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I. INTRODUCTION

After four decades of relative stability, the modern international system finds itself face to face with an old problem, a problem resulting from two of the major developments of our time: the breakdown of the "world socialist system" and the disappearance of its leader, the Union of Soviet Socialist Republics (hereinafter USSR) itself. Both events were welcomed by the international community because they ended the danger of a confrontation between West and East. But at the same time they revived the world's old troubles with disintegrated states. The USSR and Yugoslavia have collapsed and the world has seen the peaceful dissolution of the Czechoslovak Federation. This entire series of striking developments, whether comparatively peaceful, as in the USSR, or extremely bloody, as in Yugoslavia, has once again reminded the international community of the need for a final solution to the question of the right of self-determination, and, more particularly, that part of the right of self-determination known as the right to secede, or the right of secession.

II. HISTORICAL BACKGROUND OF THE RIGHT OF SECESSION

There are many examples throughout history of the break-up of an existing state into several smaller state entities.

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Sometimes it is hard to find any legitimate ground to justify secession or the seizure or annexation of one country by another. But when attention is turned to relatively recent history - since the beginning of the Netherlands Revolution in the late sixteenth century - it becomes apparent that legal science and a variety of socio-political teachings have sought out and endeavored to consolidate reasonable legal grounds for separation and the creation of an independent state. These ideas acquired their validity through the application of the right of secession in resolving such political problems.

The first example of the application of that right can be found in the history of the Netherlands Revolution. Persistent demands for recognition of some particular rights of the Dutch people led at last to the creation of the first written document arguing the rightfulness of secession - the "Act on Secession," which was adopted on July 22, 1581. Due to the extreme complexity of the relations between the Northern Provinces and the Spanish Crown, that Act played a remarkable role in the proclamation of the independence of the Netherlands, the ousting of the Spanish King Philip IX, and the creation of the separate Netherlands state. The legal grounds for those decisions were the inherent rights of the people and constant violations of those rights by the King of Spain.

Since this was the first time such peoples' rights were invoked in the practice of political relations, the authors of the document could not proclaim secession as a universal and unconditional right of all peoples. The right of secession had to be substantiated by a number of proofs, which described gross violations of the "inherent rights and laws" of the Dutch people, that had been committed by the Spanish king and Spanish administration; so, these grounds became the justification for the right of the people to secede.

A new turn in the development of that right, and a very decisive one, came during the American Revolution. This Revolution interpreted the right of secession as a common right of all the peoples in the world. Peoples' inherent right to sovereignty became the theoretical foundation for this position. One of the prominent authors and ideologists of the American Revolution, Alexander Hamilton, for example, insisted that it is:

"'the inherent right' of the peoples of Turkey, France, Russia, Spain and other despotic kingdoms . . . to overthrow the yoke of slavery at any possible moment . . . and create government which responds to the principles of civil freedom."[1] And in this context he did not make any distinction between "free" peoples and peoples under colonial domination.[2]

The combination of that idea with the idea of the right of every people to equality, which was developed by another prominent writer, G. Otis, finally resulted in the open and direct proclamation of a peoples' right to secede and create their own independent state, which was made by Thomas Paine in his famous pamphlet, "Common Sense," which appeared in Philadelphia on January 10, 1776. Paragraph 1 of the American Declaration of Independence proclaimed that right as common to all peoples, and in order to realize the right to secede and obtain independence it did not require any preliminary conditions.

The Great French Revolution developed the right of secession into the embryo of the right of self-determination. It was accomplished by combining this right with the peoples' right to sovereignty and the right to equality. The main concept consisted of the following: there are many different peoples in the world and each of them possesses his own country. All peoples are full and plenipotentiary masters in their own homes. The rights of the people even in the smallest country are equal to those of the people in the biggest country in the world.[3] As far as they are masters of their own destiny and their own land, the people have a natural right to do with them what they wish. They may separate from one state, form their own state, or join another state. The latter decision should be made strictly on the grounds of a free and formal treaty between them. But even if such a treaty to join another state was entered into

1. 1 THE PAPERS OF ALEXANDER HAMILTON 1757-1804, 122 (Harold C. Syrett et al. eds., Columbia University Press, 1961-1987).

2. *Id.* at 47.

3. *Report of the Deputy Carneau made on February 17, 1793, at the meeting of the French Convent on the Principles of the French Foreign Policy made on Behalf of the Comm. of Diplomatic Relations of the French Covent* [hereinafter *Report of the Deputy Carneau*], JEAN JEAURES, THE SOCIALIST HISTORY OF THE FRENCH REVOLUTION, 151 (Moscow 1976) (in Russian, translated from French).

with the full consent of the people, the people in question would retain the inherent right to recover their own separate independence whenever they wish. Nobody can restrict the people in the enjoyment of this right, because a people's sovereignty and freedom are inalienable.[4] This right was established as absolute and was enunciated in paragraph 15 of the Declaration on the Right of Peoples, which was formally included in the Covenant by the famous Abbe Gregoire on Floreal 4 of the III Year of the Republic: "Every encroachment on the freedom of one people is encroachment on the freedom of all the rest."[5]

As a matter of fact, this principle remained in the sphere of political and legal teachings and in the internal legal structures of some states until it was given international recognition by the well-known Declaration of President Wilson on the right of self-determination in 1918. It then became a constituent part of the overall complex of people's rights and needs to be analyzed as such.

