SELF-DETERMINATION OF PEOPLES—A CHRONIC PROBLEM OF HUMANKIND

Budislav Vukas

A. Introduction

The reason for choosing this topic for my contribution to the Festschrift for my dear colleague and friend, Professor Rüdiger Wolfrum, are the problems that self-determination of peoples cause at present in many areas of the world. It suffices to mention the recent problems relating to the states created in the 1990s on the basis of the republics of the Soviet Union and Yugoslavia, the permanent struggles for independence of the Kurds in Turkey and Iraq, the Turks in Cyprus, the Basques in Spain, the population in the southern parts of Sudan, etc.*

Having chosen this topic, it has been natural to start my analysis and drafting of the text by a reference to the Charter of the United Nations (UN), the first relevant international instrument containing provisions on self-determination. In addition to the text of the Charter itself, it was appropriate to consult the scientific opinions on those provisions in the Commentary “The Charter of the United Nations”, edited by Bruno Simma, which is used all over the world.1 Although the main text on self-determination in the Commentary was written by Professor Karl Doehring,2 many of my doubts have been clarified by the texts of Rüdiger Wolfrum.3

As already mentioned, in this short text I will deal with “self-determination of peoples”, starting with its insertion in the UN Charter. I cannot afford any analysis of the desire of peoples/tribes/minorities to self-determination in the earlier phases of the development of international relations and international law. In fact, I do not consider it appropriate even to mention “the principle of equal rights and self-determination of peoples” as discussed and practised by politicians in the United States of America and France at the end of the 18th century,

* Text completed 2 May 2011.
2 Id., at 56–72.
3 Id., at 45–56 and 759–776.
when these states were exterminating the indigenous populations and establishing colonies. The real attitude of the leaders in these countries, often mentioned as the beginning of the theory and practice of “the principle of equal rights and self-determination of peoples”, was exactly the opposite of the essence of this principle and the way in which it ought to be promoted in humankind, without discrimination among individuals and peoples. They considered this principle applicable only to “civilized peoples”.

I will avoid even the final period of World War I, when the victors imposed the principle of national self-determination as the basis for the liberation of some peoples from the defeated states in Central and Eastern Europe. However, the Great Powers had no intention of applying this principle to their own colonial possessions.

B. The United Nations Charter

I. The short text (111 articles) of the 65-year-old world constitution contains two provisions mentioning the principle of “equal rights and self-determination of peoples”. First, in Article 1, para. 2, as one of “the purposes of the United Nations” it was decided:

“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”

The second reference to self-determination is to be found in Article 55, where “the principle of equal rights and self-determination of peoples” is listed as one of the means of “the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations”, which “the United Nations shall promote”.

II. The rights of peoples, including self-determination, were mentioned in the meetings of the representatives of the major Allied Powers during World War II. Thus, this principle was announced in the “Atlantic Charter”, adopted on 19 August 1941 by the President of the United States, F.D. Roosevelt, and the Prime Minister of the United Kingdom, W. Churchill. However, the interests and opinions of the

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4 V. Ibler, Rječnik međunarodnog javnog prava, at 285 (2nd ed. 1987).