
Law Principle on People's Right for Self-Determination

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Abstract

Security and peace in the world have always been addicted by reports of peace or hostilities between states and people. Constantly the world has been accompanied by efforts to domination of some states to other states or nations against other nations. These efforts have consistently encountered resistance states and peoples not to be subjected. As a result of these efforts there have been developed numerous wars, with bloody and tragic consequences for humanity. Therefore the history of states and nationes, mainly is a history of violence and attempts to dominate and not to be imperiled. Throughout history have been invented and built many systems that have tried to regulate these relations. Some of them have collapsed quickly some have resisted longer time. For the first time as a loosely rule, Peace of Westfalia is inaugurated year 1648, and a broad knowledge and as a principle universally recognized but unrealized in this measure practically known in the twentieth century. Therefore, the principle of self-determination has become an integral part of the Charter of the United Nations. What does the principle of the right for self-determination? How is it being implemented? What is the perception of ethnic entities of this principle? How it is implemented in the case of the former Yugoslavia? Why is not applied in the case of Kosovo? Are just some of the questions that need to be answered.

Keywords: security, peace, self-determination, history, right, Kosovo.

The principle of self-determination

Viewed in historical terms, the principle of self-determination goes through three periods of development. The first period begins with the Peace of Westphalia, 1648 and ends with the Congress of Vienna in 1815. This stage is also known as the legitimation stage of monarchical dynasties. Second Period, or otherwise known as the period of equilibrium of forces in the Congress of Vienna begins and ends with the Second World War. While the third phase of development of this principle, which is at once the most important phase, which begins this principle to find a wider application, is phase after World War II¹. Although the principle of self-

¹ Hasani, Enver: SELF-DETERMINATION, Vienna: National Defence Academy, 2003

determination applies relatively recently, the basis of this principle we find, since the Peace of Westphalia of 1648.² After the terrible wars of the Reformation, the states involved in these wars, in 1648 set of principles which will be the basis of the international relations.

Under this agreement the four principles that will determinate international relations would be:

- The principle of sovereignty of the nation-state and the fundamental right of political self-determination:
- Equality (legal) principle between states:
- The principle of international agreements between countries:
- The principle of non-intervention of one state in the internal affairs of another state.

However, these principles do not find wide application and were referred almost exclusively for the most powerful states of the time. The agreement was reached as the need to end the wars and to secure a peace that will ensure recovery of the affected states³.

Although these principles did not found wide application, monarchical systems of the time, with those agreements reached to legitimize their governance systems.

Although the Peace of Westphalia, provided a relatively long peace, the strengthening of some states and the increase of appetites for territories, these principles were seriously jeopardized.

As a result, less powerful states saw the need to build a system that will protect them from other more powerful states. The construction of this system, which would later be called the balance of power system will reached and build at the Congress of Vienna in 1815. However, even this system is not clearly defined rules for the implementation of the principle of self-determination⁴. Even in this system the principle of self-determination effort refers only to maintain existing states and not peoples and ethnicities who were trying to build their country. The first occurrence of those powerful systems came after World War I, when the Axis State, rejected the principles and striving for territorial expansion at the expense of other states. Losing Axis countries, created a space to attempt to return to international peace and stability. Numerous attempts were made to create a stable base of regulating international relations. In this spirit was the 14-point proposal of U.S. President Wilson Woodrow. That "based on three main criteria, which were:

- Democracy
- Group insurance and
- Self-determination - none of which was used earlier for a European solution⁵

One of the important points of Wilson that had to do with the principle of self-determination, was his demand for "objective resolution of territorial claims."

But even though, Wilson's proposals were an important step forward, that would help little nations to determine their own destiny, through the principle of self-determination, disregard of the agreement by the U.S. Senate, made these proposals not wide applicable in practice. Just as America's withdrawal from this agreement and "return" to its previous policy isolationist, increased the appetite of Germany and Italy for territorial expansion. It ended with

² Baliqi, Bekim: HYRJE NË DIPLOMACI DHE POLITIKE TË JASHTME, Prishtinë,2010

³ Resolution of the General Assembly, 1514 (XV)

⁴ Baliqi, Bekim: HYRJE NË DIPLOMACI DHE POLITIKE TË JASHTME, Prishtinë, 2010

⁵ Kissinger, Henry: DIPLOMACIA Përth. P. Pojani, Tiranë: Shtëpia Botuese e Lidhjes së Shkrimtarëve, 1999.

World War II. The need for recuperation, peace and safety led to the creation of United Nations (UN), as a body with universal character which will have the task of maintaining peace and security in the world. In the basic document of the UN, among other things included the principle of self-determination and the right of nations to self-determination.

