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Political and Legal Aspects of the Right of Peoples to Self determination in the Light of Russian Aggression against Ukraine (Modern View)

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Summary: The people of Ukraine are right now fighting for their right to self-determination, for their European choice. The European integration is a part of the foreign policy and national identity of many European countries, among which is Ukraine. According to Academician Yu. S. Shemshuchenko, the norms of the Constitution of Ukraine are the political and legal basis for the implementation of the foreign policy, which based on its national interests and domestic policy, widely recognized principles and norms of international law. As stated by the political leadership of the Russian Federation (hereinafter referred to as the RF, Russia), the goals of its army's invasion into Ukraine are demilitarization and „denazification". This fact confirms the denial and active opposition by a nuclear state of the national identity of the Ukrainian people, as well as an option for own choice of the independent path. As the reality has demonstrated, the right of a people to self-determination is not always fully implemented as a result of their acquisition of their statehood and territory within internationally recognized borders. States that systematically violate human rights are the most prone to aggression. Thus, aggression against other countries turns into another round of the infringement of the rights of citizens of the aggressor state. The essence of the international legal personality of the state

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is the people. The identity of the legal personality of the state, regardless of its current (last official) name and various circumstances that have taken place during the entire period of its existence (occupations, annexations, etc.), follows from the continuity of the people located on the territory of its historical residence. As a consequence, the legal personality of the Baltic states after liberation from the Soviet occupation is based on the continuity of their peoples.

Keywords: continuity, legal personality of the state, sovereignty, human rights, people's right to self-determination.

Citation: TYMCHENKO, L., KONONENKO, V., TARAKHONYCH, T. Political and Legal Aspects of the Right of Peoples to Self-determination in the Light of Russian Aggression against Ukraine (Modern View). *European Studies – the Review of European law, Economics and Politics*. 2022, vol. 9, no. 2, pp. 62–79 DOI: 10.2478/eustu-2022-0014.

1. Introduction

In the morning of February 24, 2022, the entire world woke up in a new reality. The United Nations, whose main goal is to maintain international peace and security and which positions itself as the legal successor to the League of Nations, has proved to be just as ineffective and helpless. Speaking of security, the world still ignores the real protection of human rights, replacing it with a formal one, and the most outwardly effective institutions speak of a balance of interests of the state and the individual. Thus, the traditional view that human rights and national security are in conflict does not stand up to scrutiny[1].

The reality has demonstrated that states which systematically abuse human rights are the most prone to aggression. And vice versa: an improvement in the situation with the human rights inside the country reduces the likelihood of an aggressive war[2]. But that's not all: external aggression turns into a threat to national security – the position of the state, which ensures the development of the country for a long historical period, the stability and well-being of society and its citizens, which can already be observed on the example of Russia. The UN

[1] BURKE-WHITE, W. Human Rights and National Security: The Strategic Correlation. *Harvard Human Rights Journal*. 2004, vol. 17, p. 280.

[2] Ibidem, p. 249–250; see also: TOMZ, M., WEEKS, J. L. P. Human Rights and Public Support of War. *Working Paper.* No. 1026, January 2018, Stanford, Center on Global Poverty and Development. 02.03.2022 [online]. Available at: https://kingcenter.stanford.edu/sites/g/files/sbiybj16611/files/media/file/1026wp_0.pdf

General Assembly, in its resolution „Aggression against Ukraine", expressed its grave concern at reports of attacks on civilian objects such as houses, schools and hospitals, as well as civilian casualties, including women, the elderly and the disabled persons, children[3].

Such actions of the aggressor led to the application of serious international sanctions, which will hurt even ordinary Russians. In addition, the Russian government seriously restricts civil rights. That is, external aggression turns into another round of infringement of the rights of citizens of the aggressor state.

It is known that the official purpose of the invasion of the Russian army into Ukraine according to the political leadership of the Russian Federation is demilitarization and „denazification", which confirms the denial and active opposition on the part of the nuclear state of the national identity of the Ukrainian people, their choice of independent path. As the reality has demonstrated that the people's right to self-determination is not always fully implemented as a result of their acquisition of their statehood and territory within internationally recognized borders. The very statehood of Ukraine is not recognized on the basis of various historical insinuations, one of which, for example, is that it (Ukraine) was „created" by Lenin, in connection with which we consider it necessary to elaborate on the topic of state continuity.

