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ANALYSIS OF MERITS AND DEMERITS OF SECESSION RECOGNITION

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Paper examines scientific and academic understanding of secession phenomenon and presents possible merits and demerits of secession recognition. Issue of whether the right to self-determination includes the right to secession is discussed. Question of whether secession has political context is raised. Justifications for recognizing secession are presented. Remedial Right Theories of secession are discussed.
Keywords: secession, merits, demerits, right to self-determination, politica context, recognition, remedial right.

Problem statement. With a risk of oversimplification, secession can be under-stood as a process whereby a component unit of a larger independent state breaks away, with its population and the territory they occupy, and forms a sovereign state [1, p. 267]. Secession right traces its roots in the right to self-determination [2, p. 6]. However, there is an overwhelming consensus among scholars that the right to self-determination, as recognized by international law, doesn't include the right to seces-sion [3, p. 775]. Many international documents expressly recognize the right to self-determination of peoples. They even affirm that self-determination is among the founding principles of modern states [4, p. 39]. However, none of the international legal instruments explicitly refer to secession. Such instruments as the United Nations Charter, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights affirm the right to self-determination of 'peoples' but they don't adequately define what it constitutes and who the peoples are.

The right to self-determination has passed through different historical trajecto-ries [2, 775]. Self-determination, in the nineteenth century, was a political principle (and not a right) that was exploited to justify the unification claims of nations or identity groups scattered in different entities such as the Italians and the Germans. Towards the end of the World War First, it was used to justify the disintegration of such defeated empires as Ottoman Turkey and Austria-Hungary by freeing different nationalities under their subjugation. During the second half of the twentieth century, it was understood as the right of people under colonialism and alien subjugation to establish own states [5, p. 774]. After the era of independence from colonialism in Africa mainly during the first decade of the second half of the twentieth century, however, the applicability of self-determination remains unclear. The most plausible conclusion that can be reached is that international law neither prohibits nor explicitly recognizes general right to secession [5, p. 311].

However, secession remains a political reality. Indeed, Antić claims that "...very few questions in political science have such important practical value as the question whether secession should be allowed or not" [6, p. 146] although its regulation has largely been left to internal dynamics and sometimes laws of the countries concerned.

Moreover, such issues as whether it's appropriate to recognize general right to secession; whether the merits of recognizing secession outweighs its demerits or vice versa with a particular emphasis on multinational states; even if it is recognized should it be conditional or not; if conditional, what circumstances or conditions authorize its practicability; and whether there should be clearly laid procedures in constitutions remain bones of contentions for scholars and philosophers in the field.

The scholarly views are extremely divergent. It ranges from people who see that the foundations of the right to secession are at best 'cracked' regardless of the situation of the people claiming for it to those who argue for unconditional secession right as a manifestation of the ultimate respect for the wishes of individuals [12, p. 58]. Others advocate for the applicability of secession as a last-resort solution in cases where people suffer from some form of discrimination, injustice, or violation of rights [8, p. 43].

State practices on secession are as divergent as the scholarly opinions although the overwhelming majority of constitutions remain silent on the issue [9, p. 71]. The constitutions of some countries, however, clearly state that the concerned country's territory is indivisible or inalienable and some countries as Cameroon, Ivory Coast, and Rwanda declare that any agreement that modifies the existing boundaries is *void ab initio*. Ethiopia and St. Kitts and Nevis explicitly recognize the right to secede. Canada recognizes the right to secession indirectly via the decision of its Supreme Court although its Constitution remains silent.

Weinstock argues that the question of whether international law recognizes secession should be separated from the moral question of whether there should be a right to secede [3, p. 201]. For him, many of the existing scholarly works don't deal with these two issues separately thereby resulting in further complications of an already complex matter.

Analysis of analogical researches and publications. The right of nations for self-determination and secession is widely discussed by many foreign academicians and scientists. Deepest studies are presents by M. Hechter, D. Horowitz, A. Buchanan, W. Norman. Nonetheless most of the studies don't present comparative analysis of academic and scientific thoughts which gives grounds for the study presented in the paper.

