Self-determination, territorial integrity and the OSCE

Harm J. Hazewinkel

The ongoing debate over the future of Kosovo is only the latest — though perhaps not the last — example of the resurgence of the principle of self-determination in Europe. For many decades since the Second World War it was thought that self-determination only belonged to the Third World, in particular to the process of decolonisation. But in the nineties, Europe was again confronted with it — and so was the OSCE.

Self-determination is one of the principles of the Final Act of Helsinki, repeated in the Vienna Concluding Document (1989) and in the Charter of Paris (1990). But it is not — and has never been — easy to tell what is really meant by it. Take the Paris Charter, which says that ‘we affirm the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States’. The latter is also one of the principles of the Final Act, and even an innocent and unbiased observer sees the difficulty arising. Territorial integrity of states has at various occasions given way to self-determination, used to justify secession or the break-up of a state. But on other occasions ‘peoples’ have — rightly or wrongly — felt themselves denied of their right to self-determination because of the primary importance of territorial integrity. The people of Kosovo are only one example.

Forms of self-determination

A lot has been written over the years on the principle of self-determination, on what was meant (and perhaps even more what was not meant) by it and how it related to other principles of international law. Indeed, though the idea has a history of several centuries, it has for a long time been doubted if self-determination was — in the legal sense — a principle of international law, and not just a political concept. The latter comes as no surprise. The principle of self-determination is in a way a ‘principle of justification of change’, which runs contrary to the generally more static character of international law.

Furthermore, the term self-determination lacks a clear definition, either what it exactly means or who may invoke it. The eighth principle of the Helsinki Final Act is entitled ‘Equal rights and self-determination’ but here self-determination of peoples was — at least by the West — meant as a refutation of the so-called Brezhnev Doctrine used to justify the Warsaw Pact

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intervention in Czechoslovakia in 1968. Though the word ‘people’ was not defined, it was here certainly meant as the population of a State as a whole. When within a state the application of the right of self-determination was acknowledged, this could lead to a wide range of forms of autonomy. In this way, justice can be done to demands of (parts of) the population, short of secession and independence. This may not always satisfy all parties concerned, either because it goes to far or just not far enough (the recent history of Spain is but one illustration of these different views), but often this form of self-determination has yielded positive results.

Finally, self-determination may and has been invoked to obtain full independence. Here theory and practice have often taken different courses. States may accept the principle of self-determination, but they also have a vested interest in clear, well-defined and inviolable borders. They shrink away from the possibility that self-determination might lead to secession – unless of course they stand to gain from it. Nevertheless, history has shown that the exercise of the right to self-determination has — also in recent years — led to the formation of new states. Kosovo may soon be the latest example.

This article does not try to add to the theory of self-determination but takes a look at the way the concept was put into practice — and what that implied and still implies in Europe and in the OSCE area. While fully recognising the importance of self-determination taking the form of various forms of autonomy, the present article will limit itself, if only for reasons of space, to those cases where it led to or at least aimed at secession and independence. That other forms of self-determination are not dealt with in detail does therefore in no way imply that the author is not aware of their relevance.

**Early practice**

The concept of self-determination of peoples finds its origin in the idea of people’s sovereignty. This can be dated back to the late eighteenth and early nineteenth century and some authors even see the Revolt of the Netherlands in the sixteenth century as an example of self-determination — a thought which might have surprised its founding father, Prince William of Orange. But even if a case could be made for the American Revolution and the war of independence in Latin America as early forms of self-determination, these events were far