It is important to stress that in addition to the declared military goal of Russia against Ukraine, its aggressive actions were due to economic reasons, so the possibility of a war for natural resources cannot be dismissed[4]. At the same time, in an interconnected system of international relations in the context of globalization, it is difficult to count on the isolation of conflicts even in bilateral relations, without the greater or lesser involvement of third parties[5]. As you know, hydrocarbons are the main source of funds for the budgets of Russia and Putin personally. Due to this fact or rather because of gas pipelines, Putin started the war in Georgia, where he wanted to stop the gas pipeline route from Azerbaijan to Turkey, in Syria, where Qatar planned to lay its pipe to Turkey and further to Europe, Libya, where gas pipelines to the south of Europe and, of course, to Ukraine, in order to capture the largest underground gas storage

[3] Henasambleia OON ukhvalyla rezoliutsiiu, yaka vymahaie vid RF nehaino vyvesty viiska z Ukrainy. *Ukrinform*. 02.03.2022 [online]. Available at: https://www.ukrinform.ua/rubric-polytics/3418244-genasamblea-oon-uhvalila-rezoluciu-aka-vimagae-vid-rf-negajno-vivesti-vijska-z-ukraini.html

[4] TYMCHENKO, L., KONONENKO, V., NOVIKOVA, L. International mechanisms for ensuring the environmental safety. *International Law and Integration Problems (Scientific-Analytical Journal)*. 2020, No 2(60), p. 15.

[5] TYMCHENKO, L., KONONENKO, V. The legitimacy of acquisition of state territory. *Juridical Tribune Journal*. 2020, vol. 10, No 1, p. 149.

facilities in Europe and a rather powerfully developed pipeline infrastructure. It is obvious that all these actions should have led to the maximum capture of the European gas market in order to have gigantic income from gas trading, and with their pipes to throw a stranglehold on the governments of European countries, which was partially done. But Ukraine was under attack for another reason. In the Kharkiv and Donetsk Regions, American geologists have discovered giant shale gas deposits. That is why the region was destabilized so that it became unsuitable for investment. By the way, the most brutal battles are now taking place in these very places.

As we can see, limiting itself to the sale of minerals, Russia abandoned the intensive path of development, and extensive approaches require coverage of new territories[6]. However on the other hand, ensuring territorial integrity and unity is the primary function of any state[7], which is directly related to the right of its people to self-determination.

Very significant in this context is the fate of the two states, the founders of the United Nations, Belarus and Ukraine. Of course, one can speak only conditionally about the participation of these states in the creation of the UN, since, not being independent at that time, they played a purely formal role, without possessing sovereignty. In general, the Ukrainian Soviet diplomacy was not an independent subject of international life, but acted in the context of the general Soviet foreign policy activity[8] (nevertheless, the Russian Federation, in accordance with the UN Charter, is neither its founder nor, moreover, a permanent member of the Security Council).

The sovereignty of Belarus as a state is *de jure* recognized by all, it has both supremacy on its own territory and is independent in international relations, while the influence of the Russian Federation on its foreign policy can be explained by self-restraint in connection with its signing of the Union Treaty. In addition, today the competence of the state on its own territory is often limited in the interests of human rights or strengthening international security.

But, as you can see, the people of Belarus, having their own territory within uncontested borders, have not yet exercised their right to self-determination, because, being subordinate to the state, which exercises supremacy on its territory

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6 TYMCHENKO, L., KONONENKO, V., TARAKHONYCH, T. Sustainable Development, Innovation, and Security on the Pages of the Encyclopedia of International Law. *Science and Innovation*. 2022, 18(1), p. 132.

7 TYMCHENKO, L., KONONENKO, V. Territory of state as indivisible whole and the norms of Constitution. *Juridical Tribune Journal*. 2021, vol. 11, No 3, p. 498.

8 BILENKOVA, Yu. *Uchast polityko-pravovykh subiektiv Ukrainskoi RSR v rozrobtsi ta utverdzhenni osnovnykh instytutiv novoho mizhnarodnoho prava* (1944–1991 rr.): istoryko-pravove doslidzhennia: abstract of dissertation paper. Lviv, 2019, p. 10.

with the help of force and which, in turn, remains dependent on the political will of the political leadership of the Russian Federation.

In addition, it is important to distinguish between the principle of the right of peoples to self-determination and the problem of separation of a part of the territory and/or (national) minority in order to unilaterally leave the country of residence with the subsequent creation of their own state.

The people of Ukraine are right now fighting for their right to self-determination, for their European choice. The European integration is a part of the foreign policy of many European countries, among which is Ukraine. According to Academician Yu. S. Shemshuchenko, the norms of the Constitution of Ukraine are the political and legal basis for the implementation of the foreign policy, which based on its national interests and domestic policy, widely recognized principles and norms of international law[9].

