NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

MASTER OF LAWS IN INTERNATIONAL LAW PROGRAMME (LL.M)

MASTER'S THESIS

SECESSION OF THE STATE IN INTERNATIONAL LAW

NAIROOZ MUSTAFA JASIM

NICOSIA

2016

NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

MASTER OF LAWS IN INTERNATIONAL LAW PROGRAM (LL.M)

MASTER'S THESIS

SECESSION OF THE STATE IN INTERNATIONAL LAW

PREPARED BY

NAIROOZ MUSTAFA JASIM

20144552

SUPERVISOR

ASST. PROF. DR. RESAT VOLKAN GUNEL

NICOSIA

2016

NEAR EAST UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

DEPARTMENT OF LAW

MASTER OF LAWS IN INTERNATIONAL LAW PROGRAM (LL.M)

Thesis Title

Secession of The State in International Law

We certify the thesis is satisfactory for the award of degree of Master of Laws in International Law

By Nairooz Mustafa Jasim

Examining Committee in charge

Asst.Prof.Dr. Reşat Volkan Günel	**Near East University Faculty of Law**
Asst.Prof.Dr. Derya Aydın Okur	**Near East University Faculty of Law**
Asst.Prof.Dr. Tutku Tugyan	**Near East University Faculty of Law**

Approval of the Acting Director of the Graduate School of Social Sciences

Assoc.Prof.Dr. Mustafa Sağsan

YAKIN DOĞU ÜNİVERSİTESİ
NEAR EAST UNIVERSITY
SOSYAL BİLİMLER ENSTİTÜSÜ
GRADUATE SCHOOL OF SOCIAL SCIENCES

Date: 26./7./2016 Nicosia

2015/2016 Academic Year Spring Semester

DECLARATION

Type of Thesis: Master ☑ Proficiency in Art ☐ PhD ☐

STUDENT NO : 20144552

PROGRAME : Master of Law in International Law

I Nairooz Mustefa Jasim hereby declare that this dissertation entitled "Secession of The State in International Law ....."

has been prepared myself under the guidance and supervison of "Asst.prof.Dr.Volkan Cunel" in partial fulfilment of The Near East University, Graduate School of Social Sciences regulations and does not to the best of my knowledge breach any Law of Copyrights and has been tested for plagarism and a copy of the result can be found in the Thesis.

Signature:

ABSTRACT

Under the influence of an increasing interest in the issues of democracy, human rights, the growing globalization as well as its associated problems, a shift was noticed in the concept of self determination. The most important of these includes those arising from ethnic or religious minorities in which the governments of its home land has consistently called for such orientation minorities to be given the right to secede and to legitimize PIL on such secession under the heading self determination. This has prompted some scholars and researchers to initiate a transformation of the concept of this fact as well as propagate an international mechanism to achieve the independence of States under colonial and assurance of full sovereignty over its national territory as a means of settling internal conflicts that exist among some minorities with their governments.

Within the new international circumstances, the interest in the principle of the right of peoples and nations to self-determination, as the contemporary international law recognizes the right of all nations big and small, strong and weak, developed and developing, without distinction of race, language or religion, equality and report sucking ware development in areas economic, social and cultural rights.

Nowadays, the right in equality and determination is one of the fundamental principles of contemporary international law and binding of methods used by separatist movements, secession and corresponding areas such as the division and disintegration and civil war and condescending. Also, the reasons and motives of the secession may be economic motives and to undo the union and willingness of minorities to establish their own state, minorities can play a big role in the secession of states and economic resources can represent one of the motives for secession.

Keywords: The Secession and its aspects and reasons in International Law, aspects of the federal state, the secession as result of the right to self–determination and the relationship between them.

ÖZ

Demokrasi konularında artan ilginin etkisi altında insan hakları, artan küreselleşme ve onunla alâkâlı sorunlar kadar self determinasyon (kendi kaderini belirleme) kavramında bir kayma dikkati çekti. Bunlardan en önemlisi, içinde onun anavatanının hükümetleri doğuya özgü azınlıkları self sdeterminasyon başlığı altında böyle bölünme üzerine PIL'i meşrulaştırmak ve ayrılma hakkını vermeye çağıran dini veya etnik azınlıklardan yükselenleri içermektedir. Kendi hükümetleriyle bazı azınlıklar arasında var olan iç çatışmanın çözümünde bir araç olarak onun milli bölgesi üzerinde tam egemenliğin sömürge ve güvencesi altında devletlerin bağımsızlığını elde etmek için uluslararası mekanizmayı yaymak kadar bu olayın kavramının bir dönüşümünü başlatmak için bazı bilginleri ve araştırmacıları areketei.

Ekonomik sosyal ve kültürel haklar alanlarındaki eşitlik ve raporlama gelişimi, ırk dil veya din ayırımı olmadan çağdaş uluslararası hukuğun büyük küçük güçlü zayıf, gelişmiş gelişmekte olan tüm milletlerin hakkını tanıdığı kadar insanların ve milletlerin self determinasyona olan haklarının prensibindeki ilgi yeni uluslararas koşullar içindedir.

Günümüzde, eşitlikte ve kararlılıktaki hak uluslararası çağdaş hukuğun ve ayrılıkçı hareketler, bölünme, dağılma ve iç savaş ve küçümseyen gibi karşılık gelen alanlar tarafından kullanılan yöntem bağlanmasının temel ilkelerinden biridir. Ayrıca sebepler ve bölünme harekwtlenmeleri ekonomik hareketlenmeler olabilir, ve azınlıkların birliği geri almada ve kendi devletlerini kurmadaki istekliliklerinde azınlıklar devletlerin bölünmesinde büyük bir rol oynayabilir, ve ekonomik kaynaklar bölünme için hareketlenmelerden birini temsil edebilir.

Anahtar Kelimeler: Bölünme ve onun uluslararası hukuktaki yönleri ve nedenleri, federal devletin yönleri, self determinasyon hakkının bir sonucu olarak bölünme ve bunlar arasındaki ilişki.

DEDICATION

I would gladly wish to dedicate this research work to the special people in my life as well as everyone who has contributed in one way or the other in making it a success. To my mom, i am grateful for your support all the way, To dad god bless his soul, To my husband, you have been my pillar, my friend, my help and i could not ask for more than to express how i appreciate all you have done to aid me. To my supervisor i would want to express my profound appreciation for the time spent in guiding and advising me all through this work even when it wasn't convenient for you. you have truly demonstrated practical mentorship. And last but not least i would like to appreciate the department of social study at Near East University for their immense support.

ACKNOWLEDGEMENTS

Foremost, I offer my sincerest gratitude to my supervisor, Dr.R. Volkan Gunel, who has supported me throughout my thesis with his patience and knowledge whilst allowing me the room to work in my own way. I attribute the level of my Master's degree to his encouragement and effort and without him this thesis, too, would not have been completed or written. One simply could not wish for a better or friendlier supervisor.

Furthermore, I would also like to acknowledge with much appreciation the crucial role of the staff of Near East University, who gave the permission to use all required sources and the necessary materials to complete this dissertation.

A special thanks to my family. Words cannot express how grateful I am, to my mother, and all of the sacrifices that you've made on my behalf. Your prayer for me was what sustained me thus far. I would also like to thank to my beloved husband, Mr. Bijar Amedi and my sister in law kaheen & Nijan . Thank you for supporting me for everything, and especially I can't thank you enough for encouraging me throughout this experience.

Table of Content

LIST OF ABBREVIATIONS

UN : United Nations

GA : General Assembly

PIL : Public International Law

SFS : Sovereign Federal State

UAE : The United Arab Emirates

UNGA : United Nation General Assembly

KRI : Iraq Kurdistan Region

USA : United States of America

SU : Soviet Union

INTRODUCTION

Many constitutions of the federal states lay down texts to prevent the member states from secession and it confirms the internal unit of the state. While some other constitutions did not refer to this matter, nevertheless, it has seen in rare cases of constitutions were found to organize the secession matter. As it has to be mentioned that there are elements to devote the unity in the federal states, which confirm the internal unity of the state and ensure its unity, independence and sovereignty. The constitutions of USA, Mexico, Nigeria, India and Spain are the examples which support this fact. Several texts of the Iraq i constitution of (2005) confirm the state's unity from which the first article stipulated frankly that the republic of Iraq is a fully independent and SFS and that the constitution is a guarantor of Iraq 's unity.

Thus, some federal constitutions did not address the issue of secession in any way like the constitutions of Australia, Germany and Switzerland. Meanwhile, we see two unique federal constitutions', which gave us an official right for states to secession such as the SU Constitution of (1977) and the Ethiopian Constitution of (1995).

As for the attitude of general international law recognizes the right of secession as a legal right in the case of self-determination that was confirmed by the UN charter of legal right. As well as, when the acquisition of the separate part of the international character from secession, it is not being encouraged simply because it is contradictory to the principle of the unity and integrity of the state lands. But, at the same time it deals realistically with the new state, especially when the separatist movement get succeed in imposing its control and its administration of the separate part of the original state. Therefore, the international community has recognized many of the states arising from secession.

The Theoretical Framework of The Study

The thesis is divided into five chapters; the first chapter consists of the introduction, importance, problem, and aim of the study, along with the research methodology and the most important references. The second chapter is going to highlight the definition of secession, and its aspects and reasons. The third chapter will illustrate the aspects of the Federal State, unity in the Federal State, participation in the Federal State and independence in the Federal State. The fourth chapter will look at the secession because of the self-determination right and the relation between them because of the self-determination, in addition to the relationship between determination and secession, as well as, the relationship of secession with the

dissolution, and partition. Furthermore, the relationship of secession with concession, along with, the relationship of secession with revolution and civil war. Finally the fifth chapter will contain the conclusion and the research.

The Research Problem

The research problem concentrates on commonness of the secession phenomenon or asking for the secession of the units of the Federal States. It is mentioned that secession is considered one of the commonest styles historically in founding states, in the twentieth century several states were established throughout secession especially after the end of colonialism to the limit that some people have termed this period as, era of secession, which pushed states nowadays to take care of their internal security and their unity more than their external security, so disorders would start in the relation between the ventral authority and one of the region parts where the people would resist the state authorities.

Objective of The Study

- Diversity in the religions has a big role in the appearance of minorities, which demand the right of secession.
- In the event of emanation of secession movements for the regions and demanding to establish a state to them the peaceful methods must be applied.
- The economic and political motivations for the regions have a direct effect on the secession demand and establishing their own state.
- Establishing a federal rule system in the states that have a plurality of religions.
- Granting the minorities a special status by using the minority language in their life and education.
- The civil wars and revolutions lead to appearance of regions which ask for the secession.

The Significance of The Study

Many constitutions of the Federal States set texts to prevent the member states from secession and assure the internal unity of the state, meanwhile some constitutions kept silent towards this attitude nevertheless they found rare cases of constitutions that organized the

secession matter. The international law confesses the secession right as a legal right in the case of the right of self-determination which was assured by the pact of the UN and upon the acquisition of the separate part of the international personality.

The Research Methodology

Our study of the research subject would be done according to the analytical curriculum related to the secession case and an explanation of the pertinent phenomena and in accordance with the available legal resources that are relevant to the subject.

The Research Outline

The First Study / Definition Of Secession, Types and Reasons

First demand / definition of secession.

Second demand / images of secession.

Third demand / reasons of secession in the Federal State.

The Second Study / Aspects of Federal State

First demand / aspects of the unity in the Federal State.

Second demand / aspects of independence in the Federal State.

Third demand / aspects of participation in the Federal State.

The Third Study / The secession is as the outcome of self-determination right and their relation

First demand / the secession is as the outcome of self-determination right.

Second demand / the relation between self-determination and secession.

Third demand / relation of the secession of dissolution, division and waiver, revolution and civil war.

CHAPTER I

THE DEFINITION OF SECESSION AND ITS ASPECTS AND REASONS

1. The Definition of Secession

Secession is an egression from a part of a territory of the state from the original state sovereignty, for the purpose of creating a new state. In order to create a new state you have to collect all the legal state elements. (Hocking, B, 1993, p.36)

Some people mention that the secession historically is considered as the most prominent method in creating the states. Regarding to this, in the twentieth century, several states were founded via the secession of many states especially after the end of imperialism. Advanced opinion seems confused between independence and secession , secession means hashing State land while independence means freedom from colonialism and if the first one (Secession faced with a fundamental principle of the PIL principle, which includes the importance of maintaining the territorial integrity of the state). Well, the second one Independence is a principle of general international law which is the right for liberation and decolonization.

The secession issue an order to be legitimate, it is implemented throughout the constitution amendment in the case of non-existence of a text on the secession , by taking into account what it needs to amend the federal constitution of complex requirements, which is usually required the referendum, whereby the sovereignty change is displayed on the territory to the people of that territory to decide whether to accept the change or not. In order to be decided whether such a change would be accepted or not taking into consideration that the people's referendum has not become a binding base of the general international law bases yet and the resorting to it or dispensing with it, it is still a matter being subjected to the circumstances of every case and exposed to political and realistic considerations more than its being subjected to the law rule, (Rubin 1967, p.179).

1.1 The Legal Organization of Secession

Many federal constitutions which includes provisions explicitly or implicitly prohibiting units from secession and also confirms the internal unity of the state as well as keeping the union's integrity. On the other hand, it prevents the state partition and its collapse. The constitution of the USA is one of the clear examples of the constitutions which prevent the states secession from the Federal State and the same thing with the constitutions of Mexico,

Brazil, Nigeria, India and Spain, where the latter bans the societies which have the home rule to conduct popular referendum regarding the secession, as the second article of the constitution stressed the concept of indivisibility of separating the Spanish nation and homeland.

The Iraq i Constitution of (2005) emphasizes the unity of the state in the article (1), which stated explicitly that "*The Republic of Iraq is an independent Federal State, ... and this constitution is a guarantor of the unity of Iraq* ." The first sentence of this article stresses the unity of the Federal State and which is incompatible with the idea of secession of its constituent units. While, the second phrase of this article confirms that this constitution guarantees the unity of the state, as well as on the right formula to every Member of the parliament as well as the president and the prime minister has to maintain Iraq 's unity, sovereignty and safety, (Iraq i Constitution , 2005).

With regard to the Iraq i Constitution (2005), in pursuance to the article (64), which is allotted for defining the republic president, is shouldered by the president to keep the Iraq independence, sovereignty, unity and its lands integrity. It has to be said that, the article (106) of the constitution binds the federal authorities to keep the Iraq unity, integrity, independence and its democratic system. In spite of this, KRI constitution 2006 the of the constitution of the KRI states that "*the people of Kurdistan -Iraq has the right to self-determination by themselves,...*," (article (107) KRI Constitution, 2006).

