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**RIGHT OF THE PEOPLE TO SELF-DETERMINATION OR  
TERRITORIAL INTEGRITY?**

Bachelor's Thesis

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I declare I have written the research paper independently.

All works and major viewpoints of the other authors, data from other sources of literature and elsewhere used for writing this paper have been referenced.

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## **ABSTRACT**

This study examines the following issue – *the right of the people to self-determination versus territorial integrity*. It seeks to analyse the issue of self-determination from both the legal and moral perspectives in the case study of Transnistria. The moral side of the self-determination will be considered through the Remedial Right Only Theory. Apart from that, the gaps in the international legal system will be revealed through answering three fundamental questions: what is self-determination, who has this right and under what conditions.

In order to narrow the scope down, this paper will be focused on the external right to self-determination since its internal equivalent can be accomplished without threatening the territorial integrity of the state.

The final remarks will underscore that, considering the results of the analysis, the territorial integrity of Moldova has primary status over the right of the Transnistrian residents to external self-determination.

**Keywords:** self-determination, territorial integrity, Transnistria, international law, Remedial Right Only Theory

## **INTRODUCTION**

Nowadays, many conflicts are based on the territorial disputes and justified by right of the people to self-determination. From Scotland to Nagorno-Karabakh, people are trying to justify their wish to secede alluding to this right. However, this principle has many problems. Occasionally, one can assume, the external parties abuse this concept due to the possible uncertainty of the international law in terms of self-determination. In addition, if the principle of self-determination preserved as right of secession it naturally confronts with another significant principle, which is territorial integrity. Thus, this is highly important to bring more academic light to this topic and, in order to do that, the fundamental research question should be answered – what is primary: the state integrity or the right of the people to self-determination. Transnistria was chosen as a case study to answer this question.

To make it less general, the ultimate goal of this research is to conclude whether the territorial integrity of Moldova has primary status over right of the Transnistrian residents to external self-determination.

Moreover, this paper also is attempting to define whether Transnistrian external self-determination claims are justified from the legal and moral points of view. That will be analysed according to international legal instruments and the Remedial Right Only theory with the reference to the Transnistrian case study. At the same time, this paper aims to find the gaps in the international law that presumably complicates this case, other cases of self-determination and international legal system. Based on the Remedial Right Only theory and international law this paper concludes and answers the research question.

In addition, this paper indicates the presumable gaps of the international law through the following issues: what is self-determination and who and under what conditions has this right. The findings will be applied to Transnistria case.

In order to fully explore this topic, the history of the Transnistrian conflict, theoretical context, explicit information about the self-determination principle in the international legal system will be presented here.

In this paper the case study is chosen to be Transnistria<sup>1</sup>. It is *de jure* part of the Moldova, but *de facto* existing as a breakaway state since the beginning of 1990s when the conflict between the central government of Moldova and Transnistria passed the violent stage. Incidentally, Transnistria was not the only region in Moldova that wished to secede. Before it, the region of Gagauzia<sup>2</sup> declared independence in 1991. However, Moldovan government was able to resolve this through the creation of autonomy in 1994-1995 (Andersen s.a.). More visual information about Gagauzia and Transnistria regions can be found in *Figure 1*. Some scholars might claim that Gagauzia and Transnistria are good examples of successful and unsuccessful case of resolving similar territorial disputes (Roper 2010, 101), although serious involvement of external parties, namely Russia, do not let us fairly compare these two cases.



Figure 1. Map of Moldova Source: (Kamil, Caşu 2014)

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<sup>1</sup> Transnistria, essentially a breakaway territorial unit of Moldova, is an internationally unrecognized state with the population approximately 500 000 inhabitants and the total area of about 4,000 km<sup>2</sup>. Official languages are Russian, Romanian and Ukrainian.

<sup>2</sup> Gagauzia (or the Autonomous Territorial Unit of Gagauzia) is an autonomous region in Moldova with the population of 160 000 people. Total area of Gagauzia is almost 2 000 km<sup>2</sup>. Ethnically composed mainly of Gagauz.

As it was mentioned before, this research is testing Remedial Right Only theory and particularly Buchanan's approach to it. According to him, moral theories of unilateral right to secede can be divided into two main groups: Remedial Right Only theories, which explains that peoples can secede only if certain harm has been done to them and Primary Right theories, which promote that nations may secede in the absence of past injustice (Buchanan 2007, 351352). The Remedial Right Only theory was chosen as it provides moral justifications for the cases of secession and can be easily applied to Transnistrian case.

In terms of principle of self-determination, it should be mentioned, that there are many ways to address it. Some scholars explain it from historico-economic point of view as it has been done by traditional and contemporary Marxists. Others – from the context of nationalism or regionalism, arguing that political identity and territory should be linked and highlighting the principle of nation-state (Painter and Jeffrey 2012, 161). Some academics might analyse it from the legal perspective as it was done by early French jurists (Nawaz 1965). Meanwhile, others might seek the solution in social sciences or cultural studies or perhaps even in psychology. Incidentally, for example, Lenin (2000) emphasized the importance of determining “[...] whether the gist of the matter lies in legal definitions or in the experience of the national movements throughout the world”.

In a significant addition, since the rumbles of the existing international system are still framed up by a global diplomatic forum, there is a need to mention the concept of self-determination in the context of the United Nations (UN). The principle of self-determination was accepted by the Atlantic Charter in 1941 and then, few years later, introduced in the UN Charter. It claims that one of the main purposes of the UN is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace” (Charter of the United Nations 1945 Article 1 (2)). Although, it does not clarify the context for self-determination, it could be interpreted as a right of the people on full independence, autonomy, federation state, full assimilation or protection. Moreover, it is not clear how the decision on self-determination should be made and is not provided with any enforcement mechanism in order to obtain this right. Even though that the concept of nation was many times mentioned in the Charter it did not explain what factors actually constitute a nation. Furthermore, in the International Covenant on Civil and Political Rights Article 1 (1) states that “[a]ll peoples have

the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Nevertheless, some scholars might claim that it is unclear who exactly constitutes these peoples.

