communities<sup>22</sup>.

The practice of states, especially within the United Nations, has made it possible to distinguish the "colonial nation" in an indisputable manner as a subject of self-determination in the light of the Charter of the United Nations and other sources of international law. In the 1950s, there was an act of protest against colonialism, that sought to implement the tenets of Chapter XII of the Charter of the United Nations<sup>23,24</sup>. Works in the General Assembly of the United Nations, rejection of

colonialism in every form and development of national liberation movements allowed for emergence of the collective right of "colonial nations" to self-determination from the principle of self-determination of sui generis nations, which was laconic approached in the Charter of the United Nations. This entitlement is expressed in United Nations General Assembly Resolution 1514 of 1960 – the *Declaration on the Granting of Independence to Colonial Countries and Peoples*. It proclaimed "[...] the need for a quick and unconditional end to colonialism in all its forms and manifestations [...]"<sup>25</sup> and accented, that "[...] all peoples have the right to self-determination [...]"<sup>26</sup>. The attitude of states to the self-determination of "colonial nations" is illustrated in point 4 of the Declaration: „[...] All military actions or repressive measures against dependent nations should be stopped in order to enable them to exercise their right to total independence in conditions of peace and liberty; the

<sup>20</sup> A. Michalska, *Ochrona mniejszości etnicznych w świetle praktyki Komitetu Praw Człowieka*, [in:] *Państwo i Prawo*, 1990, No. 6, p. 29.

<sup>21</sup> M. Perkowski, *op. cit.*, s. 45.

<sup>22</sup> L. Antonowicz, *Samostanowienie narodów jako zasada prawa międzynarodowego*, [w:] *Annales UMCS*, Lublin 1996, No.43, p. 73.

<sup>23</sup> M. Perkowski, *op. cit.* s. 52.

<sup>24</sup> This chapter is devoted to the International Trust System.

See more in: *Charter of the United Nations*. Article 76 [in:] Official website of the United Nations: <http://www.un.org/en/documents/charter/preamble.shtml> (access: 19.09.2017)

<sup>25</sup> See more in: *Declaration on the Granting of Independence to Colonial Countries and Peoples*, [in:] Official website of the United Nations and Decolonization:

<http://www.un.org/en/decolonization/declaration.shtml> (access: 19.09.2017)

<sup>26</sup> M. Perkowski, *op. cit.*, p. 52.

*integrity of their national territory should be respected [...]”<sup>27</sup>.*

The international community and international law are characterized by continuous development and dynamism. The principle of self-determination is not an exception here. Its development occurs on different levels, including entitled subjects<sup>28</sup>.

The practice of the nineties of the twentieth century more than once marked the "nations of the multinational state" as entities authorized to self-determination of nations, referring this to the ethnic groups dominating the area of their inhabited part of the national territory, numerically similar to other nations living in that country<sup>29</sup>. In general, they reside in a separate administrative unit within the territorial unit of a multinational state. In the past "nations of multinational states" were attributed to the category of national minorities. As a legitimate entity they existed at most in the role of subject of postulate de lege ferenda<sup>30</sup>. Significant change occurred with the process of demarcation of the USSR and the breakup of Yugoslavia. The less unequivocal example of using by "nation of

multinational states" the rights arising from the principle of self-determination is the peaceful dissolution of the Czechoslovak Socialist Republic. It negates the assumption, that the principle of self-determination of nations in relation to other spheres than decolonization produces smaller or larger conflicts<sup>31</sup>.

The doctrine of international law generally does not grant minorities the right for self-determination, as evidenced by the reports of the special rapporteurs of the Subcommittee of the United Nations Commission on the Prevention of Discrimination and the Protection of Minorities<sup>32</sup>. The practice of states with respect to minorities does not provide evidence of the inclusion of minorities in the subjects eligible for self-determination. States, while building legal regulations of the principle of self-determination, have articulated separate provisions with regard to minorities, with text, which indicates individual human rights<sup>33</sup>. The Council of Europe's Framework Convention for the Protection of National Minorities

<sup>27</sup> Ibidem.