This text is considered contradictory to the previous texts as well as its contradiction to the article (121) of (2005) Iraq i Constitution which stated that "*the Kurdistan region shall acts to set his own constitution, that defines the structure of the provincial authorities and powers and mechanisms to practice those powers that should not inconsistent with this constitution,*" (article (121) of Iraq i Constitution, 2005).

1.1.1 The Most Important Articles on Iraq i Constitution Regarding to the Secession

The first referencing Iraq i article says that, "*the Iraq i constitution was originally built on the people's right to self-determination components, and its decision on the union in the state of pluralistic democracy,* " (Iraq i Constitution, 2005).

The second referencing Iraq i article address that the commitment towards this constitution keeps Iraq as a free union in terms of people, lands and sovereignty, as it was mentioned in the article (1) that "*Republic of Iraq is an one Federal State, independent and is*

of full sovereignty, its ruling system is parliamentarian republican, democratic and this constitution guarantees the unity of Iraq ," according to (Iraq i constitution, 2005).

It can be clear from these two significant texts that the federal union or the Federal State: in the shadow of the federal union the union units are made to unite in one state, according to a constitution being accepted by all the units, members or the nationalities joined inside the union and it becomes as the supreme law or the basic system of the new state that emanating from the union. So, these two texts explain doubtlessly that the commitment towards constitution is the guarantor to keep this optional union constant or steadfast. In a quick review of the Iraq constitution, condition nowadays, we see, after nearly nine years much of its fundamental items are not applied, especially that are associated with organizing the relations with Kurdistan region and guarantee of the Kurds rights, but, the federal government acted to circumvent and fudge on the constitution items and explain them according to its narrow interests by all means.

Iraq is a Federal State, but not a unified state. The Federal State is made up of the union of two entities or two nationalities and more, the differences in the nature and essence of the international unions have caused the presence of multiple forms of the Federal State, and it differs according to the difference in the extent of the relationship and the overlap between the union units such as the confederated union or the federal union.

Article (3) of Iraq i constitution stated that, "*Iraq is a country of multiple nationalities, religions and sects, and it is a founding and active member of the league of arab states and abides by its charter and it is a part of the Islamic world.* "

Thus, the constitution claimed that Iraq multinational country, is not a unified nation State. Recognition of multiple nationalities means the recognition of the full personality of nationalism, and the legal rights enshrined in international treaties, and the decisions of the UN, including the right to self-determination.

Also, article (5) of Iraq i Constitution stated that, "*The sovereignty of the law and the people are the source of authorities and its legitimacy practiced by secret election, and through the constitutional institutions*," according to, (Iraq i Constitution, 2005).

Here, the constitution recognizes that the people have the right, not the federal authority that does not work according to the constitution was voted by the people. Self-determination is based on the people is the source and legitimacy of authorities, namely that any referendum

results, will be built on the legitimacy of people's power in check and report to his fate. This was confirmed by the constitution in his introduction "to adhere to this constitution preserves Iraq to free his people and land and sovereignty." So, when the federal government is committed to applying the constitution, the people are entitled to exercise their right to self-determination, in the way that suits him. And must be noted here, that the exercise of the right of self-determination is by enacting rights internationally, and not tied to that concept in the constitution, adopt laws, decisions, and international instruments adopted by the UN and the international community as a whole is bound. (Cornell university law school, nd)

Moreover, article (46) of Iraq i constitution stated that, "*no one can restrict any practice of the rights and freedoms mentioned in this constitution or identified it by law, that it does not affect the limited and restricted the essence of the right or freedom,*" (article (46) Iraq i constitution, 2005).

The concepts of right and freedom, cannot curtail them in the constitution, but they are values recognized universally. Handling them is going to be within this context, not the context of the constitution. Since the UN had ultered the legal status determination of the principle of the right of self-determination, it becomes a part of universal human rights and freedoms, within the concept the essence of right and freedom.

The article (117) clears the attitude of Kurdistan region and states the following: This constitution confirms upon validity, "*Kurdistan region and its existing authorities, a federal region*", (article (117) KRI constitution, 2006).

The article does not mention that the Kurdistan region is a part of Iraq land, but a term is used as federal region, Kurdistan region was an existing entity by itself and its authorities, then the region was annexed to Iraq by a free optional decision being conditioned by implementing the constitution.

The region has the authority of practicing its legislative, executive and judicial authorities at the same time there is nothing in the constitution inconsistent with using the referendum right for Kurdistan people for their self-determination taking into consideration that the referendum right in the self- determination is a legitimate right and internationally guaranteed and it is not applied to the mention in the constitution.

1.1.2 The International Situation of Secession

The principle of the regional integrity is considered one of the more stable principles of the international law and it is one of the constraints mentioned about using the right of self-determination. It is prescribed for the purpose of keeping the state sovereignty and its regional integrity. On the other side, the right of self-determination is exceptional and legitimately confessed in the case of disposal of the imperialism and harsh violation of human rights, Ibid, notes that, the self-determination has become a right of the collective rights of human that cannot be ignored because it is a legal right confessed in the international postural law, (Imai, 2008, p.26).

Thus, the decision of the GA for the UN no. (2625) of the year (1970) that related to the amicable and cordial relationships between states which confirmed a grant of the right of self-determination to three categories of people and they are:

- The peoples who live in the colony areas.
- The occupied peoples or the regions which were annexed by force without a free popular referendum.
- The situation of the Federal State which has been formed by the voluntary joining from a number of states which the federal constitution accredited the right of secession, according to (UNGA, 1970).

The right of self-determination as any other right of the legal rights has the required determinants and it cannot be taken for granted. It is an absolute right that unleashes the peoples in the application because it will lead to the international chaos if it is recognized to be applied in the previous cases but its practice gets complicated on the face of the minorities problem. The people which the government deals with various components on an equal footing where the minorities cannot demand to secede from the mother state and the simple violations against human rights result in requesting the governing regimes to respect that rights and freedoms. Nevertheless some components accredit the confession for the minorities which suffer from persecution and injustice the request of secession/ secession from the mother state on condition that the injustice should reach a high degree of gravity along with non- existence of the domestic or international alternative. So the self-determination right does not mean the endorsement of secession right of the units from the mother state on the basis that it owns a language or a religion or a certain nationality where these peculiarities can

be respected by the federal government and these peculiarities lead to establish the federal order.

The conception of the self-determination right includes political and binding legal dimensions, developed along with the legal status of the conception within pacts and decisions of the UN based on experiences of peoples and different nations in determining their affiliation, their political center and a form of their ruling system. We review in this abridged study the historical, political and legal perspective of the self-determination conception and the accurate legal explanation of the Iraq i constitution articles in this connection, for the purpose of giving an universal explanation regarding this conception instead of the politicized explanations which were recently issued to distort the facts and undermine their constitutional and legal applied dimensions.

Thus, the study will tackle the following points:

- What is self-determination right, date and application.
- The legal definition, the pacts and decisions issued in the UN.

1.1.3 Essence of Self-Determination Right, Date and Application

Claims that, the conception of the self-determination has entered the political thinking before entering the legal jurisprudence, through the revolutions, greatest wars and the liberation movements in a number of the world areas. It started to crystallize as a revolutionary reaction against the conception of divine authority which the royal rule prevailed at that time and harmonized with the church in stabilizing such a kind of authorities at the medieval ages. It was the State and its residents that were the private property of the king or emperor and by the church care and this authority is not subjected to any law. The ruler practices its authorities as a legal owner for all that peoples and nationalities and their sources. The french thinker, Jean Bodin, who wrote on the conception of the state sovereignty, that royal - church authority – that is a political authority unrestricted by law. But along with the emanation of revolutions and persistent tides for getting rid of the authority practice within the religious frame of the state, celestial, the authority conception and its statutory applications developed in the international society, (Peter, 2012, p.114).

Then, It became the power resides in the people, and their will, which through the inalienable right "to decide the form of government in which the state wants to belong to it.

The ideas of the British John Locke and the French Jean Jacgues Rousseau-the owner of the general will and mass sovereignty to get the public idea and elite acquainted with the principle of the self-determination right and the conception of the new state. So the statement of the American independence was declared on (4/July/1776) as a first experience which set theoretical ideas in the right of self-determination into action and it was politically applied to get rid of the British Imperialism, then the French document of human rights came in (1789) to enhance this conception in Europe. Afterwards, the right of self-determination became a fundamental principle, on its base the government states of South America were established which took their independence from both Portuguese and Spanish imperialisms during the period between (1810-1825). In this frame the American president James Monro issued in (1823) a statement in which the right of that state was guaranteed in their self-determination and he also undertook the intellectual, economic and military support to face any European intervention into the affairs of that state, (Peter ,2012, p.114).

1.1.4 The Legal Definition, The Pacts, and Decisions Issued At UN

The agency of the UN in the San Francisco conference in (1945) after the Second World War adopted the principle of self-determination and it was stated in article (1) / paragraph (2) within the goals and principles of the UN and was also mentioned in the UN. In San Francisco conference in (1945) article (55) of ninth chapter associated with the economic, social and international cooperation. The GA of the UN followed up the issuance of the decisions related to the peoples right in their self-determination and replaced the legal status of the self-determination from principle, with the right and the difference in that is the right acquires the legal attribute, binding for the practice and application where the international law expresses the right of self-determination and it is a constant right, that it has the commanding force, (Hannum, 2011, p.32).

While, the principle gives the freedom of belief or adopts it or refuse it and change the legal status the right of the self-determination led to be global legal right whose attribute is just like Universal Human Right whether it is mentioned by the states in their constitutions clearly or not. The right of self-determination is a legal, statutory and international right being guaranteed for all the peoples without discrimination within pact of the UN and their pacts issued in this respect. Additionally, the decisions of the UN developed the legality of this right, thus, it became an integral part of the human rights regulator and become a new semantics, because the treaties, charters of human rights became the legislative foundations of

contemporary international law, and that the modern era has witnessed the emergence of divisions within many States, sometimes led to massacres and wars against ethnic minorities and nationalism. We will come on legal detail in the paragraphs below.

1.1.5 The Pacts and Decisions of The UN About The Right of Self-Determination

The legal enrolment of the self-determination right in San Francisco conference, which was held to find the UN was aroused and moved according to the San Francisco conference in (1945). The UN in San Francisco conference in (1945), in the second (2) paragraph of the article (1) a column of the goals and principles of the UN was enrolled. The paragraph stated and confirmed the development of the cordial relationships between nations on the basis of the principle respect which aims to compromise in the rights between peoples and every nation has the right of the self-determination in addition to making the other right procedures to upkeep and enhances the general peace. Here we observe the paragraph does not use the term but it sufficed to use the term nations, and peoples because the nations and peoples determine the form of the state, rule and the sovereignty under which the peoples want to live, then the right of self-determination was mentioned again in the (article 55) of the ninth chapter related to the economic, social and international cooperation where the article stated: the desire of the UN to provide the necessities of the stability and welfare to establish amicable and sound relationships between the nations being built on the principle respect which aim to the settlement in the rights between peoples and every single nation should have a self-determination, (The San Francisco Conference, 1945).

The UN In San Francisco conference in (1945), the article (55) was reckoned as a basis to create the conditions of stability and welfare to maintain the relations of friendship and peace between other nations. But, the imperial states continued to fight the anti-imperialism states, regarding the accurate legal explanation of this article. The conflict, and the UNGA by its resolution (421) of (1950), asked that the commission on human rights has to make recommendations regarding the ways and means that ensure the determination of peoples.

Then the GA confirmed by its decision no. (545) issued on (2/ 1952), that, "*the necessity of the simplicity of the agreement related to the civil and political rights where the agreement associated with the economic, social and cultural rights in an article, guarantees the peoples right in their self-determination*", (The GA in December /1952) has issued the decision no (673) accordingly considered the peoples "*right in their self-determination a*

necessary stipulation to have all the fundamental rights and every member of the UN should keep the self-determination of the other nations and respect it", (The GA, 1973).

After the decisions which the committee of human rights offered via the economic and social council of the UN conference (1960), it issued the decision no (1514) which aims at granting the independence to the imperialized peoples and states where such decision occupied an exceptional importance because it was made an axis on which all the following decisions of the UN associated with the right of self-determination were based. The decision stated as follows : *"the right of peoples without any discrimination in their political, economic, social and cultural self-determination and expected steps would be taken to grant the non-independent peoples their full independence and no any pretext would be made to defer that... unlikely it would be a denial to the basic human rights and it is contradictory to the pact of UN, meanwhile it hampers the international peace and cooperation*", (Social Council of UN Conference, 1960).

In similar ways, the GA of UN (1962), the decision (1803) in (1962) the GA of UN adopted the right of peoples ,inalienable, in soveregenity over their riches and their natural resources considering it one of the rights emanating from the right of peoples in their self-determination and in the determination of their political center and providing their economic development on condition that non-breach of any commitments depend on the requirements of the international economic cooperation reliant upon the mutual benefit and principles of the international law, the GA of UN (1962).

The above decisions were issued in the process of the attempts of the imperialized states to get rid of the imperial states the UN after that period decided to expand the scope of applying the right of self-determination throughout the issue of a decision no Available from, UN conference (1966), (2200) in (1966), which included two international eras, the first era was related to" the civil and political rights" and second era was regarding "the economic and social rights" where these two eras became enforceable in (1976), (UN Conference 1966).

It fully and legally entrenched the right to self-determination of all peoples as well as made it one of the fundamental human rights. Thus, the first article of the covenants containing one unified text determination represents "*all peoples have the right of self-determination and possess by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development,*" (UN Conference 1970). Then the GA collected all the decisions which were taken at earlier time about the self-

determination in one decision in an attempt to unify the meaning of the conception and applications, available on, UN conference (1970), the decision, (2625) was issued in 1970 comprising the frank Declaration associated with the cordial relationships and cooperation between states according to the pact of UN and the GA reconfirmed the decision no. (2787) issued on (12/12/1972) "*right of peoples in the self-determination, freedom, independence and the legality of their system by all available means and conformable to the pact of UN*" and requested via the decision no. (3970) issued in (1973) all the member states to confess the right of peoples in their self-determination, their independence, giving them the moral and substantial support and all types of assistances to people who struggle for this objective.

By these developments which were left behind by the decisions of UN and international practices, the right of self-determination has enjoyed the commanding international rules which was assured by according to Vienna accord of treaties law of the year (1969), since this right enjoys the attribute of the legal rule and it is considered one of the rules of the general international law whether their source was the international tradition or the general international accords where the self –determination occupies the acceptance by the whole international society .

