

THE EMERGENCE OF NEW STATES, BORDERS AND MINORITIES

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The emergence of new states in the Balkans was due to a combination of factors, yet two reasons, closely connected to each other, seem to have been decisive. The first was an attempt by different nations to join Western European integrations directly and not by way of a proxy and the second was a crisis of the equality of nations (peoples) within the existing multinational state. Equality was sought within the concept of the creation of a new state, which is a concept still valid in the international community, although somewhat outdated and it appears to be obsolete as a concept for creating nation states of the 19th century.

In the second half of the eighties throughout Eastern Europe there was a rapid rising frustration because of the widening economic gap between states of Eastern and states of Western Europe. The role of science and technology has long become decisive in economic development and because of limited individual freedoms the East has been much less successful. Without very clearly seeing all the causes, but clearly feeling the consequences of the failure of political and economic systems in the East, a general belief arose that problems might be solved by joining the "club of developed European nations". Even more, judging by their own hard work, people felt that they were unjustly deprived of the same standard of living as in Western Europe. In addition, it soon became obvious that no profound economic reforms were possible without thorough political reforms.

In the process of the political and economic transformation of the multinational state of Yugoslavia, it became clear that political and economic changes started lagging behind the course of developments in other Eastern European states. It appeared that the state as a whole was unable to take the necessary steps to complete transition. The goals of genuine democracy, the rule of law and respect for human rights seemed to be drifting into the distant future. This was interpreted as an exclusion from Europe, since it appeared that even the entrance requirements of the Council of Europe (CE) could not be met, primarily due to political developments only in certain parts of the state. Other parts, especially those politically and economically more advanced, became tired of waiting for the "slowest wagon in the caravan".

Political developments at the end of the eighties and beginning of the nineties in Eastern Europe are enlightening in many ways. But they also show in the long run the impracticability of domination of one nation (or peoples) over another nation (or peoples). The conflict has to be solved by giving way to the right of peoples to self-determination or quenching the right till extinction of the demands. The problem of

coexistence of different nations or peoples within one community is further aggravated by the fact that the demands for equality change according to the development of the notion of equality. And if peaceful means for the transformation of relations prove to be inadequate to accommodate competing interests, forceful events are bound to happen.

In former Yugoslavia the legal, political and social mechanisms which would allow for a peaceful transformation towards the social and political development of the whole society were clearly lacking or were utterly inadequate. There was a general feeling, for different reasons equally present in practically all nations, of inequality within the community of Yugoslav nations (Bučar 1991a). For some nations, more important than the various real or imagined legal and practical inequalities was the frustration that the future of one nation could not be determined by the nation itself, but only with the consent of all nations in the Federation. Yet all of them had different ideas of how to respond to burning contemporary challenges. The rejection of the confederation proposal¹ based on the model of the European Communities (EC) was considered by its authors as a clear example of the rejection of a community of equal nations. On the other hand, the federation proposal submitted by other actors², based on the concept of popular political representation regardless of national origin, was regarded by numerically smaller nations as clear evidence of an attempt to legalize and formalize the inequality of nations within the Yugoslav Federation. The classic formula of democracy, whereby the majority rule in a parliament based on popular representation would not take into account the different sizes of nations, did not seem to be appropriate for a multinational state. Nations were reluctant to accept a status of minorities. The form of integration achieved by Western European states, which seemed to be the ideal way to preserve the equality of nations, was therefore aspired directly and not through federal authorities.

The Yugoslav nations challenged the existence of the federal state *inter alia* on grounds of the right to self-determination of peoples, enshrined also in the federal constitution of the country.³ To implement this right seemed to have come at the right time also considering the developments in the international community. The Berlin wall had just fallen and in the 1990 *Charter of Paris for a New Europe*, the international community had *inter alia* recognized the right of the German nation to self-determination, i.e. the unification of Germany. It was an important milestone in the implementation of the right of peoples to self-determination. This collective human right had evolved from political principles after World War I into a legal principle en

¹ The Presidencies of the Republic of Croatia and Slovenia proposed a "Confederate Model among the South Slavic States", and subsequently the Presidency of Croatia a "Draft Treaty of the Yugoslav Confederation - the Alliance of South Slavic Republics". Both documents were published in *Review of International Affairs*, No. 973, 20 Oct. 1990, pp. 11-22.

² The Presidency of former Yugoslavia presented a "Concept for the Constitutional System of Yugoslavia on a Federal Basis". Reprinted in *Review of International Affairs*, No. 974, 5 Nov. 1990, pp. 15-18.

