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The Right to Self-Determination of Ethnic Groups: The Canton of Jura in Switzerland

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Abstract

The right to self-determination of peoples has become interconnected with the rights of ethnic groups, including the right to determine the group's own affairs and to participate in the decision-making process of the state. This article argues that a "people-centred" understanding of the right to self-determination is evolving in international law in response to emerging claims of non-traditional non-state actors such as ethnic groups. The case study of the establishment and continuing negotiations over the boundaries of the canton of Jura in Switzerland serves as an illustration of such a "people-centred" approach to self-determination. Findings suggest that the approach taken by the Bernese and Jurassians can serve as a role model for other ethnic groups in constitutional democracies with territorial claims.

Keywords

self-determination – minorities – human rights – Switzerland – Jura

1 Introduction

The right to self-determination of peoples is one of the most fundamental human rights, yet also one of the most contested. The right of peoples to "freely pursue their economic, social and cultural development"[1] has been

1 International Covenant on Civil and Political Rights (ICCPR) (999 UNTS 171 1966), Article 1(1).

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at the centre of efforts relating to nation building, independence and self-governance. As US President Woodrow Wilson famously said in his address to Congress in 1918, "[n]ational aspirations must be respected; people may now be dominated and governed only by their own consent. 'Self-determination' is not a mere phrase; it is an imperative principle of action …"[2] The principle of self-determination became synonymous with the pursuance of democracy within a nationalist framework and became a legal right after World War II.[3]

At the centre of the debate surrounding the right to self-determination has been the question of who holds the right to self-determination and what forms self-determination can take. This article argues that the concept of self-determination has evolved, both with regards to right holder and meaning, to include a broader definition and a "people-centred" approach. Based on the case study of the establishment of the canton of Jura in Switzerland and the continuing negotiations over its boundaries, the Jurassian people and their identities, and political solutions, the following paragraphs will shed light on the current status of the debate surrounding self-determination.

2 The Right to Self-Determination: Theoretical and Legal Considerations

The right to self-determination of peoples was originally interpreted as a counterpart to the right of states to sovereignty.[4] The right was understood to belong to the "whole people" residing within the boundaries of a state, while sub-state groups and minorities, with few exceptions, were not considered right holders.[5] However, nothing in the UN Charter prohibited the emergence of an interpretation that attributed the right to sub-state groups.[6] The principle of self-determination gained significance during the decolonisation

2 President Wilson's Address to Congress, *Analyzing German and Austrian Peace Utterances*. Delivered to Congress in Joint Session on 11 February 1918.

3 Charter of the United Nations, Article 1(2). Common Article 1 of the ICCPR, *supra* note 1, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (993 UNTS 3 1966).

4 *See* H. Kelsen, *The Law of the United Nations* (Praeger, New York, 1950) pp. 51–53.

5 *See* for an overview M. Suksi, 'Keeping the Lid on the Secession Kettle – A Review of Legal Interpretations Concerning Claims of Self-Determination by Minority Populations', 12:2 *International Journal on Minority and Group Rights* (2005) pp. 189–226.

6 R. Higgins, *Problems and Process: International Law and How We Use It* (Oxford University Press, Oxford, 1994) pp. 112–114.

struggles in the 1950s and 1960s. Colonial peoples were seen to have the right to self-determination, which could mean independence or the association with an established state.[7] The recognition of the right to self-determination as a legal right of colonial peoples was confirmed by various UN General Assembly resolutions[8] as well as by the International Court of Justice (ICJ) advisory opinions on *Namibia* (1971),[9] *Western Sahara* (1975),[10] and in its judgment concerning the *East Timor* case (1995).[11] The modern interpretation of the right of peoples to self-determination goes beyond the colonial context and recognises that any "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle".[12] Similarly, common Article 1 of the 1966 international human rights covenants speaks of "all peoples have the right of self-determination".[13] Today, the right to self-determination is widely recognised as a freestanding human right in international and regional human rights documents[14] and applies to populations of states, colonial peoples

7 During decolonisation, the principle of self-determination was extended to colonial peoples. *See* G. Pentassuglia, *Minorities in International Law: An Introductory Study* (Council of Europe, Strasbourg, 2002) pp. 163–167.

8 Declaration on the Granting of Independence to Colonial Countries and Peoples (UNGA Res. 1514 (XV), UN Doc. A/RES/1514 (XV) (1960)), and Principles which should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73 e of the Charter (UNGA Res. 1541 (XV), UN Doc. A/RES/1541 (XV) (1960)).

9 *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (*South West Africa*) *notwithstanding Security Council Resolution 276* [Namibia], 21 June 1971, ICJ, Advisory Opinion (ICJ Rep. 31–32), paras. 52–53.

10 *Western Sahara*, 16 October 1975, ICJ, Advisory Opinion (ICJ Rep. 31–33), paras. 54–59.

11 *East Timor* (*Portugal* v. *Australia*), 30 June 1995, ICJ, Judgment (ICJ Rep. 102), para. 29.

12 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (UNGA Res. 2625 (XXV), UN Doc. A/RES/2625 1970) [hereinafter Friendly Relations Declaration], Article 1.

13 ICCPR, *supra* note 1; ICESCR, *supra* note 3.

14 Examples include The Final Act of the Conference on Security and Cooperation in Europe [Helsinki Final Act], 1 August 1975, which identifies the right of peoples to self-determination in Principle VIII; Article 20 of the African [Banjul] Charter on Human and Peoples' Rights, 27 June 1981 (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 1982), both also including non-colonial situations; the UN Vienna Declaration and Programme of Action (UN Doc. A/CONF.157/23 1993), Part I.2; the CSCE Charter of Paris for a New Europe (reprinted in 30 ILM 190–228 1991); and the Framework Convention for the Protection of National Minorities, 19 November 1994 (ETS No. 157), Conference on Security and Cooperation in Europe (CSCE).

and, potentially other sub-state groups.[15] It has yet to be conclusively determined which groups qualify as "a people" in international law for the purpose of self-determination.