Since the UN introduced the principle of self-determination into the international law, it remains responsible to deal with the issues that this principle provokes. Another problem here is linked with the principle of the territorial integrity. The UN Charter Article 2 (4) emphasizes the importance of territorial integrity revealing that “[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. This principle is considered as one of the most important in implementing international security and stability (Gudeleviciute 2005, 48). However, if the principle of self-determination means possible secession from the state, then the concept of territorial integrity confronts it. Many scholars agree with aforementioned existed contradiction. For example, Monica Toft (2012, 582) underscored that “[t]he right of self-determination for ethno-national groups continues to clash with states’ rights to territorial integrity”, adding that “[...] both of these claims have become enshrined in international law, which makes sorting out which claim is the (more) legal or legitimate all the more complex”. That become the issue to have a decent academic debate on. Some authors say that principle of self-determination prevail territorial integrity in the international law, while others claim the opposite. In addition, the differentiated reaction of the international community only makes the situation over these disputes more complicated. For example, there are still disputes about the Kosovo case even within the EU, as there is still no unified position over this issue since Slovakia, Spain, Greece and Romania still do not recognize the independence of Kosovo (MFA of the Republic of Kosovo 2015).

At the end of the paper will be highlighted that the international community should establish clear international framework and improve the international law, which has to be based on the two crucial points. Firstly, “[i]nternational law should recognize a remedial right to secede but not a general right of self-determination that includes the right to secede for all peoples or nations” and secondly “[t]he international legal order should encourage alternatives to secession, in particular by working for greater compliance with existing international human rights norms prohibiting ethno-national and religious discrimination and in some cases by supporting intrastate autonomy regimes, that is, arrangements for self-government short of full sovereignty” (Buchanan 2007, 332). Furthermore, could be added that a nation “[...] have a



right to secede only if the encompassing state fails to grant them internal self-determination, or if other remedial conditions apply [...]” (Seymour 2007, 411), otherwise the principle of territorial integrity should prevail. Possibly, one can predict that recognition of Remedial Right in the context of self-determination can prevent from the possible escalation of the existing conflicts into a full-scale violence.

Overall, this paper represents an attempt to study the course of self-determination, placing the content in the theoretical framework of Remedial Right Only theory and highlighting the distinct normative aspect of the problem.

# 1. TRANSNISTRIA: CONTEXTUALISING THE CASE STUDY

Transnistrian conflict was chosen as a case study for this paper since it illustrates the tension between the principles of national self-determination and territorial integrity. Moreover, according to Adam Rotfeld “[...] the conflict in the [Transnistria] raises a question of a fundamental nature. Who [...] is legitimate to enjoy the right of self-determinations: nations, ethnic groups or nationalities, or indeed anyone who claims it?” (Arbatov 1997, 205).

## 1.1 History of the conflict

In order to understand the basis of Transnistrian disputes, it is essential to explore the history of this region, since the current situation is the result of the years of confrontation and continuous foreign influence and presence on this territory.

In 1812, as the result of Russo-Turkish War (1806–1812) territory of Bessarabia<sup>3</sup> was given from Ottoman Empire to Russian Empire (TimelinesDb s.a.) as illustrated in *Figure 2*. Later, in accordance to Paris Peace Treaty (1856), Russia lost Bessarabia and it became part of Romania (Hanioglu 2010, 82). This territory was under Romanian rule up until 1878, when Russian Empire returned it back and created the Bessarabian province (Timeline s.a.). It is important to note, that through its history Bessarabia never was a separate state (Encyclopedia Britannica 2014), so it was culturally and politically influenced by its conquerors. For example, during the Russian occupation in the mid-XIX century, Russia actively implemented assimilation policy that included the expansion of the Russian language, the influx of Russians and other nationalities and the abolishment of the local governments control (Roper 2004, 103).

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<sup>3</sup> Bessarabia is a historical region in the Eastern part of Europe, which is currently part of Moldova and Ukraine.



Figure 2. Russia in Europe Part VIII with index map (1835)

Source: David Rumsey Map Collection

In XX century, Russia lost Bessarabia again. Pro-Romanian political movements started to rise, demanding more freedom, land reforms, return of the Romanian language and eventually by the summer 1917 national assembly was established (Brezianu and Spân 2007, 9). Owing to that, in 1918, the independent Moldovan Democratic Republic (MDR) (that did not include Transnistria) was formed (Grouev 2000, 38). Shortly after these events, MDR unconditionally united with Romania (Mitrasca 2002, 2).

Meanwhile, in 1924, the Soviet Union established the Moldavian Autonomous Soviet Socialist Republic (MASSR) (territory of Transnistria) within the Ukrainian SSR (King 2001, 866). In addition, already in 1920s, the percentage of Moldovans in the MASSR was relatively low; Ukrainians composed almost 50 per cent, Moldovans 30 per cent and Russians approximately 8 per cent (Călin s.a.).

At the same time, Bessarabians experienced certain problems with full integration within Romania. For instance, many of them thought that Romanians treated them badly and “[r]omanian administrators were regarded as corrupt, inefficient and elitist” (Roper 2004, 104).

Alongside, Soviet propaganda disturbed the process of Romanianization of this region, Soviets desired to demonstrate the superiority and destabilize the relations between Bessarabians and Romanians (Negura 2012).

In 1939, because of Molotov-Ribbentrop Pact, the USSR took Bessarabia and Northern Bukovina from Romania (Mitrasca 2002, 8). Later on, in 1944 the Soviet Socialist Republic of Moldova<sup>4</sup> (MSSR) was founded (Cahoon s.a.). Therefore, the process of the russification of Moldova only increased. According to some sources Moldovans faced discrimination since almost all important positions were held by Russians (Kaufman 1996, 121).

In fact, the Soviet Union strongly supported the building of the Moldovan nation and highlighted the differences between Moldovans and Romanians. As a part of the Russification policy, the Moldovan alphabet was changed to Cyrillic, while Soviet linguists were asked to find significant differences between the Romanian and the Moldovan languages, despite the fact that they are presumably the same from the scientific point of view (Muth 2012, 223). In fact, the Romanian language has four major dialects: Daco-Romanian, Macedo-Romanian, Megleno-Romanian and Istro-Romanian (Encyclopedia Britannica 2014). Moldovan is a form of Daco-Romanian, which is used in Romania and Moldova in some regional variations (2014).

Nonetheless, in 1980s, during the Gorbachev's time, people were able to organize discussion groups that were demanding more cultural and linguistic freedom. In 1988, "[...] the Democratic Movement in Support of Restructuring to press for democratization" was organized (Roper 2004, 105). They called for recognition of Moldovan as the official language and promoted cultural freedom also for Gagauzi, Ukrainians and Bulgarians (2004, 105). However, these movements were not necessary directed against Moscow. In 1989, the Democratic Movement, Democratic League of Moldovan Students and other organizations of the so-called Popular Front, became the most popular movement within the Moldovan opposition. Finally, in the same year Moldovan became the official language and the Latin script was adopted (BBC 2012).