III. MODERN INTERNATIONAL LAW CONCERNING THE RIGHT OF SECESSION

No direct mention of the right of secession is found in any significant modern international document. Although it is nowhere to be found articulated as such, it is implied in the right of self-determination, which became the cornerstone of the modern international system. Paragraph 2 of Article 1 of the United Nations Charter proclaims the principle of equal rights and self-determination as one of the main principles of modern international law. Article 55 of the Charter determines it to be fundamental for economic and social cooperation. Paragraph (b) of Article 76 stresses at least two constituent parts of the right of self-determination: the right to self-government and the right to independence.

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4. *Report of the Deputy Carneau*, THE FRENCH REVOLUTIONARY GOVERNMENT OF THE CONVENT PERIOD (1792-1794), SELECTED DOCUMENTS AND MATERIALS, 341 (Moscow 1927) (in Russian, translated from French).

5. MIRKINE B. GUETZEVITSH, *Déclaration sur le Droit des Peuples: L'influence de la Révolution Française sur le développement de Droit international dans l'Europe orientale*, 22 Recueil des Cours de l'Académie de Droit International [R.C.A.D.I.] 309-10 (1928/II).

The U.N. General Assembly Resolution proclaiming the "Right of the Peoples and Nations to Self-Determination" expressed the right to self-determination as "right on independent state existence, national sovereignty and independence."[6] With that meaning, the right of self-determination became the fundamental and leading right of the two International Covenants on Human Rights of 1966.

Since the right to independence broadly includes the right of secession, it became obvious that a proclamation of the right to self-determination also implicitly includes the right of secession.

This complex of peoples' rights has gained new meaning as part of peoples' rights over their own affairs and destiny, including, the free determination of their way of life, political system, and relations with other peoples and states.[7] Also, it seems quite clear that such free determination may include not only unification with, but also separation from, other peoples and states.

IV. PROBLEMS AND PITFALLS OF THE RIGHT OF SECESSION

Full recognition and enjoyment of the right of secession in the modern world face three major difficulties. They are political, legal, and scientific in nature.

From the political point of view, it is very easy to understand that there is hardly a state that would agree to give up a part of its territory and population. The world is divided into states, and all attempts to reorganize them are very painful. It is entirely natural that they try to do their best to impede efforts at secession.

From the legal point of view, the situation is even more complicated. The main reason lies in the internal legal systems of states. Practically none of those systems envisages the possi-

6. G.A. Res. 637A (VII) (Dec. 16, 1966).
7. *See* Mid-Term Plan of UNESCO: UNESCO Doc. U/57.19.4 ap..

bility of dividing the state or a right of secession for any part of its population. Many legal systems even provide for criminal punishment for any activity aimed at secession from or division of the state. The former Soviet Union officially recognized the possibility of demands for secession in its Constitution which is far from unique. But even under such comparatively favorable legal circumstances it has taken a long time and proven very difficult for some of the former Soviet nations to realize that right.

The situation seems more favorable from the point of view of international law, since it presumes the right to secede, at least as a constituent part of the complex right of self-determination. But here there arise conceptual difficulties. The right to secede is beset by too many questions to be easily managed in modern international legal terms. First of all, it is necessary to identify the entity which is to enjoy this right. Individuals cannot claim it, because it is not purely a right of an individual human being, but a collective right of a people. But what constitutes a "people" defies definition. None of our humanities or social science disciplines, to say nothing about legal science, offers a precise definition of "people." And if a people do enjoy the right to secede from another state, the next question is in what legal forms such a decision should be framed and the procedures to be followed to make it valid. If such a decision is to be adopted through referendum (plebiscite), a further step is to ascertain the kind of majority of votes to be required: should it be a majority of the people seeking secession or of the population of the specific area, or of the population of the entire state? Other questions include the legal effects of such a vote. Are the seceding people to assume the form and status of some type of new territorial or state-like unit agreed-upon in advance? Or does the secession begin with a *tabula rasa*, with state territory and boundaries still to be determined? And possibly the most complicated chain of further questions connected with the right of secession arise after the right has been accomplished - how to redistribute rights and duties, population, and assets and liabilities between the original state and the seceding one.

V. CONCLUSION

The complexity of these unresolved questions shows that the right of secession still lies in the sphere of political relations, rather than legal concepts. If a specific situation connected with the right of a people to secede is to be assessed in terms of purely international legal instruments, there is a risk of an inevitable impasse. In every particular case, the question of secession in the modern world still depends on correlations of powers and interests with legal considerations and norms of international law invoked to legitimize and justify whatever political decisions have already been adopted, a typical exercise in *ex post facto* rationalization.