

Relationship between Self Determination and Nationalism in the Balkans

PhD C. Arenca Trashani

Faculty of Law, University of Shkodra "Luigj Gurakuqi", Albania

Abstract

The former Yugoslavia is seen as a symbol of the federation, for more than 50 years even though in itself there were big contradicts between different parts of it. In fact the creation of the Yugoslavia has been the real deny of the nation of Croats, Albanians, Bosnians, Macedonians and others. A key element in this long process full of deep-armed conflicts was the application of the right of peoples to self-determination. A continuing debate among international lawyers is whether or not there exists a right to self-determination¹. In the light of recent developments, especially after the Kosovo independence, paper calls for more specific guidelines regarding the right to self-determination, secession and for sure the right to territorial integrity. The so-called "international community" lacks a clear, principled and practicable policy towards self-determination claims. This is the key issue of this paper, trying through the evolution of the right to self determination and its relation to nationalism, how this concept has affected the meaning and the application of the right to self determination in the world wide and more specifically in the former Yugoslavia. So, using a comparative way but at the same time by exploring the specification of each case in discussion, to arrive to a more clear and solid principle of the right to self-determination.

Keywords: Self-determination, Nationalism, International law, Former Yugoslavia.

Introduction

The principle of self-determination today postulates the right of people organized in an established territory to determine its collective political destiny in a democratic fashion and is therefore at the core of the democratic entitlement. Self-determination is the idea of a community's right to control its own future, and thus physically to survive and prosper to the fullest extent possible². This important right is intertwined with individual human rights, international peace and security, the principle of non-intervention and the right to territorial integrity. In view of its importance, the obligation to respect the right of self-determination has been emphasized in numerous resolution of the UN.

The collapse of communism was at first supposed by many to entail the triumph of liberal capitalism, but by the other side to give a new imagine beyond that of colonization to the right of the peoples to self-determination. Global capitalism has no time for national self-determination because its project is a global market of sellers and buyers. But nation states still dominate world politics, and there are still nations that seek self-determination in the face of oppressive states. The crisis of self-determination is, therefore, not over, even though the long way of it has brought it as e key principle in international law but still no consensus meaning of the principle has emerged.

The so-called "international community" lacks a clear, principled and practicable policy towards self-determination claims. There is, accordingly, an urgent need to think clearly, systematically, and practically about what relations ought to obtain among the principles of state sovereignty, national self-determination and human rights. In this paper I would like to talk about the evolution of the right of peoples to self-determination from the time when it firstly came in the international relations. Some problems that deal with self-determination and its application are: the problem of the term ‘people’, who are those people which are entitled to apply this right? Which are the relation between self-determination and nationality, concept that have affected so much the meaning and for more the application of our principle in different part of the world.

1. The evolution of the concept of the right to self-determination

The principle of self-determination is one of the most important and controversial issues of the modern international law. The long way to win this status was not at all so easy going. Individual rights are therefore necessary but not necessarily sufficient condition for the protection, development and strengthening of the identity of a group. With the notion of self-determination we mean the right of all the people to determine always in full freedom when and as they wish, their internal and external political status, without external interference and to pursue as they wish their political, economic, social and cultural development.

¹ Foster C., “*Articulating self-determination in the Draft Declaration of the Indigenous Peoples*”, in *EJIL*, Vol. 12, No. 1, 2001, pg.142

Normally, the phenomenon of self-determination has developed as an answer to those governments who were refusing to accept a community within their jurisdiction as different from the rest of the community they represent, or where these communities by themselves refused to be represented by these governments but wanted to be represented by themselves. American and French Revolutions have been from the beginning very important in the development of the concept of self-determination, for sure enlightened by the English one also. These revolutions were based on natural law theory insofar as they reflected a rejection of the Divine Right of Kings³. The liberal ideas were taken by the most famous liberal philosophers of 17-18 centuries such as Locke, Montesquieu that have given the idea of the equality between all human beings. From these revolutions were taken the first liberal ideas of equality⁴ the democratic will and plebiscite⁵ and also the concept of liberty and sovereignty. In the United States, the United Kingdom and France the concept of self-determination thus developed from the notions of popular sovereignty, individual liberty and representative government⁶. For this reason the principle of self-determination in the West Europe and USA was democratic and in close relation with the notion of state and democratic governance.

