

INTERNAL

---

2018 SECURITY



1918–2018

SPECIAL ISSUE

100<sup>th</sup> ANNIVERSARY OF  
POLAND'S REGAINING  
INDEPENDENCE

---

Published by the Police Academy, Szczytno

INTERNAL

---

**2018** SECURITY  
SPECIAL ISSUE

S E M I A N N U A L J O U R N A L

---

Published by the Police Academy, Szczytno

**The journal *Internal Security* is indexed in the following databases:**

- The Central European Journal of Social Sciences and Humanities (CEJSH), • EBSCO Criminal Justice Abstracts, • ERIH PLUS, • Google Scholar, • IndexCopernicus Journals Master List, • NUKAT, • Polish Ministry of Science and Higher Education list of scientific journals (part B, item 948, 10 points), • ProQuest Criminal Justice Periodicals Index (CJPI),
- ProQuest International Bibliography of the Social Sciences (IBSS),
  - The researchBib Journal database, • WorldCat,
  - Zeitschriftendatenbank (ZDB)

The printed version of the journal *Internal Security* is the original one. The electronic version of the journal is available as a copy of the original printed version.

Copyright © 2018 Police Academy in Szczytno. All Rights Reserved

Circulation: 600 copies

Publisher:  
Police Academy in Szczytno  
12-100 Szczytno, ul. Marszałka Józefa Piłsudskiego 111, Poland

**Editorial Board:**

<b>Marek Fałdowski</b> <i>(chairman)</i>	<i>Police Academy in Szczytno, Poland</i>
<b>Sergij Boltivets</b>	<i>State Institute for Family and Youth Development , Ministry of Family, Youth and Sport of Ukraine, Kiev, Ukraine</i>
<b>Vladimir Petrovich Buyanov</b>	<i>Moscow Academy of Economics and Law, Russia</i>
<b>Simion Carp</b>	<i>Academy "Stefan cel Mare" of the Ministry of Internal Affairs of Republic of Moldova</i>
<b>Zenon Chaczko</b>	<i>University of Technology in Sydney, Australia</i>
<b>Tadeusz Cielecki</b>	<i>Opole University, Poland</i>
<b>Chris W. Eskridge</b>	<i>University of Nebraska-Lincoln, United States of America</i>
<b>Andrii Fomenko</b>	<i>Dnipropetrovsk State University of Internal Affairs, Ukraine</i>
<b>Aytekin Geleri</b>	<i>Turkish National Police Academy, Turkey</i>
<b>Saulius Greičius</b>	<i>Mykolas Romeris University in Vilnius, Lithuania</i>
<b>Alois August Hirschmugl</b>	<i>Austrian Armed Forces, Austria</i>
<b>Viktor Hryshchuk</b>	<i>Lviv State University of Internal Affairs, Ukraine</i>
<b>Kuba Jałoszyński</b>	<i>Police Academy in Szczytno, Poland</i>
<b>Štefan Kočan</b>	<i>Police Academy in Bratislava, Slovakia</i>
<b>Jerzy Konieczny</b>	<i>Academy of Business in Dąbrowa Górnicza, Poland</i>
<b>Arkadiusz Letkiewicz</b>	<i>Academy of Business in Dąbrowa Górnicza, Poland</i>
<b>Vesna Markovic</b>	<i>Lewis University, United States of America</i>
<b>Janusz Mika</b>	<i>Tomas Bata University in Zlín, Czech Republic</i>
<b>Michelle Ann McManus</b>	<i>University of Central Lancashire, United Kingdom</i>
<b>Mladen Bajagic</b>	<i>Academy of Criminalistic and Police Studies in Belgrade, Serbia</i>
<b>Andrzej Misiuk</b>	<i>University of Warsaw, Poland</i>
<b>Aleksandr Pastushenia</b>	<i>Academy of the Ministry of Internal Affairs of the Republic of Belarus in Minsk</i>
<b>Cornelis J. Roelofse</b>	<i>The University of Zululand (UNIZULU), Republic of South Africa</i>
<b>Joseph F. Ryan</b>	<i>Pace University in New York, United States of America</i>
<b>Jerzy Sarnecki</b>	<i>Stockholm University, Sweden</i>
<b>Gerald G. Sander</b>	<i>University of Applied Sciences — Public Administration and Finance Ludwigsburg, Germany</i>
<b>Anatoly S. Tchaikovsky</b>	<i>National Research Institute for Ukrainian Studies of the Ministry of Education and Science in Ukraine</i>
<b>Andrzej Urban</b>	<i>Police Academy in Szczytno, Poland</i>
<b>Sergei Veklenko</b>	<i>Sankt-Petersburg University of the Ministry of the Interior of the Russian Federation</i>
<b>Aleksey Vishnevski</b>	<i>Academy of the Ministry of Internal Affairs of the Republic of Belarus in Minsk</i>
<b>Shiguan Wang</b>	<i>China Criminal Police University in Shenyang</i>
<b>Keiichi Yamanaka</b>	<i>Kansai-University, School of Law, Japan</i>