<sup>28</sup> Ibidem, p. 56.

<sup>29</sup> Ibidem.

<sup>30</sup> Ibidem.

<sup>31</sup> Ibidem, p. 67.

<sup>32</sup> Ibidem, p.61.

<sup>33</sup> Ibidem.

of 1995 does not include the definition of "minorities", it only accords the rights and freedoms attributed to its members<sup>34</sup> and the commitments they make to the Parties to the Convention.<sup>35</sup> By counting the liquid boundary between the "nation of the multinational state" and the "minority," there has been a considerable relativization of both concepts, so there is nothing to prevent the definition of the minority as the "bearers" of the right to self-determination<sup>36</sup>.

<sup>34</sup> *Framework Convention for the Protection of National Minorities*

„[...] Article 3.

1Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others [...]"

See more in: *Framework Convention for the Protection of National Minorities*, [in:] Official website of the Council of Europe: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdac> (access: 19.09.2017)

<sup>35</sup> *Framework Convention for the Protection of National Minorities*

„[...] Article 4.

1The Parties undertake to guarantee to persons belonging to national minorities the right of equality before

the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to

The opinions of the doctrine of international law appear in favor of the right to self-determination of indigenous peoples. Their authors refer here to the practices of states reflected in the work of the International Labor Organization and the UN. The first of them adopted and approved in 1957 Convention No. 107 referring to aboriginal and tribal communities<sup>37</sup>, in 1989, it approved the Convention 169 on Indigenous and Tribal Peoples in Independent Countries<sup>38</sup>. The United Nations Economic and Social

a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination [...]"

See more in: *Framework Convention for the Protection of National Minorities*, [in:] Official website

of the Council of Europe: <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdac> (access: 19.09.2017)

<sup>36</sup> M. Perkowski, *op. cit.*, p. 61.

<sup>37</sup> See more in: *C107 – Indigenous and Tribal Populations Convention, 1957 (No.107). Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi- Tribal Populations in Independent Countries. Article 1.*, [in:] Official website of the International Labour Organization:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312252](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312252) (access: 19.09.2017)

<sup>38</sup> See more in: *C169 – Indigenous and Tribal Populations Convention, 1957 (No.107). Convention concerning Indigenous and Tribal People in Independent Countries. Article 1* [in:] Official website of the International Labour Organization: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C169) (access: 19.09.2017)



Council, by decision of 1985, began work on the declaration on the rights of the indigenous population, without specifying whether it will move the rights of the community or its members. In 1994, the Subcommittee on Combat against Discrimination and Minority Protection accepted the project and handed it to the Human Rights Commission, which established its own working group to build a final project<sup>39</sup>. Polish professor of law Adam Łopatka was of the opinion that in the declarations mentioned above there would be no postulates of the introduction of collective rights, if so, there will be a right to maintain identity and non-discrimination regarding human rights and fundamental freedoms<sup>40</sup>. This practice has resulted only in norms of the nature of declarations, classified as "soft international law",<sup>41</sup>.

It is easy to see moral correctness of the advocates of "indigenous peoples" right to self-determination. The situation of these groups of people is similar to the situation of population of colonial areas, but in this case it is the colonizers, not indigenous

people, have formed independent states such as South Africa, the Australian Federation or the USA<sup>42</sup>. In the light of the law addressing the subject of indigenous peoples to self-determination brings with it great difficulties, already encountered at the level of definition, what are indigenous peoples? Cultural anthropologist Paweł Trzciński claims, that „[...] *Indigenous peoples can be treated as a dying species for the sake of preserving the diversity of forms; it is possible to create a "red book of indigenous peoples" like a book developed for dying animals or separate them from the dominant part of the society in the reserve. Separation can also be based on recognition of their marginalization and weaker position towards the dominant group* [...] *People can also consider them as wrongly disadvantaged (and this is much more than relying on the principle of compassion for the weaker) in the process of the emergence of modern states and offer compensation for the seized indigenous land to remove moral dissonance.* [...]”<sup>43</sup>.