In the 18 and 19 centuries the principles of self-determination given to “national” groups is developed as a natural corollary of developing nationalism. Instead of the relations between self-determination and state in the West Europe and USA, the principle in the Eastern Europe together with Italy and Germany was seen in a close relation with the concept of nation and as a result with nationalism. In comparison from developments in the West, in Eastern Europe all these seem to be far way from the way of thinking. Indeed, it was under the label of nationalism that claims to self-determination were usually sought until early in the twentieth century⁷. This was

² Raic D., “*Statehood and the law of self-determination*”, The Hague, Kluwer Law International, 2002, pg. 173

³ In the Declaration of Independence of the United States of America of 4 July 1776 Thomas Jefferson stated that all men are created equal and that to secure these rights, governments are instituted among men, deriving their powers from the consent of the governed.

⁴ French revolution was influenced by the so-called “contractual school of thought”, which was strongly supported and introduced by a strong political philosopher John Locke

⁵ Tomuschat C. in “*Modern law of self-determination*”, Tomuschat C.(Ed), , Martinus Nijhoff Publishers, Dordrecht, 1993, pg. 4.

⁶ Radan P., “*The break-up of Yugoslavia and international law*”, London, Routledge, 2002, pg. 8.

typical for the Eastern European countries. The first to introduce the concept of nation state and nationalism were the Germans with their “*Volk*” theory of Herder⁸ and the Italians with their representative Mazzini⁹. These two representatives of the creation of the nation-state promoted both the emerging of nationalism that was then leading the principle of self-determination in the East Europe. The state was no longer perceived solely as a juristic and territorial concept and a simple historical fact. There was no relationship between ethnic groups and the state, therefore no relations between our principle and the state. The groups who were aiming to achieve their right to self-determination were convinced that the creation of the nation-state was the best solution for them.

The first one to proclaim it as the principle of self-determination and to make it part of the international law was the American President Wilson with its famous speech before the senate called “Fourteen Points” of 8 January 1918. To president Wilson stays the merit to have given to our principle a place in international law and international relations, even though at the time he was referring to self-government, which was his favorite concept, and not to self-determination. By self-government he meant the right of a population to choose its own form of government; this right was ongoing and was therefore synonymous with democratic government¹⁰. According to Wilson way of thinking self-government was the ability of the people to select by them a democratic government, which was the only guarantee against the oppression and conflict. This belief in the fundamental importance of democratic government influenced Wilson’s attitude towards the belligerents, so that he saw the war as a “battle between the forces of democracy and

⁷ According to Herder, who published “*Ideen zur Philosophie der geschichte der Menschheit*“, in the latest of the eighteenth century, the most natural state was that based on a community which shared the same national character of all its individuals.

⁸ Giuseppe Mazzini was the founder of the Young Italians and perhaps the founder of the liberal nationalism which helped for the creation of the nation-state in the Italian unification.

⁹ Cassese A., „*Self-determination of peoples*“, Cambridge University Press, Cambridge, 1995, pg.19.

autocracy”¹¹. After the First World War the new states in Eastern Europe that emerged by the dissolution of big empires claim to apply the principle of self-determination on the basis of independence, power and unity of nation. This was still a different view from that of the great powers, which still saw the principle in relation to the state more than to the nation. The Eastern European countries gave at this period a great importance to the history. On the creation of their states with the aim to extent as much as possible their borders in the neighboring countries. At the center of the attention at Paris Peace Conference on 1913 came the history and the nation much more than the economic issues. Indeed the post-World War I order in Balkans exacerbated and created ethnic tensions with arbitrary borders separating many people from their homelands and from their “ethnic brethren”¹².