Shortly after that, the Popular Front directed more and more on pro-Romanian agenda and according to some authors it created "[...] the shift in focus and the exclusive elevation of the Moldovan language touched off an immediate response by the Russian-speaking

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<sup>4</sup> Soviet Socialist Republic of Moldova: was one of the fifteen republics of the Soviet Union and existed until 1940

It was an autonomous republic within the Ukrainian SSR and MSSR occupied today's territory of Moldova.

community that William Crowther has labelled reactive nationalism, [adding that] ethnic minority-led conflict was instigated because of a threat to the status quo (in this case elite privileges)” (Roper, 2004, 106). The promotion of the Moldovan language, particularly in areas, such as Transnistria, threatened Transnistrian elites and at the same time was used by Chisinau elites to secure their position in the new political environment.

Afterwards, contra movements, such as *Edinstvo* started to emerge to counteract with the new language laws and shortly after that, the Gagauz people proclaimed independence. Alongside, Transnistrians seemed to be against new changes. In the considerably fair elections in 1990 the Popular Front won (Brezianu and Spân 2007, 288), however ethnic minorities’ elites did not wish to accept the new government. Moreover, the ethnic composition of Transnistria was different from the rest of Moldova, since almost 50 per cent of the Transnistria population were Ukrainians and Russians (Kivachuk 2014). The region aside from Bender has never been part of Romania (2014). Thus, Transnistria shortly declared its independence and the Pridnestrovian Moldavian Soviet Socialist Republic (PMSSR) was formed. It was not recognized by any countries and soon enough the Pridnestrovian Moldavian Republic (PMR) was formed. Alongside, it is important to mention, that after the PMSSR formation the conflict started escalating.

When Transnistria declared its independence in 1990, it attempted to back its claims by the following four pillars: 1) self-determination (provided that the majority of today's countries were founded on the principle of self-determination, they also have the right to self-determination); 2) Transnistria’s separate history from Moldova; 3) actual distinctiveness; 4) reversal of Molotov-Ribbentrop Pact (Pridnestrovie s.a.). In this case, the Transnistrian separatists meant the external self-determination and took an advantage of the fact that self-determination principle was not fully defined in the international instruments and that there is almost no clarifications when it could be applied.

The August 1991 *coup* in Moscow separated Moldova and Transnistria even more. In the same year Transnistrian separatists launched a referendum that was supposed to justify the legitimacy of their right of self-determination (Kolsto 2014).

On 5 February 1992, the UN Security Council adopted a resolution which basically accepted the Republic of Moldova to become a member of the UN (739).

In the spring 1992 the 14<sup>th</sup> Army with their 2,600 troops (Korosteleva 2010, 1268) that stationed there from the Soviet times now was officially under Russia (Donaldson and Noguee

2005, 215). A few month later Moscow appointed General Alexander Lebed to control it (2005, 215).

In March 1992, the conflict escalated into the full-scale war – the Transnistria War. As this territory was within the Russia’s strategic interests (Korosteleva 2010, 1268), it actively participated in the war. During the USSR time Transnistria was an important region for storing weapons, ammunition and “[p]rior to 1992, there were approximately 10,000 servicemen and some 60,000 reservists” (Roper, 2004, 108). Apart from the 14<sup>th</sup> Army, the Transnistrian militia and a group of the Don Cossacks were also involved in the conflict (Savceac 2006).

After the Moldovan army was defeated in that war, Moldova was searching for peacekeeping forces with the international watch group and asked Organization for Security and Co-operation in Europe (OSCE) to send it, but this proposal was declined (Donaldson and Noguee 2005, 215). Thus, Moldavian government had almost no choice but to accept the Russians’ proposals. In July 1992, the cease-fire agreement between Boris Yeltsin (President of Russian Federation) and Mircea Snegur (President of Moldova) was signed that settled a trilateral peacekeeping mission and a buffer zone along the Dniester River (Wolff 2011, 863).

Moldovans accepted the Russian plan for a joint supervision force that would consist of Russian, Moldovan and Transnistrian troops. Incidentally, the agreement *On Principles of Peace Settlement of the Armed Conflict In the Transnistrian Region of the Republic of Moldova* did not clarify the status of the 14<sup>th</sup> Russian army, stating that “[q]uestions on the status of army, the order and terms of its stage-by-stage withdrawal will be determined during negotiations between the Russian Federation and the Republic of Moldova”. Although, it’s mentioned that Russian soldiers would observe neutrality.

Overall, result of that war was extremely unwanted for Moldovan people and its authorities since it “[...] left Moldova with a frozen conflict on its territory and deprived it of major resources, as [Transnistria] controlled 90 per cent of Moldova’s energy and one third of its industrial output in the early 1990s” (Korosteleva 2010, 1268). The result of this war for Transnistria was its development into *de facto* state and absolute dependency on the Russian

Federation (Wolff, 2011, 863). Furthermore, during that conflict about 1,000 people died (Korosteleva, 2010, 1268) and approximately 100,000 people were displaced (OSCE 2011).

In 1994, Moldova gave the Transnistria the special autonomy status and made Moldovan an official language of the country (BBC 2012). During the OSCE Istanbul summit (1999), Russia agreed to withdraw its forces by 2002 (OSCE 2000, 50), which did not happen. Surprisingly, in 2001 the majority of Moldovans voted for communists in the parliamentary election (BBC 2012). The new president Vladimir Voronin at the beginning of his term tried not to provoke Moscow and brought the idea of a federal state for Moldova, which did not receive any sufficient support at that time (Donaldson and Noguee 2005, 215). Shortly, he shifted towards the West. More Moldovans started to wish a unification with Romania that by that time was a member of NATO and a candidate to EU.

In 2003, the proposal of a federal state was introduced again by Putin, although “[...] Volonin objected to a provision in Putin’s plan that allowed Russian peacekeepers to guarantee the proposal constitutional arrangements” (Donaldson and Noguee 2005, 216). A year later the US Secretary Defence - Donald H. Rumsfeld visited Moldova (Miles s.a.).

In 2005, Moldova granted the Transnistria an autonomy and unsuccessfully called Russia to withdraw its forces by the end of the year (BBC 2012).

## **1.2 Organization for Security and Co-operation in Europe as one of the main mediators in the Transnistrian disputes**

Since the OSCE is the international organization that got involved in this conflict greater than any other organization, it is necessary to evaluate its influence on the peace resolution process and analyse its work.