## Editorial Team:

<b>Editor-in-Chief</b>	Bernard Wiśniewski e-mail: b.wisniewski@wspol.edu.pl
<b>Deputy Editor-in-Chief</b>	Zbigniew Mikołajczyk e-mail: z.mikolajczyk@wspol.edu.pl
<b>Statistical Editor</b>	Paweł Lubiewski e-mail: p.lubiewski@wspol.edu.pl
<b>Assistant Editor</b>	Magda Maćkowska magda.mackowska@wspol.edu.pl
<b>Assistant Editor</b>	Małgorzata Andrzejczak-Świątek e-mail: m.andrzejczak@wspol.edu.pl
<b>Secretary</b>	Małgorzata Jasińska e-mail: officeis@wspol.edu.pl
<b>Production Editor</b>	Iwona Drach e-mail: i.drach@wspol.edu.pl
<b>Deputy Production Editor</b>	Adam Rogala e-mail: wwip@wspol.edu.pl

## Subject Editors:

**Security Theory and Security Research**  
Hubert Królikowski, Jagiellonian University  
in Cracow, Poland  
e-mail: hubert.krolikowski@uj.gov.pl

**History of Internal Security**  
Ewelina Sokołowska, Police Academy  
in Szczytno, Poland  
e-mail: e.sokolowska@wspol.edu.pl

**Security Law**  
Leszek Wieczorek, Ministry of Justice Institute  
of Forensic Research in Cracow, Poland  
e-mail: lwieczorek@ies.gov.pl

**Security Management**  
Paweł Kępka, Main School of Fire Service  
in Warsaw, Poland  
e-mail: pkepka@sgsp.edu.pl

**Criminology and Criminalistics**  
Magdalena Zubańska, Police Academy  
in Szczytno, Poland  
e-mail: m.zubanska@wspol.edu.pl

**Anti-Terrorism**  
Waldemar Zubrzycki, Police Academy  
in Szczytno, Poland  
e-mail: w.zubrzycki@wspol.edu.pl

**Cyber Security**  
Jerzy Kosiński, Polish Naval Academy  
in Gdynia, Poland  
e-mail: j.kosinski@outlook.com

**Maritime and Internal Waters Security**  
Tomasz Szubrycht, Polish Naval Academy  
in Gdynia, Poland  
e-mail: tszubrycht@interia.pl

**New Technologies**  
Tadeusz Szczurek, Military University  
of Technology in Warsaw, Poland  
e-mail: tadeusz.szczurek@wat.edu.pl

**International Cooperation**  
Sławomir Górski, Ministry of Internal  
Affairs and Administration, Poland  
e-mail: slawomir.gorski@msw.gov.pl

**Internal Security – Case Studies**  
Agata Tyburska, Police Academy  
in Szczytno, Poland  
e-mail: a.tyburska@wspol.edu.pl

**Miscellanea**  
Anna Świerczewska-Gąsiorowska, Police  
Academy in Szczytno, Poland  
e-mail: a.swierczewska@wspol.edu.pl

## Translators:

Agnieszka Andrzejczyk (aa), Mariola Bil (mb), Olimpia Bogdalska (ob), Małgorzata Jasińska (mj),  
Anna Jurczenko (aj), Anna Kierpiec-Leśniak (akl), Anna Kodzis (ak), Aleksandra Lewicka (al),  
Tomasz Mazur (tm), Jacek Modrzejewski (jm), Mirona Urbanik-Gołota (mug)