The question if there is an evolving interpretation of self-determination as a right of sub-state groups in international law and international relations has been debated in scholarship and practice.[16] Traditionally, a right of sub-state groups to territorial self-determination has clearly been denied. The Canadian Supreme Court, for example, stated in its ground-breaking advisory opinion in *Reference re: Secession of Quebec* of 20 August 1998[17] that "[i]t is clear that 'a people' may include only a portion of the population of an existing state".[18] However, the Court concluded that the right to self-determination applied to the state because Canada is "[a] state whose government represents the whole

15 More recently, it was established that indigenous populations possess the right to self-determination. Indigenous peoples are a *sui generis* category of ethnic groups. There is an emerging recognition of the right of indigenous peoples to self-determination. This is not unchallenged: ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169, 72 ILO Official Bull. 59 1991) states in Article 1(3) that "[t]he use of the term "peoples" … shall not be construed as having any implications as regards the rights which may attach to the term under international law"- The Convention does not provide indigenous peoples with the right to self-determination. It does, however, specify some rights for indigenous groups that are strongly connected with self-determination. The UN Declaration on the Rights of Indigenous Peoples (UNGA Res. 61/295, UN Doc. A/RES/61/295 2007) explicitly uses the term "self-determination" (Article 3), but links it with the establishment of autonomy as a special way to accommodate the right within the state (Article 4). Furthermore, indigenous peoples have the right to fully participate in the political, economic, social and cultural life of the state (Article 5), especially in matters that concern their affairs (Article 4).

16 *See* for an overview Suksi, *supra* note 5. *See also* T. Kempin Reuter, 'Dealing with Claims of Ethnic Groups in International Law', 24:4 *Connecticut Journal of International Law* (2009) pp. 201–238. With regards to the evolving international law of secession *see* M. Kohen (ed.), *Secession: International Law Perspectives* (Cambridge University Press, Cambridge, 2006); S. Mancini, 'Rethinking the Boundaries of Democratic Secession: Liberalism, Nationalism, and the Right of Minorities to Self-Determination', 6:3 *International Journal of Constitutional Law* (2008) pp. 553–384. For an overview of the international law of autonomy *see* Y. Dinstein, 'Autonomy Regimes and International Law', 56 *Villanova Law Review* (2011) pp. 437–453. For applied discussions, *see for example* UN Commission on Human Rights, Sub-Commission on Promotion and Protection of Human Rights, Working Group on Minorities, *Autonomy and Minority Groups – A Legal Right in International Law?* (UN Doc. E/CN.4/Sub.2/AC.5/2001/CRP.5, 5 March 2001) (prepared by Geoff Gilbert).

17 *Reference re: Secession of Quebec*, 20 August 1998, Supreme Court of Canada, Advisory Opinion (2 SCR 217 (Can.)), paras. 123–125.

18 *Ibid.*, para. 124.

of the people or peoples resident within its territory, on a basis of equality and without discrimination".[19] Similarly, most international documents state that the right to self-determination should "*not* be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States".[20] The UN Human Rights Committee confirmed in *Apriana Mahuika et al.* v. *New Zealand* that the right to self-determination under Article 1 of the International Covenant on Civil and Political Rights (ICCPR)[21] is a collective right and thus "attach[es] to 'peoples' of a state in their entirety, not to minorities, whether indigenous or not, within the borders of an independent and democratic state".[22]

As a result, scholars have argued that ethnic groups and minorities are part of the "whole people" and thus indirectly right holders of the right to self-determination.[23] A comprehensive approach identifies the "whole people" as "all distinct peoples," that is "whole people" in the sense of all individual, distinct "peoples" that form the "whole".[24] In other words, "self-determination refers to 'demos' not to 'ethnos'".[25] While ethnic groups are not necessarily holders of the right, they should benefit from the right to self-determination because they are part of the whole population.

To implement this principle, self-determination has to be more than just the tyranny of the sovereign. Even in democratic societies, in which the sovereign is the people, only the majority benefits from the right to self-determination unless strong avenues of minority participation in the government are

19 *Ibid*., para. 130.

20 Vienna Declaration and Programme for Action, *supra* note 14, Article 2, and UN Friendly Relations Declaration, *supra* note 12. Emphasis added.

21 ICCPR, *supra* note 1.

22 *Apirana Mahuika et al.* v. *New Zealand* (UN HRC Communication No. 547/1993, UN Doc. CCPR/C/70/D/547/1993 (2000)), para. 7.6

23 This was confirmed by the "Badinter Commission", which did not consider the concept of "people" to be homogenous and linked the right of minorities to be heard to a broader process of self-determination involving the whole population concerned. *Conference on Peace in Yugoslavia*, 11 January 1991, Arbitration Commission, Opinion No. 2 (reprinted in 31 ILM 1497 1992).

24 A US draft of the UN Friendly Relations Declaration, *supra* note 12, makes a reference to "all distinct peoples" in the territory of an independent state. Cited in Pentassuglia, *supra* note 7, p. 314.

25 UN Commission on Human Rights, Sub-Commission on Prevention and Protection of Minorities, *Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities* (UN Doc. E/CN.4/Sub.2/1993/34 (16 July 1993) (prepared by Asbjørn Eide) para. 76 [hereinafter "Possible ways and means"].

guaranteed.[26] Scholars generally distinguish two forms of self-determination – external and internal self-determination.[27] While external self-determination embraces secession and independence, internal self-determination is linked to democratic principles of participation, economic, social and cultural development and minority rights.[28] Ethnic groups only qualify for external self-determination in a very limited number of instances, namely if the group constitutes "a people" as discussed above, if the group is under colonial rule or subjected to gross human rights violations, or if the state voluntarily splits.[29] If an ethnic group is considered a "minority" – generally understood as a "group historically rooted in the territory of a state and whose specific ethnocultural features … distinguish it from the rest of the population"[30] – it would not be able claim the right to external self-determination. In this case, self-determination means assigning necessary power to ethnic groups for them to control and influence matters of direct relevance to them, while at the same time bearing in mind the legitimate concerns of other segments of the population and the state itself, including territorial integrity.[31] Scholars have argued that self-determination is increasingly understood as a "configurative principle or framework complemented by the more specific human rights norms that in their totality enjoin the governing institutional order",[32] which might be seen as an emerging "right to democratic governance".[33]

As a consequence, internal self-determination embraces the notions of the autonomy of the citizens, individual rights and freedoms, and the entitlement to a representative government. Internal self-determination in the form of segmental or "cultural" autonomy or territorial self-government provides in some cases a valid alternative to secession and independence. Autonomy is

26 *See* Kempin Reuter, *supra* note 16, pp. 223–229.

27 A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, Cambridge, 1995) pp. 109–112.

28 UN Committee on the Elimination of All Forms of Racial Discrimination, *General Recommendation No. 21* (UN Doc CERD/48/Misc. 7/Rev. 3 1996), para. 4, and UN Human Rights Committee, *General Comment No. 12* (UN Doc. HRI/GEN/1/Rev.1 1994), para. 12.