Ever since the case-fire agreement (1992) was signed, the OSCE got involved in the conflict resolution process. In 1990s they established the mission and opened their offices in Chisinau<sup>5</sup>, Tiraspol<sup>6</sup> and Bender<sup>7</sup>. The official goal of the OSCE Mission to Moldova was “[...] to assist in negotiating a lasting political settlement of the Transnistrian conflict, to consolidate the independence and sovereignty of the Republic of Moldova, and to reach an understanding

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<sup>5</sup> Chisinau: capital and largest city of the Republic of Moldova. The main office of the OSCE Mission to Moldova is located there.

<sup>6</sup> Tiraspol: capital and largest city of internationally unrecognized PMR (Transnistria). Location of one of the branch offices of the OSCE Mission to Moldova.

<sup>7</sup> Bender: is a city within the internationally recognized borders of Moldova. Location of one of the branch offices of the OSCE Mission to Moldova.

on a special status for Transnistria [adding that] [t]he Mission engages in diplomacy – mostly silent – to foster dialogue and defuse tensions” (OSCE 2011). The Mission also worked on securing fundamental human rights, freedoms, rule of law and fighting with human trafficking (OSCE 2011).

In 2005, international negotiations started under the so-called 5+2 format with OSCE, Russia and Ukraine as mediators between Moldova and Transnistrian separatists, the United States and the European Union (EU) acted as observers. According to the Freedom House these talks largely were “[...] related to freedom of movement across the *de facto* border separating Transnistria from the rest of Moldova, and generally failed to address the overarching political questions”(2014). Moreover, OSCE tried unsuccessfully to settle the deadlines (1999, 2002 and 2004) for Russia to withdraw its military forces from Transnistria (BBC 2012).

In 2010, the OSCE 5+2 format meetings established better relations between two opposing sides. For example, both sides started an elaboration of the system that supposed to provide guarantees for any future settlements, transportation agreements were made (opening of the Chisinau-Tiraspol-Odessa line), more flexible conditions on goods logistics were established.

Thus, even though OSCE struggled to resolve the conflict, it might be still assumed that its efforts did not lead to the desirable political results. At the moment OSCE is still presented on the territory of Moldova and Transnistria (The Secretariat Conflict Prevention Centre 2015, 24).

### **1.3 Transnistria and Russia**

There are certain key points that are important to note the Transnistrian-Moldovan discourse. Firstly, the minority rule. Russians in the Transnistria were a minority, but they dominated the politics as well as Abkhazians in the Abkhazia region (Donaldson and Noguee, 2005, 214).

Secondly, “[t]he Trans-Dniester territory had always been ruled from Moscow” (Donaldson and Noguee, 2005, 214).

Thirdly, the political differences. The East Bank of the River Dniester is to certain degree pro-Soviet, while the West Bank is pro-European (Donaldson and Noguee, 2005, 214).



In addition, being an important energetic and industrial region, Transnistria attracts many actors in this conflict.

At the same time, the Transnistrian region socially, politically and economically highly depends on the Russian Federation. For example, a lot of Transnistrian companies are owned by the Russians, the Russian legislation became a part of Transnistrian legal code and the Russian language is totally dominates in this region (Kolsto 2014). Alongside, the language is an important factor in the Moldovan-Transnistrian conflict. Transnistrians claim that “[...] a greater balance of local languages is necessary to reunite the entire country under one government [...]”, (Ciscel 2008, 392) but at the same time when a Moldovan government considered the possibility of making the Russian language an official one it brought huge protests on the streets (387). Thus, the language issue to a certain degree separates the two conflicting sides. In order to keep the country united the Moldavian government should satisfy peoples, those willing to keep the Russian language as an official one and opposing it (Ciscel 2008, 387).

In addition, Moscow highly supports Transnistrian self-determination claims (Socor 2012), although do not officially recognize Transnistria independence.

#### **1.4 Transnistria at present**

Today, the PRM or simply Transnistria is an internationally unrecognized region that nonetheless has some attributes of statehood.

Besides an absolute unwillingness to recognize it by the international community and its significant dependency on Russia, Transnistria has other internal problems.

The Freedom House (FH) in their annual report defined Transnistria as “not free” (2014), emphasising the issues with civil and political rights. There are no legitimate elections (2014) and almost an absolute power of elites. Political party *Obnovleniye* that have majority in the legislature is connected to the biggest company in the Transnistria – *Sheriff Enterprises*, which have strong ties with Putin’s political party *United Russia* (2014) and involved in organized crime (Ash, 2004). According to the FH, all political forces in Transnistria support separation and role of Russia in this region (2014). Moreover, the Russian influence is not restricted by that. There are still about 1,000 troops stationed on the territory of the PRM, officially to protect “[...] Soviet-era ammunition depots and uphold a 1992 cease-fire between

the PMR and the Moldovan government” (2014). Furthermore, in 2012 debt to Gazprom already was 3.8 billion dollars and almost all Transnistrian budget is reliant on Russian subsidies (Popescu and Litra 2012, 2). In addition to that, Transnistria has become a centre of crime, smuggling of arms, drugs and human beings (Korosteleva 2010, 1268).

## 2. THEORETICAL CONTEXT

Most of the conflicts in the world are internal and many of them are linked with separatist aspirations, thus this is essential to determine a common moral framework under which the issues of external self-determination of the people will be regulated.

There are some theoretical approaches to secession. Generally, they are Explanatory Theories and Normative Theories. The first type of theories aims to explain the reasons of secession as well as its primary cause (Pavkovic and Radan 2007, 184). In other words, it examines political and social conditions that may contribute to the creation of separatist movements. Meanwhile, Normative Theories address moral and political issues. They question whether secession is right or wrong and in what cases it is justified (Pavkovic and Radan 2007, 184). This paper points on the relevance of the Normative Theory of Remedial Right Only for the context of the study, since it touches upon fundamental philosophical matters concerning secession. It also provides evidence that the case of Transnistria was unjustifiable. Particularly Allen Edward Buchanan's approach to this theory is discussed here. Unlike other Remedial Right Only theorist, he brings recommendations to possible changes of the international law in terms of secession and self-determination. As there are no clear rules over the usage of the right, this concept can be overused and misinterpreted. Occasionally, the principle of self-determination is used as justification for the separatism, whereas the international law does not prohibit secession which is controversial (Buchanan 2004, 339).