In addition, in the majority of cases, there

<sup>39</sup> M. Perkowski, *op. cit.*, p. 63.

<sup>40</sup> A. Łopatka, *Międzynarodowe prawo praw człowieka. Zarys*, Wyższa Szkoła Handlu i Prawa, Warszawa 1998, p. 63-64.

<sup>41</sup> M. Perkowski, *op. cit.*, p. 63.

<sup>42</sup> *Ibidem*.

<sup>43</sup> P. Trzciński, *Konstruowanie współczesnej tubylczości- tubylczość jako ideologia i obiekt prawa*, [w:] J. Derlicki, W. Lipiński (ed.), *Pierwsze narody. Społeczności rdzenne i idea tubylczości we*

has been a significant assimilation of natives with migrant population or their fragmentation, so that we can only address the issue of refining relevant regulations in the field of international human rights protection. In duly motivated cases, the international community extends the principle of self-determination of peoples to "indigenous peoples" by prohibiting racial discrimination or the right of "colonial peoples" to self-determination<sup>44</sup>.

The principle of self-determination also applies to obliged entities - states for various reasons directly concerned (managing trustees, administering non-dependent, multinational) and third countries. One can therefore speak of the commitment of the entire international community to self-determination<sup>45</sup>.

International community materialize in international relations and in international organizations, increasingly acting on behalf of their member states. It would therefore be desirable to include international organizations to the states obliged by the principle of self-

determination, especially those with international legal status, e.g. international governmental organizations<sup>46</sup>. They are created by forms of state co-operation, accepted in a multilateral international treaty, contained mostly invariant range of participants, whose basic competence is the existence of permanent bodies with specific competences and powers to achieve common goals<sup>47</sup>. Nowadays, the obligations stemming from the principle of self-determination are most common to the United Nations, but as a result of the increased importance of regional organizations, this situation may change<sup>48</sup>.

It is appropriate to admit, that Polish lawyer Ludwik Dembiński was right, that the norms relating to self-determination are included in contemporary, positive international law, as well as other norms of this law have a specific content and object, specific entities taking on the origin of rights and obligations, and effective but not devoid of defects mode of implementation<sup>49</sup>.

The normative nature of self-determination is also emphasized by Polish

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*współczesnym świecie*, Wydawnictwo DiG, Warszawa 2002, p.28.

<sup>44</sup> M. Perkowski, *op. cit.*, p. 63.

<sup>45</sup> *Ibidem*, p. 64.

<sup>46</sup> *Ibidem*.

<sup>47</sup> W. Morawiecki, *Organizacje międzynarodowe*, Państwowe Wydawnictwo Naukowe, Warszawa

1965,

p. 31- 32.

<sup>48</sup> M. Perkowski, *op. cit.*, p. 65.

<sup>49</sup> L. Dembiński, *Samostanowienie w prawie i praktyce ONZ*, Wydawnictwo PWN, Warszawa 1968, p. 246.



lawyers: Wojciech Góralczyk<sup>50</sup>, who focuses on the universal recognition of the right to self-determination, and Lech Antonowicz<sup>51</sup>, who views the principle of self-determination as the norm of key international law. These norms are isolated from the general norms of universal law and are called the basic principle<sup>52</sup>.

The normative character of the principle of self-determination is the practice of states. UN bodies have continually emphasized and opposed its violations. The UN General Assembly accepted the intervention of Vietnam in Cambodia<sup>53</sup> or the USSR in Afghanistan for interference in self-determination, the International Court of Justice has emphasized in its advisory opinions on Namibia in 1971, Western Sahara in 1975 and Timor-Leste in

1995, the principle of self-determination of nations as a norm of international law<sup>54</sup>.