Despite Wilson’s sincere motives and ideas, the Allied Powers applied self-determination in an arbitrary manner¹³. This derives from the creation of the new states especially in the East Europe were more than the self-determination of the people were taken in view political, strategic and economic interests and also those parties which were loyal to the Great Powers was given the right to form they own states such as the Polish, the Yugoslavs, the Czechs and Slovaks. Instead of others such as Croats, Slovenians and Albanians were denied such a right within the so-called the Kingdom of Yugoslavia. Self-determination was considered only for “nations” which were within the territory of the defeated empires; it was never thought to apply to overseas colonies. The creation of new nation states did indeed satisfy the nationalist aspirations of many, but did

¹⁰ Pomerance M., “*The United States and self-determination: Perspectives on the Wilsonian conception*”, in *American Journal of International Law*, 1976, pg.19

¹¹ Crawford, Beverly "Explaining Cultural Conflict in the Ex-Yugoslavia: Institutional Weakness, Economic Crisis, and Identity Politics." In *The Myth of "Ethnic Conflict": Politics, Economics, and "Cultural" Violence*, edited by Beverly Crawford and Ronnie D. Lipschutz. University of California Press/University of California International and Area Studies Digital Collection, Edited Volume #98, 1998. pg201

<http://repositories.cdlib.org/uciaspubs/research/98/7>

¹² Raic D., “*Statehood and the law of self-determination*”, pg.190.

not eliminate the ethnic minorities, nor the desire of such groups for a further readjustment of boundaries so that they also might achieve ethnic self-determination¹⁴.

Between the two wars self-determination was perceived as a political claim, which was applied by all the “peoples” without distinctions. Under the League of Nations system the principle gained a deep importance because of the particular interest and importance given by the League to the national minorities. Even though self-determination was excluded by the Covenant of the League as a principle of international law, self-determination was included at the Article 22 of the Covenant of the League of Nations. Self-determination was only indirectly recognized as applicable to the territories placed under mandate, and this regime was limited to “*those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand to themselves under the strenuous conditions of the modern world*”¹⁵.

The national groups who were not recognized as new states was given the status of mandates which gave them protection under the ‘minorities treaties’ adopted under the auspices of the victorious powers.

Under the League of Nations the Aaland Island dispute was the first one case in which the League has to face the problem of the principle of self-determination. According to the Commission of Jurists at that time, self-determination was not part of international law in normal situation:

“Although the principle of self-determination of peoples plays an important part in modern political thought, especially since the Great War, it must be pointed that there is no mention of it in the Covenant of the League of Nations. The recognition of this principle in a certain number of international treaties cannot be considered as sufficient to put it upon the same footing as a positive rule of Law of Nations.

¹³ Musgrave T., “*Self-determination and national minorities*”, Oxford, Clarendon Press, 1997, pg.32.

¹⁴ Art.22 of the Covenant of the League of Nations

On the contrary, in the absence of express provisions in international treaties, the right of disposing of national territory is essentially an attribute of the sovereignty of every state. Positive international law does not recognize the right of national groups, as such, to separate themselves from the State of which they form part by the simple expression of a wish, any more than it recognizes the right of other states to claim such a separation”¹⁶

But anyway the Commission admits that in abnormal situation the above saying can be changed:

“From the point of view of both domestic and international law, the formation and dismemberment of States as a result of revolutions and wars creates situations of fact which, to a large extent, cannot be met by the application of the normal rules of positive law...under such circumstances, the principle of self-determination of peoples may be called into play”¹⁷

So with these last remarks the Commission proved that the principle of self-determination has a role to play in the settlement of disputes, but any way the principle was not more than a principle of justice and liberty, expressed in a vague way which leads to different interpretations. After the Second World War, with the creation of the United Nations, the principle of self-determination does not enjoyed the legal status it has today, but anyway till the end of the Second World War its meaning have changed dramatically. The principle is mentioned only twice in the Charter of the United Nations of 1945¹⁸ and this only with the insistence of the Soviet Union. Despite the fact that self-determination in the Charter is referred to ‘only’ as a “principle” and not as a legal right, its appearance in a conventional instrument establishing an international organization which would be open to universal membership was a very important step in the evolution of self-determination into a positive right under international law.¹⁹ Although the Four Powers had not devised any effective means for the use and expansion of the principle, they had at least identified self-determination as a major objective of the new world organization²⁰. It was the first time that self-determination appears in a multilateral treaty and it serves just as a guide or a start point of action for the organization. Since the beginning of the existence of the UN, the principle of self-determination was much more present than in the case of the LN. For this we can see in the following chapters of the UN Charter XI and XII where it is talked about the non-self-governing territories and international trusteeship system in which there was laid down a new regime for those territories whose peoples have not yet

attained a full measure of self- government. Anyway at the time of the adoption of the UN Charter it was more than clear that the principle of self-determination was not yet explicitly a legal right and till the beginning of the area of decolonization it was still remaining a principle. The references to self-determination in the Charter are general in nature and do not provide any detail about how it is to be implemented²¹.

