THE PRINCIPLE OF EQUALITY AND SELF-DETERMINATION OF PEOPLES AND THE PROBLEM OF RECOGNITION OF NEW STATE FORMATIONS

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ABSTRACT
The researchers put forward the thesis that in the case of systematic analysis of scientific views inherent in individual scientists, there is an opposition of the principle of equality and self-determination of peoples to the principle of the territorial integrity of states, and at the same time, in law enforcement practice there are various acts that do not meet the signs of uniformity in the interpretation of the principle of equality and self-determination of peoples. All this together leads not so much to a pluralism of opinions, but to the emergence of various kinds of legal conflicts. Additionally, the authors try to pose the problem of recognizing new state formations as subjects of international law, and also propose separate approaches to the processes that make it possible to recognize such states. So, at the end of the paper, the researchers set a vector for the continuation of the discussion, which speaks of giving such powers either the UN Security Council, or the Human Rights Council, or the International Court of Justice, subject to additional procedural requirements.

Keywords: Legal personality. International law. Principles of law. Legal conflicts. Law enforcement practice.

O PRINCÍPIO DA IGUALDADE E AUTO Determinação DOS POVOs E O PROBLEMA DO RECONHECIMENTO DAS NOVAS FORMAÇÕES ESTATAIrS

EL PRINCIPIO DE IGUALDAD Y AUTODETERMINACIÓN DE LOS PUEBLOS Y EL PROBLEMA DEL RECONOCIMIENTO DE NUEVAS FORMACIONES ESTATALES

RESUMO
Os pesquisadores propõem a tese de que, no caso da análise sistemática das visões científicas inerentes aos cientistas individuais, há uma oposição do princípio da igualdade e autodeterminação dos povos ao princípio da integridade territorial dos Estados, e em ao mesmo tempo, na prática da aplicação da lei existem diversos atos que não atendem aos indícios de uniformidade na interpretação do princípio da igualdade e autodeterminação dos povos. Tudo isso junto leva não tanto a um pluralismo de opiniões, mas ao surgimento de vários tipos de conflitos jurídicos. Além disso, os autores tentam colocar o problema do reconhecimento de novas formações de Estados como sujeitos de direito internacional, e também propor abordagens distintas para os processos que permitem reconhecer tais Estados. Assim, ao final do artigo, os pesquisadores traçam um vetor para a continuação da discussão, que fala em dar tais poderes ao Conselho de Segurança da ONU, ou ao Conselho de Direitos Humanos, ou ao Tribunal Internacional de Justiça, sujeitos a procedimentos adicionais requisitos.


RESUMEN
Los investigadores plantearon la tesis de que en el caso del análisis sistemático de los puntos de vista científicos inherentes a los científicos individuales, existe una oposición del principio de igualdad y autodeterminación de los pueblos al principio de la integridad territorial de los estados, y en Al mismo tiempo, en la práctica policial existen diversos actos que no cumplen con los signos de uniformidad en la interpretación del principio de igualdad y autodeterminación de los pueblos. Todo esto en conjunto conduce no tanto a un pluralismo de opiniones, sino a la aparición de diversos tipos de conflictos legales. Además, los autores intentan plantear el problema del reconocimiento de las nuevas formaciones estatales como sujetos de derecho internacional, y también proponen enfoques separados de los procesos que hacen posible el reconocimiento de dichos estados. Entonces, al final del documento, los investigadores establecieron un vector para la continuación de la discusión, que habla de otorgar tales poderes al Consejo de Seguridad de la ONU, al Consejo de Derechos Humanos, o a la Corte Internacional de Justicia, sujeto a procedimientos adicionales requisitos.

INTRODUCTION

Recent events taking place in the modern contradictory world clearly show how acute is the problem facing the international community on implementation of the basic international law principles [Charles de Visscher. Theory and Reality in Public International Law, Princeton, 1968], in particular, the principle of equality and self-determination of peoples, the core of which is the right of peoples to self-determination. In international practice, there is a counterposition of the principle of equality and self-determination of peoples to the principle of territorial integrity of states, as well as a variety of acts focused on interpretation of the principle of equality and self-determination of peoples and the main categories in which its legal content is revealed (KOTLYAR, 2002).