Ethno national view

Although the UN Charter recognized the right of nations to self-determination, not all nations were able to squeeze this right. Major powers used the principle of self-determination for their interests. So many nations failed to realize this right. Victorious states and their allies followed as a key principle, so they would not have any territorial losses. Here the ethnic-national played a second hand, which once again illustrates his relativity⁶. Although many of the movements state – establishing had the ethnic entities element, strained international relations and interests of the great powers, made within the new states to not reflect composition of ethnic entities population. Thus, in setting of the boundaries of new states they were based on more administrative old boundaries, that had established colonial states, or otherwise known as the principle of *uti possiditis*. Within the newly created states there were included populations with different ethnic entities, religious and linguistic⁷, etc.

This diversity of composition made within population of a state, caused many inside problems for newly created states. Within these countries started bloody wars for domination of little ethnic groups of the same state. This is evidenced by the numerous wars in Nigeria ethnic domination, the former Yugoslavia, Rwanda, Sudan, Turkey etc..

However, numerous wars within states and subjected nations efforts to realize the right of self-determination under the principle minorities, continues to promote the principles of the French Revolution of the nation-state, which does not bind the nation with an ethnic element, but with the state one. The UN continues to promote these principals. All this is due to the fact that if there would be recognized based on self-determination of ethno-national element, then the system of all states would collapse, since almost all states of the world have a population heterogeneity. However, despite this many majority of federal states, which had a large heterogeneous nationality faced with many consequences and with bloody wars for breakdown by ethno-national principle. The '90 years of the last century were dominated with ethnic and territory bloody wars. Ambitions to build nationality states were also helped from the collapse of communism in the East. Despite initial efforts to save these countries, the determination of different national groups were crowned with success. So from among the communist countries (USSR, Yugoslavia, Czechoslovakia) dissolved, came up many new national countries.

Application of the Principle of Self-Determination in the former Yugoslavia

⁶ Alttermat, Urs: ETNONACIONALIZMI NE EVROPE; Përkth. Ardian Klosi, Tiranë, PHONIX, 2002

⁷ Hobsbaum, Erik: KOMBET DHE NACIONALIZMI QE'NGA 1780-TA, Përkth. Bashkim Shehu, Tiranë, Toena, 1996.

The collapse of the communism in USSR, had a wide effect on other European communist states. Collapse of the USSR, in 1990, followed by collapse of the communism on all European states. The collapse of this system had been associated with numerous problems.

Some states faced the collapse of communism very easy and immediately began the process of democratic transition. Most problems were experienced by countries that had a heterogeneous composition of the population and that when they were created, they violently included within their various national groups. One of the countries that had numerous problems post-communist was Yugoslavia. With the communist system fell, Yugoslavia was engulfed by a powerful wave of nationalism. All ethnic groups began their national movements to build their states based on element of the ethnic entities. Serbian nationalist ambitions to dominate Yugoslavia and forcibly keep those nations led to a bloody war and multiple victims.

Thus began a bloody process of disintegration of Yugoslavia and the construction of new states. Despite the early resistance of international community to stop the disintegration of Yugoslavia, insistence and war finally made that the nations within Yugoslavia to recognize the right to self-determination. To give international legitimacy to that right, was created a committee that established the conditions of implementation to the right of self-determination for the nations of the former Yugoslavia.

This committee was known as the Badinter Committee⁸.

According to this committee the right of knowing the principal of self-determination in former Yugoslavia have the nations that the constitution of 1974 were once known as the Republic and the nations who complete the criteria of being a nation.

Based on these criteria, this right was won by: Slovenia, Croatia, Bosnia and Herzegovina, Macedonia and Montenegro. But from this right were expelled Kosovo and Vojvodina.

Kosovo was a constituent part of Yugoslavia and therefore had the right to self-determination and declaration of independence and the will of the people should be the basic element in determining the final status of Kosovo pointed Andreja Metelko Zgombić⁹.

Kosovo and the principle of self-determination

In order to handle the principle of self-determination and how this principle has not found wide application in practice it is very illustrative the case of Kosovo and Albanians in former Yugoslavia. When on 1912, Albania declared independence, it meant that it would include all Albanian-inhabited territories. But the London Congress in 1913, internationally recognized Albania as a country, only less than half of the territory and its population. Kosovo constituted the largest and most important territory outside the "London" Albania, so the Congress

⁸ The Arbitration Commission of the Conference on Yugoslavia (commonly known as Badinter Arbitration Committee) was a commission set up by the Council of Ministers of the European Economic Community on 27 August 1991 to provide the Conference on Yugoslavia with legal advice. Robert Badinter was appointed to President of the five-member Commission consisting of presidents of Constitutional Courts in the EEC. The Arbitration Commission has handed down fifteen opinions on "major legal questions" raised by the conflict between several republics of the Socialist Federal Republic of Yugoslavia (SFRY)