Buchanan, one of the most famous scholars amongst the theorists of secession, believes that there is an inadequacy and uncertainty in the International system in terms of internal (2004,342) or external self-determination (2004, 339), thus there is a need in a theory that would include "[...] an account of the right to secede [and a] broader normative framework for evaluating and responding to claims to self-determination, and one that does not assume that independent statehood is the natural goal or inevitable culmination of aspirations for self-determination" (2004, 332).

He argues that only one type of theory can approve all of these and that is the theory of unilateral right to secede – Remedial Right Only Theory. According to that, the right to separate

as well as “[...] right for revolution, is a right to a remedy of last resort, against serious and persistent injustices” (Buchanan 2004, 337). Provided that the injustices are severe, the right of the territorial integrity can be allowed to evade (2004, 338).

This case study can be applied well to the theory of Remedial Right Only since secession matters are in its focus. It provides moral evidence that Transnistrian separatists’ claims on independence are not justified. Moreover, the approach of analysing the Transnistria case has to be multidimensional, since there are various pro-Russian groups, such as ethnical, ideological and linguistic. For Buchanan all of these groups have equal rights.

## 2.1 Remedial Right Only Theory

As it was already mentioned in order to justify the secession certain injustice should happen with the group of people that want to separate from their state. This chapter presents more details on injustices, groups of people that want to secede and Remedial Right Only Theory.

In accordance with Buchanan’s theories, the right of self-determination can be granted to various cultural groups under certain conditions. At the same time, he does not give any special credit to the groups that are based on nationality, instead he claims that there should be no difference between any cultural groups, such as religious, linguistic, ideological (Seymour 2007, 397). Hence in terms of self-determination no privileges should be given to any of these groups.

Furthermore, Buchanan brought the list of the occasions that can justify the secession of certain groups from the state. Firstly, he claims that separation is justified if a group needs to protect itself from destruction (Buchanan 1991b, 48). He used the Kurdish case as an example (1991b, 48). In terms of Transnistria, there has been no threat of genocide of Transnistrian residents.

Secondly, if “[a] group's need to protect itself against discriminatory redistribution, also called internal colonialism or regional exploitation”, according to him, it happens when government implements economic policies that are advantage only certain group of people (Buchanan 1991b, 48). As he mentioned in his article *The Right to Self-Determination: Analytical and Moral Foundations*, the American Revolution was a perfect example of a response to such an unjust. Transnistria authorities predominantly claimed about cultural or

linguistic discriminations which presumably are not justified and cannot apply to this case. In addition, some academics believe that this conflict is linked to cultural concerns that become an object of manipulation. As it was mentioned by Steven D. Roper, “[t]his conflict is most appropriately characterized as one where ethnicity is instrumentalised in order to further rival political agendas” (2010, 101).

Thirdly, the secession is justified if a group brings back their illegally taken territory as it was with the Baltic States (Buchanan 1991b, 48), which were annexed by USSR in 1940s. In this case, the fact of annexation or illegal occupation should be explicit and recognized. International community has never recognized Transnistria as illegally taken territory.

In addition to that, Buchanan proposed the reforms for the international law that could regulate the principle of self-determination. One of his ideas was to link the justice, legitimacy and self-determination by introducing the Remedial Right Only Theory into the international law (Buchanan 2004, 433). This presumably can prevalent future conflicts conserving the right of the people to self-determination, but it still gives no solution in terms of solving the existing conflicts. After all, it is world widely accepted that the new laws cannot be applied to the past. For example, the *Universal Declaration of Human Rights* states, that “[n]o one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed” (Article 11(2)). Thus, even if the Remedial Right Only Theory will be approved by the international law, it still would not help to settle the conflict that erupted in the past.

### **3. RIGHT OF SELF-DETERMINATION AND SUCCESSION IN THE INTERNATIONAL LAW**

#### **3.1 History of the principle and its development**

Origins of the principle of self-determination dates back to the XVIII century with the Declaration of Independence of the United States of America and later on this concept further evolved during the times of French Revolution (Thürer and Burri 2008). In the XIX and XX century, the notion of self-determination was seen by many nationalist movements as the right of every nation to secede, which led to the creation of new states and eventually big empires such as Russian, Ottoman and Austro-Hungarian collapsed (2008). It is important to mention that the notion of self-determination played a significant role in the unification of Germany and Italy as well. In addition, could be noted that the rise socialist movement also highly contributed to the development of this principle.

During WWI, the concept of self-determination was actively advocated by the 28<sup>th</sup> U.S. President Woodrow Wilson. In one of his speeches, he stated that "National aspirations must be respected; peoples may now be dominated and governed only by their own consent. "Self-determination" is not a mere phrase. It is an imperative principle of actions [...] (President Wilson's Address to Congress 11 February 1918).

Later on, self-determination for the first time was introduced in the Atlantic Charter. It was a declaration by US President Franklin D. Roosevelt and British Prime Minister Winston Churchill (1941), that stated eight common principles and one of them emphasised a need to "[...] respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them" (Atlantic Charter). The term self-determination was not clarified in it, apart from the basic idea. The *Atlantic Charter* became a truly international document after 26 states pledged their support for it (History.comStaff 2009).

Shortly after these events, the principle of self-determination was introduced in the UN Charter. As it was mentioned before, the goal of the UN is to build good relations among different with the respect to the right to self-determination of peoples (Charter of the United

Nations 1945 Article 1 (2)). In the Chapter IX International Economic and Social Cooperation, the principle of self-determination is also mentioned. It states that “[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote [...]” the following: economic, social, cultural, educational cooperation; conditions for development and universal recognition of basic human rights (Charter of the United Nations Article 55). Importantly, the Article 55 uses the word “shall” that obligates all the member states to honour these principles.

It could be mentioned that there is no definition in the UN Charter which would explain what is self-determination.

Furthermore, in the UN Charter another term close to self-determination was used. In the Article 73 noted that “[m]embers of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount [...]” in order to “[d]evelop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement [...]” (Charter of the United Nations 1945). Moreover, Article 76 (b) pointing out that one of the aims of the trusteeship system is “[t]o promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement” (Charter of the United Nations 1945).

