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“SELF-DETERMINATION” AND THE PRESENT STATUS OF KOSOVA

Introduction

The latest developments in the international arena, especially the dissolution of two former multiethnic states, the Soviet Union and the SFR of Yugoslavia, have faced us with the imperative for a new world order.

After World War II, the concept of recognizing the ultimate importance of the individual has been gaining strength at the expense of traditionally inviolable “state interests”, “territorial integrity”, “absolute sovereignty”, etc. “Individuals” gave organized themselves and forced their governments and the international community to act whenever the conscience of humanity has been offended by civil wars, famine, genocide, and anarchy. The new world order will, as a result, face the possibility of using force if necessary to defend democracy, to oppose gross violations of human rights, to prevent famine and genocide, and to avoid anarchy. Events are heralding a new code of international behavior which will include, among other things, a new attitude towards the right to self-determination.

The concept of self-determination

In its classical sense of the inalienable right of all peoples to elect their own government, the concept takes two forms: internal (opposition to a dictatorship) and external (independence or secession). In principle, the oppressed section of a population may ask for “self-government”; the dissatisfied unit of a federation may ask for full equality or outright secession; an ethnic, linguistic, or religious group incorporated by force into the existing state may ask to redefine the borders in order to assure its distinct national sovereignty. In practice, the situation of the existing political forces remains the determining factor.

The concept of self-determination has evolved from a “principle” recognized by all, but still unrecognized by many as “a right”. Except for the case of colonies, whose self-government or independence has been clearly encouraged by the UN Charter, the concept has advanced slowly and in some cases has stalled totally. The United Nations General Assembly Resolution 1,541 (XV) of December 14, 1960 reconfirmed the principle: “All peoples have the right to self-determination”, defending equally “the territorial integrity” of the member-states.

The principle was advanced by the 1966 Conventions on Economic, Social, and Cultural Rights and on Civil and Political Rights, adopted in 1976, by also recognizing the expression “all peoples” as including those living within an existing state. An essential step forward was taken with the 1970 “Declaration on the Principles...”, when the right to self-determination included “...the establishment of a sovereign and independent state, the free association with any independent state or the emergence into any other political status freely determined by the people”¹. The expression “people” was no longer limited to the context of external colonialism.

Post Cold War Developments

With the end of the cold war era in 1990, the indecision shown by United States diplomacy regarding the right to self-determination generated a confusion resulting, among other things, in the present Yugoslav tragedy. Serbia arbitrarily abolished the autonomous provinces of Kosova and Vojvodina, thus irreparably breaking the federal contract of the former Yugoslavia, while Slovenia and Croatia had declared their intention to become independent. The United States failed to understand the process and continued to support "the territorial integrity of Yugoslavia within the existing borders"².

Faced with an accomplished fact, the European Community defined a few criteria to confront the newly created situation, which included respect for international documents such as the UN Charter, the 1975 Helsinki Final Act, and the 1990 Charter of Paris; guarantees for minority rights; the inviolability of frontiers; respect for previously undertaken international commitments; and a peaceful solution of disputes arising from the inheritance of the former Yugoslavia.

More concretely, the European Community requested a formal demand for the recognition of the six federal republics of Yugoslavia, but excluded the two autonomous provinces. Recognition came on January 15, 1992. "Neither the United States nor the European Community applied its recognition criteria to one of the most troubled and repressed Yugoslav regions, the Serbian province of Kosovo, populated largely by ethnic Albanians"³.

Nevertheless, the most recent developments in Iraq, the former Yugoslavia and in Somalia have set the stage for a new concept of self-determination. Today, one speaks of "the protection of minority rights", "promoting democracy", and "the law of recognition" as aspects of the right to self-determination, as stated in the Report of the CSCE Meeting of Experts on National Minorities held on July 1-19, 1991 in Geneva. The practical effects of these principles have been minimized by political factors, partly because of the delay in codifying and including these principles as part of international law.

Consequently, the need for such codification and inclusion is felt with an increasing sense of urgency, especially because of the indecision demonstrated by international institutions and the resulting tragedies in various areas. According to M. Halperin and D. J. Scheffer, three points are unavoidable:

1. International law be must seen as the foundation for the preservation of world peace and security.

2. The constant changes in the international situation require flexibility and new principles.

3. Demands for self-determination should be treated case by case, and not en masse, although within the framework of new principles which should draw from experiences in the former Soviet Union and the former Yugoslavia⁴.

Among these principles, the following must be included: the free will of the population; the legitimacy of the demand for self-determination; the form of incorporation by the central government of the complaining entity; the degree of popular support; the attitudes of the leaders of the movement; the consequences deriving from "the victory" of the movement; and any potential intervention to come from the U.S.⁵.

The evolution of Kosova's autonomy within the Yugoslav constitutional framework indicates the gradual process followed by the region in achieving federal status in the former SFR of Yugoslavia⁶. Although legally the term "adequate" representation was used for the former Socialist Autonomous Province of Kosova, to distinguish it from the "equal" representation used for the six republic of that defunct state, the fact remains that the former SAP of Kosova had through the 1974 Yugoslav Constitution obtained all the necessary prerogatives of "a state": a constitution guaranteeing a sovereign parliament, a government, a branch of the judiciary, and its comprehensive administration. The sovereignty derived from and residing in "the working people of the province" (not granted by the Serbian Republic), and a juridical entity invested with the right of exercising "its sovereign rights in conformity with the political and socioeconomic system of Yugoslavia". (Constitution of the SAP of Kosova, 1974, Article 1).