INTERNAL

2018  
SPECIAL ISSUE

SECURITY

---

CONTENTS

---

***Małgorzata Andrzejczak-Świątek***

The Right of Nations to Self-Determination in the Context of the  
Regaining of Independence by Poland — an International-Law Analysis 7

***Ewa M. Guzik-Makaruk, Piotr Fiedorczyk***

The Achievements of the Codification Commission of the Second  
Republic of Poland — a Century After Regaining the Independence ..... 17

***Anna Świerczewska-Gąsiorowska***

Criminal Legislation at the Time of Poland's Regaining Independence..... 31

***Piotr Kardela***

Professor Waclaw Szyszkowski — a Lawyer, Anticommunist, One From  
the Generation of Independent Poland..... 41

***Paweł Lubiewski***

The Evolving Protection of Borders of the Reborn Second Republic  
of Poland..... 53

***Sławomir Bylina***

Examples of the Relationship Between the Police and the Polish Army  
Over the Last Century ..... 67

***Marek Fałdowski***

Professional Ethics of Officers Responsible for Security and Public  
Order in the Light of Empirical Research..... 79

***Edward Wiszowaty, Anna Zellma***

Ethical Traditions of the Polish Police..... 95

***Agnieszka Choromańska***

From Questioning Notes to Audiovisual Videoconferencing —  
Reflections on the Evolution of the Model of Hearing a Witness Against  
the Background of the Solutions Adopted in the Code of Criminal  
Procedure of 1928 and 1997 ..... 107

***Monika Porwisz***

Competences of the Police in Criminal Proceedings — Experience and  
Present — Legal and Comparative Approach in the 100th Anniversary  
of the Establishment of the Police..... 127



# The Right of Nations to Self-Determination in the Context of the Regaining of Independence by Poland — an International-Law Analysis

**Małgorzata Andrzejczak-Świątek**

*Police Academy in Szczytno, Poland*

**Abstract.** *This article aims to show the problem of self-determination of the people in the light of contemporary standards of international law, as well as to compare them with the factual and legal basis of regaining independence by Poland in 1918. The principle of the right of people to self-determination as one of the basic rules of international law was proclaimed only after World War II, however, concepts conferring on the population living in a given territory to decide about themselves appeared before the French Revolution. The issue of the right to self-determination of people is extremely complex — after World War II, there was in this respect the development of treaty guarantees concluded with international agreements for the system of human rights protection, which sanctioned this right as the only subjective collective right. On the other hand, the practice of contemporary states on this issue is not uniform and largely depends on the acceptance of the facts by the international community. From the point of view of developing the right to self-determination of people, and thus the right to independence, the case of Poland is extremely interesting not only because of the historical and political background, but also because it can be treated as a precedent in international law in the context of recognition and acceptance of independence by the state.*

DOI: 10.5604/01.3001.0012.8397

<http://dx.doi.org/10.5604/01.3001.0012.8397>

**Keywords:** Independence, collective human rights, self-determination, rights of the nation

## The right to self-determination and the ‘Polish question’ in 1918 — a few comments against the background of international-law conditions for the regaining of independence by Poland

As one of the basic rules of international law, the principle of the right of nations to self-determination was proclaimed only after World War II. However, concepts granting people living in a given territory the right to decide about themselves appeared as early as before the French Revolution thanks to the philosophical thought of Marseilles of Padua<sup>1</sup> or E. de Vattel<sup>2</sup>, to mention just a few. Also, such

<sup>1</sup> Marseilles of Padua (1275–1343) was the forerunner of the idea of the sovereignty of the people. He claimed that the content of people’s sovereignty is the right to self-determination defined in normative acts. *For more information see:* Jaroszewska A. D., *Poglądy polityczno-religijne Marsyliusza z Padwy*, A doctoral thesis prepared in the Centre for Research in Antique and Byzantine Philosophy of the Adam Mickiewicz University in Poznań, under the direction of prof. Marian Wesoły. Poznań, 2014.