Since the end of Second World War 1945 and the adoption of the UN Charter the UN has dedicated a lot of resolutions passed by the General Assembly to the right of self-determination and have brought major changes in international law.

Self-determination became a driving legal force as from 1960, when the UN General Assembly adopted Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples. Resolution 1514 (XV) was the most important General Assembly Resolution to associate the concepts of self-determination and decolonization, and it has become the definite statement of the General Assembly with regard to colonial situation.

After being treated in a number of Resolutions of the General Assembly²² at the time of decolonization self-determination won a place at the beginning of both International Covenants on Human Rights.

¹⁸ The principle is mentioned only in the Art 1/2 , in relation with friendly relations among nations and also in the Art.55 in relations with equal rights of peoples.

¹⁹ Raic D., *“Statehood and the law of self-determination”*, pg.200.

²⁰ Cassese A., *„Self-determination of peoples“*, pg. 38

Common Article 1 of the 1966 Covenants on Human Rights

states:

*“all peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*²³

The inclusion of the right to self-determination in the Covenants of Human Rights was of great importance because it creates a close link between our right and individual human rights. Individual human rights are rights, which are for every human being. This has to be said also for the right to self-determination. Article 1 has been a major impetus to self-determination's development into a legal principle encompassing the internal decision making process, for it is Article 1(1) which established a permanent link between self-determination and civil and political rights²⁴. A very important document on the way of declaring the right to self-determination as a right not limited to decolonization was Resolution 2625(XXV) of 24 October 1970 adopted by the General Assembly of the UN after seven years of work of the Special Committee, by a consensus vote. In this document self-determination has a wider meaning:

*“By virtue of the principle of equal rights and self-determination of people enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every state has the duty to respect this right in accordance with the provisions of the Charter”*²⁵

This Resolution, intended to offer, even though after almost 25 years from the adoption of the UN Charter, quite a complete overview of the main principles of international law²⁶. Resolution 2625(XXV) does not put at all, any limitation on the application of the right to self-determination only for decolonization as it uses the wording of all peoples. Also in the 2

²¹ Foster C., *“Articulating self-determination in the Draft Declaration of the Indigenous Peoples”*, pg.142

²² The most important after Resolution 1514 was Resolution 1541 (XV) of 15 December 1960, the purpose of which was to enumerate a definitive list of factors, known as ‘principles’, to guide members in determining whether an obligation existed to transmit information under Article 73 (e) of the Charter.

²³ Declaration on Granting of Independence to Colonial Countries and Peoples, UN Doc.A/Res/1514, 14 December 1960 Cassese A., *„Self-determination of peoples“*, pg.54.

²⁴ Declaration on Friendly Relations, UN resolution 2625 (XXV), 24 October 1970

²⁵ Palmisano G., *“Nazioni Unite e autodeterminazione interna”*, pg. 198

paragraph dedicated to the principle of self-determination the Declaration stressed for the states “*duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter*”²⁷. The use of the phrase ‘all peoples’ in paragraph 1 and 2 to ‘all States’, and the enumeration of a goal which did not necessarily refer to colonial situations, were evidence of the Western desire to extend the principle of self-determination beyond colonial context, and to make it universal in application²⁸.

The ongoing character of the right of peoples to self-determination is proclaimed in other very important documents of universal and regional application. Just to name some of them: the OSCE Helsinki Final Act, the African Charter on Human and People’s right and also in the Vienna Declaration and Program of action adopted by the World Conference on Human Rights. In this respect, it seems noteworthy that a common feature of these instruments is that they all refer to “*all peoples*” and not merely to ‘colonial’ or ‘oppressed’ peoples as the holders of the right of self-determination, a terminology that in itself denotes a universal and continuous character of at least some aspects of the right²⁹.