1.1.6 Some Legal Directions in Explaining The Right of Self-Determination

Some opponents of the right of self-determination stipulated in the decisions of UN adopt a narrow explanation against the people's right at equality and liberation on the pretext that this right is restricted to the colonial states only. Thus, this contradicts the development of the contemporary international law and the practical application of this conception by a number of peoples and states. Many jurists believe that determination has provided for in paragraph (2) of article (1) of the Charter of the UN with the concept of equality, equal rights and self-determination, "*therefore, it is not possible to say that equal rights are*" legal right while that determination is not like that , according (paragraph (2) of article (1) of the Charter of the UN)

Also many of the international law jurists stood against the pretexts used by some states to narrow the legal application of this right and proved about such ill-founded pretexts confirming that the self-determination has developed throughout the decisions and practices of the international society based on the pact of UN and became a legal right arranging rights for the peoples and states and imposing international commitments on them. Thus, the attempts of some states of distorting and falsifying the right of peoples in their self-

determination by the claim that the self-determination would cause a sense of chaos and dispute between nations and states, such thing means that these states act to enslave peoples and enchain them with lawless authorities. Proceeding from this point we saw how the application of this falsified idea was made against the Kurdish people by depriving them of their right of self-determination after the first world war, which jeopardized them to repressive policies such as the deportations, localized use of the internationally banned weapons such as the chemical gases, and the anfal campaigns, and genocide, (Boykin, 1998, p.187).

Then, the decision of the great powers was to sacrifice the Kurds, which resulted in the chaos, conflicts, wars and catastrophes. So granting the right of self-determination to the peoples on this planet would doubtlessly lead to removal of violence and disorder. Finally, the nineties era of the past century came to crystallize the implementation and application of the international confession of this right in a bigger and deeper way after the disintegration of the SU. It led to appearance of nationalities and ethnicities independence where Estonia, Latvia and Lithuania declared their independence and the ex-Yugoslavia was partitioned to seven states namely Serbia, Croatia, Bosnia, Herzegovina, Macedonia, Slovenia, black mountain and Kosovo, (Boykin, 1998, p.159).

1.1.7 The Permitted Methods Within The Frame of Practicing The Right of Self-Determination

Acoording to the charter of the united nations, both the fourth and fifth ideas of the fifth principle of the Declaration of the international law principles regarding the cordial relationships and cooperation among nations, according to the pact of the UN amongst the permitted methods within the frame of practicing the right of self –determination were:

- "*Establishing à sovereign and independent state.*"
- "*The desire in the secession / secession freedom from the state or joining an independent state.*"
- "*Transformation into a political system freely according to the people's desire.*"

But at the same time, the seventh paragraph of the same principle permitted the states the right of defense of their sovereignty against the movements of secession or partition hence

the application of the self-determination right requires the balance between two contradictory considerations, (Watts, 2005, p.243).

Although, this contradiction has been settled in Vienna Treaty in (1993) in the UN on Human Rights which settled the differences. Ready from, Vienna treaty (1993), Thus, the conception of self-determination conception is highlighted after Vienna Treaty. This long wave of the legal development and experiences of the states are as follow:

- The right in the state dissolution, changing its shape and nature as it took place in the SU and Czechoslovakia.
- The right in the withdrawal or secession as it took place in Bangladesh and Eretria.
- The right in a home rule autonomy for certain groups and regionally defined as it was common in the ethnicities and language in a frame of confederation.
- The right of the liberty from foreign imperialism as it took place in Africa, Asia and Caribbean.
- The right of keeping the independent will of people occupies a certain region as it was in Mayotte Island in Comoros or in Puerto Rico.
- The right in the unification of the partitioned state as it was in Germany.
- The rights of minorities and groups which have a big political and a legal presence of the confession as being the article (27) of the treaty of the political and civil rights of the GA Declaration in (1992) about the peoples' rights who are subordinate or dependent to a nationality or an ethnicity or a religion or a language.
- The right of the internal determination in the freedom of the government shape and in a clearer form just like the democratic shape in Haiti, (Vienna Treaty in the UN, 1993).

1.1.8 The UN and Methods of Practicing The Right of Self-Determination

The majority of the members in the UN agree to practice the self-determination prescribed by peaceful and democratic methods like suffrage and referendum or any other peaceful method. These methods centered on the suffrage and referendum for their being are ones of natural, constitutional methods of the internal legislation on one hand, on the other

and such methods are agreed to as the legal law and they include the people consultation via the direct voting about the people desire regarding the self-determination and "it was confirmed by according to the GA of the UN in (1952), its decision no. (637) issued on the self-determination on (12/1952) and stipulated "*that the desires of peoples are being confirmed via the suffrage or any other democratic methods and being prescribed and it is recommended that they would be practiced under the supervision of the UN*," the committee of human rights repeated the same text in the paragraph (2) of the first article and article (48) of the Human Rights agreement project. (the GA of the UN,1952)

If the people rights are denied by the controlling government, it will be considered an aggression and a violation against the principles of the international law. Then, the UN and Nations Council would be obliged to take the required procedures to stop this aggression and in case of the failure about that.... a contradictory status would take place against the pact and principles of the international law. Both the referendum and suffrage were used in Sudan, Mauretania, Guinea, India and Nigeria. (Hannum, 2011,p.54)

The international relationships are based on the interests and on this basis the determination / fate of the separatist attempts would be decided, that being confessed would lead to negative tracts on many states especially those states that are made up of national or religious or ethnic components that have separatist tendencies. The international society has nearly taken an attitude different to this secession because it would cause a sense of tension of the international relationships and it could destroy the total frame of the states and the entire continent like Africa continent which includes ethnic, religious and domestic groups and it would be dangerous when the tribes. " Igbo " tried to take independence from Nigeria and inside that tribes there was an attempt to divide it into twenty small states on the basis of the difference in the accents between them. The dissolution of the federal unions requires the liquidation of the assets, public and private funds between the mother country and the separate states / provinces followed by several problems.

The sum of the above discussion illustrate that to activate right secession based on determination and response as a solution in situation of tyranny and oppression suffered by a particular group. The last option, which would take it to task conditions are in accordance with the constitutional and legal mechanisms are complex and agreed with other ethnic groups and other regional groups. As autistic was voluntary, optionally with other groups that exit should be subject to the blessing and support of other components as the component that

requests secession shall bear in mind how to develop and perfect economic and political position to activate this right, especially for ethnic minorities living in a specific geographical area and not dispersed throughout the Federal State otherwise generate activate this right problematic than comes from an ethnic ingredient no solutions, but of the whole other components in the Federal State.

1.2 Aspects of The Secession

Several cases of secession took place in a number of Federal States some of which used the peaceful ways in the secession and some other used the coercive ways, some of them succeeded and others failed.

1.2.1 The Peaceful Secession

There were cases through which the units secession from the Federal State befell peacefully either by the referendum or without it like the secession of Venezuela from Colombia at the onset of the thirties of the ninetieth century and the other secession in the federal union of the western India isles in (1962) and the federal union of Rhodesia and Islands in (1963), Singapore from Malaysia in (1965), SU disintegration to 15 republics in (1991), Czechoslovakia secession in (1993). Also Nevis island was separated from Saint Qestsi union and Nevis at the percentage of two –thirds of the votes of the legislative council for the island in (1998). In this connection the republic of the black mountain secession from Serbia union and the black mountain after the conduct of the referendum on (9/2006). (Buchanan, 2010, p.322)

So the study of such secession cases shows us that it belongs to a number of reasons not because of the federal adoption basically but as a result of misuse of the federal procedures as it happened in Czechoslovakia because of the adoption of the sectarian dual federal. Such federal causes several problems because of insistence of both units on the equality between them in all the affairs where they both have the right of veto in all the important decisions which at some time result in the deadlock and the stopping to implement the projects and the beneficial general plans for the union. By the two units of the union Czech and Slovakia vary by the population and wealth bulk in addition to the absence of the alliances and political coalitions between the two units, all of these affairs contributed to their secession which formed the Federal State altogether. (Nanda, 2010, p.13)

1.2.2 The Coercive Secession

This is the act of separating the Federal State forming units throughout the use of the violence and armed force. When the Declaration of Pakistan East Bangladesh in (1971) from the federal Pakistan state which was achieved after a civil war, continued for two weeks and led to appearance of Bangladesh state, separated from Pakistan in the end which retained its federal system under the shadow of its new constitution of (1973), when the secession and compulsory disintegration in the ex-Czechoslovakia in (1991), where this Federal State fell apart to five (5) states after a heated civil war according to the (1974) constitution. (Buchanan, 1991, p.336)

For example the Federal State in ex-Yugoslavia was in lack of the democracy and the central authority and the one- party have controlled all the political and economic fields in the state. In the meantime, there has never been any aspect of the participation in the authority. Also, on the other, the national and ethnic variations among the Serbians, Croatians, Albanians and Muslims played a big role in escalating the interior splits and the attempts of the secession in the shadow of non-presence of the opportunities of the tolerance and peaceful coexistence especially in the hard economic circumstances which the state has witnessed because of the corruption and impairment of the central economic plans. So in the beginning of the nineties, the state was divided at the regional, economic and ethnic levels, then it ended to the (1991) civil war and led to the secession of the federal units at the end. (Kreptul 2007, p.48)

It seems that the problem of the ex-Yugoslavia was not in its federal system or its ethnic plurality but in its non-democratic system along with its economic condition where the federal was used as a tool to manage the ethnic conflict successfully. It is the same in several multi - ethnic states such as Switzerland and Canada. India can be considered one of the most outstanding examples of the multi-ethnic Federal State.

1.3 Reasons of the Secession from the Federal State

The reasons of the unit's secession from the Federal State are diverse and they are differing in the terms of importance, but anyway they belong to the political and economic reasons and for other reasons whose importance varies according to every Federal State.

1.3.1 The political reasons

Presented that, the Federal State, by its nature requires a democratic ruling system inside the union forming provinces or at the level of the establishments of the central government, where many of the federal systems which failed and their failure reason belonged to their non-democratic nature more than their federal nature, so the cases of secession and failure which took place in the ex-SU, Czechoslovakia and Yugoslavia were due to their governments which were highly centralized and were in lack of the democracy and such case led to absence of dialogue opportunities or a sense of cooperation between the center and provinces, as the last one was often compelled by force to keep the Union and all that it was no wonder that these states seek for secession, as they are waiting for a suitable opportunity. (Hocking, 1993, p.35)

The democratic federal system requires the law rule, distribution of the authorities according to the constitution and respect of the minorities rights and these matters were not achieved in the unsuccessful federal systems meanwhile the federal systems should be founded voluntarily in order to have a bigger opportunity for more survival. The voluntary federal systems which were founded as a result of the negotiations between their different groups have a bigger chance where the citizens consider them the central authority as a legal authority. The Russian federal system is facing the most difficult challenge nowadays is the Chechnya crises which enkindled two wars in, (1994-1996) in (1999-2000), and the reason behind that Chechnya had not joined the Russian Federation, willingly but joined by force. (Hocking, 1993, p.40)

The bias of the political parties to work at the federal level or concentration at the regional level in the first place cancels the role of these parties as active bridges or stretched between the parts of the union and this element had a huge role in a secession of a big number of regions and provinces like the secession of Bangladesh from Pakistan in (1971), the total collapse of Yugoslavia federal union in (1991) and collapse of Czechoslovakia in (1992). The federal union in Belgium witnesses a real danger in the shadow of concentration of the political parties at the regional level and also in Canada. Finally, the presence of one-party in the Federal State has led to collapse of a great many countries because of absence of the democratic means in dealing with difficulties which created the secession cases which are considered very seldom in the democratic federal systems. The political parties are considered the important elements in protecting the entity of the Federal State whether these parties were

small or big and as these parties owning a clear vision about the federal system which may push them to carry this vision to their popular bases in the center or regions for the purpose of more diligence about the unity of the Federal State away from the secession. (Hodges, 2011, p.15)

1.3.2 The Economic Reasons

The availability of enough economic resources is considered one of the important elements on which the success of the federal system is based to funding the federal government and governments of the states.

Also mentioned that, one of the general features in all the federal systems is nearly to make most of the financial revenues resources run by the central government to be able to play the expectant role in redistributing the financial resources among its provinces like the natural resources, which may be available in some provinces without the other. This case led to the creation of big tensions among the units themselves and with the federal government. Therefore, all the federal systems acted to develop a number of councils and committees to facilitate the operation of distributing the riches among the various provinces fairly. (Hodges 2011, p.18)

The weakling economic situation in some provinces could push some provinces for the secession from the mother Federal State in search of new fund resources as it happened in the western Australia state whose majority voted for the secession from the "Australian federal union in (1933) this happened because of the bad economic situation but, the Australian federal government was firm and rejected its secession, in return it responded to its economic demands by founding a special system related to the financial assistances to the provinces which face economic hardships. (Hocking, 1993, p.46)

The Federal Communism regulations have been suffering from the weakness of economic; its regulations did not allow their systems to provide the level of pension acceptable. Therefore, the states founded most active states in the business sector, in such a state the opportunity for secession favorable as in the Baltic republics in the former SU. As in Slovenia, in former Yugoslavia, as in Czechoslovakia since the large economic disparities between the two units disappeared Federal Union Czechs and Slovaks led to the unwillingness of the richest unit commitment to many of the restrictions in order to accommodate poorer unit. (Watts, 1989, p.89)

1.3.3 The Other Reasons of the Secession

There are several reasons other than what previously could be cause for secession units in the Federal State prominently:

A number of the units that form the Federal State : A number of the provinces that make the Federal State, their location and their people can significantly affect the unit of the federal union while a number of the provinces becomes relative, for example (89) Units in the Russian federal union or (50) provinces in the USA where the influence of these units decrease but this influence and force of these units increase when their numbers decrease "*like the six units in Australia and the ten units in Canada*" but it worsens in the union which consists of two units as in Pakistan, Czechoslovakia, Malaysia union and Singapore, thus, it would create big bi-polar conflicts leading to nearly non-stability and then the secession and the variation in a number of people and the geographic location could cause a source of a split and secession which requires the reconsideration in the amendment of the regional borders for the purpose of reducing the variation as it happened in India and Nigeria . The conclusion from the above that size of a States and population density is of key importance in Federal States and that there has to be some sort of reasonable balance which can secure the capacity of each member States to maintain their independence and not to dominate any of them on others. (M Abdurrahman, 2005, p.104)

Distributing of the authorities among the provinces : this distribution of the authorities between the provinces of the federal union equally and harmonically is the general base, nevertheless some provinces are inclined to ask for more autonomy and such procedure needs some s non-harmonic steps when these provinces are granted more independence to avoid the secession like Qebek province in Canada and Sabah and Sarawak provinces in Malaysia and also in a number of provinces of India, Spain, Belgium and other federal countries. (M Abdurrahman, 2005, p.105)

From the above it is clear that we must find some sort of flexibility in the composition of the federal system to keep pace with the variables required by the times to preserve the unity of the Federal State and so we saw that some Federal States have given some of their mandates without the other right to conclude certain international conventions or granted diplomatic representation or membership in some international organizations of franchises as a result of a number of variables that takes those Federal State.