29 *See generally* Kempin Reuter, *supra* note 16, pp. 233–236.

30 Pentassuglia, *supra* note 7, pp. 58–59.

31 H. Hannum, 'Rethinking Self-Determination', in R.J. Beck and T. Ambrosio (eds.), *International Law and the Rise of Nations: The State System and the Challenge of Ethnic Groups* (Chatham House, New York, 2002) p. 243.

32 J.S. Anaya, *Indigenous Peoples in International Law*, 2nd edition (Oxford University Press, Oxford, 2004) p. 77.

33 T. M. Franck, 'The Emerging Right to Democratic Governance', 86 *American Journal of International Law* (1992) pp. 46–91.

"a relative term which describes the extent or degree of independence of a particular entity, rather than defining a particular level of independence which can be designated as reaching the status of 'autonomy'".[34] Power-sharing arrangements on the state level complement autonomy on the sub-state level. Federations, confederations, and the devolution of regulative powers to self-governing regions or autonomous territories are the most common forms of creating a state in which minorities and peoples have an accurate say in determining their own affairs.[35] The international community has acknowledged the potential of autonomy and power-sharing arrangements for the protection of ethnic identity and integration of minorities in the decision-making processes of the state.[36]

The autonomy/power-sharing model used depends on the structure of the state and the size and situation of the ethnic group.[37] Functional or segmental autonomy might be the most suitable method to empower dispersed or very small minorities. This involves the allocation of administrative powers to minorities to allow them to regulate their own affairs. Typical areas of delegation include education, language, traditional social and economic systems, or cultural institutions like places of worship.[38] Territorial autonomy, by contrast, is likely to be the most appropriate form of self-determination

34 H. Hannum and R.B. Lillich, 'The Concept of Autonomy in International Law', 74 *American Journal of International Law* (1981) p. 885.

35 *See* for a detailed discussion of regime types Suksi, *supra* note 5, pp. 193–195.

36 *See* Conference on Security and Cooperation in Europe (CSCE), *Document of the Copenhagen Meeting on the Human Dimension of the CSCE* (Doc. CSCE/CHDC. 43 1990), para. 3 [hereinafter "Copenhagen Document"]. *See also* P. Thornberry, 'Images of Autonomy and Individual and Collective Rights in International Instruments on the Rights of Minorities', in M. Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, Cambridge, MA 1998) pp. 97–124. *See also* R. Lapidoth, *Autonomy: Flexible Solutions to Ethnic Conflicts* (United States Institute for Peace Press, Washington, DC, 1996) pp. 175–177. Autonomy for indigenous groups is increasingly recognised by international law, as the Declaration on the Rights of Indigenous Peoples, *supra* note 15, shows.

37 *See* for a more detailed discussion UN Commission on Human Rights, Sub-Commission on Promotion and Protection of Human Rights, Working Group on Minorities, *Autonomy and minority groups – a legal right in international law?* (UN Doc. E/CN.4/Sub.2/AC.5/2001/CRP.5 2001) (prepared by Geoff Gilbert); and UN Commission on Human Rights, Sub-Commission on Promotion and Protection of Human Rights, Working Group on Minorities, *Cultural autonomy and territorial democracy: a recipe for harmonious group accommodation* (UN Doc. E/CN.4/Sub.2/AC.5/2001/WP.4 2001) (prepared by Asbjørn Eide). *See also* Kempin Reuter, *supra* note 16, pp. 226–227.

38 *See generally* H.-J. Heintze, 'On the legal Understanding of Autonomy', in Suksi, *supra* note 36, p. 21.

for regionally concentrated minorities who live in a well-defined territory.[39] Any solution has to ensure that all citizens of the country enjoy equal human rights in all parts of the state. This is particularly important with regards to sub-minorities within the autonomous region who have to be protected against discrimination, suppression, or exclusion.[40] The arrangement should be entrenched in the constitution or an international agreement to provide minorities with a certain degree of security about their status even if the political context changes.[41] Either way, for lasting success it is vital that autonomy agreements benefit both the minority and the state.[42] States fear that autonomy may lead to more extensive claims, especially in the case of territorial arrangements. These fears are not always unsubstantiated; studies have shown that multi-ethnic federations are particularly prone to experience secessionist conflict and breakups.[43] Nevertheless, regional autonomy and federalism are generally effective in dealing with ethnic conflict[44] and

39 *See* A. Reynolds, 'Majoritarian or Power-Sharing Government', in M.L. Crepaz *et al.* (ed.), *Democracy and Institutions: The Life and Work of Arend Lijphart* (University of Michigan Press, Ann Arbor, MI, 2000) pp. 169–170. *See also* S. Wolff, *Ethnic Conflict: A Global Perspective* (Oxford University Press, Oxford, 2006) p. 144.

40 *See* European Commission for Democracy through Law [Venice Commission], *The Protection of Minorities: Collected Texts* (1994) p. 81.

41 If, for example, a less "minority-friendly" government is elected.

42 *See* Lapidoth, *supra* note 36, pp. 169–205; and Kempin Reuter, *supra* note 16, pp. 227–228.

43 *See* J. McGarry and B. O'Leary, 'Federation as a Method of Ethnic Conflict Regulation', in S. Noel (ed.), *From Power Sharing to Democracy* (McGill University Press, Montreal, 2005) p. 263, pp. 274–275. However, other factors have to be taken into account when explaining the breakup of federations. First, some failed multi-ethnic federations were pseudo-federations in which the units had no *de facto* power. Second, in some cases the units were forced together (Soviet Union) or arbitrarily consolidated (former colonies). And third both in the communist and post-colonial cases the federations had economic problems (either regarding the system or regarding the functioning). (pp. 276–278). *See also* B. O'Leary, 'An Iron Law of Federations? A (neo-Diceyian) Theory of the Necessity of a Federal Staatsvolk, and of Consociational Rescue', 7:3 *Nations and Nationalism* (2000) pp. 273–296.