The end of the cold war and the end of the communist bloc also bring a new area for the development of the right to self-determination. As a result of a nationalistic pressure there were and still are deep conflicts in the Eastern Europe and especially in the Western Balkans. The dissolution of Yugoslavia showed how can be self-determination applicable to the situation also out of the context of colonialism. Self-determination has been invoked during all the process of dissolution of the former Yugoslavia as a result of a collapse of the central state structure, as the main action to legitimate the break-way of the republics³⁰. Quite visibly, self-determination has become a tool for attempts to revive historical developments that have extended not only over decades, but centuries.

²⁶ Declaration on Friendly Relations, *supra note*,

²⁷ Musgrave T., “*Self-determination and national minorities*”, pg 75

²⁸ Raic D., “*Statehood and the law of self-determination*”, pg.228

The big question in the case of Yugoslavia dissolution was whether such a process could be directed and regulated by a principle of international law such as self-determination. Also another big question was that of the degree of applying the legal principle of self-determination. In the case of Yugoslavia was raised the question if the struggles for liberation, such as that of the Kosova Albanians has to be legitimated as a fair struggle for the right of peoples to self-determination.

2. The “people” Concept

Violation of the right of self-determination creates a situation, which has repercussions on many areas of international law³¹. The right to self-determination is part of the so-called collective rights whose for many reasons are much more difficult and complex to be studied, much more than human rights. This is primarily because the notion “people” is ambiguous and used in different contexts³². Who are these peoples, which are entitled to apply the right to self-determination and up to what level? According to the international documents after the Second World War: “...*self-determination is a right to all the peoples...*” So with people we have to understand a group which can be holder of the right to self-determination which can exist only if it lives in a distinct territory, where it constitutes the majority, and it is able to speak its own language, develop its own culture, cultivate its traditions or practice its particular religion.

An important issue here, whether the claimants can be seen as a people within the terms of the principle of self-determination of peoples, and this also have been developed over the years under national and international law, is of big importance. As a starting point to identify the term people for sure are the legal basis of the right to self-determination, but as Crawford has observed, ‘from the perspective of international law, the key feature of the phrase “rights of peoples” is not the term “rights”, but the term “peoples”³³.

²⁹ Cassese A., „*Self-determination of peoples*“, pg. 257

³⁰ M.Akerhurst, „*A modern introduction to international law*“, p.255.

³¹ Michalska A., *Rights of peoples to self-determination in international law*”, in “*Issues of self-determination*”, Twining W. (Ed.), Aberdeen, Aberdeen University Press,1991, pg.71.

The first thing to be said is that the term ‘people’ is a separate term from that of the ‘state’ and this was seen from the Charter of the UN. This distinction between a ‘people’ and a ‘state’ was clearly confirmed in the subsequent interpretation of Charter principles by resolution 2625 (XXV), which declared in the paragraph 1 that ‘all peoples’ had the right to self-determination and that ‘every state’ had ‘the duty to respect this right’³⁴.

At the beginning it was difficult to identify who are those peoples whose were entitled to self-determination. Often, the term people is linked with the term nation or better to say people often were qualified as nations and what is more important here is to differ the term people from the term minorities. Romantic theory dealt people with nation and the classical one dealt people with the giving territory. It was accepted that a people is defined according to a given territorial criteria. With this it was accepted that people was to be intended the whole people living in a giving territory without the distinction of race, ethnicity, creed or colors³⁵.

It seems possible to conclude *prima facie* that political self-determination is a concept, an idea, a doctrine about the legal-political relationship between a people and the state³⁶

In the context of post-1945 decolonization, it soon became evident that primary, and often sole, definition of “peoples” was that of non European inhabitants of former colonies, without further regard for ethnicity, language, religion, or other objective characteristics of such colonized peoples³⁷. It was clearly understandable not only by the UN documents but also by the International Court of Justice in the *Namibia* case where it was affirmed that self-determination was already developed for the Trust Territories:

³² Crawford J., “*The rights of peoples: “Peoples” or “Governments”?*”, in Crawford J. (Ed), “*The rights of peoples*”, Oxford, Clarendon Press, 1988, pg.55

³³ Musgrave T., “*Self-determination and national minorities*”, pg.149

³⁴ For more see: Higgins R., “*Problems and process, International law and how to use it*”, Oxford, Clarendon Press, 1994, pg. 124

³⁵ A.Cobban, “*The nation state and national self-determination*”, 1969, p.39

³⁶ Hannum H., “*Autonomy, sovereignty and self-determination: The accommodation of conflicting rights*”, pg. 36

³⁸“the subsequent development of international law in regard to non- self-governing territories...made the principle of self-determination applicable to all of them”.