The aim of the paper is to analyze scientific and academic understanding of secession phenomenon and study possible merits and demerits of secession recogni-tion.

Main study. Among the devoted opponents of the right to secession is Donald Horowitz. According to him, the right to secede from independent states shouldn't be recognized by international law under any circumstance [2, p. 6]. This is because, for him, the demerits of secession outweigh its possible merits. Moreover, he argues, those who favor secession have unfounded assumptions about its merits [2, p. 5]. The following are among the key 'unfounded assumptions' he identifies:

One of the often presented justifications for recognizing secession is the assumption that its exercise will result in homogenous units. Nonetheless, this

doesn't happen in reality. The seceding units will almost always have minorities within their territories [2, p. 8]. Thus, secession tends to perpetuate claims for secession because it's very likely that the new majority in the seceding territory will tend to oppress the minorities. Second, secessionist movements don't often have the capacity to achieve their goals without some external support [2, p. 10]. This in turn elongates the sufferings of the people in the territory that is attempting to secede due to harsh responses from the central government. Third, Horowitz admits that the state boundaries in today's world are overwhelmingly artificial and an argument can be forwarded that secession may help make boundaries congruent to group identities. Nonetheless, he insists that this is more of a projection than a reality because group identities tend to continuously fluctuate. Rather, allowing secession changes an already fragile internal boundary to a more conflict-prone international boundary [2, p. 10]. Fourth, allowing secession passes a wrong signal to others and encourages them to follow suit [2, p. 11]. This makes accommodation of diverse groups in a single state near to impossible besides posing a serious threat to territorial integrity of states [2, p. 10].

However, Horowitz's stand on secession is challenged by many scholars. Among such scholars is Allen Buchanan. Buchanan identifies and analyses two distinct understandings of the right to secession [4, p. 35]. One is what he calls the Primary Right Theory of secession and the other a Remedial Right Theory of secession. Primary Right Theory of secession is further categorized into two groups: Ascriptive Group Right to secession and Associative Group Right to secession [4, p. 39]. According to Ascriptive Group Right to secession, such identity based groups as nations should have the automatic right to exercise the right to secession provided that they unequivocally demand so. On the other hand, according to the Associative Group Right to secession, regardless of any manifestation of identity, people in a territory should be allowed to exercise the right to secession provided that they demand so in such an unequivocal manner as majority vote in a referendum. However, Buchanan prefers that secession should be allowed as a remedial right only i.e. as a solution for injustices suffered by a group of people provided that there is no other solution to such a problem short of secession [4, p. 32].

Buchanan emphasizes the need to honor the territorial integrity of states which is a cardinal principle of international law [4, p. 32]. However, he is also cautious that the territorial integrity of states shouldn't justify obvious injustices directed against a certain group. In other words, "...national unity should not be pursued at any cost» [10, p. 106]. As a point of compromise, therefore, Buchanan recommends for a remedial right to secession to be applied in such exceptional circumstances as discrimination against equitable participation in state affairs, serious human rights violations such as genocide, and related overt injustices. In such cases, provided that there is no other possible solution, such a group must be allowed to determine its destiny including exercising the right to secession. Buchanan sees his argument as not only one that is supported by international instruments including 'the declaration on principles of international law concerning friendly relations and cooperation among states' but also he sees some merits in such an understanding of the right to secession.

He claims that if secession is recognized only as a remedial right, states will be encouraged to treat minorities or any other group, for that matter, fairly. Consequently, there will be less demand for secession. This, on the other hand, helps maintain the territorial integrity of states on which international law bases.

However, Buchanan's stand on secession is not free of criticisms either. Important questions that the Remedial Right Theory of secession doesn't answer are: who evaluates the existence or absence of injustices, violations, and discriminations? It is obvious that groups, particularly those involved in such sensitive issues as secession, will see a certain event from different angles and they may reach at a diametrically opposed views. Say a force-accompanied action of a central government can be seen as a law enforcement by the majority but the minority may see it as an act of suppression and hence a violation on their human rights. The other key challenge is related to the presence of secessionist movements in such democratic countries as Canada, Spain, and the United Kingdom despite Buchanan's assumption that remedial right to secession will make states more democratic and groups will find fewer reasons to claim for secession in democratic states. This leads us to examining the opinions of other scholars who push for unqualified right to secession based on the claim that the merits of doing so outweigh its demerits.