³ According to the *Basic Principles* of the (federal) *Constitution* of 1974 "the nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession" have united in a federal state.

shrined into the *Charter of the UN*. From the very beginning it challenged the much older yet equally important right of states to territorial integrity. In the colonial situation this dilemma was solved by a series of political and legal instruments of which at least two should be mentioned: the *Declaration on Granting the Independence to Colonial Countries and Peoples*⁴ and the *Declaration of 7 Principles*.⁵ The first declaration does contain a strong antiseccessionist clause, but *nota bene* it was inserted as a safeguard against breaking up of colonial territories and not of colonial empires. The second declaration, which was an attempt to elaborate the principles enshrined in the *Charter of the UN*, while distinguishing the status of the territory of a colony and the territory of the state administering it, still retains the antiseccessionist clause but limits it to those states which conduct "themselves in compliance with the principle of equal rights and self-determination of peoples...and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color".

After all major issues of decolonization have been solved there was a general belief that "the establishment of a sovereign and independent state" was no longer relevant as a mode "of implementing the right of self-determination". Only few have seen a new wave of decolonization coming (Petrič 1984, Ginther and Isak 1991).⁶ In view of the integration processes world wide, but especially in Europe, somewhat more relevant seemed to be "the free association or integration with an independent State or the emergence into any other political status freely determined by a people". The focus seemed to have moved to the issue that "all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development". This was the instrument then, together with other international legal⁷ and political human rights instruments, which was hoped for to become useful for the desired changes in Eastern Europe. Small wonder then, that in the specific historical context of the CSCE in 1975 a lot of attention was focused on the principle of the inviolability of frontiers in the Decalogue and on the human rights basket. The eight principle in the *Final Act of Helsinki on Equal rights and self-determination of peoples* passed virtually unnoticed. Despite the fact that it read "all

⁴ UNGA Res. 1514(XV) adopted (89:0:9) on the occasion of the XVth anniversary of the OUN on 14 December 1960.

⁵ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Annex to UNGA Res. 2625(XXV) adopted by consensus on the occasion of the XXVth anniversary of the OUN on 24 October 1970.

⁶ Colonization may also be based on territorial contiguity, which within the UN, as a rule, was not considered a colonial situation. Few dared to speculate on the dissolution of the Soviet Union, mostly thinking only of the Baltic states, and the idea of the dissolution of other socialist federations was even more remote. Meanwhile we have experienced the emergence of new states even in Africa (Eritrea). There were however authors (Esterbauer 1978:47) who called the relations between states and their subnational regions a "disguised" form of colonialism. From such concepts the second wave of decolonization was expected to come from the emancipation of subnational regions resulting in the idea "Europe of Regions".

⁷ Articles 1.1 of both UN Covenants on Human Rights (on civil and political rights and on economic, social and cultural rights) specifically state that all peoples have the right to self-determination (UNGA Res. 2200 A (XXI) of 16 Dec. 1966. Both Covenants came into force in 1976).

peoples always have the right, in full freedom, to determine, 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".

Many political leaders of nations (in the European sense) felt that a national state of their own would be the only adequate protection of a national identity. Protection against threats from within, since the nation would transform from a minority to a majority, and from outside, since the state is still the most powerful actor within the international community where all states, large and small, are juridically equal. But the right to self-determination proved to be a right which is mostly recognized *post festum*, i.e. only after the beneficiary has achieved it on its own. The corresponding duty of states to guarantee this right leaves much to be desired. What seems to be important is that this right has evolved and exists as a materialized expression of the strivings for the emancipation of mankind and that peoples and nations will continue to claim this right. In the absence of peaceful means, ways and mechanisms for its implementation it is bound to create conflicts and bloodshed.