It is necessary to emphasize that European self-identification has grown among Ukrainians, deepening and bringing to a new level of cooperation with the EU, depending on the practical implementation of the existing legal foundations of regulation of the process of the European integration of Ukraine, conceptual approach to it, the observance of common values, respect for human rights in particular, the level of cultural and civilizational self-identification of Ukrainians with Europeans and feeling like an organic part of them, the development of Europe in Ukraine and its Europeanization[10].

The purpose of the article is to analyze the relationship between such notions as ,,the sovereignty of the state", ,,sovereignty of the people" and certain aspects of the principle of the people's right to self-determination. In addition, it is planned to consider the hypothetical connection of the latter with the principles of the territorial integrity and the prohibition of the use of force or the threat of its use.

In parallel, it is planned to review the relationship between national security and the level of observance of human rights, as well as to study some aspects of annexation, occupation, and state continuity.

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[9] SHEMSHUCHENKO, Yu. S. Konstytutsiia Ukrainy 1996. *Entsyklopediia mizhnarodnoho prava*: U 3 t. / redkol.: Yu. S. Shemshuchenko, V. N. Denysov (spivholovy) ta in.; Instytut derzhavy i prava im. V. M. Koretskoho NAN Ukrainy. T. 2. E–L. Kyiv: Akademperiodyka, 2017, p. 738.

[10] DENYSOV, V., FALALIEIEVA, L. The Construction of European identity in the Paradigm of Anthropocentrism and its Constitutionalization, *European Studies – The Review of European Law, Economics and Politics,* vol. VII, Wolters Kluwer, 2020, pp. 102–103; see also: CHABAN, N., ELGSTROM, O. Politicization of EU Development Policy: The Role of EU External Perceptions (Case of Ukraine), *Journal of Common Market Studies*, vol. 59, iss. 1, January 2021, pp. 143–160.

2. Subjects of the right to self-determination

The principles of the right of peoples to self-determination and the territorial integrity of states are enshrined in authoritative sources of international law – declarations of the UN General Assembly, documents of international organizations; they are often invoked during ethnic conflicts.

N. V. Ostroukhov notes that the observance of the principles of equality and self-determination of peoples, together with the principle of the territorial integrity of states, is one of the urgent problems of modern international law[11]. A. M. Shulga writes that „the right to self-determination" is not the „right to secede"[12]. L. A. Timchenko adds that the subjects of the right to self-determination are colonial peoples and peoples of non-self-governing territories[13]. And the very right of self-determination is associated with the collective will of the society of people, which in the modern sense fits into the term „people-demos", but not „people-ethnos"[14]. The modern concept of self-determination is based on two key aspects: 1) „internal", according to which „all peoples have the right to freely carry out their economic, social and cultural development without external interference"; 2) „external", assuming that „all peoples have the right to freely determine their political status and their place in the international community on the basis of the principle of equality and taking into account the example of the liberation of peoples from colonialism, as well as the prohibition to subject peoples to foreign enslavement, domination and exploitation"[15].

Doctrinal interest in the issue under consideration increased significantly after the end of the Cold War and the emergence of ethnic and territorial conflicts in the former expanses of the USSR and Yugoslavia. Among the conflicts in the post-Soviet space is the Armenian-Azerbaijani Nagorno-Karabakh conflict, which for three decades has been erroneously presented in the context of a collision of

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[11] OSTROUHOV, N. *Territorialnaya tselostnost gosudarstv v sovremennom mezhdunarodnom prave i ee obespechenie v Rossiyskoy Federatsii i na postsovetskom prostranstve*: monografiya. M.: Yurlitinform, 2009, p. 128.

[12] *Teoriia derzhavy i prava: navchalnyi posibnyk*. SHULGA, A. (ed.). Kharkiv: KHNU im. V. N. Karazina, 2014, p. 44; see also: BUSQUETS, P. B., *Morality and Legality of Secession. A Theory of National Self-Determination*. Palgrave Macmillan, 2020, pp. 386.

[13] TIMCHENKO, L. Tolkovanie ponyatiya «pravo narodov na samoopredelenie» v sovremennom mezhdunarodnom prave. *Evropsky politicky a pravni diskurz*. 2016, vol. 3, iss. 4, p. 31.

[14] TIMCHENKO, L. Opredelenie «priznakov gosudarstva» v issledovaniyah yuristov-mezhdunarodnikov klassicheskogo perioda. *Moldavskij zhurnal mezhdunarodnogo prava i mezhdunarodnyh otnoshenij*. Kishinev: Institut istorii, gosudarstva i prava Akademii nauk Respubliki Moldova, 2009, No 1, p. 23.