The lack of a uniform understanding of the content of the principle under consideration by the members of the international community excludes on their part a uniform qualification of the actions of one or another people to exercise their right to self-determination. Such an approach to understanding the principle of equality and self-determination of peoples inevitably leads to ignoring this principle by individual subjects of international law and to equating peoples claiming their right to self-determination with separatists encroaching on the territorial integrity of the state in which these peoples live. Opposition to the exercise of the people's right to self-determination by states often results in the use of force against those who claim this right, which inevitably entails the emergence of local armed conflicts in the world. An escalation of local armed conflicts can lead to a situation of humanitarian disaster and thus can pose a threat to peace and security.

Today, the practice of implementing the basic principles of international law more than ever, needs a theoretical analysis of the problem under consideration and related problems. One of the related problems highlighted by the international practice of exercising by peoples of their right to self-determination is the problem of recognition of new state formations that have arisen as a result of the secession from the state of a part of its territory in which the people lived before the implementation of the act of secession.

METHODS

This work uses the dialectical method. Legal study is also facilitated by logical techniques in the form of analysis and synthesis, induction and deduction, comparison and generalization, analogy and typology. The formal legal method made it possible to understand the essence and significance of legal norms concerning both equality and self-determination of peoples and the recognition of new state formations.

RESULTS AND DISCUSSION

The initial premises of the theoretical analysis of the problem

The principle of equality and self-determination of peoples is one of the basic principles of international law, which is equal in relation to all other principles of international law, due to which it is opposed to other basic principles of international law (say, the principle of territorial integrity) or, even more so, diminishing its importance for international law and order is not acceptable.

The principle of equality and self-determination of peoples is a peremptory norm of international law. From the point of view of its content, it is a grant-binding variety of legal norms. In summary, and being based on a variety of international documents, one can single out in the content of this principle the right of the people to choose their own political, economic and social path of development and, along with this right, the obligation of all subjects of international law (first of all, the respective states) to respect this right and promote its implementation and in no way interfere with the exercise of this right, provided that the subjects exercising this right do not go beyond the legal field.

As we know, international law, in the implementation of the principle of equality and self-determination of peoples, allows various forms and methods of self-determination within the framework of an existing state, while the possibility of secession from a state is not denied as an extreme measure. (Valeev, 1998) As long as secession is an exceptional (extraordinary) method from the point of view of international law, then the subjective right of the people to secede, in other words, the emergence of a personal opportunity for the people to secede from the state should be linked to certain legal conditions (legal facts); these conditions should be understood as stipulated by the norms of law and, in fact, specific life circumstances that have arisen, with which the possibility of secession from a specific community, called a people, is associated. Consequently, the question on the legality of the act of secession is associated with the presence of these legal facts in a certain community.
In international law, unfortunately, there is no unified codification of the principle of equality and self-determination of the people, until the question of what exactly is considered a legal fact of the emergence of subjective law among the people, i.e. legal possibility for secession from a certain state. At the same time, in international law, one can find fundamental parameters in understanding the legal conditions for the possibility of secession.

Thus, in the main international documents, in which the content of the principle of equality and self-determination of peoples is disclosed in a blanket way, the conclusion is drawn that when circumstances arise indicating discrimination of the people, the absence or usurpation of the people of the right to choose, to independently determine or participate on an equal footing in determining the path of political, economic, social and cultural development, the people have the right to allow the act of secession and the creation of a new state formation.

In the international system, there is no world state and world government and, therefore, the establishment of legal facts can be dealt with by international bodies created by states or international organizations by coordinating the wills of states as primary subjects of international law. The powers of these bodies to establish legal facts should be considered as discretionary, therefore, law enforcement acts, which record the presence or absence of relevant legal facts, should be considered as acts having legal force for all relevant subjects of international law. In this case, none of the subjects of international law can ignore such an act and must, in qualifying the actions of the people for secession, for their legality and in relation to these actions proceed from its content. However, such a body is not specifically provided in international law so far.

Due to the close interconnection of the basic international law principles, the implementation of the principle of equal rights and self-determination of peoples should be considered taking into account all other basic principles, in particular, the principle of the conscientious implementation of international obligations. It is thanks to the implementation of the principle of the conscientious implementation of international obligations that international law, conciliatory in its nature, is a kind of objective reality.