44 *See* T.R. Gurr, 'Peoples against States: Ethnopolitical Conflict in the Changing World System', 28:3 *International Studies Quarterly* (1994) pp. 347–377. Gurr argues that "negotiated regional autonomy has proved to be an effective antidote for ethnopolitical wars of secession". (p. 366). Similarly, Kjell-Åke Nordquist observes that creating autonomy "as a conflict-solving mechanism in an internal armed conflict is both a theoretical and – very often – a practical option for the parties in such conflicts". K.-Å. Nordquist, 'Autonomy as a Conflict Resolution Mechanism – An Overview', in Suksi, *supra* note 36, p. 59. *See also* Günther Bächler (ed.), *Federalism against Ethnicity? Institutional, Legal and Democratic Instruments to Prevent Violent Minority Conflict* (Verlag Rüegger, Chur/Zürich, 1997).

have been praised as the most successful means of protecting a minority's dignity and cultural identity.[45]

While ethnic groups *per se* are not entitled to self-determination and international law does not provide clear guidelines,[46] the recognition of a right for minorities to some form of autonomy or self-government under international law would be desirable. International law can tolerate almost any institutional arrangement on the sub-state level as long as it guarantees essential human and minority rights and the people freely determine their political status.[47] The flexibility of these concepts additionally allows for the creation of tailored solutions that take the special circumstances of ethnic groups into account. "People-centred" self-determination can "stand for an inclusive human rights-based, democratic and pluralistic process, which ultimately provide the materially disaggregated individuals and groups comprising the 'whole' with meaningful choices on an occasional and permanent basis".[48] The goal of these arrangements should never be to build ethnic states or sub-units, but to "live diversity in unity respecting one another",[49] thus merging the objectives of the state and ethnic groups alike.

3 The Case of the Canton Jura in Switzerland

Switzerland, and particularly the establishment of the canton of Jura, is an interesting and apt example of this "people-centred" approach to self-determination. The Jura conflict has its roots in the early 19th century, when the Jura territory was given to the canton of Berne at the Congress of Vienna. The area, also known as Bernese Jura, constituted the north-western part of the canton of Berne.[50] The two, now connected, territories did not match: Jura, the

45 *See* the conclusions in G. Alfredsson, 'Minority Rights and a New World Order', in D. Gomien, *Broadening the Frontier of Human Rights. Essays in Honour of Asbjørn Eide* (Oxford University Press, Oxford, 1993) pp. 55–74.

46 *See also* D. Sanders, 'Is Autonomy a Principle of International Law?', 55:1 *Nordic Journal of International Law* (1986) pp. 17–21.

47 K. Henrard, *Devising an Adequate System of Minority Protection. Individual Human Rights, Minority Rights and the Right to Self-Determination* (Kluwer Law International, Cambridge, MA, 2000) p. 135.

48 Pentassuglia, *supra* note 7, p. 323.

49 Federal Constitution of Switzerland, Preamble, 18 April 1999 (S.R. 101).

50 The Jura region encompasses the north-western part of Switzerland and derives its name from the Jura mountains, which stretch from Lyon in France through several Swiss cantons to the southern part of Germany. For the purpose of this paper, the Jura region is de-

conservative, mainly Catholic, mostly French-speaking area that was once autonomous was conjoined with the more liberal, mainly Protestant, mostly German-speaking canton of Berne.[51] From the very beginning, the dissatisfaction with the solution was expressed through political separatism calling for the autonomy or secession of the territory from the canton of Berne.[52] The separatist movement under the leadership of the *Rassemblement Jurassien* (RJ) gained momentum after World War II and called for the establishment of a new canton encompassing the region. The efforts were successful. A first step was achieved when a revision of the Bernese Constitution in 1950 officially recognised the minority status of the people of the Jura region. The Constitution now acknowledged the difference between the people of Jura and the "old canton",[53] named French as a second national language in the canton,[54] and granted the representatives of the Jura region two of nine seats in the Bernese cantonal government.[55] In addition, the Jura flag was recognised as official symbol of the region.[56] While no self-determination was granted, the recognition as a minority had an important impact on the Jurassian people, their identity, and their political mobilisation. The goal of establishing a new canton for the people of the Jura entered the mainstream political agenda of the region.[57]

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fined as the seven districts of the north-western region of the canton of Berne. These districts are Courtelary, Delémont, Franches-Montagnes, Moutier, La Neuville, Porrentruy, and Laufen. These districts are predominantly French-speaking, with the exception of Laufen, which is German-speaking. After the establishment of the canton of Jura, the term Bernese Jura has been used for the districts remaining with Berne. For more details on terminology *see* J. R. G. Jenkins, *Jura Separatism in Switzerland* (Clarendon Press, Oxford, 1986).

51 R. Buechi, 'Use of Direct Democracy in the Jura Conflict', in W. Marxer, *Direct Democracy and Minorities* (Springer, Wiesbaden, 2012) p. 187.

52 In one case, even the union with France. A good overview of the development and different phases is given by Jenkins, *supra* note 50, particularly ch. 7 "The Development of the Jura Separatist Movement", pp. 90–107.

53 *Staatsverfassung des Kantons Bern* (Constitution of the Canton of Berne) (as of 29 October 1950), Article 1 [hereinafter "*Staatsverfassung*"].

54 *Staatsverfassung* (as of 29 October 1950), Article 15: *"Die deutsche und die französische Sprache sind die anerkannten Landessprachen". See also* K. Geiser, *Einführung zur Staatsverfassung des Kantons Bern*, Staatskanzlei Bern (ed.), 1991. 13 sub IV.3.

55 *Staatsverfassung* (as of 29 October 1950), Article 33.

56 F. Erard, 'Pro Jura', in B. Prongué, *Le canton du Jura de A à Z* (Office du patrimoine historique, Porrentruy, 1991) pp. 167–168; R. Bruckert and F. Erard, *(R)évolutions. Cent ans de loisirs et de progrès en pays jurassien* (Ed. Pro Jura, Moutier, 2003).

57 For more details on the political mobilisation of the Jurassian people *see* V. Indermaur-Hänggi, 'Der Jura Konflikt', *Soziologisches Institut der Universität Zürich*, 1997.