⁹ Chief Legal Adviser in the Ministry of Foreign Affairs and European Integration of Croatia

recognized Kosovo as part of Serbia. In 1918, there were established the Kingdom of Serbs, Croats and Slovenians, which included Kosovo within it, without taking into account the structure of the population and its will¹⁰. However, despite the invasion of Kosovo from Serbia and "international recognition" of this occupation, Albanians fought constantly strived for self-determination. So in 1943-44, Albanian representatives of Kosovo in Bujane issued a resolution, which required that after the War, Kosovo will recognize right to self-determination up to secession and union with Albania. But after World War II, Yugoslav- Serb leadership violated and dismissed the resolution as invalid, by which the people of Kosovo unjustly were denied from the expression of free will. This "will" forge, as the people of Kosovo want to join the Yugoslav federation. Within the federation, Kosovo was an unequal status with six other federal entities. The position deteriorated further with the suppression of the 1974 autonomy. Kosovo's right to have self-determination, was once again denied by the Badinter committee, which did not recognized Kosovo's right to self-determination. Albanians tried to recognize this right through the referendum that was held on 1992, but this referendum was never officially known by the national mechanisms. However, despite this discrimination, Albanians of Kosovo constantly tried to achieve their right for self-determination. These tries led even with armed war of UÇK, which with the help of national community ended with the removal of Serbia from Kosovo.

But, despite of the forced removal of Serbia from Kosovo, the latter again was prevailed from the right of self-determination. Kosovo was placed under UN administration and continues its journey under a so-called temporary status, which is being more than 9 years, whereas on 17 February 2008 Kosovo declared its independence and was recognized nationally by more than 108 countries around the world so far, and continues its path towards integration into Euro-Atlantic structures.

The Resolution 1244 has not guaranteed the territorial integrity of Serbia, but Yugoslavia, which now does not exist, and that only during the interim period of international administration in Kosovo.

Further on, we will show also few opinions that also protect the right of Kosovo for self-determination.

Independence of Kosovo is a fact and is a consequence of the failure of negotiations between Belgrade and Pristina carried with the mediation of the UN Secretary General's Special Envoy Martti Ahtisaari, former President of Finland¹¹.

The people of Kosovo had the right to self-determination and secession from Serbia because the Belgrade authorities systematically violated civil and human rights of Albanians for years. International law thus allows the proclamation of Kosovo's independence. The violations of the rights of the Albanians by the authorities in Belgrade from 1989 to 1999 are thoroughly documented in UN reports, resolutions of the Security Council and the Hague Tribunal, and were admitted by Serbia before the International Court of Justice. After such breaches of their rights, no one could expect the people of Kosovo to agree to continue to live within Serbia. Kosovo could not become a dangerous precedent in international law¹².

¹⁰ Nimani, Petrit: BAZAT E SHITETIT DHE SË DREJTETES, KUB, Prishtinë, 2012

¹¹ Päivi Kaukoranta, Director General, Legal Service, Ministry of Foreign Affairs of Finland

¹² Liesbeth Lijnzaad, Legal Adviser, Ministry of Foreign Affairs of Netherlands, 10 December 2009.

In a statement issued 19 February 2008 the U.S. State Department argued every territorial conflict is unique. It said Kosovo's unilateral independence cannot be used by other states to resolve disputes. When asked about the Kosovo's independence in reference to recognition of South Ossetia, Secretary of State Condoleezza Rice dismissed it and said, *"we've been very clear that Kosovo is sui generis and that that is because of the special circumstances out of which the breakup of Yugoslavia came. The special circumstances of the aggression of the Milosevic forces against Kosovars, particularly Albanian Kosovars, and it's a special circumstance"*.

Conclusion

Even that the right of nations for self-determination was accepted very often during the history with different national agreements, it did not applied universally for all nations and ethnic groups. This right was implemented and known for the nations according to the interests of great powers, which implemented the known principal called *uti possidits* than considering the will and interests of nations, whose fate was decided. This thing has often led to bloody wars and created big problems for created states. Also, many nations were denied from this right, like Palestine and Israel today they reflect the most known ethnic groups in the whole world that fight for decades to create their own states. Also, in their fate reflects the whole complexity of the self-determination principal and the perception that the ethnic groups have for the right of this principal. As can be seen from the above sections of this paper, the principle of self-determination is a principle universally recognized. But its use in practice has not found universal application. For the first time in the system of international relations, this principle was recognized in the Peace of Westphalia. Than was involved in the most recent systems that regulate or tried to arranged the international relations. This principle was included in the basic document of the United Nations. But even after its implementation in practice was never universal. Also from this paper you can see that the perception of nations that try to realize that this principal is ethnic-national perception. Ignorance of this principal has caused and it is still causing problems and wars in states that are trying to forcibly keep under domination different ethnic-national groups. Only the '90 years and wars in the former Yugoslavia had taken the life of hundreds and thousands people and caused uncountable material damages as due to refusing to let the ethnic-national group to embrace this right.

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