<sup>2</sup> de Vattel E said: ‘Every nation, just like individuals, has the inalienable right to freedom and independence, dignity, equality, security, resistance to evil’; see: E. de Vattel, *Prawo*



concepts were the cornerstones of peace processes already after the First World War. The question of the self-determination of peoples was used both by Lenin, who in March 1916 published his concept of the issue in his work entitled: *“Theses on the Socialist Revolution and the right of peoples to self-determination”*<sup>3</sup>, as well as by Thomas Woodrow Wilson, who advocated the idea that the government must be based on the consensus of individuals under the reign of those in power<sup>4</sup>, being, therefore, inherently embedded in the system of the democratic state of law. Despite the fact that Wilson’s concept is sometimes criticised in the doctrine due to its too general character, limited scope and lack of solutions for its implementation in practice, it became the basis for the legal justification for Poland’s proclamation of independence in 2018.

On the other hand, the slogan of national self-determination, proclaimed by Lenin in such a seemingly unlimited form and, also seemingly, taking the form of detailed factual solutions, as a result, was not reflected in reality.

Lenin’s call for self-determination of nations was purely populist and fictitious, although the basis of that populism could have been the real conviction of its executor about the power and attractiveness of socialist Russia, which all nations of the former Tsarist empire would join by themselves. Regardless of the beliefs of the Bolshevik leader, the practice of the Bolsheviks completely undermined his concept, treating the right to self-determination of nations in an instrumental, politicised and selective way, and suppressing any attempts to decide about themselves by the nations of the former empire aspiring to their independence being recognised.<sup>5</sup>

For those reasons, the Leninist concept should not be given any considerable value — apart from the illusory one, because it did not play any role in the context of Poland having regained its independence. In Lenin’s theses, the question of the self-determination of the Polish nation did not exist, nor were their assumptions taken into account at any stage of the rebirth of the Polish state.

Paradoxically, it was the slogans proclaimed by Wilson — the ones that were in principle very general and unspecified, and yet concrete and not calling into question the right of the Polish nation to regain its state identity, that became a strong foundation on which the Polish nation, in a sense, based its claims to regain independence.

On January 8, 1918, U.S. President Thomas Woodrow Wilson presented his peace programme in the Congress Address. In it, he called for action to be taken to ensure a fairer world after World War I. In point 13 of the so-called Wilson Declaration, he voiced the necessity of creating an independent Polish state on the territories inhabited by the Polish population, with free access to the sea, political and economic independence. According to this point of the document, the territorial integrity of the country should be guaranteed by an international convention.<sup>6</sup>

The political context and the moment in which President Wilson proclaimed his demands was of extreme importance because the presentation of his idea

---

narodów, czyli zasady prawa naturalnego zastosowane do postępowania i spraw narodów i monarchów, Vol. 1. Trans. B. Winiarski. Warsaw, 1958, p. 53.

<sup>3</sup> See: Cassese A, *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge, 1999, p. 15.

<sup>4</sup> *Ibid.*, p.19.

<sup>5</sup> Besides Poland, it is worth mentioning here, e.g., Armenia or Ukraine.

<sup>6</sup> See also: *Electronic source*: <https://wpolityce.pl/swiat/375359-100-rocznica-czternastu-punktow-wilsona-punkt-13-dotyczy-utworzenia-niepodleglej-polski>, accessed: 9.11.2018.

of a peace plan for the world affected by World War I in Congress coincided with peace negotiations between the central states and the Bolsheviks taking place in Brest-Litovsk. It has to be admitted that when establishing peace relations in Europe after the outbreak of the October Revolution, Western countries looked anxiously eastward, knowing that the 'Bolshevik experiment' had no chance of success. It is highly probable that the anxiety contributed to the lack of willingness to take binding decisions regarding Poland and to postpone the Polish question.

Thus, at that time, the only factual and legal basis in terms of international relations and international law for Poland's regaining independence was the peace plan and Wilson's doctrine. The proclamation of Poland's independence, announced by the Regency Council on October 7, 1918, was largely based on the thirteenth point of the Wilson Declaration, and the fact that the document had been accepted a few days earlier by the central states and had been recognised as the basis for peace negotiations, strengthened its legal significance even further. As a direct consequence of the above, the Regency Council of the Kingdom of Poland, established on September 12, 1917, seized an opportunity and, while protesting against the conclusion of a peace treaty between the central states and Ukraine, announced on February 13, 1918 that from that moment on: *'It will exercise the right to hold the supreme authority of the state based on the will of the Nation, believing that the Nation wishes to have a symbol of its independence and intends to stand by this symbol.'*<sup>7</sup> This position coincided with President Wilson's speech in the U.S. Senate (22 January 1918), in which he stressed with full conviction that *'statesmen agree everywhere that a united and independent Poland proclaiming its own laws should be established'*.<sup>8</sup>

Analysing the international legal context in which Poland regained independence in 1918, it is not possible to overlook the importance of the institution of recognition in international law.