In recent history we have witnessed certain difficulties in the implementation of the right of peoples to self-determination. Here we do not think of the complex relations between the old state and the new emerging state, which is the old controversy between the right of states to existence and the right of peoples to self-determination, but rather of the relations between groups of peoples within the newborn state where certain parts of the population might not wish to become a minority within the new state.⁸ If the disintegration of states was the result of the wish of a part of the population not to be treated as a minority, how can we deny the same aspirations to remaining minorities in a new state?⁹ Especially considering the lack of well defined techniques for determining the true will of the beneficiary, provided we could agree upon the issue of who the beneficiary really is in the first place.¹⁰ The international borders of states which serve for the inclusion and exclusion of individuals and groups of people are not appreciated in the same manner by all parts of a given population. The problem is further aggravated in border areas since many states inherited international borders from poorly defined and often disputed internal administrative lines.¹¹ In Africa the inviolability of colonial borders has been secured by the *Charter of OAU*,¹² and in Latin America by the ancient principle of law "*uti possidetis*". In Europe the problem was tried to be

⁸ E.g. the Transnistria part of Moldavia aspires special relations with Russia, Mt. Karabakh in Azerbaijan with Armenia, etc.. These are all entities that do not border on the state they wish to have special relations with. In this sense we may designate such groups as atypical (national) minorities as compared to typical national minorities who live in border areas of two (or more) states, whereby in one of the states the same ethnic group constitutes a majority of the population.

⁹ An overview on different positions of this issue see Isak 1991.

¹⁰ It has sometimes been claimed that on the territory of the Socialist Federative Republic of Yugoslavia the right to self-determination has been granted to Republics (federal units) and not to peoples.

¹¹ Such was allegedly the case in Yugoslavia, but notice also the decision of the Russian parliament on 21 May 1992 that the inclusion of Crimea into Ukraine in 1954 has been illegal. Both cases seem to be only a tip of an iceberg.

¹² Especially art. 3.3 of the Charter done on 25 May 1963.

dealt with on the principle of the inviolability of borders, except by peaceful means, as foreseen in the 1975 Helsinki *Final Act* of the CSCE. But this principle has been agreed upon by states for (at that time) existing international borders and its mechanical application on present day situations often does not help. Especially until international borders are not well established and recognized as such.¹³ Groups of people belonging to the majority nation in the old state tend to influence the setting of an international border in such a way as not to become a typical national minority in the new state while groups belonging to the national majority of the new state wish to set the same international border in a way which would not leave parts of the population as a typical national minority in the old state. Both efforts have little in common with the right of self-determination, since it is rather an issue of delimitation between states. But besides the deep-rooted mistrust in the possibility of an effective protection of minorities by the general public, one should also remember that the prevailing doctrine in jurisprudence denies the right to self-determination including secession to typical national minorities. Only few voices are heard to the contrary (Petrič 1984:115), especially if the very physical existence of the minority is threatened by violent means. It is small wonder then that in times of uncertainties people prefer stronger safeguards for their legitimate rights. They believe to be on the safe side opting for a state, rather than laying their trust in internationally guaranteed minority protection. And states make use of these feelings for their own political reasons. To counterbalance demands for shifting borders, higher standards of minority protection might be of some help, although it seems that the desired and aspired co-decision making process calls for much more than may be guaranteed by existing minority protection systems.

But it was not the human rights in general and specifically the self-determination issue which influenced the decision on the recognition of new states. Decisive were economic, security and political reasons which - at least in the Balkans - in the beginning supported the principle of integrity of old states until armed conflict turned these same reasons in favor of new states.¹⁴ Yet once the decision to recognize new states has been reached a strong emphasis was placed on the human rights issue in general and on minority protection in particular. The EC Declaration on the "*Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union*" demanded *inter alia* respect for the *Charter of the UN* and the commitments subscribed to in the *Final Act* of Helsinki and in the *Charter of Paris*, especially with regard to the rule of law, democracy and human rights, as well as guarantees for the rights of ethnic and na-

¹³ E.g. a part of Georgia would like to join South Osetia, which in turn would like to be included into Russia (on 19 Jan. 1992 they voted to join North Osetia), parts of Bosnia and Herzegovina would like to join Serbia or the Federal Republic of Yugoslavia and other parts Croatia. But even in old states with a democratic tradition *mutatis mutandis* similar situations may be observed (e.g. the case of Northern Ireland, South Tyrol and others).

¹⁴ The reasons were numerous and could be summarized as follows: in economic terms there were uncertainties as to who would pay the debts once the debtor state would cease to exist and a dissolution of a state also means a shrinkage of the market. In security terms the disintegration of a state creates risks that a potential armed conflict may not be properly confined. In political terms there was a general discomfort as regards a possible future influence of reunited Germany on small states as well as a possible influence of the recognition of new states on old countries with substantial ethnic or other minorities (Bučar 1991b).

tional groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE.¹⁵ Furthermore in the EC Council of Ministers *Declaration on Yugoslavia* of 16 Dec. 1991 special reference was made to human rights and rights of national or ethnic groups.¹⁶ By way of citing certain documents it calls for the guarantees of specific individual rights, the respect for most universal international legal and other documents as well as many European, including mere drafts of declarations and conventions, it enumerates specific minority rights including political participation, it refers to special territorial autonomies, international monitoring and a Court of Human Rights. But because of intensified and continuous armed conflicts on the ground most of the newly designed and envisioned measures for the protection of minorities were never brought to life. The protection of minorities was left to existing international instruments and modes of implementation.