Nevertheless, the two million Albanians of Kosova saw the denial of fully-fledged republican status as an injustice. An alternative solution became unavoidable, but, given the inability of the dictatorship to enter dialogue, the options were very limited. With Tito as a force for arbitration gone, a confrontation loomed large between the demands of the Albanians and the obdurate Serbs.

In Spring 1981, huge Albanian demonstrations shook the foundations of the SAP of Kosova. Serbia reacted by sending the Army and special police forces. In the resulting clashes, at least 300 Albanians were killed⁷. From 1981 to 1988, it was officially admitted that 484 000 Albanians had passed through the hands of the police. Education in Albanian was banned and schools were closed; Albanian medical personnel in the hospitals were expelled, and 1 245 economic enterprises were closed or removed to Serbia. Over 120 000 Albanian workers lost their jobs. The police and the judiciary became exclusively Serb. The die was cast.

After a huge protest involving over 500 000 Albanians and a hunger strike at the Trepca mines, the Yugoslav Government declared "a state of emergency" in Kosova, transforming the region into a military camp. On March 23 1989, under the threat of tanks and police, the parliament of Kosova "agreed" to divest itself of its own sovereignty. In the ensuing clashes, 22 Albanians were killed. A newly-elected "parliament" (November, 1989) soon fell under heavy popular pressure, and on July 2 1990, it declared Kosova an equal and independent unit of the Yugoslav Federation or Confederation. Serbia threatened the delegates, who went into hiding, and took over the entire administration of Kosova. In the meantime, meeting in secret at Kacanik in Kosova on September 7 1990, the exiled parliament declared the Republic of Kosova as a free state with the right to join the other republics in a new Yugoslav federation or confederation.

A popular referendum followed on September 26-30 1991, approving the parliament's decision, and a new government-in-exile was formed. The Albanian political parties, particularly the Democratic League of Kosova under the leadership of Dr. Ibrahim Rugova, took over the direction of the movement, opting at the same time for the exclusive use of peaceful means in their struggle for independence.

Having applied for recognition by the European Community as an independent state on 23 December 1991, and being rejected, the Albanians began to construct a

"parallel administration" of their own in Kosova, operating schools and hospitals under very difficult conditions, and keeping law and order among themselves. On 24 May 1992, internationally monitored free elections were held. The results produced 130 delegates and the president of the Republic of Kosova, Dr. Rugova.

Prospect

Albanians in the former Yugoslavia are now divided among four former federal units, Kosova, Serbia proper, Macedonia and Montenegro, all of them independent republics. However, Albanians are conscious of being a large and distinct ethnic group, occupying a distinct area for a very long time, as descendants of the ancient Illyrians. As such they are entitled to the inalienable right of choosing their own government, in the land they inhabit, in order to secure their national self-preservation, which is threatened by irresponsible Serbian governments.

Oppressed and subject to discrimination, Albanians in the former Yugoslavia live in a typical apartheid situation of "internal" colonialism. Their inclusion in the former SFR of Yugoslavia, and now in Serbia, Macedonia, and Montenegro, was achieved by military means. Therefore, their demand for independence is justified on both moral and legal grounds, as they do not ask for the change of frontiers by force.

Albanians in the former Yugoslavia are asking for dialogue, for international mediation and for a United Nations trusteeship for their Republic of Kosova, until the final status of Kosova is determined. They also accept all the commitments required from emergent states by the international conventions regulating relations among the independent states.

It is logical to assume that the role of any Albanian state must include the preservation and the advancement of the interests of all Albanians. Therefore, a free and independent Republic of Kosova, achieved through peaceful means, must remain a primary goal. For this purpose, close cooperation between the two states of Albania and Kosova is essential.

For the moment given the present tragedy in Bosnia and Croatia caused by the irrationality of Serbian politics, the immediate task of those responsible for the future of the Albanian nation should be the avoidance of a Serbian massacre in Kosova and Macedonia, which only a strong and democratic Albania can achieve.

The latest events in the former Yugoslavia require that the right to self-determination should involve the development of new principles, if other interethnic conflicts are to be avoided. International pressure must force the democratization of central governments in multiethnic states, while demands for self-determination should be treated in a principled way, and not on the basis of political expediency. It is to be expected that these principled approaches will be complicated by the revival of old geopolitical forces in the Balkans, as the recent Russian support to Serbian aggression indicates.

1. *United Nations General Assembly Resolution 2,625 (XXV)*, 24 October 1970.

2. *Statement of 24 May 1991*, reprinted in: "U.S. Department of State Dispatch", Vol.2 (1991), p.395.

3. M. Halperin, D. Scheffer, and P.L. Small, *Self-Determination in the New World Order*, Carnegie Endowment for International Peace, Washington, D.C., 1992, p. 37. Another example is Iraq. The oppression of the Kurds in the north and the Shiites in the south sensitized international public opinion. The Allied Forces took upon themselves the defense of both areas, thus allowing the Kurds to create political autonomy with prospects for further gains later. However, the United States supported the unity of Iraq.

4 Halperin, et al., *op.cit.*, p. 72.

5 The most recent experiences in Iraq, Somalia, and Yugoslavia indicate that the United States remain the only superpower militarily and economically capable of playing a leading role.

6 S. Repishti, *The Evolution of Kosova's Autonomy...*, in: "Studies on Kosova", A. Pipa and S. Repishti (eds.), Columbia University Press, New York, 1984, pp. 195-223. A.N. Dragnich and S. Todorovich, *The Saga of Kosova*, Columbia University Press, New York, 1984. "One American Embassy source in Belgrade estimated that 200 to 300 were killed.

It would seem certain that the number killed was far greater than the Yugoslav press reported", p. 166.