It was the Resolution 2625(XXV) that gave to all the peoples the right to self-determination so in a sense made the right to self-determination of universal use. This can be seen not only from the fact that the enumerated purposes of self-determination set out in resolution 2625(XXV) extend beyond decolonization, but also because the reference to ‘a government representing the whole people belonging to the territory’ would not be necessary if self-determination applied only to colonial territories³⁹

With the passing of self-determination to another standard, as a universal right, the problem of defining the term “people” became more complex, this because when it is talked about right to self-determination this is dealt soon with the right to attain statehood. Seeing the problems that emerge with a creation of new state entity there have been always attempts to limit as much as possible the holders of the right to self-determination. The Resolution 2625(XXV) of the UNGA requires from all States to behave in compliance with the principle of self-determination and so to have a government, which is representing the whole people of its territory. The most significant parts of the Declaration that have been used to assign a meaning to a people are the references to maintaining the continued territorial integrity of existing states⁴⁰

Making reference to representative government, Resolution 2625 extends the application of self-determination beyond the decolonization process. So it means that the problems facing after the decolonization period are now with independent states, which are facing the multinational problem. Now, international law has recognized subgroups of a state as holders of right of self-determination.

The characteristics of such a group have been the core of the discussion for the application of self-determination out of the decolonization context. Normally the meaning of people that are entitled with the right of self-determination or to define the characteristics of such groups is not

³⁷ Namibia case, ICJ Rep. 1971, pg.31.

³⁸ Crawford J., “*Aboriginal self-government in Canada*”, 1988, pg.54.

³⁹ Radan P., „*The break-up of Yugoslavia and international law*”, pg 52.

easy because this is not a static concept, so any effort to define definitely the meaning of people is fruitless because this can't be defined of static conditions.

The International Commission of Jurists set up in 1972 to investigate the events in East Pakistan, defined people in terms of ethnic criteria which where:

“...we find that their members have certain characteristics in common...The nature of more important of these common features may be:

- *historical*
- *racial or ethnic*
- *cultural or linguistic*
- *religious or ideological*
- *geographical or territorial*
- *economic*
- *quantitative*”⁴¹

These are the main characteristics or criteria to identify a group, which can be called a people, entitled to exercise the right of self-determination.

Since only peoples are entitled to self-determination in contemporary international law, minorities must demonstrate that they are peoples in order to qualify for self-determination⁴². But self-determination and minorities are locked in a relationship which is part of the architecture of the nation state, since whenever a state is forged, the result is the creation of minorities⁴³ Any way when self-determination takes place it usually affects minorities in one way or another, whether the act of self-determination is an act of decolonization, an exercise of popular sovereignty, or results in the formation of a new state.

⁴⁰ International Commission of Jurists ‘*East Pakistan Staff Study*’, in *International Commission of Jurists Review*, Vol. 8, 1972, pg. 23.

⁴¹ Musgrave T., “*Self-determination and national minorities*”, pg. 170

⁴² Thornberry P., “*International law and the rights of minorities*”, Clarendon Press, Oxford, 1991,pg. 13

3 Relationship between self-determination and nationalism

Claims for self-determination are frequently 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. Nationalism has played and in some places continues to play a key role in these movements for the right of people to self-determination. An important issue from the beginning was to define the concept of nationalism which turns to be very important on the question of self-determination.

In brief, nationalism is a theory of political legitimacy, which requires that ethnic boundaries should not cut across political ones, and, in particular, that ethnic boundaries within a given state – a contingency already formally excluded by the principle in its general formulation – should not separate the power-holders from the rest⁴⁴. For most writers nationalism is a modern ideology that can be found only by the late of the eighteenth century, but what is more important in our study is the way how it implicates on the evolution and on the claims of the peoples for the right to self-determination.