A plurality of the nationalities, languages and cultures: In similar ways, the federal system was the typical solution for the problems of the multi-ethnic nationalities, but the non-dealing with that pluralism according to this new fashion may lead to the laxity of the contract of the federal union. (Watts, 1989, p.69)

The unit represents a big challenge in many federal systems which witness colossal splits in the identity on the basis of the difference of the lingual, ethnic, religious and class foundations, so the presence of a number of ethnics, cultures and languages in the Federal State requires the necessity of confession of these groups and considering their privacies where these groups formed great minorities in the state. The non- provision of the constitutional and legal guarantees for the groups' rights would push them to demand the secession, so most of the constitutions of the Federal States confirm the respect of these groups' rights by giving them the right of using their local languages and their own cultures along with their religious ceremonies in addition to all the appearances which these groups want to retain as part of their historical and civilizational legacy.

The response to the aspirations and hopes of the sects and multi- nationalities, highlight of their heritage, traditions and enabling them to rule themselves by themselves, all of it would lead to save them from suppression, deprivation and the alleviation from the religious and national sensitivities in addition to bringing the different groups closer to each other towards the patriotic principles and common factors, on the contrary the domination, autocracy and the restriction on the freedoms make a reaction which urge them to demand the secession.

CHAPTER II

ASPECTS OF THE FEDERAL STATE

2.1 ASPECTS OF THE FEDERAL STATE

There are fundamental aspects in Federal States, which should be followed; meanwhile, the non-commitment of such aspects may be a reason for the secession of the Federal State forming units.

The aspects the unit in the Federal State are represented at both international and internal levels

2.1.1 Aspects of The Unit at the Unit at The International Level

The Federal State is considered a personal entity of the entities of the general international law while the international personality of the members states and the unit of the international personality for the Federal State is arisen that it has the only right to enter into international relationships with other countries and it will be the only member in the international organizations. It also has the only right of the diplomatic representation and the war Declaration in addition to a general base and holding the international treaties and joining them. (Hocking , 1993, p.41)

The unit of the international personality is incurred by the following:

Monopolization of The Exterior Treatment: The Federal State has the only right of the exterior treatment with the foreign countries and international organizations at war time or at peace time. By the way, some federal constitutions allow the states to have the right of the diplomatic representation and holding some international treaties according to the Swiss constitution of (1999), and the constitution of according to Arab Emirates of (1971), where the article (8) of the Swiss constitution permitted the cantons to hold agreements to organize the neighbor affairs and borders but the article (123) of the UAE constitution accredited the member emirates to hold limited agreements that have a local administrative nature with the neighboring countries on condition that the supreme council of the union should be kept informed before and the member emirates may retain their membership in OPEC organization and the organization of the oil exporting arab countries or joining them. (The UAE Constitution, 1971)

Furthermore, Iraq i constitution (2005), but the attitude in the Iraq i constitution was settled by the paragraph (1) of the article (110) of the constitution which referred to the exclusive specializations of the federal government which acted through its inclusion to shape the foreign policy and diplomatic representation, the negotiation about the treaties and international agreements and signing them then not any of the regions or the irregular governorates in a region of making and signing the world treaties, for your kind information, the fourth paragraph of the article (121) of the constitution permitted the regions and governorates to found their offices in the embassies and Iraq i diplomatic missions to follow up the educational, social and developmental affairs, and these offices do not deviate from these affairs do not address political or security affairs which are the responsibility of the federal government. (Iraq Constitution, 2005)

The unit of the state nationality:

The nationality which the citizens of the union state is one irrespective of the units they belong to as much as related to the people of one state even if the nationalities of that state differ or their ethnicities and religions multiply. (John, Steve, 2001, p.150)

The unity of the state region: The region of the Federal State forms one unit where it comprises all the regions of the units inside the union, which could form a continent like Australia or subcontinent as it is in India.

The unit of the state president: The Federal State is headed by one person who may be a president or a king who represents a symbol of the Federal State. (John, Steve, 2001, p. 149)

2.1.2 The Aspects of Unit at The Internal Level

There are several elements which encourage the unity in the Federal States including the sovereignty of the federal constitution and a system of the two legislative councils and federal judiciary.

Sovereignty of the federal constitution: one of the important features in the Federal States is the guarantee of the federal constitution sovereignty for being a source of the government authorities whether they would be federal or regional and the extreme importance of this constitution is a basic condition in the federal state.

The federal constitution represents the legal base on which the federal state is based and it represents a dual guarantee being bodied in the guarantee of the self-independence of the states and it also forms a great protection of the federal system.

The creation of the federal constitution is to be achieved by participation of representatives for the federal government and governments of the states when creating it by the way of the constitutive associate being chosen by people or when creating it by the constitutional referendum which is supposed to have the approval of the majority of the federal state people on the project of the approved constitution

The vast majority of the constitutions of the federal state forming units almost be the true copy to the federal constitution with some slight changes which aim to show the local properties of the state, for example the project of KRI constitution project came up with a preamble and its eight doors as a reflection of federal Iraq constitution even if Ibid, the KRI constitution (2006), the region president has been given big authorizations be discovered the article (65) of the KRI constitution (2006), project which exceed the authorizations of the prime minister of the region, conversely what the texts of the federal constitution include. This, and taking into consideration the constitutions of the units in the federal state and their local laws that they cannot be contrary to the federal constitution or the federal law and in that, is an enhancement of the political unity of the federal state and the federal constitutions comprise usually the unified financial policy of the state where the financial centralism is certified in all the federal states so that the federal government be able to redistribute the financial resources among states. (KRI Constitution, 2006)

There are necessities which require that the federal constitution be passive as long as this constitution acts to determine the specialties the union government. The governments of the provinces where the amendment of the federal constitution needs complicated procedures as long as this amendment affects the self- independence of the provinces and decreases their specialties which are stated by the federal constitution before the planned amendment, so for the purpose of the amendment conduct and its implementation needs the approval of the majority of the member states. Therefore the federal constitutions agreed to suffice by the approval of the majority of the member states and did not require their unanimity regarding that amendment where the unanimity is important only when the union is founded and its constitution is created but its amendment will be sufficed by the majority and not by the

minority which rejects the amendment that it would be separated from union. (Hadi, 2005, p.95)

The system of the two legislative councils : Illustrated that, the federal parliament is formed in terms of the two legislative councils system and one of which is made on the basis of the election base for the all the union people then every state or province in the council has a number of seats which differ from the other states or provinces according to their population size where this council is called the parliament or the people council or the lower council / house but the other council is constituted on the base of representing the member provinces /states in the union for being distinguished political units and they have their own self-independence, each province /state almost has a number of seats, equal to the other provinces irrespective of their population bulk or their area and this council is called the provinces council or the union council or the supreme council or the Senate council. By the way this dual regulation was created to dissipation of the fears of the small provinces and they are worried in case that they have a little representation of the members in the parliament, they would be a victim of the dominance by the big provinces/ states and this legislative arrangement can provide the right opportunity for the small provinces/ states to show their regional interests on the cases of the foreign policy and economic topics, (Qasim, 2006, p.68).

So if the parliament expresses the unity aspect in the federal state, the union council expresses the independence aspect/ appearance in the federal state and represents an aspect of equalities among the state forming units. The base of the duality on which the federal parliament is based is a necessity to represent the nature of the federal state and enable the states / provinces to take part in the rule authorities. (Qasim, 2006. P.67)

Although the two council authorities would be different according to the whole constitution, they would be equal in most contemporary countries on condition that there should be their approval regarding all the federal laws projects before their issue, if the parliament would lay down these legislations. They would be offered to the provinces council which the latter has the right of practicing the veto or the right of deferment or even the right of holding a joint session about such legislations especially that regards the interests of the provinces or the minorities. Nevertheless some of the federal constitutions grant the provinces council authorities which exceed the authorities of the parliament like the American constitution which entrusted the senate council the authority of ratifying some doings works of the republic president like the treaties holding and appointing the senior officials but

meanwhile some federal constitutions make the parliament more influential than the provinces council as it is search in the German constitution of (1949), which granted the parliament legislative authorities exceed the provinces council where the parliament can insist on adopting a certain law in spite of the provinces council's opposition when being voted in the second time after retrieving it from the provinces council.

Similarly the Iraq valid constitution has stated the formation of a union council, the article (65) and has bound the parliament to lay down the private law but such law has not come into existence so far. The federal parliament throughout it both councils as a general base is involved in the legislation authority regarding the vital entities of the country as the foreign affairs, defense, nationality, financial affairs, custom matters, currency, immigration and communications. Its legislations are valid in all parts of the federal state region and its people and all the states should be subjected to these legislations and stick to them in their internal legislations where it is a devotion to the unity of the federal state .

The executive authority: The executive authority of the federal state differs from another of the federal state according to the political system determined by the federal constitution. In the countries that have the presidential system as the USA of America the federal executive authority is made up of the country president alone who is elected by people indirectly and is assisted by a number of the aides of the ministers. But in the countries which adopt the parliamentary system like Germany, Canada, India and Australia they are characterized by bilateral executive power made up of a country head, irresponsible and of a federal government made up of a government head, a number of ministers and it is responsible before the federal parliament. But the countries which adopt the system of the associate government as Switzerland, the executive authority in these countries is made up of a number of members being elected by the federal parliament and presided by the president of the federal council and it is irresponsible before the parliament for being emanated from it.

The federal government takes the responsibility of implementing the legislations enacted by the federal parliament at the level of the federal state region in addition to making the required decisions.

The federal judiciary : figure out that, the federal judicial authority is reckoned a very important authority in the federal states because it keeps the balance between the federal government and governments of the member states/ provinces and also it is the decisive authority to settle the disputes between them and this federal judicial board has its original

specialty in the censorship over the constitutionality of the federal laws and laws of the states/ provinces regarding the federal constitution.

The federal judiciary is a very important power in federal states because they maintain the balance between the federal government and the governments of the member States. They also have final authority to settle disputes between them as the federal judiciary inherent jurisdiction in the constitutionality of federal laws and state laws for federal constitution. The importance of the specialty of the federal courts is to settle the conflicts peacefully as long as the relations among these states /provinces do not belong to an international nature but belong to an internal constitutional nature and these problems cannot be solved by the administrative ways because the federal system does not make the federal state a state higher than the states/ provinces administratively but guarantees it the internal independence, so the judicial style is the only style to solve such disputes and it has been adopted by most federal states. It has to be seen that, it must satisfy two conditions to federal courts could be accepted as a neutral and independent bodies which are independent of any influence from any authority in the State and two proportional representation in the membership of the court where, it representing all religious, linguistic and national totals and higher legal and judicial professionals. (Hadi, 2005, p.97)

It can be said that the supreme court of Canada draws any secession strategy that may arise in the future, that it cannot be separated from only one side. The federal government and other States are obliged to negotiate in good faith on issues such as the required majority for secession, breakaway region borders and guarantee the rights of minorities in addition to other important issues in the federal state, and it must be agreed before the referendum for secession and containing inevitably amending the constitution.

2.2 Aspects of the Independence in the Federal State

The aspects of independence of the formed units for the federal state are represented under the shadow a private constitution per start / province and general authorities.

2.2.1 Constitution of The State / Province

The aspects of independence of the formed states /provinces for the federal country are represented under the shadow of a private constitution per state /province as a general base in the federal countries along with presence of some exceptions in some countries which do not have constitutions for their states / provinces like the UAE, India and Nigeria. The

constitutions of these states / provinces organize the general authorities and clear the rights of citizens, create the independence to these citizens and amend the constitutive authority in the province and not to put restrictions on such authority except the constraints set by the federal constitution to guarantee the state unity and its general interest. (Rashba, 2005, p.46)

2.2.2 The Legislative Authority of The Province

The legislative authority is represented in the province in an elected parliament by the province electors where it takes the responsibility of laying down the legislations of the state and observing its executive authority, although the legislations of each province sticks to the rules of its constitution and the rules of the federal constitution but, on the other hand these legislations represent the distinguished nature per province, so what is prohibited in a province, may be permissible in another province. (John, Steve, 2001, p.152).

2.2.3 The Executive Authority of The Province

Also addressed that , this authority is involved in the political and administrative affairs in every government province which works independently away from the federal government without any censorship or a direction or a supervision by the later and it is responsible before the province parliament only. (Rashb, 2005, p.47)

Additionally, the government is made up of a head and a prime minister in case of application of the parliamentary system by the province or by the head and assistants / aides in case of application of the presidential system by the province. This government is entrusted to implement the province laws and issue the required decisions in this respect and at the level of the province region.

2.2.4 The Judicial Authority of The Province

The judicial authority of the province is represented in its courts related to settle the disputes which take place among citizens and takes the responsibility of applying its laws within the geographic scope of its regional borders.

2.3 Aspects of The Participation in The Federal Country

The participation means that the member units in the federal union participate in making the federal laws via their representatives in the federal board where the federal constitution is considered an accord or a pact between the union and regions and amending it requires the

approval of the center and a limited number of the regions and here the negatives of the participation appear in the authority where the amendment is not imagined to be made by one side. For example the amendment of the ready to American constitution of 1787 requires the approval of three -quarters of the provinces about the amendment after being raised by two – thirds of the congress members while Switzerland Constitution amendment requires a popular referendum conduct Ibid, the Iraq i Constitution (2005), but in Iraq the paragraph first of the article (126) *"requires the approval of two-thirds of the members of the parliament and the people approval on it via the referendum"*. (article (126) of the Iraqi Constitution, 2005)

The participation degree differs according to the federal constitutions where the participation takes place at its highest degree on condition that the unanimity should be made when taking the federal decisions, where per province has the right of raising the objections and the participation may be at its weakest degree in case of the sufficiency by the simple majority ,when taking the federal decisions and such participation is reflected at the best aspect, when amending the federal constitution and also in case of presence of the provinces council or the supreme council or the Senate council which consists of the representatives of these provinces at equal footing no matter how small the size of the state is or fewer its populations are and this council practices important legislative and political specialties.