In addition, the principle of the self-determination was highlighted in the International Covenant on Civil and Political Rights (ICCPR). It was ratified by the majority of the countries in the world, with the exception of Antigua and Barbuda, Bhutan, Brunei, Burma, Fiji, Kiribati,

Malaysia, Marshall Islands, Federated States of Micronesia, Oman, Qatar, Saint Kitts and Nevis, Saudi Arabia, Singapore, Solomon Islands, South Sudan, Tonga, Tuvalu and United Arab Emirates (United Nations Treaty Collection 2015). Whereas, People's Republic of China (PRC) signed this treaty on 5 of October 1998, but never ratified it, as well as Cuba, Comoros, Nauru, Sao Tome and Principe, Palau and Saint Lucia (2015).

The ICCPR proclaimed that “[a]ll peoples have the right to self-determination” and according to that, they have a right to choose their political status (2200A, XXI, § 1(1)). Alongside, ICCPR stated that “[t]he States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations” (2200A, XXI, § 1(3)).

Interestingly enough, the principle of self-determination was proclaimed in many other legal and political instruments, such as *African Charter on Human and Peoples’ Rights* (§ 2023), *Helsinki Final Act* (Conference on Security and Cooperation in Europe, 1975), *Charter of Paris for a New Europe* (Conference on Security and Cooperation in Europe, 1990), *Vienna Declaration and Programme of Action* (World Conference on Human Rights, 1993) and this term became a part of the jurisprudence of the International Court of Justice. Most of the cases that were addressed there connected with the decolonization process, although as an exception Kosovo proceedings could be mentioned (Zyberi 2009, 429).

In the next sub-chapter, resolutions of the UN General Assembly (UNGA) will be taken into consideration. Occasionally, the UNGA drew attention to the principle of the self-determination. All of that cases will be presented in a short historical overview of the key resolutions.

### **3.2 The United Nations General Assembly’s Resolutions and the principle of self-determination**

When it comes to the UNGA resolutions, one might claim that it is merely the recommendations (Green, 1971) that do not have any real legal power. However, resolutions play a significant role for the international community since they can be cited as authoritative pronouncements and the resolutions that were adopted without any opposition can indicate common legal conviction of the global community (Gayim 1990, 34). Good example is the resolution 1514 (XV) or Declaration on the Granting of Independence to Colonial Countries and Peoples. Member states adopted this resolution with an absolute agreement (McWhinney 2008, 1). In a significant addition, the UNGA resolutions often clarify or interpret the existed treaties such as the UN Charter. Thus, it is highly important to review all the UNGA resolutions that are connected with the issue of self-determination.



In 1952, the UNGA with the resolution 545(VI) “[d]ecides to include in the International Covenant or Covenants on Human Rights an article on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations [and it have to be] drafted in the following terms: All peoples shall have the right to self-determination”. Several months later, the UNGA accepted Resolution – The Right of People and Nations to self-determination (637, VII). The UNGA recommends that the Member States should support self-determination of all people and nations (637, VII, A (1)). Later on, it reaffirmed and carried binding character (Gayim, 1990, 28).

In 1960, the UNGA adopted Resolution 1514 (XV) - Declaration on the Granting of Independence to Colonial Countries and Peoples. It linked the right of the people to external self-determination and decolonisation. In the same year, the UNGA adopted the Principles, which would guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter (1514, XV). However, these principles are applied only to the colonial type of territories. In 1961, the UNGA adopted Resolution 1654 (XVI) that created the Special Committee on Decolonization to monitor the implementation of the previous resolutions.

In 1970, other significant events occurred – 4 more resolutions about self-determination were adopted. Namely, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the UN (2625, XXV). This was an attempt to explain the principle of self-determination, however this principle still remains broad and contradicting to the principle of territorial integrity. It emphasized that states should “[...] refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence” (2625, XXV). At the same time, it highlighted that “[n]othing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour”(2625, XXV). Furthermore, it clarified that there is a need to support the self-determination principles in order to bring the end to colonialism.

On 12 October 1970, the programme of action started with the full implementation of the declaration on the granting of independence to colonial countries and people.

In addition, on 24 October 1970, the *Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations* (2627, XXV) was passed. It reconfirmed that, in order to maintain peaceful relations, the states should respect principle of the self-determination of the peoples and sustain equality (2627, XXV (2)). Moreover, it highlighted the importance of the principle of the territorial integrity of any state (2627, XXV (3)) and reaffirmed that the UN support colonial nations on the right to self-determination, particularly the examples of Namibia, Southern Rhodesia, Angola, Mozambique and Guinea were brought (2627, XXV (6)). Few month later another resolution on the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples passed (2708, XXV).

To sum up, the term of self-determination is mostly used in the context of decolonization. As it was in the Article 73 and 76(b) of the UN Charter; ICCPR; in the UNGA Resolutions 1514 (XV), 1654 (XVI), to certain degree in the resolution 2625, (XXV), 2627 (XXV (6)) that also mentioned the colonial issue and resolution 2708 (XXV). In some cases of decolonization issues the principle of self-determination clearly obtained the meaning of secession (UN Charter § 76(b)) and importantly, even in decolonization cases the principles of self-determination of the people and territorial integrity clashes (UNGA resolution, 1514, XV). When the right to self-determination is mentioned outside of the context of colonized nations then it became highly unclear whether self-determination can be interpreted as an absolute separation from the state or not. Today, unilateral secession is neither prohibited nor allowed. Thus, one might claim that this situation gives a lot of freedom for certain manipulations as it was in Crimea.

Transnistria is neither the trust territory nor non-self-governing region (United Nations and Decolonization 2015), so the majority of the UN declarations cannot be applied to it.

### **3.3 Problems of the self-determination**

There are many disputes concerning the principle of self-determination particularly in the UN Charter. For example, Benjamin Rivlin claimed that this principle is not legal at all and the Charter itself is too broad, meanwhile Hans Kelsen said that only states are entitled to the right to self-determination and the Charter changed nothing in terms of external right to self-determination of the people (Gayim 1990, 21). Moreover, others might even claim that this is a passing term (Green 1971). However, this principle is there and it is impossible to take away its legitimate power. Besides, as it was contended by Eyassu Gayim “[t]here are many other general principles which were not defined by the Chapter but are accepted as legal principles” (1990, 23), plus many other scholars would claim that the UN Charter as an international treaty that is a source of universal rights reconstructed the principle of internal or external self-determination from the political term to a legal one (1990, 24).

Other disputes directed on what exactly “peoples” mean in the concept of self-determination in the legal declaration of the UN. For example, some scholars might even say that “peoples” in reality could mean “peoples of the sovereign countries” (Gayim 1990, 22), which completely turn the meaning upside down. However, these authors, could not explain why then the word “peoples” was used instead of “states”. Moreover, many continue their disputes on whether the self-determination is the individual or collective right (Gayim 1990, 37). Buchanan believes that the right to external self-determination could be only collective. He explains that individual rights can be exercised by individuals and collective rights by collective or on behalf of this collective (Buchanan 1991b, 74).