Fundamentally, nationalism fuses three ideals: collective self-determination of the people, the expression of national character and individuality, and finally the vertical division of the world into unique nations each contributing its special genius to the common fund of humanity⁴⁵

Nationalism as we have mentioned also on the evolution of self-determination as a legal principle of international law was one of the main objectives that affected the right of peoples to self-determination. The notion of self-determination in Eastern Europe, and more specifically in the Balkans, grew out of the phenomenon of nationalism. And is by no means true that nationalism plays a key role in the emergence of the right of peoples to self-determination. While in the West nationalism developed as a political expression of the rising middle classes within the established

⁴ Gellner E. "Nations and nationalism", Basil Blackwell Publisher, Oxford, 1983, pg.1

⁵ Smith A., "*Theories of nationalism*", Holmes & Meier Publishers, New York, 1983, pg 23

states, in the Balkans it developed as a cultural movement in societies, which had not for the most part experienced Renaissance, reformation or Enlightenment⁴⁶.

The right to self-determination during its evolution by the East European countries is seen as a right to self-determination of the peoples in close relationship 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 to a community and all this was preceded by the existence of a state and limited within state borders. This was affected also by the fact that the process of nation – building in the Balkans happened to be more lately and always in struggle with foreign occupations.

The process of creating national states on the democratic principle of one nation – one state has been underway for some two hundred years, starting in Europe and then, after some delay, spreading to the rest of the world⁴⁷. This is the unhappy consequence that in those places where nationality might support democracy and social justice it is becoming an irrelevance, while in places where nationalism remains strong it is likely to be used to prop up authoritarian and repressive regime⁴⁸.

When we speak of nationalism in East Central and Western Europe, or the problem of creating a genuine European “identity” within the process of European integration, the question is raised whether nationalism as an ideology is always the same in form and content throughout Europe⁴⁹.

⁶ Andrew V. Bell-Fialkoff and Andrei S. Markovits "Nationalism: Rethinking the Paradigm in the European Context." In *The Myth of "Ethnic Conflict": Politics, Economics, and "Cultural" Violence*, edited by Beverly Crawford and Ronnie D. Lipschutz. University of California Press/University of California International and Area Studies Digital Collection, Edited Volume #98, pg.158 , 1998. <http://repositories.cdlib.org/uciaspubs/research/98/6> ⁴⁷ Tudjman F. *“Nationalism in contemporary Europe”*, East European Monographs, Boulder, Columbia University Press, New York, 1981, pg.1

⁴⁸ Miller D., *“On nationality”*, pg. 155

For sure the answer is no, because the theories of nationalism are differently created and developed in the Europe. If the Western liberal tradition emphasised choice as a legitimate criterion in establishing nationality, the Germanic and the East European tradition did not⁵⁰. They shared experiences and myths producing British and French nationalism took their shape primarily from the shape of the state, rather than from the myths of primordial ethnic groups, nationalism became more tied to the notion of citizenship within a territory than to the notion of ethnic identity⁵¹

In the case of Balkans there was a shift from the normative principle of individual freedom and democratic internal structures – founded on the separation of state and society and the notion of human rights – to the political necessity and even obsession to form a strong union by creating a nationally conscious collective identity. The existence of politically centralized units and of a moral political climate in which such centralized are taken for granted and are treated as normative is a necessary though by no means a sufficient condition of nationalism⁵²

Equality is the basic underlying normative concept. Thus the quest for self-determination can only be legitimised under serious conditions of inequality, as a means to escape exploitation, discrimination and exclusion in order to achieve a new status of equality⁵³

The role of the state should not be to impose some preformed definition of national culture on people who resist it, but to provide an environment in which the culture can develop spontaneously rather than being eroded by economically self-interested action on the part of particular individuals⁵⁴.

⁴⁹ Marko J., „*Equality and difference: Political and legal aspects of ethnic group relations*”

⁵⁰ Sharp A., „*The genie that would not go back to the bottle. National self-determination and the legacy of the first world war and the Peace Settlement*”, in “*Europe and ethnicity. The First World War and contemporary ethnic conflict*”, ed. Dunn S. & Fraser T. G., Routledge, London, 1996, pg. 14.

