

## THE RIGHT TO SELF-DETERMINATION IN WESTERN BALKAN COUNTRIES

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### Abstract

The right to self-determination is the collective right of a nation to freely determine its political status and freely pursue its economic, social and cultural development. This right has a central position in international law as a fundamental principle in the creation and destruction of states. In Article 1 of the Charter of the UN (1945) it is counted as one of the goals of the organization, and it was listed as the first right in both International Conventions in 1966 (ICCPR and ICESCR).

Although it is a principle in evolution, whose origin is seen in the Declaration of Independence of the USA back in 1766, this right remains an important and current topic for the countries of the Western Balkans, especially after the breakup of Yugoslavia for the countries that made up this federation. The Prespa agreement between Macedonia and Greece, as well as the fragile relations between Kosovo and Serbia and the current border change negotiations, return the attention to the notion of the right to self-determination and its meaning today.

This paper aims to analyze the evolution of this right in international law, to better understand the border/relationship between the right to self-determination and the sovereignty of states in a regional context for the countries of the Western Balkans.

*Keywords:* self-determination, human rights, sovereignty, territorial integrity, Western Balkans

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### 1. Introduction

The principle of self-determination was invoked on many occasions during World War II. It was also proclaimed in the Atlantic Charter (1941) (Declaration of Principles of August 14, 1941), in which US President Roosevelt and UK Prime Minister Churchill declared, among other things, that they wanted "no territorial changes which do not agree with the freely expressed wishes of the peoples concerned", that they respect "the right of all peoples to choose the form of government under which they will live". The provisions of the Atlantic Charter were reformulated in the Declaration by the United Nations (United Nations (UN)), signed on January 1, 1942, in the Moscow Declaration of 1943, and in other important instruments of the time.

Despite the legal coverage of this right in the most important international documents, the so-called the international community does not have a clear and strict definition of the term 'right to self-determination', there is no clear and practical policy towards the emergence of this phenomenon. As a result, there is an urgent need to think, systematically and practically, about the relationship between the principles of state sovereignty, national self-determination and human rights. In addition to this, self-determination as a concept has always been part of the debate about whether it represents a right or a principle, considerations that avoided the element that it is still a legal norm *ius cogens*, an aspect that represents an added value to the notion of self-determination as a right, the realization of which has a great impact on the enjoyment of other rights and on how the political and legal processes will move in a certain region.

The right to self-determination and its implementation in international public law was and remains one of the most controversial issues. This is not only due to its nature, but because of the influence of this right on the existing world states.

## **2. The boundary between sovereignty and the right to self-determination**

Each case of the acquisition of sovereignty is characterized by an initial phase of joint sovereignty whereby the state and the substitute entity can exercise some sovereign powers and functions in a certain territory.

Gradual acquisition of sovereignty implies the accumulation and exhaustion of powers and functions by the sub-state entity for a certain period of time before determining the final status.

While Serbia and Montenegro, Northern Ireland, Bougainville and Western Sahara shared sovereignty with a central authority, in the cases of Kosovo and East Timor, a sub-state entity shared sovereignty with international organizations during the period before final status was determined.

So far, about sixty cases of self-determination referendums are known, some of them official and some unofficial. One of the most famous in the last few years is Catalonia's referendum on secession from Spain. In 2017, the Kurds called for a referendum to form an independent state and secede from Iraq, and in November this year residents of the French overseas territory in the Pacific Ocean, New Caledonia, voted in a referendum on independence, the latest step in three decades of attempts by local separatists to create an independent state.

## **3. Europe and the right to self-determination**

In 2014, Scotland submitted a "Democratic Petition" for the transfer of power from the British to the Scottish Parliament, demanding independence from Great Britain in a referendum. The question in the referendum was "Should Scotland be an independent country?", to which voters answered "Yes" or "No". The No side won with 2,001,926 voting against independence and 1,617,989 voting for it. However, this remains an open question for Britain, considering that as of 2019, Scotland is seeking a repeat of this referendum.

Another European country like Spain seems to have even more serious open internal issues with Catalonia. Last year, during one of my study visits to the institutions of the European Union and the Council of Europe in Strasbourg, thousands of Catalans filled the streets of Strasbourg, coming for a peaceful protest in front of the European Parliament. There were so many that it was impossible not to contact a few of them. They did not demand the promotion of rights or greater independence from Madrid, they were determined for self-determination.