It is often possible to see the attempts of representatives of the doctrine of international law to narrow the formal side and the subject of the principle of self-determination. In the first case, Antonio Cassese treats the principle of self-determination of nations as a norm of international customary law<sup>55</sup>. Anna Michalska leads it out of the Charter of the United Nations<sup>56</sup>. Formal restrictions do not, however, have a greater bearing on the legal nature of the principle of self-determination, since individual rules of international law have the same binding force and relations between them are based on following principles: *lex specialis derogat legi generali* and *lex posteriori derogat legi priori*<sup>57</sup>.

<sup>50</sup> W. Góralczyk, *Prawo międzynarodowe publiczne w zarysie*, Wydawnictwa Prawnicze PWN, Warszawa 2000, p. 62.

<sup>51</sup> L. Antonowicz, *Podręcznik prawa międzynarodowego*, LexisNexis, Warszawa 2011, p.29.

<sup>52</sup> M. Perkowski, *op. cit.*, p. 117.

<sup>53</sup> As a result of famine, deportation, torture and genocide at the turn of the 4th year (1975-1979), 2 million people died, or 1/3 of Cambodia's population, from the Khmer Rouge troops to Phnom Penh in April 1975. The crimes of the Red Khmers ended only with the invasion of Vietnam, motivated by the protection of the persecuted Vietnamese minority, who entrusted the power in Cambodia to the government obedient to them. In 1988, the UN General Assembly adopted a resolution on the withdrawal of foreign troops from

the People's Republic of Kampuchea (the name of the Cambodian state in 1979-1989).

See more in: A. Jórasz, *Interwencja humanitarna – (po)mocna dłoń Zachodu ?*, [in:] Official website of Polish informational portal- Portal Spraw Zagranicznych: <http://www.psz.pl/tekst-13776/Anna-Jorasz-Interwencja-humanitarna-pomocna-dlon-Zachodu/Str-2> (access: 19.09.2017)

J. Kukułka, *Historia współczesna stosunków międzynarodowych 1945-2000*, Wydawnictwo Naukowe Scholar, Warszawa 2007, p. 213-218.

<sup>54</sup> M. Perkowski, *op. cit.*, p. 118.

<sup>55</sup> A. Cassese, *Self-determination of peoples. A legal reappraisal*, Cambridge University Press, Cambridge 1995, p.160.

<sup>56</sup> A. Michalska, *Prawa człowieka w systemie norm międzynarodowych*, Państwowe Wydawnictwo Naukowe, Warszawa 1982, p. 70-71.

<sup>57</sup> M. Perkowski, *op. cit.*, p. 118.

In 1975, the International Court of Justice interpreted the subject of self-determination in the advisory opinion on Western Sahara, characterizing it as a cardinal principle ruling the decolonization<sup>58</sup>. Some representatives of international law share this view. It seems necessary in this case to agree with the views of Antonio Cassese, that it is impossible to limit treaty or customary law to anti-colonial character, and the assumption, that after decolonization the principle of self-determination of nations will be transformed into a relic of law, is serious error<sup>59</sup>. The practice of the states in the nineties of the twentieth century has sufficiently highlighted the fact, that in the system built around the Charter of the United Nations, this principle has a lasting and universal character<sup>60</sup>.

Departing from the attempt to narrow the principle of self-determination it should be noted, that it is linked to the Charter of the United Nations. It was written in Article 1 of the Charter as one of the founding principles for achieving UN

goals and international cooperation, the Article 2. of this Charter obliges states to follow these goals<sup>61</sup>. The Charter of the United Nations constitutes an overarching norm in relation to other norms of international law.<sup>62</sup>, as one can read in the Article 103 „[...] *In the event of a conflict between the obligations of members of the United Nations under this Charter and their obligations under any other international agreement, the obligations arising from this Charter shall prevail* [...]”<sup>63</sup>.

The Charter thus creates a constitutional norm, which pertains to the perception of the principle of self-determination as a fundamental principle of international law and its inclusion in the Declaration of the Principles of International Law, 1970<sup>64</sup>.