Antić criticizes such writers as Horowitz and Buchanan both from normative and empirical angles. His key argument is that secession should be allowed for a nation that demands so via at least two-third majority of all voters in a referendum [11, p. 147]. He bases his justification in his firm believe that the consent of the governed nation should be given the ultimate priority more than anything else including the say of international bureaucrats. Thus, for Antić, none of the arguments forwarded against the free exercise of the right to secession by national groups make sense [11, p. 149]. He criticizes Horowitz's understanding of homogeneity. For him, if it is required, secession should be allowed because the concerned people have already expressed their interest through their votes. Therefore, there is no reason to prohibit the exercise of such a right because it doesn't result in a homogenous unit. Moreover, according to Antić, Horowitz's claim that newly established states are more oppressive towards minorities is not supported by practical evidence [11, p. 148]. Instead, he argues, it is easier to put pressure on the newly established states so that they respect minority rights because they need lots of external support. Antić doesn't deny that secession may be accompanied by violence but he argues that it's not the people who claimed for it to be blamed but the ones who try to stop it by killings and suppression as, practically, secession is usually a response to violence rather than a cause of violence [11, p. 148]. For him, the argument that central governments may kill people and there may not be external support is ridiculous if one analogizes it with preventing divorce as women may be beaten in the process and no one may want to intervene. Furthermore, Antić continues, the right to secede fosters rather than dampens adoption of federalism and hence encourages accommodation of diversity based on the consent of the governed [11, p. 149].

Extending his criticism towards Remedial Right Theories of secession, Antić argues that secession shouldn't be limited to remedying situations of unjust conquest, exploitation, threat of extermination and threat of cultural extinction, as Buchanan proposes [11, p. 150]. Citing Norman [12], he claims that secessionists and unionists are likely to disagree

about what kinds of incidents or events constitute just cause to secede; about whether a certain incident occurred or not; about whether they have been or could be rectified by measures short of secession; about whether any particular violation was significant enough, and so on.

Antić also criticizes other less popular arguments [11, p. 151]. Among them are the ones that allege that secession should be allowed in liberal democratic countries only [11, p. 152] and the ones that claim that secession defies majority rule which is one of the basic tenets of democracy [11, p. 152]. He counters such arguments by stating that liberal democracies are themselves the result of secession and not a cause of it. He mentions such examples as the USA and India as evidence. Regarding the counter-majoritarian tendency of secession, he argues that secession demands are practically against the wills of dictators and oppressive regimes than they are against the wills of the majority. By citing the former Yugoslavia as an example, he asks what options the Albanians had apart from secession when the Serbs supported Milosevic, a war criminal. It's also obvious that majorities don't always rule according to democratic principles [11, p. 152].

Passing to wider political theories, according to Kreptul, liberal democrats are divided on whether the merits of allowing secession outweigh its demerits although they have a common point of departure i.e. maintaining the territorial integrity of modern states [9, p. 59]. Such writers as Norman [12] and Weinstock [3] argue that secession should be allowed for its merits in neutralizing challenges against the territorial integrity of states. Thus, they are not in favor of secession *per se* but in the advantages it provides for containing secessionist movements. But others from the same ideological backgrounds are against recognizing secession because they think that doing so amounts to paving the road for territorial disintegration of states [9, p. 50]. The scholars in the Austrian libertarian school of economics, on the other hand, have a different reference point in arguing whether secession should be allowed or not. They see secession from the perspective of individual rights and freedoms [9, p. 44]. Thus, for them, secession should be allowed because of its merits in respecting the consents of individuals.