[15] MAMMADOV, I., MUSAEV, T. *Armyano-azerbajdzhanskij konflikt: istoriya, pravo, posrednichestvo*. Tula: Grif i K, 2006, p. 91.

two imperative *(jus cogens)* principles of international law – the principle of the territorial integrity of states and the principle of the right of peoples to self-determination. Of fundamental importance in this case is the need to distinguish between the principle of the right of peoples to self-determination and the problem of the separation of the (ethnical) minority in order to unilaterally withdraw from the country of residence with the subsequent creation of their own state[16]. The emergence of the doctrine of national self-determination dates back to the Enlightenment and is associated with the names of such thinkers as D. Locke, G. Grotius, E. de Vattel, J. J. Rousseau, who theoretically substantiated the sovereignty of the people through the theory of „natural law„. The first French Constitution, adopted on September 3, 1791, declared freedom and equality in rights from birth, that the goal of each state is to ensure natural and inalienable human rights, and that the source of sovereignty lies in the nation, which laid the foundations for the idea of self-determination of peoples. French Revolution 1789–1794 for the first time proclaimed the rejection of the conquest of foreign territories, the restriction of the rights of monarchs to dispose of the state territory, the inviolability of national borders. In May 1790, a draft declaration was submitted to the National Assembly of France, which later became a decree, which stated that the invasion of one state by another threatened the freedom and security of all[17]. According to S. N. Baburin, the territory of the state is a space of self-determination of the people, within which the state exercises its sovereignty[18].

E. de Vattel made a great contribution to the development of the concept of state sovereignty. He singled out such features of it as self-government and independence: „Every nation that is self-governing in whatever form, independent of another nation, is a sovereign state"[19]. This means that self-government is the internal, and independence the external side of the sovereignty of the people, from which follows the concept of a sovereign state as a completely self-governing state. And therefore an independent community. M. Huber spoke in the same vein in the decision of the arbitration court in the Palmas case: „Sovereignty means independence in relations between states"[20].

[16] MUSTAFAEVA, N. *K voprosu «o prave na otdelenie»: princip prava narodov na samoopredelenie vs. prava menshinstv: kejs Nagornogo Karabaha* [online]. Available at: https://www.virtualkarabakh.az/ru/post-item/40/304/k-voprosu-o-prave-na-otdelenie-princip-prava-narodov-na-samoopredelenie-vs-prava-menshinstv-kejs-nagornogo-karabaha.html

[17] YAVKIN, N. *Problema obespecheniya edinstva i territorialnoj celostnosti gosudarstva v usloviyah borby narodov za samoopredelenie*: dissertation paper. Nizhnij Novgorod, 2004, pp. 22–23.

[18] BABURIN, S. *Territoriya gosudarstva: teoretiko-pravovye problemy*: abstract of dissertation paper. *M*. 2005 [online]. Available at: http://www.dissercat.com/content/territoriya-gosudarstva-teoretiko-pravovye-problemy

[19] See: FERDROSS, A. Mezhdunarodnoe pravo. Moskva: Izd. inostr. lit., 1959, pp. 25–26.

[20] Ibidem, p. 26.

Under the sovereignty of the state V. G. Butkevych[21], R. A. Kalamkarian[22], L. D. Tymchenko[23], and many other scholars understand its supremacy in its own territory and independence in international relations.

In the twentieth century the influence of the people and their right to self-determination and statehood has been discussed in detail in the context of the legal status of Germany after its defeat in World War II. In particular, the question was considered whether the existence of the German state ceased or continues[24].

In cases where the principle of self-determination is used for the purpose of violating territorial integrity and presenting demands from the seceded territories for their recognition as a subject of international law, such an important aspect as their compliance with generally recognized criteria of statehood is updated[25].

A. F. Cherdantsev defines the following features of the state: sovereignty, territoriality, universality, publicity, monopoly on legislation, tax collection, coercion[26]. V. Ya. Lyubashits et al. are agree with a such conclusion[27]. According to L. Mälksoo, the definition of the state used in the Montevideo Convention reflects the concept of statehood in international law[28].

According to B. M. Klimenko, historicity as a factor in the formation of a territory belonging to a self-determining people also requires a cautious and dialectical approach, because in the process of history many peoples changed the places of their settlements, moved, merged with other peoples, formed new and stable economic, social and other ties. Historicity implies a long process, which, in isolation from other factors, can distort the actual state of affairs and serve for unfounded territorial claims[29].

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[21] See: BUTKEVYCH, V., MYTSYK, V., ZADOROZHNII, O. *Mizhnarodne pravo. Osnovy teorii*: Pidruchnyk. Kyiv: Lybid, 2002, p. 312.