⁵¹ Ivanov A., „*The Balkans divided: Nationalism, minorities and security*“, pg. 39

⁵² Gellner E., *Nationalism*, pg. 4

This explains also the decline of nationalism even though it has caused a lot of armed conflicts all over the world. But this decline comes after centuries of conflicts on the name of nationalism. The decline of nationalism especially in the Western Europe was due to a number of reasons such as the regional organization. The boundaries especially after the Second World War have not that importance as they have and still in a way continue to have in the Balkans. There is a related political movement, “regionalism”, which can seem to shade into nationalism where linguistic or cultural characteristics define the region⁵⁵. But at the same time we agree that regions for sure are not nations, that’s why the policy of the Western Europe especially of the EU was directed towards the principle of decentralisation and in the creation of the regions mostly than that of nations or centralized politics orientated towards central governments of states and this process of decentralisation of 1970s and 1980s have largely satisfied moderate nationalist demands. The new regionalist movements in Western and Southern Europe are examples of a national paradox, insofar as ethnic mobilization stands in conflicts with the nation state⁵⁶. Also some other important reasons are the participation on changing cultural and political configurations and also cultural homogenisation. This is because democracy is made of large participation of the people in the decision-making.

During the history of the development of the right to self-determination that was put in movement by the nationalist movements, the people were aiming for total independence that seek to destroy the existing states or usually leave the boundaries of a state intact.

This depended on the scale of nationalism and on the degree of the compromise made by the parties in the conflict.

⁵³ Marko J., „*Equality and difference: Political and legal aspects of ethnic group relations*”, pg. 77

⁵⁴ Miller D., „*On nationality*“, Clarendon Press Oxford, 1995, pg. 88.

⁵⁵ Kellas J. , “*The politics of nationalism and ethnicity*”, pg. 86.

⁵⁶ Marko J., „*Equality and difference: Political and legal aspects of ethnic group relations*”, pg.69

In the case of the Balkans countries nationalism was experienced at the 18th and 19th centuries but suddenly we find it playing a key role at the end of 20th century, this because of the changing system. One obvious feature is that regime change seems to be the most important factor in explaining the sudden rise of nationalism in the former Yugoslavia. Nationalism found fertile ground among the Balkan intelligentsia precisely because this philosophy was immediately relevant to local conditions⁵⁷

The principle of national self-determination won increasing recognition in European politics, but its full implementation in Balkan was impeded. Applying the right to self-determination in the Balkan countries was equal on creating the nation states based on the concepts of nationalism. More than ever the spirit of nationalism was coming out from the different group peoples at the beginning of 1990, each of them with the fixed idea to create their own state and in this case to apply the right of peoples to self-determination without respecting at all at least the limits of human rights towards each other.

Conclusions

The principle of self-determination has made remarkable steps toward its establishment as a legal principle of international law. The way was not easy but 50 years after the UN Charter, we have a right to self-determination proclaimed and protected the same as the rest of the individual and collective rights of international human rights law.

In the case of the former Yugoslavia there was a shift from the normative principle of freedom and democratic structures – founded on the separation of state and society and the notion of human rights – to the political necessity and even obsession to form a strong union by creating a nationally conscious collective identity. It was the first time, after the period of decolonization that the western community has accepted the proposal that the process of self-determination could legitimately occur within one section of a state's territory amongst one part of that state's population. And the dissolution of the former Yugoslavia presents a clear case of the application of the right to self-determination based on nationalism and the right of people to self-determination.

⁵⁷ Lane A., „*Yugoslavia. The search for a nation state*”, in “*Europe and ethnicity*”, Dun S. & Fraser T. G (ed), Routledge, London, 1996, pg. 33

Nationalism helped in a way the evolution of the right to self-determination, simply identifying those groups who saw themselves different from other part of the society within a state who wanted to be recognized as such with the help of the right to self-determination. Just the reason of being different on language, history and culture made those groups of people conscious of having their right to be self-governed.

Last but not least we have to admit that the only way to produce peace and stability in the region is to invest not just on the economic grow but also on the social restructuring of the Balkan society through European integration process which could see collaboration and realization of the dream of the people of the region to be part of the European Union.

The role of the EU as the guarantor of world peace together with the precedent of the actions in its close peripheral regions is like to encourage a sliding toward an indirect intervention in resolving internal national conflicts⁵⁸

⁵⁸ Francisco Lentamedia, „ *International recognition of self-determination within the European Union*, ECPR, Pan – European Conference on EU Politics, Institutions and politics (Conflict resolution and Regional Autonomy) 25-27 September 2008, pg 15