After a series of public demonstrations, political discussions and negotiations between representatives of the separatist movement and the Bernese government, the Bernese Constitution was amended in 1970 to provide for a series of referendums to determine if a new canton should be formed and which districts should be part of it.[58] The goal was to give the people of the Jura region the responsibility to decide their political destiny and thus exercise their right to self-determination.[59] In a first vote in 1974, the people of the Jura region decided that they were in favour of the establishment of a new canton.[60] The referendum was surprisingly close with only 52 per cent of overall "yes" votes, which was interpreted as a setback for the separatist movement.[61] Important was the geographical distribution of the votes. While the three northern districts voted "yes", the four southern districts said "no", on both sides with strong majorities.[62]

In accordance with an agreed voting procedure, a second referendum was held in 1975 to determine whether the districts that had voted against the establishment of a new canton wanted to remain in Berne. All four districts decided to stay.[63] A third referendum was held in individual communities along the border. Each town had to decide which canton they wanted to belong to and whether to leave their district. Eight towns in the district of Moutier, in which the outcome of the 1974 referendum was the closest, voted to join the new canton of Jura while four voted to remain with Berne.[64] Two communities in the Jurassian district of Delémont decided to join the canton of Berne.[65] In a final step, a national referendum was held on 24 September 1978 to decide on

58 Zusatz zur Staatsverfassung des Kantons Bern hinsichtlich der jurassischen Landesteiles, 10 December 1969/1 March 1970 (BSG 101.1).

59 *Zweiter Bericht der Kommission der guten Dienste für den Jura*, 7 September 1971, p. 7, p. 25.

60 The three northern districts of Porrentruy, Delémont and Franches-Montagnes accepted; the three southern districts of La Neuveville, Courtelary and Moutier, as well as the Valley of Laufen, rejected. For an overview of outcomes, *see* Jenkins, *supra* note 50, p. 103.

61 *See for example* the commentary in the *Neue Zürcher Zeitung*, 25 June 1974, b17.

62 "Yes": Delémont, 79 per cent; Franches-Montagne, 77 per cent; Porrentruy, 68 per cent. "No": Courtelary, 77 per cent, Moutier, 57 per cent, La Neuville 66 per cent, Laufen 74 per cent. Cited in Jenkins, *supra* note 50, p. 103.

63 *See* the overview of the results in *ibid*., p. 104. A somewhat special case was the German-speaking district of Laufen, which voted with an overwhelming majority of 94 per cent to remain with the canton of Berne. In a series of referendums held later, Laufen decided to become a part of the canton of Basel-Land, which entered into force on 1 January 1994.

64 Towns that decided to join Jura: Chitillon, Corban, Courchapoix, Courrendlin, Les Genevez, Lajoux, Mervelier, and Rossemaison. Towns that decided to remain in Berne: Grandval, Moutier, Perrefite and La Scheulte.

65 Rebévilier and Roggenburg.

the creation of the new canton. A majority of 82.3 per cent of Swiss voters supported the formation of the canton of Jura,[66] which was officially established on 1 January 1979.

Despite these successes, Jura separatism remained alive for the next decades. The separatists particularly lamented the loss of the southern part, calling for the unity of the region.[67] In November 2013, the people of the canton of Jura and the people in the three Jura districts in Berne[68] voted again whether the Bernese part of the Jura should become part of the canton of Jura. While the population of the canton of Jura clearly would have welcomed a "greater Jura" (76.6 per cent "yes" votes), the people on the Bernese side voted against switching sides with a clear majority of 71.9 per cent.[69] The Bernese part of the Jura region thus continues to enjoy special status within the canton of Berne.[70] Only the town of Moutier on the Bernese side voted "yes" to joining the canton of Jura and will be able to hold a referendum deciding this question in early 2017.[71] While the recent referendum and upcoming vote in Moutier put a temporary end to Jura separatism,[72] it has yet to be seen if the Jura issue has been resolved in the long run.

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66 Swiss Votes, *Bundesbeschluss über die Gründung des Kantons Jura*, <www.swissvotes.ch/db/votes/view/299/list>, visited on 10 February 2016.

67 *See generally* A. Volmert, 'The Reinterpretation of Political Tradition: The Catholic Roots of Jurassian Nationalism', 14:3 *Nationalism and Ethnic Politics* (2008) pp. 395–427. *See also* J.-J. Schumacher, *L'assemblée interjurassien: Histoire et perspectives* (Société jurassienne d'Emulation, Porrentruy, 2005).

68 *See* footnote 63 regarding the fourth district of Laufen.

69 SRF, 'Der Grosskanton Jura ist vom Tisch', <www.srf.ch/news/schweiz/abstimmungen/abstimmungen/jura-abstimmung/der-grosskanton-jura-ist-vom-tisch>, visited on 2 February 2016.

70 *Staatsverfassung* (as of 24 September 2006) Article 5(1): *"Dem Berner Jura, der die Verwaltungsregion Berner Jura bildet, wird eine besondere Stellung zuerkannt. Diese soll es ihm ermöglichen, seine Identität zu bewahren, seine sprachliche und kulturelle Eigenart zu erhalten und an der kantonalen Politik aktiv teilzunehmen".* In addition, the Bernese Jura will be represented in the parliament of the canton Berne with 12 mandates regardless of population (Article 71(3)) and one seat in the Bernese government (Article84(2)). A special statute of 2006 guarantees the three remaining Jura areas self-determination over regional and cultural matters, including cultural events, sports and education. It established the *Bernjurassische Rat* (the Bernese Jura Council) that represents the interests of the Bernese Jura in Berne.

71 'Weg frei für Jura-Abstimmung in Moutier', *Der Bund*, 4 February 2016, <http://www.derbund.ch/bern/stadt/Weg-frei-fuer-JuraAbstimmung-in-Moutier/story/25333600?dossier_id=2345>, visited on 30 January 2016.

72 *Rapport du Gouvernement au Parlament sur la reconstitution de l'unité du Jura*, 27 May 2014, p. 10. About the reasoning on why the Bernese Jura decided to stay in Berne, *see*

How has the right to self-determination influenced the formation of the canton of Jura? As described above, the Jurassian people are a minority within the canton of Berne, French-speaking (with the exception of the valley of Laufen), in a geographically closed location with a history of autonomy, proven ability of self-government, and an interconnected, relatively closed economy. Based on these facts and the comparative analysis of peoples in similar situations, observers have argued that the Jurassians qualify as a "people".[73] Similarly, Article 1 of the Bernese Constitution of 1950 described the people of the Jura region as "a people" ("*Volk*") and not as a minority. However, Article 2 determines that the authority of the canton extends over the whole population in the canton of Berne ("*Gesamtheit des Volkes im alten Kantonsteil und im Jura*"). It is unknown if the drafters of the 1950 Bernese Constitution intended to create international legal consequences by using the expression "a people" ("*Volk*") in Article 1 and to what extent the right to self-determination influenced their choice of words and actions. As described above, at the time of the discussions surrounding the establishment of the canton of Jura in the 1950s and 1960s, the right to self-determination was interpreted as a right of a state's population and increasingly as a right of colonial peoples. Sub-state groups were not considered right holders. Nevertheless, if assessed under the current, "people-centred" understanding of the right to self-determination, it can be cautiously concluded that the use of the term "a people" ("*Volk*") in the 1950 Bernese Constitution has significance under the international law of self-determination. At the very least, the case has likely contributed to the development of the modern understanding of who holds the right to self-determination.[74]