Many tend to see the secession clause as having a mere symbolic value and they doubt that it would ever be put into practice. There are also arguments that the procedural hurdles in the Constitution make the exercise of the right to secession almost insurmountable. However, Yonatan disputes this assertion [13, p. 430]. For him, the procedural requirements for exercising the right to secession are not as burdensome as many portray them. They can be even labeled as very liberal or permissive even in light of the prescriptions of scholars who favor recognizing secession in multinational states. According to Article 39 of the Constitution, what the concerned nation, nationality, or people is required to do is to present its claim to its council. Then if the question is accepted by a-two-third majority of the members of the legislative council, the federal government has to organize a referendum which must take place within three years from the time it received the concerned council's decision for secession. Afterwards, if the demand for secession is supported by majority vote in the referendum and if government power is transferred to the council of the nation that demanded secession and if division of assets is effected according to the law, then secession may be effected. Thus, the claim that it has a mere symbolic value and it's burdened by procedural hurdles is not entirely true.

So far, we saw that there is no agreement among scholars on whether secession should be recognized and on its (de)merits although demands for secession by different groups remain a political reality. To make things more complicated, even the scholars who favor secession have different points of departure and they differ on whether constitutions should include secession clauses and clear procedures. Furthermore, even if secession clauses and clear procedures were to be incorporated in constitutions, scholars differ on what the actual contents should be.

Conclusion. It is truism to state that international law is not copping up with secession related developments within states. Of course, states who are the creators and the subjects of international law are not expected to easily incorporate a legal instrument that can finally result in their own demise. However, if the ultimate goal of states is indeed to put consent-based governance in place and to protect the overall security of the people in their territories, it's reasonable to push for orderly demise of states by regulating it under international law provided that they lack legitimacy on the grounds that justify their existence.

An important element that recurs in the writings of those who oppose a liberal secession clause in constitutions is their conviction that such a provision would endanger the territorial integrity of states on which international law and order lies. Nonetheless, the absence of such a regulation by international law is not in any way stopping secessionist movements. Rather, secessionist movements are being left to determine their destiny mostly resulting in bloodshed.

It can be plausibly argued that not all national groups in modern states have chosen to belong to where they are now. It is also obvious that modern states favor a certain language, cultural, or national group. Thus, if others who believe that they are distinct national groups aspire for an international political status which gives them access to the benefits modern states enjoy, it is not morally unsupportable idea at all.

Nonetheless, it is also obvious that belonging to bigger states has many economic, defense-related, and other advantages due to economies of scale. However, owing to the rigidity of state-controlling elites and scholars with nationalist obsessions, the issue of constitutionalizing secession is not being settled as simply as it should be. Such scholars confuse the issue of whether secession right is morally supportable with whether international law allows for secession. And they often mention the absence of general secession right under international law to trump the moral right to secession.

The most important piece of conclusion to be drawn from the foregoing discussions is the fact that international law and many state constitutions are shying away from adequately addressing issues of secession, despite their obvious presence in reality, which at the end of the day is resulting in more chaos.

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АНАЛІЗ ПЕРЕВАГ І НЕДОЛІКІВ ВИЗНАННЯ СЕЦЕСІЇ

Анотація
У статті розглядаються наукові та академічні походи вчених до розуміння феномену сецесії, а також представлені можливі переваги і недоліки визнання сецесії. Обговорюється питання про те, чи включає право на самовизначення сецесію. Піднімається питання, чи має сецесія політичний контекст. Пред-ставлені обґрунтування для визнання сецесії. Обговорюються процесуальні теорії сецесії.
Ключові слова: сецесія, переваги, недоліки, право на самовизначення, політичний контекст, визнання, процесуальне право.

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АНАЛИЗ ДОСТОИНСТВ И НЕДОСТАТКОВ ПРИЗНАНИЯ СЕЦЕССИИ

Аннотация
В статье рассматриваются научные и академические походы ученых к по-ниманию феномена сецессии, а также представлены возможные достоинства и недостатки признания сецессии. Обсуждается вопрос о том, включает ли право на самоопределение сецессию. Поднимается вопрос, имеет ли сецессия политический контекст. Представлены обоснования для признания сецессии. Обсуждаются процессуальные теории сецессии.
Ключевые слова: сецессия, достоинства, недостатки, право на самоопределение, политический контекст, признание, процессуальное право.