The new nation states were not dissatisfied with the aforementioned requirements, since they considered them as necessary standards for their acceptance into the family of European nations. Their fulfillment was judged by a special arbitration committee of the European Union (EU).¹⁷ But in essence the states of the EU disregarded the arbitration opinion and used their discretionary political judgment to recognize some and withhold recognition of other states. If we could explain it by the tantamount importance of defending individual national interests of states, it is much harder to explain why these interests are defined by the executive of respective states, without any real influence from other bodies within a given society. The foreign policy of states is still beyond the reach of democratic influence. Nevertheless, some of the beforementioned problems and several others, the new states tried to solve by aspiring to become a part of developed western Europe. The same borders they had just established for the protection of their nations, they were willing to sacrifice for their own development, provided the equality of nations would be preserved. The idea of a unified Europe of equal nations still remained an important political goal to them.

The history of Europe is the history of its unification, which was never without influence on world politics. And whenever attempts towards unification were made on the basis of the domination of one nation or state - or a group of states - attempts ended in bloodshed and chaos. Domination may end either with the extinction of one or the other side, or with a change in relations towards greater equality and self-

¹⁵ At that time meant were probably the Document of the Copenhagen and the Moscow meeting of the Conference on the Human Dimension of the CSCE, as well as the report of the CSCE meeting of experts on national minorities held in Geneva. This was also expressly required in the draft Convention which was under consideration by the Conference on Yugoslavia. Treaty Provisions for the Convention of 23 Oct. 1991 were reproduced in *Review of International Affairs*, No. 995-7, 5 Oct.-5 Nov. 1991, pp. 33-36.

¹⁶ Specifically mentioned was Chapter II of the draft Convention of 4 Nov. 1991. These rights were considered also one of the key principles of a political settlement of the Yugoslav crisis at the EC Conference. See *US/EC Declaration on the Recognition of the Yugoslav Republics*, Bruxelles, 10 March 1992, reproduced in *Review of International Affairs*, No. 1003, 1 April 1992, p. 7.

¹⁷ Opinions No. 4, 5, 6 and 7 of 10 Jan. 1992. Reproduced in *Review of International Affairs*, No. 1001, 5 Feb. 1992, pp. 15-21.

determination of peoples. Equality is a relationship and a process and requests change constantly in time, and relations need constant adaptation.

Historically speaking, the reasons for Western European integration after World War II were a combination of the strivings for faster economic development and the fear of possible Russian domination, i.e. a determination to preserve democratic systems of government (Arah 1995). The formula for economic development furthered by integration processes was *inter alia* promoted by USA and tried to duplicate the economic success of the North American economy of scale.¹⁸ But it was also an effort that no wars should ever again originate from European states and the abolition of international borders and turning them into administrative lines seemed an appropriate way to achieve the goal.

Economic success, security and democracy - as well as the equality of states within integration processes - were those basic reasons which provoked also Central and East European States (CEES) to embark upon a political determination to join the Western European integration institutions as full members. All the more, since historical reasons for integration, admittedly in changed circumstances, stayed the same. In changed historical circumstances economic development depends on the scientific and technological progress, whereby only united efforts of developed Europe may compete with the achievements of USA and Japan. On the other hand, even if the Russian threat immanently presents no real danger any more, a greater number of local conflicts, economic and social underdevelopment, organized crime, terrorism, the danger of nuclear and other ecological catastrophes, may well replace the initial feelings of insecurity. And within the ever developing world market state borders are increasingly becoming an obstacle to development.

After the fall of the Berlin wall, Europe changed dramatically. If before the fall Western Europe had encouraged Eastern Europe to open up, after the fall, Western Europe started to close its own borders. And the *Schengen Agreement* is just one manifestation thereof. The changes which have been so hard and long awaited for have not brought only advantages, but also new challenges and dangers. A certain vacuum in the security field appeared and numerous issues of economic development remained unanswered. The former "second world" became nothing else but an "extended third world", which slowly starts pondering upon eternal circles of undevelopment or upon the development of non-development.¹⁹ Nations in the central position of their own state suddenly found themselves on the periphery of the international community.