The principle of the conscientious implementation of international obligations from the point of view of its content is a binding norm; the obligation it contains presupposes, from our point of view, two aspects of understanding - internal and international. In the first aspect, from the point of view of its implementation, this principle contains the obligation of subjects of international law to fulfil and comply with their international obligations and not abuse the law. In the international aspect, one should bear in mind the obligation of the subjects of international law to assist in ensuring that other subjects of international law also strictly implement their international obligations.

One of the international obligations arising from universal international law and, therefore, common to all subjects of international law, is that states should build their relationships with each other on the basic principles of international law, taking into account the priority of international obligations under the UN Charter in order to maintaining international peace and security. To this end, as stated in the Preamble of the UN Charter, states undertake to “take effective collective measures to prevent and eliminate threats to peace”, “develop friendly relations between nations based on respect for the principle of equality and self-determination of peoples”, “carry out international cooperation in resolving international problems and in the promotion and development of respect for human rights and fundamental freedoms for all”. In the light of this general (universal) international obligation, states as primary subjects of international law have the right to recognize only those new state formations that have arisen legitimately from the point of view of international law. (Conclusions and recommendations of the conference of independent legal experts of the CIS member states.

Moscow. Journal of International Law n. 4. 2000). With regard to the legitimately emerging new state formations and in accordance with Article 2 of the UN Charter, the member states of the international community are obliged to recognize their sovereignty, the inviolability of their borders and refrain from using and threatening by force, even when they have no intention of speaking to establish stable economic and diplomatic relations with these state entities.

The category “recognition of states” is one of the main categories through which such a scientific category as “the subject of international law” is developed. The well-known theories of the recognition of states – declarative and constitutive – consider the issue of recognition of the state in connection with the issue of determining the moment of the emergence of a new state entity as a new subject of international law (Murphy, Stâncescu, 2017; Alexandrowic, 1958).
So the declarative theory of recognition proceeds from the fact that a new subject of international law arises ipso facto of the creation of a new state entity. The constitutional theory of recognition makes the emergence of a new subject of international law dependent on the recognition of a new state formation by member states of the international community. The domestic doctrine of international law basically gave and still gives preference to the declarative theory, considering the constitutive theory as a theoretical substantiation of obstacles in the exercise of the right to self-determination through secession or as provoking separatist movements by individual states in order to create puppet states pleasing to them under the promise of their subsequent recognition as subjects of international rights.

The analysis of the pros and cons of these theories is contained in the works of the well-known specialist on recognition issues, a world-renowned scientist who worked within the walls of Kazan State University, D. I. Feldman. (FELDMAN, 1965) However, the declarative theory is not flawless in its categoricality from the point of view of the consequences of its use to substantiate the legitimacy of the emergence of new state formations as new subjects of international law.

**SUMMARY**

In our opinion, it seems fair to conclude, being based on the above, that the declarative theory should be taken as a basis with a certain proviso that the emergence of a new state entity and its acquisition of the status of a subject of international law coincide in time only when the fact of the emergence of a new state formation took place within the framework of the international legal order.

**CONCLUSIONS**

The official recognition of new state formations, both de facto and de jure, by individual members of the international community, individually or by a group of states, cannot by itself give rise to the emergence of a new subject of international law. The legitimacy of the emergence of a new state entity must either be obvious to members of the international community, or in the event of serious disagreements on this issue, a special check is required by an international body. Until this body is named in international universal law, although there have been proposals in this regard, (RESHETOV, 1995) such a body may, in our opinion, be the UN Security Council (KELSEN, 1950), due to the importance of the emergence of new state formations for the stability of international law and order and the maintenance of international peace and security. The Human Rights Council or even the International Court of Justice can act as such a body, provided that some state or international organization submits to it for consideration the question of qualifying a fact from the point of view of compliance with international law.

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**REFERENCES**


KOTLYAR, V.S. For discussion among international lawyers of the countries of the world on the problem of self-determination and secession of peoples Russian Yearbook of International Law. SPb.: Russia Neva. 288 p. 2002.


RESHETOV, YU. A. *Reservations to the international convention on the elimination of all forms of racial discrimination and maintenance of international law and order in the field of human rights*. Moscow Journal of International Law, n. 393 p. 1995.


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