But Catalonia and Scotland are not the only regions in Europe that want to declare independence. In the east of Europe, with the breakup of Yugoslavia and the Soviet Union, a series of new states were created, but it seemed that nothing would change in the west. However, it is only an appearance because in many nation-states, as they have existed for centuries, there are regions that constantly demand complete independence.

The government of Madrid does not intend to allow holding a referendum on independence not only in Catalonia but also in one of the poorest regions in Spain, the Basque Country, where there is also a long-standing independence movement.

Belgium with the region of Flanders, Italy in South Tyrol and Padania, Germany with Bavaria and other European countries also deal with independence movements, but it can be said that

these cases were not as loud as those in Spain and Great Britain.

Events related to the principle of self-determination have the characteristic of events with a domino effect in other countries. This so-called domino effect may be the reason that Spain, for example, is one of the few EU countries that did not accept the independence of Kosovo, but many authors also wrote how the possible independence of Catalonia could destabilize the whole of Europe.

#### **4. The Western Balkans and self-determination**

Claims for self-determination are often in conflict with each other and no clear standards have been established to distinguish those claims that will be accepted from those that will not be accepted by the international community.

Nationalism has played and continues to play a key role in movements for people's right to self-determination. An important question remains the definition of the concept of nationalism, which seems to be a key factor for a better understanding of the principle of self-determination.

In short, nationalism is a theory, according to which it is necessary that ethnic borders do not exceed political ones.

For most writers, nationalism is a modern ideology that can only be found until the end of the eighteenth century, but what is more important for this paper is the connection and the way it is implicated in evolution and the claims of peoples for the right to self-determination.

Basically, nationalism binds three ideals: collective self-determination of people, expression of national character and individuality and, finally, vertical division of the world into unique nations where each contributes his special genius to the common stock of humanity.

The notion of self-determination in Eastern Europe, and more precisely in the Balkans, arose from the phenomenon of nationalism. During its evolution by the countries of Eastern Europe it is considered the right of self-determination of peoples in close connection with the concept of nationalism, and this is especially typical for the Balkan countries.

Unlike the Balkans, in Western Europe, mainly France and England, the process of nation building was a gradual process of building a sense of belonging in a community and all this was preceded by the existence of a state and limited within state borders. This process in the Balkan region happened very late and in completely different circumstances.

The issue of the right to self-determination, the borders and the process of formation of the countries of the Western Balkans will remain open and will be used politically for a long time, until these countries become part of the European Union.

#### **Conclusions**

Among the principles that are closely related to the principle of self-determination, the rule of *uti possidetis* and the concept of 'international security' are most often highlighted.

When the First World War ended, there was no clear concept of self-determination and there was a vacuum in terms of this principle. In fact, it was from this time onwards that the modern development of the principle of self-determination as it is today began.

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The fact that most of the former Yugoslav states opted for territorial self-determination does not mean that the content of this right was the same in all cases. In the north of Yugoslavia, self-

determination was not only territorial in nature, but was also based on liberal values regarding democracy, the rule of law, and respect for human and minority rights.

The different international status of the new states which until recently were part of a single state (SFRJ) represented a great challenge and obligation for European and world diplomacy. This problem set before them the task of completing the already started dissolution process, with de jure recognition of the republics.

The initial role of the Commission was to peacefully resolve the constitutional problem and to clarify the legal aspects of the problems that would be faced during the work of the Peace Conference in Yugoslavia. However, it became a body engaged in the dissolution and succession of the state.

The international community, starting from the findings of the Arbitration Commission, confirmed by the European Community, recognized that Yugoslavia ceased to exist with dissolution (breakup), thus confirming the fact that Yugoslavia broke up and that new independent states appeared on its soil.

The example of Yugoslavia showed that the establishment of an independent body or structure for the prevention of further conflicts at that time was an important step. Through balanced and impartial decisions, the Arbitration Committee has proven that such a body can be very useful. This example can be recognized and used in any situation where mechanisms for resolving ethnic territorial conflicts are sought.

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