Many questions occur concerning the type of these groups of peoples which are entitled to the external self-determination right. Some authors might think that all ethnic groups have a right to have their own state, but if that would be established unconditionally then the limitless upheaval would take place, which would break apart the majority of the existing countries. (Buchanan 1991a, 9). Besides, there is no real evidence why ethnical groups should have a privilege. According to the Remedial Right Only theory, any group of people have a the right to secede if certain severe injustice happened to them and if they feel a treat to their existence.

In terms of conditions that are essential in order to realize the right to self-determination, presumably there are no legal instruments that would explicitly clarify them. Although, some

scholars try to point them out, Gayim claims that at least the following conditions should present: 1) a clear territorial division; 2) will of the group of people; 3) public awareness and no external intervention or manipulation; 4) an independent forum for discussion before making a decision (Gayim 1990, 61). As for the Transnistria case, one can reasonably assume that it does not meet these criteria because of external influence, absence of any free platform for discussion and pro-governmental propaganda (Freedom House 2014). Furthermore, it is essential to note that in accordance with the Remedial Right Only theory, Transnistria does not have moral justifications for secession.

### **3.4 Territorial integrity and self-determination: attempts to resolve the contradiction**

As it was previously mentioned, the international documents highlight the importance of the principle of self-determination and territorial integrity in equal terms. This creates contradiction between these two notions, particularly because self-determination principle is not fully defined and could be interpreted as secession. In addition to that, international instruments do not determine whether secessions are legal or not. Thus, one might claim that everything that is not prohibited is legal. This line of thought could lead to an anarchy and threat the territorial integrity.

Even though, that this situation would lead many scholars to think that modernization of the international legal system is needed, there are still others that would prefer to continue to act on case by case basis and depend on negotiations. For example, Timothy Sisk from the United States Institute of Peace sees the solution in the creation of the mutual understanding between two conflicting sides and negotiations (Patricia 1996, 17). He thinks that powersharing or coalition governments would be a beneficial solution to almost any conflict that is connected to an external self-determination (1996, 17).

At the same time, some scholars might do not see a problem at all, claiming that territorial integrity is a more powerful notion than self-determination in the international law (Patricia 1996, 17). However, even if that is true, the self-determination principle is still a very strong political concept that needs to be regulated.

Others stress that the principle of self-determination should be somehow separated from the notion of secession. In this case, they claim that secession is an absolutely internal issue of the state (Patricia 1996, 8-9) and if the state wants to give its people a right to external self-determination it may include this right in their constitution (example: the United Kingdom).

At the same time, one can assume that “[s]tatements about legal principles and territorial integrity mean little to people who believe they are fighting for their very existence” (1996, 11). The proposals of the Remedial Right Only Theory suggests a list of occasions which can justify secession, seems quite reasonable. It is essential to mention, that the Remedial Right Only Theory emphasises that secession could only be a matter of the last resort (Buchanan 2007, 5). Thereby, this theory provides the essential balance between the territorial integrity and the right of the people to self-determination.

## **4. TRANSNISTRIAN SELF-DETERMINATION FROM THE LEGAL PERSPECTIVE**

Foremost, there is a need to clarify certain points concerning the legitimacy of the Transnistrian secession.

Essentially, as it was introduced in the first chapter of this paper: 1) Transnistria is not a subject to decolonisation; 2) secession is not envisaged by the Constitution of Republic of Moldova; 3) Transnistria was not occupied by Moldova (which would otherwise give them the right to return their illegally taken territory); 4) both Transnistrian independence referendums (1991 and 2006) are considered to be illegitimate. On the referendum 2006 more than 97 per cent (Tishenko 2006) of the Transnistrians voted for independence and potential future integration into Russia. International community did not recognize this referendum (US Department of State). EU representatives also claimed, that “[t]his ‘referendum’ contradicts the internationally recognized sovereignty and territorial integrity of the Republic of Moldova” (European Union Delegation to the United Nations New York 2006). Thus, according to the international law and Remedial Right Only Theory, Transnistria has no right to secede.

However, it is also highly important to define whether Transnistria could be legally called a state. For that cause principles of the *Montevideo Convention* is applied to Transnistria in this paper.

### **4.1 Statehood of Transnistria**

In order to fully indicate the actual status of Transnistria, it is necessary to explore whether it is a state and *Montevideo Convention* is a good legal tool for that.

In 1993, *Montevideo Convention on the Rights and Duties of States* was signed and it established four criteria for Statehood. As shown in *Table 1* below, Transnistria does not meet these criteria.

Table 1. Attempt to apply the Montevideo Convention principles of Statehood to Transnistria

Montevideo Convention's features of Statehood	Transnistria	Apply to the criteria of Statehood
permanent population	permanent population of approximately 500,000	yes
defined territory	geographic areas on a strip of land between the River Dniester (territory controlled mostly by Transnistria, although some part of the Dubăsari district controlled by Moldova)	yes
government	fully functioning government, which consist of unicameral parliament named the Supreme Council of the Pridnestrovian Moldavian Republic and the President	yes
capacity to enter into relations with the other states	diplomatic relations with Nagorno-Karabakh and Abkhazia	no

Source: Prepared by the author on the basis of data provided in Montevideo Convention on the Rights and Duties of States § 1, Supreme Council of the Pridnestrovian Moldavian Republic, Project Gutenberg and Citypopulation.De

Transnistria has a permanent population, a functioning government and the majority of its territory is clearly defined. It has economic relations with Russia, Belarus, Ukraine, Moldova (Project Gutenberg 2015), but it has no diplomatic relations with any of the recognised states. Thus, Transnistria cannot be identified as an actual State.

## **5. SELF-DETERMINATION CONFLICT RESOLUTION AND TRANSNISTRIA**

### **5.1 Common self-determination conflict resolution approach**

It is important to remember that there are always certain issues that negatively affect the group of people who wish to secede from their state. For example, many countries in the world have disputable territories and people on these territories who wish to achieve their right to external self-determination. Thus, these countries will be against any claims to external self-determination, because of the possibility of the precedent. For example, one can assume that Spain will not recognize the independence of Kosovo mainly because of its own internal self-determination disputes. For separatists the situation becomes even more complicating since the establishment of a new state is almost impossible without international recognition.