Obviously, the volumetric limitations of this article do not allow for a detailed consideration of the connection between the right to self-determination and the concept of recognition. However, it is precisely this recognition as a unilateral act of the State that confirms the legality of the exercise of the right to self-determination and the declaration of independence by the State.<sup>9</sup> In the case of Polish efforts to regain independence, there are two examples of attempts to avoid identifying one's actions with recognition. After the act of 5 November, 1916 and the proclamation of the Kingdom of Poland, the American consul in Warsaw was instructed to conduct talks with the Polish authorities, but to refrain from participating in any official

---

<sup>7</sup> See: Kumaniecki K. W, *Odbudowa państwowości polskiej*. Warsaw–Krakow, 1924, p. 112.

<sup>8</sup> See: 'Wilson's Note' handed over to the Polish State Archives. A handwritten note with an autograph of the American leader is placed on the letterhead. One page contains a quote from President Woodrow Wilson's speech to the US Senate on 22 January 1917 on the need to revive Poland as a united, independent and sovereign state. On the back of the document there is the content of point 13 from Wilson's famous 14-point peace programme, which he presented in his address to the US Congress on 8 January 1918. The President called, among other things, for the creation of an independent Polish state on territories inhabited by the Polish population, with free access to the sea.

<sup>9</sup> For further information on the concept of recognition in international law — see: Sa-ganek P, *Uwagi w przedmiocie ogólnej teorii uznania*, [in:] Karski K (Ed.), *Kierunki rozwoju współczesnego prawa międzynarodowego*. Warsaw, 2015.

ceremonies.<sup>10</sup> And the evidence that in 1916 the United States was not yet ready for the recognition of the 'Polish questio' had been the decision of the Americans to establish an agency in the United States which would deal with Poles, at the same time not wanting to grant it the character of a consulate (this decision was a response to the request of the Chairman of the Polish National Committee, Roman Dmowski).<sup>11</sup>

The aforementioned change in the position of the United States regarding the regaining of independence by Poland two years later in 1918 is an example of how an act of recognition may determine the exercise of the right to self-determination, especially in the contemporary situation in international law, when the treaty norm regulating this aspect did not yet function in the international legal order.

From the point of view of the evolution of the right to self-determination of nations, and thus the right to independence, Poland's case is extremely interesting not only because of its historical and political background, but also because it can be treated as a precedent in international law in the context of the recognition and acceptance of the regaining of independence by a state.

## **Evolution of the right to self-determination in the international system of human rights protection after World War II**

Until the end of World War II, the right to self-determination remained a philosophical and political concept, and as an autonomous treaty norm in the form of a collective subjective right was regulated as late as in 1966 through the adoption of the International Covenant on Civil and Political Rights by the UN General Assembly. However, already at the stage of its conceptual evolution, it was interpreted in the light of the principle of respect for national sovereignty and territorial integrity.<sup>12</sup> For this reason, in the context of the evolution of the right to self-determination of peoples, extreme importance is attached to the stipulation of Article 2 (4) of the United Nations Charter, according to which: 'all members shall refrain in their international relations from using threat or force against the territorial integrity or independence of any state.'<sup>13</sup>

The legal criteria for statehood adopted pursuant to Article 1 of the 1933 Montevideo Convention are determined as follows: As an entity governed by international law, the state should have the following elements: a stable population, sovereign authority, a defined territory (the size of the state does not affect its subjectivity) separated from other territories by borders, and the capacity to enter into international relations<sup>14</sup>.

---

<sup>10</sup> See: Hackworth G.H, *Digest of International Law*, Vol. 1. Washington, 1940, p. 214; *op. cit.*, p. 44.

<sup>11</sup> Hackworth G.H, p. 216.

<sup>12</sup> See, e.g.: Karski K, *Rozpad Związku Radzieckiego a prawo międzynarodowe*. Warsaw, 2015, pp. 95–101.

<sup>13</sup> See: Article 2 (2) and Article 55 of the UN Charter.

<sup>14</sup> Montevideo Convention on the Rights and Duties of States, signed at Montevideo on 26 December 1933, entered into Force on 26 December 1934.