The "western twelve" were quite content to expand their membership to fifteen, since the newcomers are economically developed countries, with a similar history of democratic development. With the *Treaty of Maastricht* (and in other documents) the

¹⁸ Once the European Economic Community (EEC) showed signs of success, the UN recommended similar integration processes world wide, especially as a development strategy for Less Developed Countries (LDC). For various reasons these efforts experienced very different destinies, yet not all of them were a failure.

¹⁹ If in the changed international circumstances a new Marshall plan for Eastern Europe is not feasible, one should at least analyze the reasons for the failure of the idea of the New International Economic Order (NIEO), as well as the consequences thereof. Lessons are never directly applicable but they do serve a purpose.

EU has already determined economic standards for future members, standards which are still hardly met by all the existing members.²⁰ The second northern expansion²¹ may not be compared to the southern expansion²², which at the time had a political reason, but till today proved to have negative economic, and as a consequence social and political effects on the EU. Likewise, the central European expansion of the EU towards Austria may not be compared to the expansion towards other CEES. Central, East and South-east European states would surely, purely in economic terms, cause even more difficulties than the first southern expansion. Therefore, most CEES were offered European Agreements providing for associate membership, containing nebulous promises for negotiations on full membership²³ and in return providing for a gradual transition of an asymmetrical character to non-preferential trade based on reciprocity. Looking at the experience of what was once Eastern Germany one may well wonder how the Eastern European economies will be able to cope with the demand for reciprocity between developed and less developed economies, between the center and the periphery. At present it seems that the center is more cautious in opening its economy, although it is certainly less vulnerable than the periphery. Often it seems that the story of protectionism of the developed countries is repeating itself and that the "iron curtain" has rusted only to be replaced by a "velvet curtain" dividing the more from the less fortunate.

Of course, besides economic suitability, the club of the richest European states will surely carefully examine the social and political compatibility of candidates for full membership.²⁴ Although states are hard to compare (Bučar and Kuhnle 1994) in the case of CEES, religious, ethnical and cultural differences with the EU will surely play a minor role as compared to the politics of the EU towards its southern neighbors.²⁵ Nevertheless an important consideration will be social and political developments in CEES which, despite the initial enthusiasm caused by transition, leave much to be desired (Neuhold *et al.* 1995).²⁶ Although the case of Cyprus (and Malta) is not di-

²⁰ New member states *inter alia* have to be economically fit for membership in the Economic and Monetary Union (EMU). The criteria are: The size of the national budget deficit (3% of GNP per year), the public debt (60% of GNP), an inflation level (1.5% over the average level of inflation rate in EC) and a long-term interest rate (2% over the average level of the long-term interest rate of EC). And there are still other requirements (Bučar and Brinar 1994:438).

²¹ To Finland and Sweden as opposed to the first northern expansion in 1967 to Denmark, Great Britain and Ireland.

²² In 1981 Greece and in 1986 Spain and Portugal joined the EC.

²³ Until now no final date has been set by any official organ of the EU. Most unofficial (realistic) estimates range from 10-20 years with an additional 10 years adaptation period. In demography 30 years are considered to be one generation.

²⁴ On its meeting in Copenhagen in June 1993, the European Council *inter alia* determined the following criteria: stability of democratic institutions, the rule of law, protection of human rights and minorities and a competitive market economy.

²⁵ E.g. towards Turkey or Morocco.

²⁶ Most countries still experience a general economic depression, the fall of industrial production, raise of unemployment and inflation, modest foreign investments, a deficit in trade relations with the EU etc. All of it has a direct effect on their internal political development.

rectly applicable to the point we are trying to make, we should not forget that there are countries which have been standing in line in vain for a far longer time than the mis-managed societies of the East. The paradox of the economic, political and social compatibility lies in the fact that it is closely connected with an overall economic development on the one hand, and with the involvement and cooperation with western European democratic institutions on the other hand. Therefore it seems that this should be a common European responsibility, although the existing structures and policies seem to be poorly adapted to such a concept.

