The Right to Self-determination: Approaching an Elusive Concept through a Historic Iconography

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I. Introduction

Claims and counter-claims based on an alleged right to self-determination have heavily influenced the course of history of the last century. The concept of self-determination is intimately related to ideas such as liberty, democracy or equality that have exercised an irresistible appeal to the populace and that have changed the world-wide political landscape in a rapid and incisive way never seen before in history. It can be said that all these ideas are interwoven as they are based on the emancipation of the individual from the group, from pre-determined truths and from bonds inherited from the past. They are favouring a culture of change in which socio-cultural vinculations are continuously re-assessed and re-determined according to the aspirations of the present generation and, ultimately, of the single individuals composing the social group. However, each of these concepts also bears in itself its immediate negation. The liberty of one single individual can mean the oppression of another and a democracy can furnish the formal basis of its own suppression or the tyranny of the majority.¹

While these developments are usually seen as pathological degenerations of concepts entirely positive in themselves, the situation is somewhat different in the case of the concept of self-determination. Though the right to self-determination is often invoked to improve a given political situation, the overall attitude towards this concept is mixed, more often even critical, as fears with regard to its inherent potentially disruptive forces prevail. The negative aspects of self-determination that show up with a certain regularity are simply more visible than the beneficial ones. In the following it will be shown that the concept of self-determination, if rightly understood, offers an enormous potential for the solution of pressing problems of our time. In order to fully grasp this potential, it seems appropriate to look back to different historic interpretations of this idea. It can thereby be evidenced that this idea has undergone a long development in a trial-and-error process and, as a consequence, it may in the meantime have become a controllable tool which can be employed for widely shared goals.

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Of essential importance is a change of perspective away from the collective dimension to a primarily individual one. This way, central contradictions inherent in this concept dissipate, and self-determination loses its disruptive connotation and nonetheless maintains its enormous potential for change and development. In the following, the primary focus will be laid on the historic roots of the law of self-determination. At the same time it will be tried to put into evidence the present-day relevance of these past experiences. It is argued here that the historic perspective can provide considerable additional information for the explanation of an otherwise elusive concept.2

II. Basic Steps in the Formation of the Concept in a Nutshell

In the 20th century three great events stand out in the process of the formation of this concept: The first one is World War I with the demise of the Austro-Hungarian and the Ottoman Empires which led to the creation of a plethora of new national states more or less along real or putative ethnic lines; the second one covers the process of decolonization during which the principle of self-determination ‘hardened’ to a right; and the third one refers to the various attempts to adapt this concept to a post-colonial setting and to transform it into an instrument that would find general application detached from a specific situation of crisis.3 Each of these events revolutionized the concept of self-determination, as it created new hopes and disappointed previous ones. These events were not, however, expression of a linear, steady development according to which state sovereignty and integrity would gradually succumb to a new principle of order in international relations. In the aftermath, the impression could be gained that self-determination was no more than the battlecry for a resetting of national boundaries, for a redistribution of the cards, a provisional waiving of the conservative criteria aiming at the preservation of the traditional subjects of international law in their original shape. At the end of each of these steps of development, the principle of territorial sovereignty stood more firmly than before and it was most adamantly defended by the newcomers in the international society. Each time the principle of self-determination resurfaced this happened surreptitiously catching those off-guard who had considered this concept to be a relic of history. But over the last century the concept of self-determination has shown an extraordinary resilience and an amazing

2 For a focus on the present-day situation see P. Hilpold, “Self-determination in the 21st Century – Modern Perspectives for an Old Concept”, 2006 Israel Yearbook on Human Rights 1, at 36.

3 An important transitional step from the second to the third stage described here was the dissolution of Yugoslavia during which the concept of self-determination was, on the one hand, again re-interpreted to adapt it to an extraordinary situation in a European setting. On the other hand, the application of this concept outside the specific field of colonialism prepared its generalization.