However, the emergence of a new state or the restoration of independence by a state depends not only on the fulfilment of the legal conditions listed in the Montevideo Convention, but, as can be seen from the modern examples of states declaring independence, the key issue is the aspect of international recognition. This is particularly evident in case of Kosovo or Northern Cyprus, where the lack of recognition by the entire international community significantly determines the inability to function on the international stage as a fully-fledged sovereign entity. For these reasons, there appear in the doctrine even such radical views as the one to treat the Montevideo criteria more as policy guidelines for politicians than as binding legal norms. For, in such an approach, recognition has the qualities of constitutiveness, and the fulfilment of the criterion of statehood 'is in fact a legal state achieved in the political process of gaining independence, sanctioned by international recognition.'<sup>15</sup>

In addition, the question of confronting the right to self-determination with the principle of territorial integrity is extremely important, especially in the context of Article 2 (4) of the United Nations Charter, where it is included as the basis of the modern international legal order (According to T. Grzywaczewski, after the decolonisation process, each creation of a new state must be confronted with the principle of integrity — p. 80). Under international law, the principle of self-determination and the principle of territorial integrity were first combined in the Declaration of Principles of International Law on Friendly Relations and Cooperation of States in accordance with the Charter of the United Nations.<sup>16</sup> According to the Declaration, 'Nothing in the preceding paragraphs shall be interpreted as authorisation of or encouragement for any activity which would disrupt or prejudice, in whole or in part, the territorial integrity or political unity of sovereign and independent states acting in accordance with the principle of equality and self-determination of peoples (...) and therefore governed by a government representing the entire population of the territory, irrespective of race, creed or colour of skin'.

The doctrine also contains an interesting aspect regarding the need to consider the right to self-determination in the context of the respect for territorial integrity, bearing in mind the two phases of self-determination: with one of the phases being limited to gaining independence, and the other creating specific obligations for international law actors when it comes to refraining from any action except for positive initiatives undertaken by them. Only then, does self-determination take the form of the principle of respect for territorial integrity, national sovereignty and the prohibition of external interference.<sup>17</sup>

Article 1 of the International Covenant on Civil and Political Rights of 1966 was the first international treaty to enshrine the right to self-determination as a collective

---

<sup>15</sup> See: Vidmar J, Territorial integrity and the law of statehood, *George Washington International Law Review*, 2013, Vol. 44, pp. 147–149. Also, see: Grzywaczewski T, 'Ludowe Republiki Donbasu' — the limits of the right to self-determination and the phenomenon of quasi-states. *Law Studies, Catholic University of Lublin (KUL)*, 2 (62)2015.

<sup>16</sup> See: United Nations General Assembly Resolution 2625: Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the UN Charter, adopted during the twenty-fifth session on 24 October 1970, A/Res/25/2625, Annex.

<sup>17</sup> Sokolewicz W, *Prawo narodów do samostanowienia*, [in:] *Prawa człowieka. Model prawny*, Wieruszewski R (Ed.). Ossolineum, 1991, p. 12.

human right. Under this provision, all nations have the right to self-determination, by virtue of which right, they freely determine their political status and freely ensure their economic, social and cultural development. All nations shall be free to dispose for their own purposes of their wealth and natural resources without prejudice to any obligation arising from international economic cooperation, based on the principle of mutual benefit, and from international law. Under no circumstances may a nation be deprived of its own means of subsistence. States parties to the Pact, including states responsible for the administration of dependent territories and fiduciary territories, shall promote and respect the right to self-determination in accordance with the Charter of the United Nations.<sup>18</sup>

C. Mik noted that as a collective human right in its conceptual layer, the right to self-determination could not function without an element of solidarity between entitled subjects. In his opinion, 'in the initial conceptual phase, human rights and the rights of peoples are not equated with each other, although their relationship is seen (...). Peoples' rights will be considered as collective human rights only under the influence of the doctrine of solidarity.'<sup>19</sup>

The UN Human Rights Committee has presented the interpretation of Article 1 of the Pact and the question of self-determination in General Comment No. 12. Admittedly, it is true that there appear right opinions in the doctrine claiming that this Comment demonstrates a very cautious attempt to interpret the term 'self-determination' and that it is one of the most difficult concepts to define in the system of international law.<sup>20</sup>