The decolonization practice of the 1960s and the regulation of human rights gave such a strong support for self-determination that the UN General Assembly in the 1970 Declaration of International Law defined it as a key principle of international law and outlined its content<sup>65,66</sup>. The Declaration has been

<sup>58</sup> Ibidem.

<sup>59</sup> A. Cassese, *op. cit.*, p.159.

<sup>60</sup> M. Perkowski, *op. cit.*, p. 119.

<sup>61</sup> See more in: *Charter of the United Nations. Article 2* [in:] Official website of the United Nations: <http://www.un.org/en/documents/charter/preamble.shtml> (access: 19.09.2017)

<sup>62</sup>M. Perkowski, *op. cit.*, p. 119.

<sup>63</sup>See more in: *Charter of the United Nations. Article 103* [in:] Official website of the United Nations: <http://www.un.org/en/documents/charter/preamble.shtml> (access: 19.09.2017)

<sup>64</sup> M. Perkowski, *op. cit.*, p. 119.

<sup>65</sup> Ibidem, s. 121.

<sup>66</sup> See more in: 2625 (XXV). *Declaration on Principles of International Law concerning Friendly*

tentative to two aims - the adherence to traditional international legal principles and to clarify the political principles contained in the system of international law. The binding force of the principles set out in the Declaration of Principles of International Law begins with the UN Charter as the most important source of current international law. They are the key principles of international law, hence all states must follow and respect them in international relations<sup>67</sup>.

The jurisprudence of the International Court of Justice has approved the nature of the *ius cogens* of the principle of self-determination. In its advisory opinion for Western Sahara, the Court has declared it a key principle guiding the process of decolonization.

On Timor-Leste it testified to the effectiveness of the right to self-determination of the people of that country in relation to Portugal - the former colonial metropolis, and Australia - a third state<sup>68</sup>.

The present form of the self-determination as *ius cogens* is characterized by universality and applies to all nations. The opponents of this view, emphasizing

the situation of the Kurds or Chechens, face the fact that, in the period of decolonization, many African tribes failed to acquire the right to statehood, although, in terms of efficiency and organization, they often surpassed the tribes, which were given independence. However, these should not be subject to closer comparisons, as they are not relative to each other<sup>69</sup>.

Confirmation of the character of the *ius cogens* of the principle of self-determination

also arises from the ban on the use of force or the threat of its use, as described in the Declaration of International Law, 1970. It assumes, that every state is obliged to refrain from any coercion, although it does not exclude the possibility of making an exception to this obligation, accepting the opposition to activities directed against their self-determination. International humanitarian law validates the national struggle for national liberation towards self-determination<sup>70</sup>.

Contravention of self-determination as *ius cogens* is often the result of the lack of determination and sufficiently clear position of the international community as to the area

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*Relations and Co-operation among States in accordance with the Charter of the United Nations*, [in:] Official website of the UN Documents: <http://www.un-documents.net/a25r2625.htm> (access: 19.09.2017)

<sup>67</sup> M. Perkowski, *op. cit.*, p.121.

<sup>68</sup> M. Perkowski, *op. cit.*, p.122.

<sup>69</sup> M. Perkowski, *op. cit.*, p. 124.

<sup>70</sup> *Ibidem*.

of the mandatory nature of this principle<sup>71</sup>. Like every general norm, the principle of self-determination is subordinated to a large degree of interpretation dependent on political determinants. It would be worthwhile to refine this issue, basing on the development of international law, especially as, as Manfred Lachs wrote: „[...] *Proportionally, acts of lawlessness in relation to a large number of lawful activities are becoming rarer, and they become exceptions. With the end of the Cold War and the division of Europe, there is a renaissance of the law: the rights of peoples and human rights. More and more concrete are the principles that make up the international community, covering all countries of all continents [...]*”<sup>72</sup>.

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<sup>71</sup> Ibidem, p. 125.

<sup>72</sup> M. Lachs, *Czy kryzys prawa międzynarodowego ?*, *Państwo i Prawo*, 1992, No. 2, p.25.

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