[22] KALAMKARYAN, R., MIGACHYOV, Yu. *Mezhdunarodnoe pravo:* Uchebnik. Moskva: Eksmo, 2005, p. 143.

[23] TYMCHENKO, L., KONONENKO, V. *Mizhnarodne pravo:* pidruchnyk. Kyiv: Znannia, 2012, p. 43.

[24] MYALKSOO, L. *Sovetskaya anneksiya i gosudarstvennyj kontinuitet: mezhdunarodno-pravovoj status Estonii, Latvii i Litvy v 1940–1991 gg. i posle 1991 g. Issledovanie konflikta mezhdu normativnostyu i siloj v mezhdunarodnom prave*. Tartu: Tartu Ulikooli Kirjastus, 2005, pp. 62–63.

[25] MUSTAFAEVA, N. *K voprosu «o prave na otdelenie»: princip prava narodov na samoopredelenie vs. prava menshinstv: kejs Nagornogo Karabaha* [online]. Available at: https://www.virtualkarabakh.az/ru/post-item/40/304/k-voprosu-o-prave-na-otdelenie-princip-prava-narodov-na-samoopredelenie-vs-prava-menshinstv-kejs-nagornogo-karabaha.html

[26] CHERDANCEV, A. *Teoriya gosudarstva i prava*: Uchebnik dlya vuzov. Moskva: Yurajt-M, 2002, pp. 86–89.

[27] LYUBASHIC, V., MORDOVCEV, A., TIMOSHENKO, I. *Teoriya gosudarstva i prava: Uchebnoe posobie.* Rostov n/D: Izd. centr «MarT», 2002, pp. 69–81.

[28] MYALKSOO, L., op. cit., p. 15; see also: VIDMAR, J. *Territorial Integrity and the Law of Statehood*, Geo. Wash. Int'l L. Rev., vol. 44, 2012, pp. 697–747.

[29] KLIMENKO, B. *Mirnoe reshenie mezhdunarodnyh sporov*. Moskva: Mezhdunar. otnosheniya, 1982, pp. 8–9.

After the events that took place in 2014 in the south and east of Ukraine, the issues of annexation and occupation, as well as state continuity, have acquired particular importance. The open military aggression of Russia, launched in February 2022, put them at the forefront.

Interestingly, the Russian doctrine and the legislator seem to know and understand the requirements of international law governing the issues under consideration. So, in the Reference to the Deputy of the State Duma of the Federal Assembly of the Russian Federation A. N. Savelyev on the problem of continuity Z. B. Nigmatullina points to the fact that if the territory of one state at some time in the past (before the adoption of the UN Charter) belonged to another state, this in no case can serve as a basis for presenting claims for its return at the present time. This would be contrary to such fundamental principles as the territorial integrity and inviolability of state borders, which provide, among other things, that changes in the territories of states and their borders can only occur in accordance with international law (conclusion of an international treaty, unification, separation and secession of states, etc.). Otherwise, the political map of the world would be constantly changing and would be extremely unstable. On this basis, Russia, as the legal successor of the Russian Empire, could demand, for example, that Poland and Finland, which in the past were part of the empire, be included in its territory. Such a demand, of course, cannot be recognized as legitimate in the light of the norms and principles of the contemporary international law[30]. Regarding the collapse of the USSR, there is an opinion, for example, that the adoption by almost all republics (except for the RSFSR) of acts of state independence came into conflict with the constitutional legislation on the procedure for secession from the USSR, the results of the referendum on the preservation of the USSR of March 17, 1991, and thus did not could give rise to legal consequences[31]. However, the position of the Russian Federation on this issue is not consistent: the holding of a referendum in Crimea, which clearly does not meet the requirements of the Constitution of Ukraine for the implementation of such an expression of will, did not raise doubts of the political leadership of Russia about its legitimacy (for the purpose of this work, we give a very superficial assessment of this referendum).

E. Aman emphasizes that the changes that took place in Eastern Europe in the late 1980s and early 1990s led to the emergence of a number of successor states, most of which were formed as a result of the collapse of the USSR.

[30] See: KONONENKO, V. *Razreshenie territorialnyih sporov Mezhdunarodnyim Sudom OON: teoriya i praktika: monografiya.* Kiev-Odessa: Feniks, 2017, pp. 220–221.

[31] KREMNEV, P. *Mezhdunarodno-pravovye problemy, svyazannye s raspadom SSSR*: abstract of dissertation paper. Moskva, 2010, p. 12.