The participation in the authority is not only confined to the legislative authority but also via the participation of the provinces / states of the central authority in the federal executive authority by participating in the government represented in the ministries, boards and the other executive agencies, so the federal system requires the presence of federal institutions whose mission is to administer the joint interests and imposition of application of their issued laws to the member states, the later participates in these institutions to make the decisions which concern the entire federal state or country. (Saadon, 2008, p.52)

By the way, the federal state/ country has a bigger opportunity for survival if the whole regional groups are represented inside the federal government where the groups which find themselves outside the federal government will follow up its interest in protecting the federal in a less manner and its incentives towards the split are bigger, So all the successful federal systems stick to the participation principle in the authority at the federal level whilst the unsuccessful federals cannot participate in the authority duly.

Finally, the local authority's participation in the federal authority is the method of the unity in the federal systems and it acts to enhance the federal government and from here it is important for every state to participate in the federal government.

CHAPTER III

THE SECESSION AS RESULT OF THE RIGHT TO SELF-DETERMINATION AND THE RELATIONSHIP BETWEEN THEM

3.1 The Secession as a Result of the Right to Self-Determination

There has been much use of the term, self-determination, during the First World War as a translation of German word, elbstimmug srecnt, which was used in the subject of nationalities as word initially emerged in the writings of German philosophers about (1848) and in (1915). The expression in English was used for the first time as a translation of the resolutions of the Socialist Conference held in, Copenhagen, which called to recognize the right to self-determination, the groups and individuals were demanding the content of the right without calling it. (Imai 2008, p.16)

The first announcement for the principle of the right of people to self-determination was after the first world war, in a letter from the U.S. President ,Wilson, to the German Empire. When he called for recognizing the right to self-determination, his attitude was not personal attitude, it was the attitude of the USA. Then he was followed by the heads of State of the world, the allies, and then announced a principle in the Versailles agreement of (1919), but this principle has not been applied only to the benefit of nations who were governed by Germany and was a part of the Austrian Empire. (Griffiths, 2005, p.124)

After the Second World War this principle was declared in the Charter of the UN in (1945) on the basis that it would apply to colonized nations.

In places like Eritrea and Bangladesh, the central government have a right to resist the separatist movements, only if this resistance has become a serious issue of human rights. In like manner, also addressed that, where the colonial domination became convicted by the international community so far, it has not accepted this principle over the countries that have achieved its unity even if the separatist movements rarely benefit from this principle. (Imai, 2008, p.16)

Following the commission on human rights' reports of the UNGA passed its resolution No. (1514) dated (14 December 1960) on granting independence for colonial countries and nations, and the decision stated on the right of all people without any distinction in the political, economic, social and cultural self-determination. In order to take steps to give

non-independent nations fully independence without delay, which making the right of self-determination because independence is a legal right to the colonial peoples, and the Conference of Bandung, which combines the continents of Asia and Africa, Sudan has participated in (1955) which confirmed the right to self-determination of colonial nations for independence and sovereignty.

It is noted that, the political borders in African countries have been divided according to the interests of European colonial powers after the Conference of Berlin (1885) these powers ignored the division of benefits for the local population in Africa, such as language, religion, traditions and the like. Then the African Unity Organization decided in its Charter in (1962) in ,Addis Ababa, to maintain the legacy of colonial borders in order to preserve the unity of the continent's countries after its independence. The GA of the UN collected the principles that have already been taken in the process of self-determination in an attempt to clarify it in a resolution no. (2625) adopted unanimously on (24/11/1970) on (12/12/1972) resolution issued by the GA is another important number (2955) on the right of nations to self-determination, freedom, independence and the legitimacy of their struggle with all the means at its disposal and that are consistent with the Charter of the UN in its decision No. (2070) dated (30/11/1973). In this charter it requested all member States to recognize the right of nations to self-determination, independence and provide material and moral support and all kinds of assistance to peoples fighting for this goal.(Rubin, 1997, p.239)

On the other hand, the UN has expanded the scope of application of the right to self-determination, and made him one of the basic human rights as stated in the Covenants on (16 December 1966) on Civil, political, economic. The UN Covenants (1976), social and cultural rights and the two Covenants became effective since (1976) where stipulate in the first article of the Covenants "*on the right to self-determination letter and the one that has the right of all peoples to self-determination by the virtue of this right they have freedom to determine their political status and freedom to warranty their economic, social and cultural development.*"(The UN Covenants,1976)

Thirty-three European countries plus the USA on (August 1, 1975), in Helsinki, signed a final agreement that emerged from the conference on security and cooperation in Europe and the First Section of the agreement contain the Declaration of principles and its eighth principle stated on the Self-determination. The international community agreed that the

practice of the right of self-determination through a friendly and democratic means, through the election, preferably under the supervision of the UN or under its auspices.

Problematic application of the right of nations to self-determination is fall effects as a result of the emergence of political pressure due to the lack of national cohesion and the weakness of the national idea. Often modern states avoid conflicts, even if it does not give resonance in the various debates on the concept of self-determination, it did not specify an absolute value for it except in the talk about colonizing nations. Questions remained unanswered surrounding this topic is, to what texts mean by the phrase. All nations, and despite the right of self in terms of origin of human rights as previously stated, and during the past decades, which have been trading this topic, it did not specify the rights and well-defined minorities and It did not often exceed its first interpretation, that accompanied the emergence of the UN. (Habtu, 2015, p.314)

Despite what has been said about the meaning of self-determination, which represents many of the views of persons, states and organizations, the first challenges of the UN in (1950) can be considered as a legal right to self-determination, its opponents, including British, Ibid,the charter of the UN the articles (2), the first article, paragraph (2) and article (55) of the Charter are only guidance material of great literary value. On the other hand, French, recognized that the Charter had been most useful database for all people adhere to all States, but without specifying its meaning and content, which is no more than a dead letter, while its supporters have argued that the right to self-determination, and the meaning of equality is much wider than the meaning of equal sovereign peoples they emphasized to the extent that paragraph (2) of article one provides for the equal in rights and self-determination. It is the best witness to the equal rights while the legal right of self-determination is not come to the light that, the dispute about the legal value of the right to self-determination. It is not confined to the attitudes of members of the international community for the UN, but also the trends of international jurists whom denied possession of self-determination oblige them legal force refers to self-determination within domestic jurisdiction of States, they also see the UN bodies that lacking to the legislative nature to put international law and this means that the UN issues any decision in this picture is a violation of state sovereignty and a violation to the provisions of paragraph (7) of the second article of the Charter. While, other scholars believe that the revolutionary nature of self-determination is a challenge to the existing system, which prove in front of the control in other words create mess and they stressed that only a political nature principle, and many of the international jurists response to these arguments, and they

demonstrated the loss of its foundation that they support it, some of them confirmed that the self-determination has evolved through the decisions and practices of the international community based on the UN Charter and became a legal right to arrange for the countries and peoples' rights and impose by the international obligations. (Kreptu, 2003, p.66)

Also claims that the right of self-determination leads to mess and conflict between nations and states are not real, but the opposite is a reflection of the resistance to the self-determination. If the nations won its right to self-determination, it will not be a justification for the assumption that the violence and chaos will be followed. By many general practices of customary international law events, a lot of opinions views on the legal value of the right to self-determination, which it become an international legal right. Discussing the issues of Morocco and Tunisia and Algeria and the other in the UN, had made it clear that self-determination was accepted by all members, although all the resolutions in question had failed to achieve the two-thirds and were limited to gain a simple majority and make sure that the adoption of GA resolution (1514), which is special granting of Independence to Colonial Countries and Peoples and in the year (1960) without any objection. Private Granting of Independence to Colonial Countries and Peoples and in 1960 without any objection. (Habtu, 2005, p.314)

Some believe that the right to self-determination cannot be exclusive only to the colonial nations, based on the Declaration of (1960) of the UNGA, which identified explicitly that the right of self-determination is a right of all peoples as the two international treaties made on human rights. Despite this clear text that the self-determination is for all peoples but understanding remained only as a right of colonized peoples until the fall of the Berlin wall in 1989 through the events which accompanied this time period. Subsequent shifts accompanied the collapse of the SU, Yugoslavia and the emergence of liberation movements, ethnic, religious groups and many cultural in America and Latin America in its fight against the Central Government and civil wars in Nigeria with the tribes of the South, as in Bangladesh, Pakistan.

The principle of the right of peoples to self-determination has returned to the level of legal and political debate, starting in (1989), keeping up with important events that have shaken the staff of the socialist camp countries. In terms of ideology where socialist countries focused on the principle of the recognition of the national rights and these rights are considered one of the most important achievements for the political system and the people

who live in this system, and it was clear in the constitutions and institutions of the socialist countries with a heterogeneous population and yield in some socialist States felt the importance of this principle as a means of maintaining Cohesion of Nations that living on its territory.

These constitutions were given formal expression of human diversity in these countries on the basis of linguistic and cultural differences as they take into account the historical background of these people, it could be argued that by focusing on the principle of respect for national rights signed a constitutional recognition of the right of peoples to preserve the cultural and historical identity but in 1989 was a year of transformation in the history of communist regimes, the collapse of socialist system in Eastern Europe countries ,the SU, was unveiled political realities were not unknown before but imposed themselves and The rupture of Yugoslavia was quickly followed by the collapse of the SU which had to admit the right of secession for the Baltic States, and then by the principle of secession of the other republics of Russia.(Harbor, 2008, p.137)

Finally, after the collapse of the SU and the announcement of US President ,Bush, for what he called the New World Order in (1990), the concept of national self-determination, where some minorities began to decompose to compose their own countries and this is what happened in the SU, which split into ten countries, was declared Estonia, Latvia and Lithuania's independence full independence, as well as what happened in the former Yugoslavia, which was divided into seven countries: Serbia, Croatia, Bosnia and Herzegovina, Slovenia, Macedonia, Montenegro and Kosovo as a result of internal ethnic and religious factors and conflicts that have led to the secession. (Borgen, 2008, p.2)

Presented that, the views of the scholars of international law, and the attitudes of countries about the right determination as clear with it, that it is not easy to define it comprehensively, consideration could be given to the term of the corners of the international law and political science, some scholars of international law believe that it could defined the right of self-determination as "*the right a nation to choose the form of government that they want it and the sovereignty which they wants to belong to it*". In another definition, it means the term in international law "*Granting the nation and local residents the possibility that they could form the power that they want and the way to achieve it freely and without external interference*". (Harbor, 2008, p.132)

With respect to the political science and the international politics in particular, the definition of the term self-determination refers to "*the right of each community that has a distinct collective identity as a people or racial experts or other in determining his political ambitions and then build the preferred political system in order to achieve these ambitions without external interference or conquer by foreign States or organizations*".

There is another definition which states that "*the right of every person to govern itself and choose its own political system and the future freely is a choice and that this person be a resident of the home on an on-going basis.*" (Crawford, 2012, p.108)

Through the definitions of international law and political science for self-determination right that the intention is an independent states that has sovereignty on the grounds that the right of their people as a result of this independence to decide the form of government or authority or the political system to achieve their political aspirations without foreign interference, and so that the right to self-determination is the basis and logic rights to independence and sovereignty and branching out from the other rights, foremost the choice of political system without external interference.

In other words, we can talk about the broad concept and the narrow concept of the right to self-determination, and what it means by the broad concept is that, all nations have the full right and full freedom of self-determination without any foreign interference, as well as full freedom to choose the political, economic, social and cultural system which is acceptable to it, it also means that each nation has the right of enjoyment and exercise of sovereignty. The narrow concept means independence and the establishment of a state that has its own sovereignty, because independence is the ultimate goal, that nations' hope to achieve, and it practices it's right, which is a legitimate right enshrined and endorsed by all the rules and principles of general international law. According to the first article of the Charter of the UN, one of the most important goals of the international organization is to develop friendly relations among nations based on the principle of equal rights and self-determination of peoples and to take other appropriate measures. (Boykin, 1998, p.238)

The controversy still exists on the subject of who has a right to enjoy the right to self-determination, or does it come back to the entire peoples, colonial and minorities, however, this controversy was discounted in the Treaty of (1993) at the UN Conference of Human Rights, that resolve the differences over interpretations of the Declaration of (1960 and 1970) and the Treaty of Human rights. Among the issues which focused on the disagreement is the

right of secession, that considered by many as a form of self-determination as it was mentioned previously and on the other hand, some people refused it to be like this. There are some types and multiple forms that highlighted the concept of self-determination, including as following. (Heraclides, 1991, p.164)

1- Right to freedom from colonialism, like what happened in Africa, Asia and the Caribbean.

2-The right to maintain independence, if it represents the independent will of a nation that takes advantage of a specific territory, as in the island of Mayotte in the Comoros or in Puerto Rico.

3-The right to solve the State and change their shape and nature as it happened in the SU and Chico Slovakia.

4- The right of withdrawal or Secession as it happened in Bangladesh.

5- The right to unify the divided countries as it happened in Germany.

6- The right of autonomy to a specific group and regional knowledge.