However, one distinguished scholar in the field of self-determination Wolfgang F. Danspeckgruber states that simply denying the right to self-determination would not help to regulate the nowadays conflicts and leave all the problems to the states can only increase the likelihood of conflict escalation (2005, 23). He states that “[...] the struggle for self-determination is rarely a zero-sum game between one community and the center” (Danspeckgruber 2005, 23-24), but an international matter. Moreover, Danspeckgruber continues that since the recognition of new countries has become a quite rare occasion, there is a need in rearranging the international system that would help to clarify the provisions under which the self-determination would be possible. This line of thought matches with Buchanan’s (and corresponds to Remedial Right Only theory) since he also highlights the importance in reorganization of the international law concerning the self-determination and actively promotes other alternatives to secession such as autonomy (Buchanan 2007, 7). It could be concluded, that generally, when claims for independence occur the international community and scholars tend to support the alternatives to secession rather than the right to external self-determination. It is understandable since it does not change international borders and usually does not threat regional stability. This approach worked in the case of Gagauzia, but has not work in Transnistria. According to the Remedial Right Only theory, the secession is possible in rare



occasions when certain injustices took place. However, this theory does not explain what to do if the claims for secession are not justifiable and the region is still confronting with central governments and do not obey them, as it is in the case of Transnistria.

## **5.2 Proposals on the Transnistrian issue**

Foremost the existed proposals will be considered, such as Report No. 13 of the Commission on Security and Cooperation in Europe Mission to Moldova (1993); Bratislava Declaration of the PMR (2002); OSCE Kiev Document (2002); Russian Draft Memorandum on the Basic Principles of the State Structure of a United State in Moldova (2003); Proposals and Recommendations of the Mediators from the OSCE, the Russian; Federation, and Ukraine with regard to the Transdnestrian Settlement (2004); Plan for the Settlement of the Transdnestrian Problem (2005); Law ‘On Fundamental Regulations of the Special Legal Status of Settlements on the Left Bank of the River Nistru (Transnistria)’ (2005); Moldovan ‘Package’ Proposal (2007); The German ‘non-paper’ (2011).

Almost all of them have something in common. For example, the suggestion for a special territorial status for Transnistria was proposed in the CSCE Report, Ukrainian Plan, Moldovan Framework Law and Moldovan Package Proposals (Wolff s.a.). However, it was not sufficient for Transnistria. Other territorial proposals suggested to create a Federation in Moldova, although it seemed quite unrealistic.

In terms of distribution of powers, almost all early proposals brought the idea of “[e]xclusive and joint competences listed in detail”, but later on, they concentrated on the division of powers (Wolff 2011). At the same time, some people called for representation for Transnistria in Moldovan governmental bodies or brought the idea of structuring the foreign policy of Transnistria in agreement with Moldova, in addition to joint law drafting concerning the special status of Transnistrian region (Wolff s.a.).

Furthermore, the complete demilitarization of the both sides was suggested (Wolff 2011). None of these were implemented. Moreover, Russia wanted Moldova to stay neutral and be a non-aligned state with no foreign military bases on its territory (Wolff s.a.). These conditions contradicted to the Moldovan’s interests.

The idea to accept the Transnistria’s separation from Moldova was also proposed, however the Moldovan respective governments have been seemingly against it, although that

would be the easiest solution. However, one of the obstacles of that will be Moldovans that are currently living in Transnistria.

In terms of the public opinion, according to the statistics, most of the Moldovans prefer Transnistria to be a part of Moldova without any special status, meanwhile Transnistrians predominately wish to unify with Russia (O'Loughlin, Toal and Chamberlain-Creangă 2013, 252).

At the same time majority of Moldovans and Transnistrians support continuation of the peace talks concerning the Transnistria status (O'Loughlin, Toal and Chamberlain-Creangă 2013, 254), which give a hope for a peaceful resolution of this issue. However, the conflict is still stagnant and no resolution seems to work.

## CONCLUSION

This paper was dedicated to the territorial conflict between the sovereign country of Moldova and a breakaway territory of Transnistria. This case study was analysed through the history of the development of this conflict, Moldovan and Transnistrian relations as well as the involvement of external parties. Transnistrian case was put into the legal and moral framework in order to determine whether external self-determination of the residents of Transnistria is justifiable. The ultimate goal of this research was to see whether the Transnistrian external self-determination claims are more legitimate than Moldovan territorial integrity or not.

The main problem of self-determination that was analysed here is the contradiction between the self-determination principle and territorial integrity. Due to the fact that the principle of self-determination is not clarified in the international law, it naturally contradicts with the territorial integrity. It was proven from the legal and moral perspective that the territorial integrity of Moldova is primary than the right to external self-determination of Transnistrians. Secession of Transnistria was not legal due to the following reasons: Transnistria is not an ex-colony, so it could not be entitled to the rights of colonized countries; secession was not allowed in the Constitution of Republic of Moldova; Transnistrian region was not occupied by Moldova; both of the Transnistrian independence referendums were illegitimate. Moreover, according to the Remedial Right Only theory, Transnistrian residents also did not have moral justifications for separation since there were no threats of destruction of any group on the territory of Transnistria; no internal colonialism took place; this territory was not illegally taken by Moldova.

The principle of self-determination in the international legal instruments was analysed through setting the following issues: what does self-determination mean in the international law; who has this right and under what conditions. It was revealed that in the international law there is no clear explanation to these issues. Furthermore, it was found that external self-determination is a collective right and according to the Remedial Right Only theory, any groups that experienced certain injustices entitled to this right. These injustices include: genocide; discriminatory redistribution or so-called internal colonialism; illegally taken territory.

The term of self-determination in any of the mentioned above in this paper legal and political instruments is mostly connected to the decolonization. Sometimes, the principle of territorial integrity and self-determination clash, generally leading to the conclusion that “[...] only legal secession would not undermine territorial integrity of the parent state” (Stepanowa, 2014). As it is presented in the UN Charter, external self-determination is basically possible in the exceptional cases when it comes to decolonization. In all other cases, the term of self-determination is presented as highly important as well as the principle of territorial integrity.

In general terms, it could be concluded that the principle of territorial integrity is prevailing the right of the people to external self-determination and according to the Remedial Right Only Theory, only in extreme cases, such as genocide it could be vice versa. Furthermore, since the international legal instruments are unclear in terms of self-determination principle, certain changes should occur in the UN based system of law or an alternative institution should be established (Buchanan 2007, 432).

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