3. Focusing on the question of the continuity of the state

In the works on the collapse of the Soviet Union, one point was primarily studied: whether all the resulting states are new states. The Baltic countries presented themselves as the successors of the states that existed before 1940[32]. At the official level, the Russian Federation speaks of the non-interruption (continuity) of the state existence of the Russian Empire, the Russian Republic, the RSFSR, the USSR and the Russian Federation[33].

From the scientific point of view, there is an opinion that the concept „The Russian Federation is the continuator state of the USSR" does not stem from the doctrine of continuity, but is a new category of the event of succession of states, the result of recognition by international organizations[34] and it is not necessary to talk about the continuity of the Russian Federation[35]. Therefore, we suggest to have a closer look at the issue of the continuity of states more carefully.

Continuity is a political theory about the non-interruption of the state and, in the legal sense, about the continuity of its obligations. This is the difference from the concept of „succession", when one state assumes the international rights and obligations of another existing or ceased to exist. The problem of continuity arises in the event of fundamental changes in the state – a revolution and a change in the state regime, the collapse or unification of the state[36], as well as occupations and annexations.

R. Bernhardt writes that the continuity of the state is the continuation of the existence of the state as a subject of international law, despite changes in the external and internal environment[37]. This situation takes place, because, according to R. L. Bobrov, the essence of the international legal personality of the state is the people[38]. According to A. Ferdross, the identity of the legal personality of the

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[32] AMAN, E. Vzglyad evropejskih yuristov na raspad SSSR. *Pravovedenie*, 1999, No 2, pp. 220–230.

[33] Poyasnitelnaya zapiska „K proektu Federalnogo zakona «O vnesenii izmenenij i dopolnenij v Zakon Rossijskoj Federacii O vnesenii izmenenij v Federalnyj zakon O grazhdanstve Rossijskoj Federacii"» ot 23.06.2014. N 157-ФЗ [online]. Available at: http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=PRJ;n=32537

[34] KREMNEV, P. *Obrazovanie i prekrashenie sushestvovaniya SSSR kak sub`yekta mezhdunarodnogo prava:* abstract of dissertation paper. M., 2000, p. 10.

[35] KREMNEV, P. O novyh ponyatiyah i kategoriyah pravopreemstva gosudarstv: teoretiko-prakticheskie voprosy. *Zhurnal mezhdunarodnogo prava i mezhdunarodnyh otnosheniy*. 2010, No 1, p. 25.

[36] KONONENKO, V., op. cit., p. 223.

[37] BERNHARDT, R. Kontinuitat. In: Strupp, K., Schlochauer, H. *Worterbuch des Volkerrechts*. Band 2. 2 Aufl, 1961, p. 295.

[38] BOBROV, R. *Osnovnye problemy teorii mezhdunarodnogo prava*. Moskva: Mezhdunarodnye otnosheniya, 1968, p. 64.

state does not depend on the identity of its constitution, but on the continuity of its population[39]. Thus, the continuity of the people is constant regardless of the existence of the state and its actions in the event of occupations, annexations, etc., but the continuity of the state directly depends on the continuity of the people. Here we agree with the above opinion of A. Ferdross, but with one remark: if this people was not isolated from the place of historical residence[40]. Because the territory is not just a space, but the necessary attribute of the state, the material basis for the life of the people inhabiting it[41]. The authors acknowledge that this thesis is controversial, and therefore ask to consider it as a working version.

Thus, the identity of the legal personality of the state, regardless of its current (last official) name and various circumstances that have taken place during the entire period of its existence (occupations, annexations, etc.) follows from the continuity of the people located on the territory of its historical residence. In this regard, there is a wide range of conflicting scientific views and interpretations regarding the Baltic countries. Among the questions that arise, according to L. Mälksoo, the most difficult to answer may well be the following: to what extent were the practice of states and the „solution" of the issue of the Baltic countries determined by law, and to what extent by politics? The case of the annexation of the Baltic States affects the very foundations of international law, its nature, limits and possibilities. During the Soviet annexation, leading political scientists referred to this case as illustrating the limits of international law in situations where it is opposed to factors such as force[42].

The problem of the use of force has always been and remains one of the most complex and debatable in international law[43], but, according to A. A. Merezhko, the assertion of those who believe that force will always play a key role in the field of international relations is erroneous[44].

Professor of the University of Tartu Lauri Mälksoo devoted his work to the study of the problem of continuity with respect to the Baltic States, who drew attention to the fact that Estonia, Latvia and Lithuania were forcibly erased

[39] VERDROSS, A., SIMMA, B. *Universelles Volkerrecht. Theorie und Praxis. Auflage.* Berlin: Ducker & Humblot, 1984, p. 231.