7-The rights of minorities and groups that have a substantial political and legal existence in recognition as it mentioned in the article (27) of the Treaty of political and civil rights about the rights of persons who are belonging to a national or minority or religion or language. (The GA Proclamation, 1992)

Examples for the application of the right of self-determination and its outcomes:

The era of the nineties of the last century has seen a series of referendums for some ethnic groups its result was the secession from the homeland. The most important survey of these referendums is in Europe, and what happened in the former Yugoslavia, discover that, Slovenian citizens voted in the favor of secession from Yugoslavia and established their own state as the Tatar Stan region separated from Russia. In the year (1991), the Croatia citizens voted for secession and declared their own state and followed by the citizens of Macedonia as well as Georgia and Ukraine. In the year (1992), citizens voted in the favor of secession from Yugoslavia and they create the republic of Bosnia and Herzegovina, followed by a referendum of Southern Ossetia as a reality. In (2006), the Republic of Montenegro was separated from Yugoslavia, followed by Kosovo in (2008). Czechoslovakia was divided into

two national states. The most famous referendums on self-determination in the African continent lead to the independence of Eritrea from Ethiopia in (1993), while in Asia it has given independent to the East Timor's from Indonesia in (1999).(P. Nanda, 2010, p.25)

3.1.1 The Independence of Eritrean From Ethiopia

Italy's occupation of Eritrea during the period from (1890 to 1941) made Eritrea as a colony with a certain boundaries and multicultural nation and it has a port on the Red Sea, which derives from its name and it has two ports which are, Assab and Massawa. After the Italian's occupation of Ethiopia in (1936) and its alliance with Nazi Germany, the British forces managed during the Second World War to defeat Italy in (1941), which was put Eritrea temporary under the British administration until (1952). Regarding this, the UN formed a Special Commission of fact-finding in Eritrea from representatives of the great powers. As a result, the committee suggested that the right to self-determination of Eritrea, but, Ethiopia disagreed because of its interest to reach the Red Sea as it is a closed state and it was supported by America in order to ensure that its strategic interests in the Horn of Africa. Then the UN have formed other committee that submitted its report in (1949) where the majority of its members recommended establishing the federation between Eritrea and Ethiopia. (Paul, 2001)

The UN resolution has started to create an autonomous Eritrea government for a transitional period from (1950) until (1952) and the establishment of a Federation between Eritrea and Ethiopia, beginning in 1952. Ten years later Ethiopia in (1962) add Eritrea to Ethiopia under the pretext that the Eritreans had agreed to the annexation, it was denied by Eritrean side, the Ethiopia Emperor, Haile Selassie, before annexation process led the Eritrean sovereignty aspects in order to boot to merge Eritrea with Ethiopia, which summoned the Eritrean liberation movement in (1961), a year before the official announcement of the annexation of Eritrea to Ethiopia, the USA has approved the annexation and supported the Ethiopian government against all Eritrean attempts for independence. (Paul, 2001)

After the fall of Haile Selassie, the AL Derek system led by Haile Maryam has rejected the Ethiopian minorities in right to self-determination, the Eritrean liberation fronts continued with various factions, including the popular front for the liberation of Eritrea military struggle in order to achieve independence. In Tigray region a rebellion movement has been established in (1975) under the name of the Tigray People's Liberation that formed a new alliance called the Revolutionary Democratic front for the peoples of Ethiopia to confront Marxist Mankato

system, which raising again the question of self-determination for Tigray nationalities, It was also agreed in the framework of this new alliance the right to Eritrea to secede from Ethiopia as its colony. (Gaim, 2008, p.231)

On (February 1991), the Tigray People's Liberation Front attacked the Mangiest forces with the help of the Popular Front for the Liberation of Eritrea. The fighting ended on (May 21, 1991), with the collapse of the Mangiest regime and after three days the Popular Front for the Liberation of Eritrean forces entered the Eritrean capital, Asmara, and four days later the revolutionary democratic forces of the people of Ethiopia, has entered the Ethiopian capital city Addis Ababa, in coordination with the Popular Front for the Liberation of Eritrea. After a transitional period of two years in Eritrea voted in (April 1993) in the favor of independence in a referendum and took the popular front for the Liberation of Eritrea power in Asmara political leadership Al fwerki. The two parties were agreed that Eritreans has a right to use the port of Assab and Ethiopian currency continues ,Ethiopian Birr, to trade within the two countries, but it did not sign the agreement on the demarcation of the Bad me triangle it is ,an area of approximately 400 km 2, causing a war between the two countries for two years ,(1988-2000) m, And it is still tension and disagreement existed between the two countries, despite the intervention of the UN to demarcate the border, the two countries which make the likelihood of a return to war exist. (Gaim, 2008, p.231)

3.1.2 The Independence of East Timor From Indonesia

The Eastern Timor is an island in South East Asia with an area of (31,000) km^2, and its population of 2 million people, the western part of the island was a part of Indonesia since the formation of the State in (1949) and was the Eastern, Portuguese colony since the 16th century and in (1975) the Eastern Timorese people requested for independence from Portugal, and fighting against the Portuguese led to their withdrawal. In the same year, Indonesia occupied the Eastern Timor as the twenty-seventh province of Indonesia with the approval of former US President Ford in the era of Indonesian President Suharto. But, the UN does not recognize Indonesian sovereignty over the territory as many of the residents in the island had revolted over Indonesian rule. Fighting continued intermittently between Indonesian troops and Timorese gangs for seven years, leading its meaning the East Timorese because of food shortages and death over (200,000) people starving and has issued several resolutions of the Security Council and the GA of the UN has called for giving the people of Eastern Timor the

right to self-determination during the period of (1975) and (1982), but they were not implemented (available from Wikipedia).

The force was formed from a number of Southeast Asian countries, led by Australia. It allowed Indonesia to hold a referendum on the options of unity and secession as a result of the external interventions. According to UN Juridical Yearbook (1966), where the USA and non-governmental organizations Indonesia accused of human rights abuses in East Timor, but Indonesia objected to Australia's involvement and asked to send a force under the umbrella of the Association of Southeast Asian and this didn't happen, the Security Council decided to authorize a multinational force to monitor the situation in East Timor during a transition period, after which a referendum will be done on self-determination for the people of the island. (Gelman, 2003, p. 378)

The referendum on self-determination in East Timor has been managed on (30 August 1999) and the population voted in the favor of independence for the territory by more than 80% rather than the option of self-government in the framework of the unified State. Then the Indonesian troops withdrew from territory which consequently underwent a UN administration following the outcome of the referendum. But elements of the armed militias opposed to independence for the territory began the extensive violence in the territory where most of the infrastructure was destroyed, killing about 1,000 people forcing its approximately 100 000 people to flee to West Timor Belonging to Indonesia. The UN sent a multinational military force headed by Australia in (July 1999) to end the violence. Press reports have raised the Australian force had participated in the looting as it became clear that Australia's ambitions on the riches of the sea area between East Timor and Australia, where he signed an agreement between Australia and Indonesia to share the wealth, especially oil on the shores of the sea area of East Timor since (1991 In 1999) it demarcated the maritime borders between East Timor and Australia to ensure that Australia's interests in the exploration and to take advantage of the marine wealth .

In September (2000), the Indonesian government signed a memorandum of understanding with the head of the UN Mission in East Timor the leader Xanana Gusmão attended the leader of independence groups in East Timor. In the (2001) elections in East Timor led to more unrest as a result of the violence that has spread among the Indonesian militia in transit from West Timor and demobilized soldiers on the one hand and the new forces have not yet become regular troops Meanwhile declared East Timor's independence in

(2002) where the constituent Assembly approved a new constitution for the country. In april of the same year was elected Jose Alexandre Gusmão and people called him Xanana Gusmão as President of East Timor. East Timor joined as a full member of the UN GA and in the same year became the first State to join the UN in the twenty-first century. In (2006) further unrest from Indonesia's militia, demobilized soldiers and other soldiers had not received their salaries, was an armed conflict and all parts of East Timor into ethnic conflicts. The East Timorese government has been requested assistance from the international community after having completed the UN mission duration. (Gelman, 2003, p.379)

Australia with Malaysia, Portugal and New Zealand hastened to send troops to restore the situation to normal. Then another dispute broke out in (2008) in the wake of an assassination attempt Suffered both Gusmao the head of State and Jose Ramos, the Minister of Foreign Affairs. For the third time Australia has sent troops to quell the rebellion in East Timor. Informed departments pointed out that the recent rebellion was instigated and stood behind both Australia and the USA as Prime Minister of East Timor Mary Qatari who his party won 80% of the vote in the 2001 election, and the unrest stood behind foreign countries. The Prime Minister was disagreed with both the head of State and Foreign Minister. The leaked document from the Australian Ministry of Defense indicated that the aim of Australia fomenting unrest in East Timor with the consent of America is trying to find an a presence in the decision-making process by sending military forces to Timor to be able to practice its influence. (Pinto, Jardine, 1997, p.37)

3.1.3 A Model Case of The Independence of Kosovo from Serbia ,Former Yugoslavia

Kosovo was one of the Yugoslavia republics' territories inherited by the republic of Serbia after its collapse in the wake of the collapse of the SU. Kosovo was before that known as old Serbia that fell at the hands of the Ottomans in 1389 and became part of the Ottoman Empire. Albanians began entering Kosovo in large numbers in the fifteenth century, and began to convert gradually despite opposition from Orthodox Serbs and then fell to Serbia by the Ottoman Empire in (1459) A.D, followed by Bosnia and Herzegovina in (1465-1483) A.D. Then Serbs began heading towards Belgrade as a result of Ottoman rule in Kosovo in the seventeenth century in the great migration consequent decline in the number of Kosovo's population, making Albanians turning them from Albania Heights soil fertility. (Noel, 1999, p.209)

During the first world war Kosovo stood alongside Austria against Serbia, after the defeat of Austria, Serbs began committing many massacres against the Albanians of Kosovo and organized themselves in the form of gangs for attacking Kosovo Albanians. In the aftermath of the First World War, peace treaties established the State of Yugoslavia under the name Kingdom of cellophane, Croats and Serbs in a clear reference to the Kingdom is composed of the Slavic elements. Then the name was changed to the Kingdom of Yugoslavia to also include all of Bosnia and Herzegovina, Montenegro and Macedonia, thus laying the Foundation of the Yugoslav republics. While, Kosovo was considered as one of the Serbia's territories without intrinsic personality, opposite the six components of the Yugoslavia State. (Noel, 1999, p.212)

Kosovo Albanians called the League of Nations after the emergence of the Kingdom of Yugoslavia to separate Kosovo from Serbia and trimming its annexation to Albania because of massacres that committed against them where the number of Kosovo Albanians who were killed (12) thousand, in addition to the lack of affiliation to the Slavic nationalism and that they belong to the Albanian nationalism. But the League of Nations did not react to the claims of Kosovo Albanians, which led to the formation of the first separatist movement called the Cachaca movement for the secession of Kosovo and annexed it to Albania. Serbia responded by sending a large number of Serbs to settle in Kosovo as it did the same in Bosnia and Herzegovina and Croatia and others. (Stefanova, 2011, p.93)

During the second world war a large number of displaced from Albanians in Kosovo, after Tito's victory over the Germans and the Italians, then, the number of inhabitants of Kosovo autonomy, but did provide his promise by virtue of belonging to Croats and the fear of offending Serbs. So Tito kept the Kosovo territory within Serbia and given by the Croats, Bosnians and Serbs and Slovenes formed Macedonians and Montenegrins. But Tito to put down a rebellion in Kosovo killed around (48) thousand people awarded after Kosovo Albanians and got a kind of autonomy in (1974. In 1981), a large number of displaced Kosovo Serbs to Serbia so that the proportion of the Kosovo Albanian population were increased, compared with the Serbs. After the death of Joseph Tito in (1980) Milosevic took over in (1987) he withdraw from Kosovo through amendments to the federal constitution, and the Parliament approved amendments after isolating the deputies who were belonging to the Albanian nationality. (Peritte, 2010, p.23)

The collapse of the SU led to the tendency of disintegration that dominated Yugoslav republics starting with the Republic of Slovenia initiated baklavas. While Slovenia an salt peacefully, the wars between Serbia and Croatia, as well as, Serbia and Bosnia in its attempt to be separate from the Yugoslav federation, where the Serbs were opposed to secession , as the war intensified between the Kosovo Albanians and Serbia, the Security Council met in (1989) on Kosovo's case with the aim of placing observers on the battle lines but that NATO had begun bombing Serb positions in Kosovo, which encouraged Kosovo Albanian to redouble their operations against the Serbs, and before the intensity of the aerial bombardment of Serbia signed an agreement on the withdrawal of Serbian troops and the cessation of violence and an international force and the return of refugees and a political settlement under the resolution of (1244) that adopted by the Security Council to send UN force in (1999) called (KOFOR) under the auspices of the UN Mission in Kosovo. (Stefenova, 2011, p.100)

Kosovo declared its unilateral independence under the auspices of the UN international administration on (February 17, 2008). Confirming that it will take into account the rights of other minorities in Kosovo in an attempt to stop ethnic violence erupted following the declaration of independence, especially from the Serbs who initiated the violence and promised minority groups type of administrative decentralization in the management of their districts, and pushed the USA to a large number of Western countries and allies to recognize Kosovo by cancelling any Russian Serbs movements to restore Kosovo. Remaining before the Kosovo problem state to join the UN as Russia rejects this and this going to happen only through the GA, the International Court of Justice in its advisory opinion recently stated that Kosovo had not breached international law by declaring its independence. (Pinto, Jardin, 1997, p.345)

3.1.4 The Case of The Referendum for Self- Determination in Western Sahara

The Western Sahara is the region located in the North-Western coast of Africa between Algeria and Morocco, Mauritania and the Atlantic Ocean, an area of approximately (266,000) km2 and a population of about (318,000) and named Spanish Sahara colony, with a view to removal from the Arab countries. After the return of Tarfaya to Moroccan sovereignty has become Western Sahara consist of regional Saguia Al-Hamra ,its capital city is Laayoune, which became the capital of the desert and the Valley of gold its capital is Dakhla, and the Kingdom of Morocco has demanded since independence in (1956) by retrieving the Sahara Moroccan sovereignty but that Spain withdraw procrastinated because wealth especially

phosphates which discovered in (1963), because of its strategic location on the Atlantic Ocean. (Erick, 2012, p.73)

Spain has tightened its control over the Sahara called ,Spanish Sahara, in the late 19th century, after the violent resistance by desert tribes. The (1904) Convention between France and Spain had provided to the Division of Morocco between the two and this is also confirmed by the convention (1912). Sahara issue emerged in (1973) with the intensification of national resistance operations against Spanish in the desert with the advent of the popular front for the liberation of Saguia Al-Hamra and goleden valley Polisario, Morocco has demanded the return of the desert to Morocco as Saharans who owe their allegiance to the Sultan of Morocco, while Mauritania has also demanded that the southern part of the desert of (1974), while Algeria and with Libya demanded the independence of the Sahara, then an agreement was signed between Morocco and Mauritania to split desert among themselves, where the Saguia Al-Hamra going to be part of Morocco and gold Valley for Mauritania.

Morocco announced the acceptance of the principle of self-determination, but hardly opposed the entity independent of desert from Morocco, in reference to the Polisario, and then they were summoned by legal case transfer case to International Court of Justice in the Hague in (December 1989), and response of the Court was issued in October (1975). The Advisory opinion which he lived in separate tribes of Sahara at the time of Spanish colonization and that there is a relationship between the desert tribes and the Sultan of Morocco but the Court supported the resolution of (1514), which text on ways to decolonization and supported the application of the principle of self-determination. (Jackson, 2009)

Spain agreed undue Madrid Agreement in (1975) to end its presence in the Sahara before (February 28, 1976). Algeria stood next to Polisario, which announced the establishment of Arabic Desert Republic, on (February 27, 1976), which led to an alliance between Algeria and Polisario on one hand, and Morocco and Mauritania on the other. Then a military confrontation between the two alliances broke out and Mauritania was forced to withdraw from the fighting in (1979) and ended its claim part of the Sahara, while Morocco has to continue to claim the entire desert region after organizing the Green March in order to return the desert back in (1976).