The question if the population of the Jura region considers itself "a people" is even more difficult to answer. Internal divisions, which might not be evident to the outside observer, need to be considered. While the Jurassians share French language and heritage (with the exception of Laufen), the northern part tends to be Catholic and the southern part Protestant. In addition, the two areas belonged to historically different territories: the three northern districts were part of the Holy Roman Empire, while the three southern districts were

D. Sirkoy, S. Mueller and M. Hechter, 'Religious Legacies, Political Preferences and Intergroup Bargaining: The Case of Jura', *Paper prepared for the Annual Meeting of the American Political Science Association 2014, Washington,* DC, pp. 19–20. Sirkoy, Mueller and Hechter argue that remaining in Berne offered better conditions for the people of the Bernese Jura to realise their political goals, namely maintaining the status quo and preserving their distinct identity.

73 *See* D. Richter, *Sprachenordung und Minderheitenschutz im schweizerischen Bundesstaat* (Springer, Berlin, 2005) p. 527. *Also* D. Thürer, *Das Selbstbestimmungsrecht der Völker, mit einem Exkurs zur Jurafrage* (Stämpfli, Bern, 1976) p. 207.

74 *See* Richter, *ibid.*, p. 530; *see also* Thürer, *ibid.*, pp. 219–225.

part of the Swiss Confederation.[75] To make matters even more complicated, the case can be made that the Jurassians are indeed three separate groups: the people of the northern Jura (French-speaking, Catholic), the people of the southern Jura (French-speaking, Protestant) and the people of the Laufen valley (German-speaking, Catholic).[76] This begs the question: Is this a linguistic conflict, between French-speakers and German-speakers, as it seems on the surface, and as the separatist movement claimed?[77] Or are the boundaries cultural, along religious lines, as the referendums in 1974/75 indicate?[78] Both views are correct: for the linguistic conflict speaks that the majority of Jurassians speaks French, which is not the case in Berne. In addition, the amendments of the Bernese Constitution in 1950 and 1970 clearly show that the Bernese themselves perceive the people of the Jura as different based on the linguistic distinction. For a religious conflict speaks that people in the southern three provinces have expressed their desire to remain with Berne multiple times (in 1974/75 and again in 2013) and that historical connection and common experience seem to lead to closer bonds than sharing a language. The separatists claim that the divisions between the north and south Jura are the result of a deliberate Bernese policy of "Germanisation";[79] however, these claims cannot be easily substantiated. The separatists thus never recognised the outcomes of the 1975 referendums cementing the split between the two parts of the Jura and claimed that the division of the Jura region cannot be legitimised under

75 For a detailed history *see* F. Koller, 'Jura (Kanton)', *Historisches Lexikon der Schweiz*, <www.hls-dhs-dss.ch/textes/d/D7399.php>, visited on 2 February 2016.

76 *See* for a detailed discussion on how identity developed in the Jura region Richter, *supra* note 73, pp. 528–529. *See also* Sirkoy, Mueller, and Hechter, *supra* note 72.

77 B. Voutat, *Espace National et Identité Collective: Pour une Sociologie Politique du Conflict Jurassien* (Institut de Science Politique, Lausanne, 1992) p. 39, pp. 95–97, pp. 306–321, pp. 381–382.

78 Volmert, *supra* note 67, for example, argues that the religious aspect is at the core of the conflict while the separatists argued that the conflict was clearly a linguistic one. For the separatist argument, *see* Commission européenne des droits de l'homme, Décision du 10 octobre 1979, *Rassemblement Jurassien et Unité Jurassienne contre Suisse* (DR 17 1980, En Fait, No. 22) p. 93. *See generally* L. Wildhaber, 'Territorial Modifications and Breakups in Federal States', 33 *Canadian Yearbook of International Law* (1995) p. 50.

79 *Rassemblement Jurassien et Unité Jurassienne contre Suisse*, *supra* note 78, p. 93. *"D'après les requérants, 'complexité' de l'affaire jurassienne, sur laquelle le Gouvernement suisse a mis l'accent, ne peut justifier l'adoption de mesures exceptionnelles notamment en matière de 'sécurité publique.Ils réaffirment que le problème jurassien est linguistique et ethnique, dû à l'immigration de ressortissants bernois de langue allemande dans les districts du Jura-Sud, et que l'argument confessionnel, utilisé par le Gouvernement bernois pour opposer les Jurassiens entre eux, ne joue aucun rôle".*

any circumstances.[80] The efforts put forward by the government of Jura to bring about the 2013 referendum can be seen against this background.

The determination of ethnic group membership depends on objective and subjective criteria, the context, and on the identification by outsiders and insiders. Ethnic groups tend to distinguish themselves from other groups based on objective factors, such as a shared language, skin colour, or religion, and subjective factors, namely the self-identification of an individual with an ethnic group and, in turn, the acceptance of the individual by the group. Two elements are particularly significant when identifying ethnic groups. First, the accentuation of cultural traits or the belief in a common ancestry, and, second, the sense that these traits distinguish the group from the other members of the society that do not share the differentiating characteristic. These "ethnic criteria", which provide the origins of communal identity, may include shared historical experiences or myths, common descent, religious beliefs, language, ethnicity, and region of residence.[81] In the case of Jura, the definition of group membership and the geographical boundaries of the group's territory were viewed differently by the Bernese government, the separatist movement, and the people of the Jura region themselves. The canton of Berne made it clear that the "people of Jura" should include all seven districts. At the same time, prior differences and internal divisions were apparent – most clearly in regards to the German-speaking district of Laufen, and maybe less visibly, but just as significantly the historical split between the Catholic and Protestant areas described above. Flexible identities and context dependent interpretation of ethnic attachment further complicated the situation.[82] In the end, it was impossible to fulfil the wish of the northern Jura for its own canton and the desire of the southern parts to remain with Berne while at the same time

80 R. Schiffers, 'Die Jura-Frage seit der Anerkennung des neuen Kantons 1978', 40:3 *Europa Ethnica* (1983) p. 139. *See also* A. Charpilloz, *Ir(r)land Jura: Südjurassier im Konflikt* (Zytglogge Verlag, Berne, 1976). G. Ganguillet, *Le conflit jurassien: Genèse et trajectoire d'un conflit ethno-regional*, PhD Dissertation, University of Zurich (Bokos Druck, Zurich, 1998).