[40] KONONENKO, V., op. cit., pp. 213–224.

[41] TYMCHENKO, L., KONONENKO, V., op. cit., p. 352; KONONENKO, V. *Vyrishennia terytorialnykh sporiv Mizhnarodnym Sudom OON: teoriia i praktyka:* monohrafiia. Kyiv-Odesa: Feniks, 2018, p. 4.

[42] MYALKSOO, L., op. cit., p. 19.

[43] DOLZHENKOVA, O. K voprosu o primenenii sily v mezhdunarodnom prave. Pravo: istoriya, teoriya, praktika: *materialy II Mezhdunar. nauch. konf. (g. Sankt-Peterburg, iyul 2013 g.)*. Sankt-Peterburg: Renome, 2013, p. 131.

[44] MEREZHKO, A. *Nauka politiki mezhdunarodnogo prava: istoki i perspektivy.* Kiev: Yustinian, 2009, p. 124.

from the political map of the world in 1940, but in 1991 they „awakened“ [45] and restored the previously repressed sovereignties. But a number of scholars in the field of international law were skeptical about the idea of confirming the continuity/identity of their legal personality. Other international lawyers insisted that the recognition of the continuity of the Baltic States was a political decision. Some of them were considered as states that separated from the USSR, and did not restore their independence. In the practice of most other states, the identity of the legal personality of the Baltic States with the Baltic republics that existed before 1940 was recognized[46].

M. Koskenniemi even wrote about the prevailing international acceptance of the thesis of continuity put forward by the Baltic countries, which corresponds to our position that the retention of territory acquired in any way in the past, even legally at that time, but against the will of its population, would be contrary to the modern principle of self-determination of peoples[47]. A completely different question is how to prove the fact that the holding of the territory took place against the will of its population. Obviously, this will be evidenced by armed resistance to such a hold. Here, historical documents, chronicles, perhaps even the cultural heritage of the people, will be extremely important, confirming that the armed struggle that took place in the distant past is characterized by the fact that it was (1) precisely popular (and not attempts by individual applicants to seize power over a certain territory or simply petty rebellions caused by dissatisfaction with the authorities); (2) due to the rejection of the illegal retention of a certain territory by the occupier, and was not, for example, of an economic nature[48]. Some scientists argued that the Baltic republics indeed ceased to exist after their annexation, which does not correspond to reality: Lithuania began armed resistance to the Soviet occupation in 1944, when the first partisan detachments began to form, later united into larger organizational units: brigades, counties and districts were formed. The goal was to unite the military-territorial partisan structures operating in occupied Lithuania, to create an organization that would fight for the liberation of the country by political and military means, and to form a unified political and military leadership of the armed resistance.

In February 1949, a congress of Lithuanian partisan commanders was convened, which was attended by representatives from all over Lithuania. Already at the first meeting, it was decided to name the Lithuanian armed resistance organization the Lithuanian Freedom Movement (LLKS). At other meetings, the leadership of the LLKS, the political program of the movement, the program of

[45] MYALKSOO, L., op. cit., p. 17.
[46] MYALKSOO, L., op. cit., p. 100.
[47] Ibidem.
[48] KONONENKO, V. (2018), op. cit., p. 295.

armed resistance, tactics, political, ideological, organizational and other activities of the movement, the charter of the LLKS, partisan uniforms, ranks and badges of ranks, appeals to the participants of movement and other residents of Lithuania were adopted and formed.

However, the most important document is the Declaration adopted on February 16, 1949, which formed the legal and political basis of the Lithuanian armed resistance, gave a new character to the struggle for freedom, legitimized the LLKS as a general organized resistance to the Soviet occupation and its Council as the only legitimate government in Lithuania[49]. S. Torrequadrada wrote that the rebirth of the Baltic States in 1991 is a case of identical legal personality without continuity[50]. According to L. Mälksoo, for a number of researchers who recognize the identity of the legal personality of the modern Baltic countries, the starting point is, obviously, the unity of the concepts of the identity of legal personality and continuity[51].