After the recognition of (71) State in the Republic of Sahara in (1988), King Hassan II agreed to the principle of the referendum on self-determination for the Saharawi's by the UN and agreed to re-establish diplomatic relations with Algeria and held face-to-face meetings

with Polisario leaders, but the referendum on self-determination for the Saharawis overdue since that time and until today because of differences between Morocco, Polisario the most important one a withdrawal of the Moroccan administration from the desert as well as the number of Saharans eligible to participate in the referendum so that Morocco rejects the request of Polisario added Saharans abroad especially in Algeria. Morocco has many administrative reforms in the context of decentralization, as well as economic projects in the desert to win the desert people who have been involved also in the referendum on the fourth Moroccan constitution in (1992), as such the King also visited Laayoune city in March (1985), in conjunction with a special session of Parliament on the territory of the Sahara. Finally, Morocco proposed autonomy for the Sahara held by King Mohammed VI, who succeeded his late father Hassan II, but the Polisario side rejects any settlement not based on the right to self-determination which therefore remains suspended until its date. (E, Jensen, 2012, p.42)

The researcher has found through the forms that have been displayed for the independence of Eritrea, East Timor and Kosovo, which is different from the Sudan Case. Eritrea was an Italian colony, including Ethiopia by force despite the UN decision to establish a federation between Eritrea, Ethiopia and as Eritreans used armed struggle for nearly 30 years (1961-1990) for independence from Ethiopia. (Hodges, 2011, p. 193)

East Timor is the former Portuguese colony, but the withdrawal of Portuguese without the desire of most of its residents. While, Kosovo, the majority of its population are Albanians, but they are closer to Albania than Serbia. Also, Western Sahara was a Spanish colony, but they were tracking the history of Morocco and the independence of both Eritrea and East Timor, the war was continued for two years (1998-2002) between Eritrea and Ethiopia due to the lack of agreement on the demarcation of borders between the two countries. Whereas, deadly violence broke out and the destruction of infrastructure in East Timor after its independence from Indonesia. While, Kosovo, which the majority of its people are Albanians has been subjected to Serb dominance and deprived of their political rights and Kosovo suffered horrific massacres practiced by the Serb on its population, which invited them to claim to independence and association with Albania. For the referendum for the self-determination of Western Sahara, the most important problem in the referendum, the first three cases do not apply to the case of Sudan, where southern Sudan has become part of Sudan since (1947) and the Declaration of independence of Cuba from inside Parliament on 19 December (1955), without the need for a referendum for self-determination. South Sudan

was not colonized by the North but to the Addis Ababa agreement of (1972) provided it a chance for regional governance which paved the way for a federal system with rescue add to gains achieved through the comprehensive peace agreement of (2005) and at the end of the terms for a referendum on self-determination, and therefore, this referendum is different from the polls was for countries colonized by European colonial powers that southern Sudan was not colonized after the first of January (1956) which makes it possible to talk about the independence from the South which is not accurate, but the correct term is secession not independence. (Jacob, 2006, p.76)

3.2 The Relationship Between Self-Determination and Secession

The international law does not recognize nor international practice of state entities, within the states the right to secession, whether by announcing unilateral or by any other means. Self-determination of peoples or groups residing within a state is done through internal self-determination, with an effective participation in the political system of that country. There is no doubt that participation will be effective only if this system based on the principles of pluralist democracy, the rule of law and respect for human rights and fundamental freedoms. In the case of referral in the secession of Quebec region, the Supreme Court of Canada decided to answer three questions. The second question was: does the international law give Quebec determination really to unilateral secession? The Court replied that it is clear that the international law does not grant the component parts of sovereign States their legal right to unilateral secession from the parent State.

The court said that the right to self-determination enshrined in international law does not create only the right to self-external fate in the cases of former colonies, the military and foreign occupation, or when is transmitted among specific groups and their right to access to power in a meaningful way to pursue political, economic, social and cultural growth. The court went to say that in all cases the three aforementioned, meaning the people have the right to external self-determination report, because it may prevent the exercise of the right to report internally determination. However, these exceptional circumstances do not apply to the situation in Quebec. Thus, it is not considered as Quebec's population, even if described as Shi'a or peoples, in representing the province institutions have the right to secede unilaterally from Canada under international law. (Rubbin, 1997, p.187)

In its advisory opinion on the conformity Declaration of the Kosovo independence with international law, the court noted that the question of whether the international law gives the

right of self-determination for a part of the population in the state the right to secede from that State, unlike radically raised among States which took part in the proceedings. The court did not give an opinion on the matter because it decided to issue graduated from the scope of the question posed by the GA of the UN. Here to go into the details of the Advisory opinion of the International Court of Justice. It is enough to mention that it concluded that Kosovo's declaration of independence on (17 February 2008) not the profane customary international law or Security Council resolution number (1244) on (1999) by the deployment of a civilian presence and international security presence in Kosovo, or the constitutional framework issued by the UN Mission in Kosovo. (Rubin, 1997, p.190)

What adaptation option agreed in Naivasha as an alternative to the unit and uses the term secession ? according to the standards that the suggested by James Crawford, the proper adjustment agreed in Naivasha it is devolution or transition rather than a split meaning, the secession unilateral action without the approval or consent of the State. Either devolution is bilateral and conducted the procedure by agreement of the parties might argue that the difference between secession and the imaginary or artificial as regards practical results. In fact, there is a huge difference between them with respect to the important question of international recognition, international community shies away from unilateral secession be without the consent of the parent State, and reluctant to admit. (Weller, 2005, p.18)

For example, Somaliland declared it unilaterally in November (1991) but to this day has not been recognized by any country and had not acceded to the UN with Pakistani army pulled out of Bangladesh in December (1971). But, it did not get the membership of the UN in (1974), shortly after Pakistan's recognition of its many examples in this area. Anyway, if the South secedes duly agreed under the peace agreement and the constitution, it would encounter difficulties in obtaining recognition of States, to join the UN and other international organizations the right to therapeutic secession. (Crawford, 2012, p.107)

We have already argued that the right to self-determination of peoples under colonial or other forms of alien domination of foreign or foreign occupation. But, some commentators created from the paragraph seven of principle five of the declaration of the principles of international law concerning friendly relations and cooperation in accordance with the Charter of the UN issued by Ibid, the UNGA on (24 October 1970) (25) resolution (2625) a prerequisite clause or an exceptional condition, founded upon it the right of remedial secession. (Weller, 2005, p.21)

Article (7) of the Declaration, that "*May not say anything that is stated in the preceding paragraphs as authorizing any action or encouraging any action which would dismember or partially or completely impair the territorial integrity or political unity of sovereign and independent states that are committed in their actions the principle of equality of peoples in their rights and their right to self their own destiny described above and which have thus a government that represents the people of the whole region, without distinction of race, creed or colour*" and this paragraph was confirmed in the Vienna Declaration and programmer of action adopted by (The World Conference on human rights held in Vienna in June, 1993), Show us commentators have interpreted paragraph seven of the Declaration on the principles of international law and the corresponding paragraph in the Vienna Declaration as follows:

-"*The right of self-determination in the independent States performed through the implementation of the principle of internal self-determination and with the participation of all residents in the State Government at national and regional level on the basis of equality and without discrimination of any kind*".

-"*That the State which performs internal self-determination for all people deserve protection under the international law of its territorial integrity*".

-"*The right to self-determination in the form of outer secession treatment may arise in extreme cases for the benefit of the group denied the right of internal self-determination, e.g., in gross violation of the fundamental rights and freedoms, denial of participation in decision-making at the national level and in matters concerning them and the absence of any possibility of a settlement within the framework of the State system*". (The World Conference on human rights held in Vienna in June, 1993)

The Supreme Court of Canada addressed the issue by referring to the question of secession of Quebec secession. After confirming that the right to self-determination has to be for colonial nations under foreign occupation. The Court also pointed out that a number of commentators have argued that the right to self-determination was founded really to unilateral secession in the third Circumstance. It said that, although the third circumstance has been characterized in several ways, but it involves the idea that when people are denied their right to self-determination internally in a meaningful way, it is entitled to as a last resort that exercised through secession. Then ruled that it was not clear whether the third envelope reflects the stable criterion in international law, but even assuming that it is enough to create a right of unilateral secession under international law, it applies not just to the development of

Quebec, because Canada sovereign and independent State and behave in a manner consistent with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction. Some States participated in the case of advisory opinions on Kosovo issue right to secede. As well as the United Kingdom, the Russian Federation was among those States.

According to the written statement submitted by the Russian Federation to the Court that the purpose of the requirement of prevention is to ensure the safety of States could also explain this requirement that licensed secession certain circumstances. But these conditions should be limited to, extreme circumstances right such as an armed attack from the parent State threatens the survival of the people concerned. Otherwise you must make every effort to resolve the tension between mother and a concerned ethnic group within the State. The International Court of Justice did not give an opinion on the right of secession for it outside the scope of the question by the General Assembly. And simply refer to differences of opinion between States that had participated in the proceedings about whether international law provides a right to secession and establishing the conditions for, and whether such circumstances exist in the case of Kosovo. In our view, there is no international practice to justify cutting a right of secession.

Lastly draw the peace plan published by as it stated that "*If it does not requested by each ethnic group or religious or linguistic Statehood own, it will not be indivisible limits, and will be peace, security and economic well-being more distant stages*", the UN in (1995).

3.3 The Secession Relationship with Dissolution and Partitioning, The Secession Relationship with Concession, The Secession Relationship with Revolution and Civil War

3.3.1 The Secession Relationship with Dissolution and Partitioning

It can be clear from the doctrinal writings that dissolution is split of a country into several States with the demise and disappearance of that State's from the existence of the most prominent recent example of this image is the disappearance of the SU and disintegration of Yugoslavia in the early (1990) of the previous century and indeed proved the decay usually occurs in the countries of the Union, consisting of multiple races and peoples and that a collapse of the legal system which is connected between the creators of legal persons by each Union acquires international personality. (Weller, 2005, p.12)

The legal effect of the occupation is achieved when the total disintegration of the state so that they form the constituent parts together at the same time, several independent States on the same territory and may join other States recognize some between secession and between the revolutionary rupture, which require simultaneous revolts throughout the territory of the State which seeks not to reach for power in each State of origin but to independence. There is a principle in international law whereby the secession such as any loss of territory did not affect the personality of the State of origin, where the revolutionary rupture lead to final extinction as it is clear you rip a dissolution have occurred as a result of multiple and simultaneous eruptions of course effects the dissolution results ranked him won't change whether dissolution due to internal revolts or due to other factors. (Brilmayer,1991, p.185)

The distinction between secession and dissolution does not find its relevance only in determining the meaning of the term, but precise implications with regard to the application of the rules of the respective revolutions, as well as with regard to the application of rules of recognition, but the distinction between secession and dissolution is not easy because both are leading to the emergence of new international people and this could say that there is a fundamental difference between them:

The First Opinion is: the separatism has to cancel the legal system when part of the territory of the predecessor State, either the dissolution of the resulting collapse of the legal system, the dissolution of the Ottoman Empire resulted in the Islamic caliphate system interruption and the dissolution of SU resulted in the collapse of communist ideology.

The Second Opinion is: the collapse of the legal system, the demise of the Predecessor State in the case of the decay and disappearance of international personality. In the case of secession , the Predecessor State continues its international personality remains unchanged for the increase or decrease territory and increase or decrease the number of people has no effect on the legal personality.

The distinction between secession and dissolution in certain cases seem difficult and complex for example, when layering more than one part at one time is adjusted so that the secession or dissolution in cases where the establishment of a Federal State of the two is the secession of one that dissolution or the secession of notes in many cases overlapping secession and dissolution. (Lehning, 2005, p.221)

As regards to the relationship of the secession with division, we find that the first division of the world was after World War II into two blocs and that divided the nation-states into two states, it appeared the Eastern and Western Germany and North and South Korea and scholars of this fragmented situation indicates that following the reunification of Vietnam in (1971) and then the two Germanys in (1990), the international status of the countries fragmented no longer actually go out only in Korea alone .

Secession and partition are similar in that they both lead to the emergence of new people, but they differ on two things:

In the case of division one or both parts it claims to represent each State is to lead to a conflict over who is considered the Predecessor State. Either secession , the predecessor state is known and specific.

Partition occurs mainly as a result of circumstances and international variables either secession occurs mainly due to internal factors that in many cases overlapped with the term the external and internal factors. (Saadoun, 2008, p.64)

3.3.2 The Secession Relationship with Concession

The concession is the State abandoned sovereignty over part of the territory for the benefit of another State under an international agreement and concession is the means to acquire territory in contemporary international law, the comparison between the secession and the concession is clear that they agree on some points and differ in other points:

A. Similarites Points

Firstly, both of them does not effect on the continuing legal personality of the predecessor State, the changes that occur in the region lead to the continuation of that area and be wide or narrow or specific.

Secondly, owing to continuing the legal personality of the predecessor State, both of which lead to partial succession, by reference to the texts of the Vienna Convention on succession of States in respect of treaties, we find that the assignment falls under the rule of succession in part of the territory of either the Vienna Convention on succession of States in respect of State property, archives, has approved several articles on behalf of the transfer of part of the territory of the State.

Thirdly, both often happen despite the predecessor State, the reality proves that State to receive a secession of part of their territory only if it failed to enforce its sovereignty as the dominant image of the waiver are those occurring under the pressure of coercion following war or an armed conflict where the State defeated the territory or part of the victorious State. (Lehning, 2005, p.225)

B. The Concession Differs from Secession as Follows

Firstly, the province has no mentioning role in concession, the process of concession place between the assignor State and assigns them regardless the attitude of the population of the region, even in the case of the application of the right to choose, the role of the population is only limited to sexual selection, carried by them and not decide the fate of the region in the event of secession, The region has a role and population the ones who are in the process of secession. (Saadoun, 2008, p.66).

Secondly, The case of accession to another state, there will be three parties ,the breakaway territory, the Predecessor State, and the boarding to the territory, and thus will be the region's role in the development of the transition from the rule of the country of origin to the new rule arrangements. (Watts, 2005, p.341)

Thirdly, The consequent of concession on two things contradictory, leading concession to a decline in state authorities assignor in return for the increase and expansion of the regional authorities of the State assigns them the sense that sparked concession is limited to the predecessor State and separate state, because the presence of international figure is a matter for the international community in general.

3.3.3 The Secession Relationship with Revolution and Civil War

The term revolution was the subject of debate in the French- Mexican Committee in (1928) the chairman of committee has reached that this term has no specific meaning in international law and that if it is used in the agreement, the meaning is confirmed in the context in which they use it and concluded that the revolutionary movement is an armed movement less or more organized. Which is influenced by political or social program and be under the leadership of specific or all arise because of public discontent with the prevailing political system and aiming to overthrow the government.