81 S. Van Evera, 'Hypotheses on Nationalism and War', 35 *International Security* (1994). A.D. Smith, 'The Ethnic Sources of Nationalism', in M.E. Brown, *Ethnic Conflict and International Security* (Princeton University Press, Princeton, NJ, 1993) pp. 28–30. T.R. Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (United States Institute of Peace Press, Washington DC, 1993). W. Connor, *Ethnonationalism: The Quest for Understanding* (Princeton University Press, Princeton, NJ, 1994).

82 For example, the Bernese Jura uses its linguistic identity as French-speaking region when bargaining with Berne, but relies on its distinct religious identity when negotiation with the canton of Jura. *See* Sirkoy, Mueller and Hechter, *supra* note 72.

saving the unity of the region and its people. Both the Federal Council[83] and the Swiss Supreme Court[84] acknowledged these internal divisions, but did not see a problem with the Bernese approach of tiered democratic expression. The Bernese authorities' approach is justified because it made sure that the self-determination of all people living within the boundaries of the Jura region were recognised and neither side dominated the final outcome.[85] The "whole people" condition of the right to self-determination described in section 2 of this article was thus upheld.

With regards to the content of the right to self-determination and its interpretation, the separatists used the term "self-determination" first and most often.[86] The Bernese used the term in 1969/70 when they amended their Constitution in preparation for the referendums on the establishment of a new canton. The Bernese government stated that the amendment gave the people of the Jura region the right to self-determination,[87] and that the exercise of this right depended on the support of the Bernese population, which was given in the referendum accepting the 1970 amendment of the Bernese Constitution.[88] Similarly, the Swiss Government used the term "self-determination"

83 Botschaft des Bundesrates an die Bundesversammlung über die Gewährleistung des Zusatzes zur Staatsverfassung des Kantons Bern hinsichtlich des jurassischen Landesteils, 26 August 1970 (Anm. 449, BBI 1970 II 549) p. 553.

84 *Canton du Jura contre Canton de Berne*, BGE 117 I a 245 Erw. 4 c.

85 Botschaft des Bundesrates, *supra* note 83, p. 553: *"Der Jura stellt in seiner bisherigen Entwicklung keine politische Einheit dar, sondern besteht auf Grund der geschichtlichen, geographischen, wirtschaftlichen, sprachlichen und konfessionellen Gegebenheiten aus dem Nordjura mit den Amtsbezirken Freiberge, Delsberg und Pruntrut, dem Südjura mit den Amtsbezirken Neuenstadt, Courtelary und Münster und dem Amtsbezirk Laufen, dessen Bevölkerung deutschsprachig ist. Dieser Gliederung wird dadurch Rechnung getragen, dass das Selbstbestimmungsrecht nicht nur dem Gesamtjura, sondern jedem genügend grossen Teilgebiet (jurassische Amtsbezirke, jurassische Gemeinden) zuerkannt wird, so dass die Bevölkerung jedes Teilgebietes die Möglichkeit hat, darüber zu entscheiden, ob sie sich aus dem bestehenden Kantonsverband lösen und eine neue politische Einheit bilden will". See also* Richter, *supra* note 73, p. 544.

86 *See* Zweite Bericht der Kommission der guten Dienste für den Jura, 7 September 1971, 9 H.

87 Bernese view: *"– soweit dies vom Kanton Bern abhängt – das eigentliche Selbstbestimmungsrecht zuerkannt".* Vortrag des Regierungsrates an den Grossen Rat betreffend einen Zusatz zur Staatsverfassung des Kantons Bern hinsichtlich des jurassischen Landesteils, June 1969, No. 2.

88 Zusatz zur Staatsverfassung des Kantons Bern hinsichtlich des jurassischen Landesteils, 1 March 1970.

in its message in preparation of the Swiss national referendum in 1978.[89] The Swiss Supreme Court specifically mentioned in the case *Canton du Jura* contre *Canton du Berne* (1991) that the referendums held in 1974 and 1975 are not only based on Swiss constitutionalism and democracy, but were also derived from the international law of self-determination.[90] This could be seen as an indication that the Swiss Supreme Court intended to put the Jura dispute within the realm of the international right of peoples to self-determination. Finally, the preamble of the Constitution of the canton of Jura reads:

> The people of the Jura, conscious of its responsibility towards God and to the people, with the intention to restore sovereignty and to establish a united community, gives itself the following constitution: … based on these principles the Republic and the Canton of Jura, founded by the act of free self-determination …[91]

Scholars dispute, however, the extent to which the international law of self-determination influenced the decisions. Some scholars argue that international law and developments in international politics influenced both the arguments made by the different sides of the conflict as well as the resolution of the conflict.[92] Others question if the right to self-determination had a direct impact on the decision-making process.[93] For one there is the issue with the contemporary understanding of self-determination as a right of state

89 *See* Botschaft des Bundesrates, *supra* note 83 and specifically for the relevant text, *supra* note 85. *See* also *ibid*., p. 555: *"Nicht nur hat die Bevölkerung des Kantons Bern Gelegenheit erhalten, sich zum vorgesehenen Trennungsverfahren auszusprechen, womit die Conditio sine qua non für die Revision von Artikel 1 der Bundesverfassung erfüllt ist, sondern es wird darüber hinaus, getreu dem föderalistischen Prinzip unseres Staates, der Bevölkerung des Juras die Möglichkeit eingeräumt, über ihr Schicksal selbst zu entscheiden".* Similarly, Richter, *supra* note 73, pp. 532–533.

90 BGE 117 Ia 233, 4.c, p. 244.

91 *Constitution de la République et Canton du Jura* (RS 131.235). Translation in T. Fleiner and L. Basta Fleiner. *Constitutional Democracy in a Multicultural and Globalised World* (Springer, Berlin, 2009) p. 560.

