

The Principle of State Sovereignty and the Right to Self-determination: The Case of Kosovo¹

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Abstract

Sovereignty and self-determination are two basic norms of international law which often appear in contradiction to each other. The main debate here is which principle limits the other and the answer depends on an evaluation of each case. The case of Kosovo is a classic example of this dilemma. Both sides, Kosovo Albanian and Serb, claim their own rights based mainly on historical arguments, the former the right to self-determination in the form of their own state and the latter the right to retain the province of Kosovo under the framework of Serbia. Historical arguments or historical rights are an outdated concept. The modern concept of self-determination, developed from Woodrow Wilson's theory which is linked to democracy, allows Kosovo Albanians the right to external self-determination. Sovereignty of the state does not exist as an absolute concept anymore, since it is directly linked to respect of basic human rights. Even that the self-determination can not derive to a consistent international legal order, Kosovo Albanians have the right to external self-determination and their own state, since they were severely oppressed by the Milosević regime. Self-determination remains a radical concept to this day, one which can only be applied on a case by case basis and by taking into account of various factors.

Key Words: internal and external sovereignty, self-determination - internal (autonomy) and external (right to secession), natural law, basic human rights, democracy, Woodrow Wilson, Pact of London, Paris Peace Conference 1919, Yugoslav Constitution of 1974.

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