During the war of secession in the USA, the American Secretary of War on (April 24, 1863) adopted on the link between the mutiny, it considered revolution as an armed insurrection widespread and how secession as a revolution, it seems that some scholars toe this direction and equated the revolution and secession as it includes both the Declaration of Independence from the previous political links .

Some scholars considered secession as a distinct type of buyback revolutions to change within the State but against it on the basis that secession start to an event within the State and not acquired international status later, indeed, the equality revolution and secession is not accurate if the revolution is similar with many cases separatist military method. They differ radically, the revolution only in one corner of the State is on the corner of Royal authority, either secession, is a change in State, the people, territory, and power, And between them is the goal of the rebels access to power and the creation of decoding the legal link between the territory system that seek to secession .

The rebels care of the entire State in regional borders, while, the separatists seek to divide it and find new regional boundaries, so results vary ranked on the success of each, but under internal law could be considered a partial revolution secession if the revolution aimed at abolishing the constitutional system for the entire State. The secession to eliminate branch of central authority in the selected part of the territory and the total and partial failure of the revolution leads to the continuation of that system to the entire State, and on the part which seeks towards secession and note that the wars of secession often influences the constitutional amendments aimed at addressing the causes of secession passed several constitutional amendments after the war of secession in the USA was the abolition of slavery, which was the main reason for the types of civil wars. (Martin, 1997, p.92)

While, the relationship of secession with civil war is seen from doctrinal writings needs certain conditions to release a description of civil war and internal armed conflict as the conflict needs to be a degree of power continuity is so distinct from the unrest and violence to be a rebellion from becoming party to the extent of the regulation and control of the part of the territory. While several definitions referred detachable deserted other than those noted. The civil war in the view of some is only one a descriptions of the armed conflict, some shrouded due to multiple terms have some felt that the civil war is that the hostilities taking place in the framework of a single state exists when the parties anti resort that peace within the State for the purpose of access to power where or when you are a large percentage of

citizens in the country to take up arms against the legitimate government. Some of the gold is the distinction between civilian wars and wars of secession if the first designed to bring internal changes in terms of targeting the recent secession with half of the county set up a new state .

CONCLUSION

This research confirms that determination are showing a sharp shift in content and applications in a world of accelerating revolutions reflected events on many international legal principles and rules that were considered for a stable period as understood and applied in the international arena. As well as, it is a parallel shift quickly reflected the mood of many ethnic and religious minorities and ambitions that you see the secession of the States where a legal right and a successful solution, if not alone to its problems or crises within the borders of their homelands. Which it became a sought its best to win this right through the practice of political pressure supported by the major regional or global power, due to the protection of human rights. And at other times through the imposition of the option of secession as a director of a long military conflict, under this title with the government of home country. Which it has already succeeded in Indonesia and Sudan, the future has brought similar successes of this approach to other countries suffering from problems or conflicts with some minorities among their populations, as it is the case today in Iraq Kurdistan region and Eastern Sudan and others.

According to what have been mentioned that, to activate the right to secession based on determination and responded as a solution in case of tyranny and oppression suffered by a particular group and the option you take is going to be important terms that are in accordance with the constitutional and legal mechanisms are complex and agreed with other ethnic groups and other regional groups. As autistic was voluntary, optionally with other groups, the exit has to be conditional on other countries. Moreover, the country that requesting for secession has to take into account the degree of development of political, economic and perfection that it takes to activate this right.

Regarding to this, the people of Kurdistan region have internationally recognized legal right to exercise their right to self-determination, and that the Iraq i Constitution materials don't stand against the exercise of this right. As the Kurdistan region has a right to practice its powers, and the application of direct democracy through a referendum, which is used through the people of Kurdistan in the right to self-determination, and protect it from exposure to injustice, displacement, and localization, and genocide again, which we have already succeeded in Indonesia and Sudan. The future is going to show a similar future success of this approach in other countries that suffer from problems or conflicts with some

minorities among their people, as it is the case today in northern Iraq and eastern Sudan and others.

The Research Outcomes

- Diversity and multi-ethnicity has a significant role in the emergence of minorities appearance demands secession and statehood for achieving their goals.
- In the case of the emergence of separatist movements, the Central Government use force to solve the problem, but makes the separatism maintains secession .
- Economic wealth in a particular territory of the State can be an incentive for secession in case of poor regions.
- The general international law emphasizes the principle of the territorial integrity of States and the protection of State's lands and borders from change or partition.
- Most constitutions prevented the Federal secession of the constituent units of a Federal State, while some were silent on the regulation of this matter, while rarely appeared for the constitutions of matter organized in terms of difficult investigation.
- There are some political, economic and social reasons in the absence of control by the Federal Government to claim units for secession.
- There are aspects of working on the unification of tight federal and state portions of which the existence of the Federal Constitution and the duplication of the Legislative Council and the Supreme Federal Court.

Recommendations

- Do not use narrow means against separatist movements and open channels for dialogue and discussion to achieve their goals.
- Granting minority status, such as education in the minority language and management of the affairs of life approach chosen by the minority.
- Converting drafting system of government in countries where the rule of minorities in the federal decentralized system there.

In the case of achieving the desire of the minority to secede must find a common formulation between the predecessor and the breakaway province this formulation can be a confederation.

References

Articles

1. Andrei Kreptul, (2003) *"The constitutional right of secession in political theory and history"* (Volume 17, pp. 39–100), Mises Institute Working.
2. Andrew Shorten, (2003) *"Constitutional Secession Right,"* (Vol. 26, pp.99-115), University of Limerick, Ireland.
3. Alem Habtu, (2005) *"Multiethnic Federalism in Ethiopia,"* (Vol. 6, pp.313-335), Queens college, Cuny.
4. Christopher J.Borgen, (2008) *" Kosovo,s Declaration of Independence, American Society of International Law ,"* (Vol. 12, nd), Amercan Society of International Law, p2 .
5. Mohsen Saadoun, (2008) *"federalism in multiple communities."* (Vol. 1, pp.24-36), Univercity of Dohuk.

Bookes

1. Ann Griffiths, (2005) "*Handbook of Federal Countries*," McGill-Queen's Press – Mqup.
2. Alfred P. Rubin, (1997) "*Secession and Self-Determination: A Legal, Moral, and Political Analysis*" Stanford Journal of International Law ,Cambridge University Press, British.
3. Alexis Heraclides, (1991)"*The Self-Determination of Minorities in International Politics*," Frank Cass and Company Limited, Londorn.
4. Allen Buchanan, (1991) "*Toward a Theory of Secession*" , Ethics Vol. 101, No. 2, Published by: The University of Chicago Press Stable URL .
5. Abdulrahman Mohammed, (2005) "*The secession part of thestate territory*," Jordan sanaa.
6. Boyka Stefanova, (2011) "*The Europeanisation of Conflict Resolutions: Regional Integration and Conflicts*" from the 1950s to the 21st Century , Oxford University Press.
7. Baylis, John; Smith, Steve (2001) "*The globalization of world politics : an introduction to international relations*" (2. ed.). Oxford [u.a.]: Oxford Univercity Press
8. Brian Hocking, (1993) "*Foreign Relations and Federal States*," Leicester University Press, London.
9. Constâncio Pinto; Matthew Jardine, (1997) "*East Timor's Unfinished Struggle: Inside the East Timorese Resistance*," South End Press.

10. Florentina Harbor, (2008) *" Secession Right, Journal of politics and law,"* Youngstorget , Oslo, Norge (Norway).
11. Henry H. Perritt, (2010) *"The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan,"* Cambridge University Press.
12. Henze, Paul (2013) *"war: confrontation, international response,"* outcome, prospects. Addis Ababa, ET: Shama Books.
13. Hurst Hannum, (2011) *"Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights,"* University of Pennsylvania Press .
14. Ihsan mafraji and Dr. raad Aljada, (1990) *"the general theory in constitutional law and constitutionalorder of the Iraq i,"* Univercity of baghdad, baghdad .
15. Ihsan hadi, (2005) *"federal study in the conceptual framework and theoretical,"* silmanih.
16. James Crawford, (2012) *"State practice and International Law in relation to Unilateral Secession"* , UP Oxford
17. Jensen, Erik, (2012) *"Western Sahara: Anatomy of a Stalemate"?* 2nd ed. Boulder, Colo: Lynne Rienner Publishers.
18. Kibreab, Gaim, (2008) *"Critical reflections on the Eritrean War of Independence: social capital,"* associational life, religion, ethnicity and sowing seeds of dictatorship. Trenton, NJ: Red Sea Press.
19. Lea Brilmayer, (1991) *"Secession and self-Determination,"* Yale Law School .
20. Marc Weller, (2005) *"Contested Statehood: Kosovo's Struggle for Independence , New York,"* Oxford University Press
21. Mundy, Jacob, (2006) *"Autonomy & Intifadah: New Horizons in Western Saharan Nationalism,"* Review of African Political Economy.
22. Lea Martin, (1997) *"the general theory of the state,"* Oxford University Press, London.
23. Majid Rachb, (2005) *"political systems and constitutional law,"* alaskandria, Eygpt.
24. Malcolm Noel, (1999) *"Kosovo: A Short History. Harper Perennial,"* New York University Press .
25. Percy B. Lehning, (2005) *"Theories of Secession,"* Routledge..
26. Ronald Watts, (1989) *"Executive Federalism: A Comparative Analysis,"* Queen's University.
27. Ronald watts, (2005) *"Distribution of Powers and Responsibilities in Federal Countries"* McGill-Queen's Press.
28. Rahim qassin, (2006) *"A federal system in Iraq and the distribution of powers,"* Iraq .

29. Stefan peter, (2012) *"Self-Determination UN Charter Self-determination International Court of Justice (ICJ) Unification,"* Routledge.
30. Shin, Imai, (2008) *"Indigenous Self – determination and the state,"* York University.
31. Scott Boykin, (1998) "*Secession, State, and Liberty*," Transaction Publishers,
32. Taylor, Jean Gelman (2003) *"Indonesia: Peoples and Histories,"* New Haven, Yale University Press, London
33. Tony Hodges, (2011) a. *"Western Sahara: The Roots of a Desert War. Westport,"* Conn.: L. Hill. 1983, The Origins of Saharawi Nationalism.
34. Ved. P. Nanda, (2010) "*Self-Determination and Secession Under International Law*," Denver Journal of International Law and Polity.

Websites

1. Cornell University Law School (ND), Self determination international law, online available from http://www.law.cornell.edu/wex/self_determination_international_law , accessed date (29/1/2016).
2. UN Juridical Yearbook,(1966), Legal activities of the UN and related inter governmental organizations , available from http://legal.un.org/UNJuridicalYearbook/pdfs/english/ByChapter/chpIII/1966/chpIII.pdf , accessed date (6/3/2016).
3. UN, (ND), General Assembly , available from http://www.un.org/documents/ga/res/21/ares21.htm accessed date (13/4/2016).
4. United Nations, (6 Nov 2012) Universal Recognition of Inalienable Right to Self-Determination Most Effective Way of Guaranteeing Fundamental Freedoms, Third Committee Told, available from http://www.un.org/press/en/2012/gashc4051.doc.htm accessed date (25/4/2016) .
5. Andreas Follesdal, (2014), Federalism, available from http://plato.stanford.edu/entries/federalism , accessed date (2\3\2016) .
6. Wikipedia, Eritrean_War_of_Independence, available from https://en.wikipedia.org/wiki/Eritrean_War_of_Independence , accessed date (1\4\2016) .
7. Jackson. (2009), "09Rabat195: Morocco's Tally of Countries Rejecting/Supporting Recognition of Independent Sahara." US State Dept. Diplomatic Cable. Rabat, Morocco: US State Department.

http://www.cablegatesearch.net/cable.php?id=09RABAT195 accessed date (5/1/2016).

8. UAE constitution of (1971), article (123), Available from https://en.wikipedia.org/wiki/Constitution_of_the_United_Arab_Emirates , accessed date (25/3/2016).
9. Swiss constitution of (1999), article (8) , available from https://www.admin.ch/opc/en/classified-compilation/19995395/index.html , accessed date (22/2/2016).
10. Iraq constitution of (2005), articles (1,3,5,46,64,65,106,110,121) , available from http://www.Iraq inationality.gov.iq/attach/Iraq i_constitution.pdf , accessed date (12/4/2016).
11. IKR constitution of (2006), articles (65, 107 ,117), available from , http://www.unpo.org/article/538 , accessed date (22/1/2016).

turnitin **Turnitin Originality Report**

Secession of States in International Law by Nairooz Jasim

From MASTERS OF Int Law (INTERNATIONAL LAW MASTER)

Processed on 25-Jul-2016 13:38 EEST
ID: 691669856
Word Count: 24811

Similarity Index	Similarity by Source	
14%	Internet Sources:	9%
	Publications:	6%
	Student Papers:	9%

sources:

1 2% match (student papers from 12-Jan-2015)
Submitted to Coventry University on 2015-01-12

2 1% match (student papers from 27-May-2013)
Submitted to American University in Cairo on 2013-05-27

3 1% match (Internet from 16-Mar-2016)
http://e.bangor.ac.uk/4739/1/Viva%20draft.pdf

4 1% match (student papers from 06-Jun-2014)
Submitted to Deakin University on 2014-06-06

5 1% match (Internet from 25-Jan-2015)
http://137.193.200.7:8081/download/90720/90720.pdf

6 < 1% match (Internet from 11-Feb-2014)
http://cetim.ch/en/documents/cristescu-rap-ang.pdf

7 < 1% match (publications)
Introduction to International Law, 1959.

8 < 1% match (Internet from 22-Apr-2015)
http://www.peacepalacelibrary.nl/ebooks/files/335882129

9 < 1% match (student papers from 12-Feb-2015)
Submitted to Girne American University on 2015-02-12

10 < 1% match (Internet from 29-May-2016)
http://dr.library.brocku.ca/bitstream/handle/10464/4097/Brock_Azizieh_Jana_2012.pdf?isAllowed=y&sequence=1

11 < 1% match (Internet from 24-May-2016)
http://v-scheiner.brunel.ac.uk/bitstream/2438/9199/1/FulltextThesis.pdf

12 < 1% match (student papers from 31-Mar-2014)
Submitted to Massey University on 2014-03-31

13 < 1% match (student papers from 18-Jul-2016)
Class: INTERNATIONAL LAW MASTER
Assignment:
Paper ID: 690109787

14 < 1% match (Internet from 08-Sep-2012)