92 *See* Richter, *supra* note 73, pp. 530–534. *See also* P. Talbot, *La Republique et canton du Jura* (Dissertation, Université de Bourgogne-Dijon, 1988) p. 52, with regards to the application of the UN Charter's rules on self-determination within Switzerland: *"Ces règles ne peuvent s'appliquer immédiatement et directement à l'intérieur de la Confédération. Mais elles pourraient y trouver application si le droit fédéral ne contenait aucune disposition de ce sujet".*

93 Thürer, *supra* note 73, p. 213.

populations and colonial peoples as discussed above. Second, the Swiss confederation has longstanding experiences in the accommodation of minority rights and claims within its constitutional democracy and historically has not relied on international law to solve these issues.[94] And third because of the domestic nature of the Jura conflict, its resolution and regulation is not a matter for international law, at least in its direct sense.[95] This being said, international law influenced the final outcome, particularly with regards to state succession and questions of properties, liabilities, and records.[96]

Indirectly, the right to self-determination expressed itself in the various discussions, demonstrations and negotiations of the Jura question and most importantly in the referendums that have determined the final status of the Jura region and its people. As the Canadian Supreme Court in the case *Reference re: Secession of Quebec* spelled out, self-determination and secession in a democratic state must happen in a democratic way,[97] either along explicitly spelled out avenues in the constitution or, if such rules are absent, in a way that respects the right to self-determination and the integrity of the democratic process.[98] The mechanism of sequential referendums chosen to solve the Jura

94 *See* D. Schindler, *Die Schweiz und das Völkerrecht* (Haupt, Bern, 1992). *See also* T. Fleiner, 'Minderheitenschutz im kantonalen Recht der Schweiz', 40 *Jahrbuch des öffentlichen Rechts der Gegenwart* (1991). When the canton of Jura was formed, the Constitution of Switzerland included no guidelines or rules on how to create a new canton. Because of the Jura experience, Article 53 was added. Today Article 53 of the Swiss Constitution (1999) reads:

Art. 53 Number and territory of the Cantons

1. The Confederation shall protect the existence and territory of the Cantons.
2. Any change in the number of Cantons requires the consent of the citizens and the Cantons concerned together with the consent of the People and the Cantons.
3. Any change in territory between Cantons requires the consent both of the Cantons concerned and of their citizens as well as the approval of the Federal Assembly in the form of a Federal Decree.
4. Inter-cantonal boundary adjustments may be made by agreement between the Cantons concerned.

95 *See* on this subject I. Bernier, *International Legal Aspects of Federalism* (Longman, London, 1973) pp. 83–120.

96 *See* for an overview of how international law impacted the secession of the canton of Jura C. Dominicé, 'La Sécession du Nouveau Canton Suisse du Jura', in M. G. Cohen, *Secession: International Law Perspectives* (Cambridge University Press, Cambridge, 2006) pp. 453–469.

97 *Reference re: Secession of Quebec*, *supra* note 17, para. 2.

98 C. Lloyd Brown-John, 'Self-Determination, Autonomy and State Secession in Federal Constitutional and International Law', 40:3 *South Texas Law Review* (1999) p. 577.

conflict serves as a perfect illustration. It was based on the founding principle of Swiss federalist political culture, namely the focus on decentralisation and loyalty on the local level.[99] The democratic, "people-centred" expression of self-determination allows for flexibility and compromise to guarantee that voices on all sides are heard. It also does not necessarily lead to outcomes that can be easily put within the generally assumed categories of internal or external self-determination described in section 2. Again, the case of the canton of Jura acts as an example: one could argue that the secession of the northern parts constitute external self-determination, while the subsequent referendums and the special status of the Bernese Jura within the canton of Berne could be considered a manifestation of internal self-determination. The staged referendum process that included decision-making on the local level giving people in the proximity of the border the right to choose their own destiny within the old canton or new canton additionally allowed the largest number of people to participate in self-determination. As a result, the number of "sub-minorities" created was minimised. The fate of minorities within minority territory was one of the concerns voiced by the Canadian Supreme Court in *Reference re: Secession of Quebec* when asked under what circumstances the province of Quebec could secede from Canada.[100] The secession of the canton of Jura in a peaceful and orderly manner is generally considered one of the great victories for direct democracy and federalism, and specifically for the Swiss model.[101] It required flexibility and the adaptation of federal law, a broadened understanding of international law, and the consent of the federal government, the cantonal government(s), and all units directly affected by the change. The Jura situation and the democratic interpretation of the right to self-determination have influenced other comparable cases in Europe and elsewhere, including the efforts of Catalonia to separate from Spain and most recently Scotland's attempt to secede from United Kingdom.[102]

In conclusion, the case of the establishment of the canton of Jura represents the new understanding of self-determination in which "neither a purely individualistic human rights approach nor an ethno-territorial self-determination

99 Fleiner and Basta Fleiner, *supra* note 91, p. 640.

100 *E.g.* English speakers within French-speaking Quebec. *Reference re: Secession of Quebec*, *supra* note 17, para. 2.

101 Buechi, *supra* note 51, 187.

102 A. Glaser, 'Die Beilegung des Jurakonflikts – Ein Modell für direktdemokratische Sezession in Europa?' *Schweizerisches Zentralblatt für Staats- und Verwaltungsrecht* 115 (2014) pp. 463–486.

approach will be adequate to address group-based political demands".[103] Self-determination is a claim that increasingly combines both collective and individual elements and thus needs to remain relativist, an approach in which solutions need to be flexible and context-based. Self-determination is a right for all rather than only for some, and while the process of establishing the canton of Jura was a slow and difficult one, it was the only one guaranteeing a comprehensive application of the right to self-determination.

4 Conclusion

A closer look at the modern understanding of the right of peoples to self-determination reveals that the application of the right to ethnic groups is not inconceivable. A "people-centred" interpretation of self-determination, derived from a human rights and minority rights approach, creates innovative opportunities for ethnic groups. Most importantly, it allows for flexible solutions guaranteeing the rights of ethnic groups to determine their own destiny, to protect and preserve their culture and to (co-)exist with the majority.

The formation of the canton of Jura is an example of this "people-centred" approach to self-determination. It illustrates and recognises that members of all ethnic groups are part of nation building. The Jura situation represents one of the few cases in which democratic expression of internal self-determination, down to the lowest level of governance, allowed all members of society, including minorities, to express their views on territorial affiliation, political participation and cultural belonging. Both parts of the movement – the separatist Catholic French speakers and the anti-separatist Protestant French speakers – ended up enjoying the right to self-determination. The fact that the discussion continued after the establishment of the canton of Jura in 1979 and was followed up with further negotiations and the referendum in 2013 shows understanding for changing identities and new claims.

103 H. Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, Revised Edition (University of Pennsylvania Press, Philadelphia, PA, 1996).