Further, L. Mälksoo gives an example of Poland, which lost its independence as a result of the third partition of the country in 1795 and regained it in 1918 after the end of the First World War[52]. Poland became the first state to declare that, regardless of its actual non-existence for 123 years, as a subject of international law it is identical to a pre-existing state[53]. And when, during the Second World War, the former President of Czechoslovakia, Eduard Benes, created a government in exile, the peace treaties signed on February 10, 1947 fully confirmed the identity of the legal personality of the post-war Czechoslovak Republic. A similar situation took place in Albania: when Italy annexed Albania, most states, with the exception of the United States and some other countries, recognized the results of violent acts committed by Italy. Since no Albanian government-in-exile was formed, Albania appeared to have ceased to exist as a state. Despite this, in the Peace Treaty of February 10, 1947, Italian actions against Albania were qualified as aggression and the continuity of the Albanian state from Albania, which existed until 1939, was unambiguously confirmed. International practice in other matters supported the view that Albania was restored on the basis of continuity. Finally, there is the Austrian precedent. When on April 10, 1938, under pressure from Germany, a plebiscite was organized on the issue of including Austria in its structure[54]. We should recall that the question

[49] LLKS Tarybos 1949 m. vasario 16 d. *Deklaracija ir signatarai*. Lietuvos gyventojų genocido ir rezistencijos tyrimo centras [online]. Available at: http://www.genocid.lt/muziejus/lt/754/a/

[50] See: MYALKSOO, L., op. cit., p. 102.

[51] Ibidem, p. 101.

[52] Ibidem, p. 32.

[53] Ibidem.

[54] Ibidem, p. 32–34.

of the legality of the annexation of Austria was considered by the International Military Tribunal in Nuremberg, which is reflected in its Judgment of October 1, 1946. It was argued that the annexation of Austria was justified by the mutual desire for an alliance between Austria and Germany, since these peoples had many common features that made such an alliance desirable, and that as a result the goal was achieved without bloodshed. The Tribunal concluded that these statements, even if they are correct, are factually irrelevant because the facts prove with certainty that the methods used to achieve this goal were aggressive. The decisive factor was the military power of Germany, ready to take action in the event that she met resistance[55].

Unfortunately, history repeats itself: in a similar situation Russia used the same arguments to annex Crimea. By the way, one of the justifications for the so-called referendum in 2014 in Crimea was the implementation (in the understanding of the collaborators and the political leadership of the Russian Federation) of the principle of self-determination of peoples.

In the last century, the most significant role as a legal basis for territorial changes was played by the principle of self-determination of peoples. The implementation of this principle led to major territorial changes, as a result of which many new states appeared on the political map of the world in Europe, Asia, Africa, and Latin America. M.E. Cherkes draws attention to the fact that the primary development was gradually replaced by a derivative acquisition, when the territory of one state passes to another on a contractual or non-contractual basis[56]. The principle of self-determination of peoples has long been the subject of study by international lawyers. G. Lauterpacht studied it most profoundly, he developed a comprehensive concept of its development as a legal principle in accordance with the UN Charter and its interaction with other principles of international law[57]. According to Yu. G. Barsegov, self-determination should be considered the basic principle of territorial delimitation[58].

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[55] *Nyurnbergskij process. Sbornik materialov*. V 2-h t. T. 2: Prigovor mezhdunarodnogo voennogo tribunala. Moskva: Yurid. lit., 1954, pp. 966–967.

[56] CHERKES, M. *Mizhnarodne pravo*: Pidruchnyk. 5-te vyd. Kyiv: Znannia. 2006, p. 172.

[57] CASSESE, A. Self-Determination of Peoples: A Legal Reappraisal. *The American Journal of International Law*. 1996, vol. 90, No 2, p. 331.

[58] See: BARSEGOV, Yu. *Territoriya v mezhdunarodnom prave. Yuridicheskaya priroda territorialnogo verhovenstva i pravovye osnovaniya rasporyazheniya territoriej*. Moskva: Gosyurizdat, 1958, p. 101.

4. Conclusion

Such categories as „state sovereignty", „sovereignty of the people", the principle of the people's right to self-determination are directly related, but the problem of formulating their actual and correct definition, establishing interdependence and mutual influence requires a deeper study.There is a direct relationship between national security and the level of observance of human rights: states that systematically violate human rights are most prone to aggression. Thus, aggression outside turns into another round of infringement of the rights of citizens of the aggressor state.

The essence of the international legal personality of the state is the people.

The identity of the legal personality of the state, regardless of its current (last official) name and various circumstances that have taken place during the entire period of its existence (occupations, annexations, etc.) follows from the continuity of the people located on the territory of its historical residence.

The right to self-determination is not the right to secession. The subjects of the right to self-determination (external) are colonial peoples and peoples of non-self-governing territories.

The right of a people to self-determination is not always fully implemented as a result of the acquisition of their statehood and territory within internationally recognized borders, in the absence of the ability to exercise self-government independently without external influence, to form the political structure of the state and its position in international relations, to choose independently and without regard to third forces, to join international organizations of both economic and military-political nature.

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