The Committee has rightly pointed out that the right to self-determination is of particular importance, since its implementation is an essential condition for the effective guarantee and respect for individual human rights as well as for their promotion and strengthening. For this reason, states have enshrined the right to self-determination in a provision of positive law in both Covenants and have included this provision as Article 1 in addition to and before all the other rights in both Covenants.<sup>21</sup>

Section 3 of Article 1 of the Pact is, in the Committee's view, particularly important because it imposes certain obligations on states parties, not only in relation to their own people, but also as regards all peoples who have not been able to exercise, or have been prevented from exercising, their right to self-determination. The general nature of this section is confirmed by its editorial history. It stipulates that 'States-parties to this Pact, including those responsible for the management of non-governing and fiduciary areas, shall promote and respect the exercise of the right to self-determination, in accordance with the provisions of the Charter of the United Nations'. Obligations exist regardless of whether or not persons entitled to self-determination are dependent on a state party to the agreement. It follows that all states parties to the Pact should take positive action to facilitate the implementation of and respect for the right of peoples to self-determination. Such positive action must be consistent with states' obligations under the Charter of the United Nations

<sup>18</sup> See: Article 2 (4) of the UN Charter.

<sup>19</sup> See: Mik C, *Zbiorowe prawa człowieka. Analiza krytyczna koncepcji*. Toruń, 1992, p. 79.

<sup>20</sup> See, e.g.: Daranowski P, *Międzynarodowa ochrona praw obywatelskich i politycznych in statu nascendi*. Międzynarodowy Pakt Praw Obywatelskich i Politycznych. Łódź. 1993, p. 158; Cassese A, pp. 92–118.

<sup>21</sup> See: General comment No. 12: Article 1 (Right to self-determination), par. 1.

and in accordance with international law: in particular, states must refrain from interfering in the internal affairs of other states so that they do not adversely affect the exercise of the right to self-determination. The reports should include information on the implementation of these obligations and the measures taken to this end.<sup>22</sup>

The Committee believes that history has shown that implementation of and respect for the right to self-determination of peoples contributes to the establishment of friendly relations and cooperation between states and to the consolidation of peace and understanding in the international arena.<sup>23</sup>

The principle of self-determination in public international law has undoubtedly been developed to equate it with the principle of respect for territorial integrity, starting, as a matter of fact, with the stipulation of the United Nations Charter. This is also demonstrated by the content of Principle IV of the Final Act of the CSCE, which includes the following conclusions: each participating state has an obligation to respect territorial integrity; participating states should therefore refrain from any action contrary to the objectives and principles of the UN Convention against territorial integrity or political independence or unity, and in particular from acts constituting a threat of the use of force; participating states should also refrain from making the territory of any of them subject to military occupation or other direct or indirect coercive measures, contrary to international law, or to being acquired through or under the threat of such measures.

In view of the above, one should agree with the view expressed by J. Białocerkiewicz that European states bound by the UN Charter have reinterpreted Article 2 (4) of the Charter by introducing into the Decalogue of Principles a separate principle of respect for integrity by giving it a wide content.<sup>24</sup>

Applying a holistic interpretation of the right to self-determination, while treating the international law system for the protection of human rights as a whole, appropriate conclusions should be drawn from Principle IV of the Final Act of the CSCE as regards the interpretation of the principle of self-determination in the light of it being perceived together with the principle of respect for territorial integrity. Otherwise, this law would be interpreted contrary to the objectives and principles of the UN Charter.

## Summary

The issue of the right to self-determination of nations is extremely complex — after World War II, there were established relevant treaty guarantees of the international human rights protection system, which sanctioned this right as the only subjective right of a collective nature. On the other hand, the practice of contemporary states in this matter is not uniform and largely depends on the acceptance of the actual state by the international community.

The regaining of independence by Poland in 1918 could not be reflected in treaty law, as the treaty law in existence at that time did not regulate the right to self-determination. Nevertheless, it was ideological and political considerations and the acceptance by the international community that gave a 'go-ahead' to the Polish

---

<sup>22</sup> *Ibid.*, par. 6.

<sup>23</sup> *Ibid.*, par. 8.

<sup>24</sup> Białocerkiewicz J, *Prawo międzynarodowe publiczne. Zarys wykładu*. Olsztyn, 2003, p. 151.