Regardless of the political, economic and social compatibility of the candidates for full membership in the EU, newcomers may also encounter something we could call the Greek syndrome. If the politics of Greece towards Turkey might still be explained by the Turkish occupation of northern Cyprus it is much less clear how the expansion of its territorial waters could contribute to a peaceful settlement of the dispute with its neighbor. The Greek policy towards Macedonia, and on the other hand towards Albania, becomes inexplicable except in terms of power politics. As regards Macedonia the policy of not allowing the Macedonian nation to use its name for its own state is also compatible with the policies of some other neighbors who contest the very existence of the Macedonian nation.²⁷ Contrary to the opinion of the special arbitration committee of the EU, Greece declared to be endangered by territorial claims of its "powerful" northern neighbor and closed the mutual border completely. While not recognizing minorities on its own territory, Greece started accusing Albania for a low level of minority protection and also took recourse to certain measures of self-help. Last but not least Slovenia experienced a similar policy by Italy.²⁸ Although relations of both countries are based on international legally binding instruments, Italy demanded a revision of existing agreements, because in changed circumstances the nationalized property of her citizens should not be compensated as had been previously agreed upon, but returned *in natura*. If Slovenia would not comply with the request, it would not be allowed to conclude an *Association Agreement* with the EU.²⁹ How many revisions of legally binding agreements will there be necessary before full membership is reached? The scary fact is, that European diplomacy, while recognizing the legal rights of

²⁷ Bulgaria recognizes the state but does not recognize the nation since they consider the people to be western Bulgarians speaking a Bulgarian dialect. Serbia has eventually recognized the state, but as long as a conflict of greater proportions is still possible on the Balkans one should also remember that before World War II Macedonia was considered to be Southern Serbia.

²⁸ After the independence of Slovenia, Italy first tried to reach an agreement on the protection of its minority in Slovenia. Since reciprocity for the protection of the Slovenian minority in Italy was not foreseen, Slovenia refused to sign such an agreement. Therefore Italy blocked the participation of Slovenia in the E-10, an informal organization of East European countries which was designed as a partner to G-7, the club of developed nations. It also tried to block the accession of Slovenia to the CE and Slovenia had to spend considerable time and effort to prove that it not only meets but surpasses international and European standards of minority protection. On the issue of its minority in Italy, Slovenia had to remain coy.

²⁹ A formal objection had also been raised to the fact that Slovenia's legal system was incompatible with EU legislation since its Constitution in art. 68 limits the right of foreigners to real property. It was for the first time that full compatibility of legal provisions had been sought not only before full membership would be acquired but even before associate membership would become effective.

Slovenia, nevertheless favored a compromise solution.³⁰ And if the policies of Greece and Italy remain successful, other states might get tempted to follow. May we imagine the consequences if Germany or other states bordering on CEES would start following the same pattern?³¹ One could hardly claim that this was the rational behind the common foreign policy designed at Maastricht (Carlsnaes and Smith 1994), yet one can not help noticing that within the EU a dangerous practice of past relations between large and small states is reviving, a practice which is even more dangerous since it involves relations between strong states within the EU and weak states outside the EU.

Also, within the EU, which - and rightfully so - remains a lighthouse for the development of the CEES, certain other problems may be sensed. Here we do not think of different economic interests or the notorious common agricultural policy, nor the complicated relations between the poor and the rich states manifested *inter alia* in regional and structural funds etc., but of the relations between the small and the large states. In the past the decision making process had to be adapted to changed circumstances (e.g. the Luxembourg and the Ioannina Compromise) and the issue of enlargement will surely challenge the present model. The drive for greater efficiency combined with the tradition of European rationality may well push for solutions which smaller nations might find inequitable or even oppressive. This could have an influence on candidates waiting for full membership since particularly the CEES were *inter alia* attracted to western European integrations because of the equality of nations. The importance of being able to take part in the decision making-process may be shown by the example of EFTA (European Free Trade Association) states which through the Agreement on the European Economic Area (EEA) did in fact enjoy most economic benefits as EU members, yet could not participate in the decision-making process. This seems to have been the main reason for most of them to apply for full membership.

As we have seen, integration processes, driven by economic and security considerations, have also their political logic. Besides the issue of the decision-making process among states, also the issue of popular representation arises. The more decisions are transferred to the international or even supranational level, the more the public is concerned and calls for parliamentary control of the decision-making process. In the EU the parliamentary control, despite directly elected representatives to the European Parliament, has long turned into a democratic deficit within the integration structures. Yet possible increased competences of the parliament will again trigger issues of the decision-making process since the majority rule in parliament was devised as a democratic

³⁰ Slovenia had to promise to amend its Constitution not only in a way that 4 years after the ratification of the *Association Agreement* EU nationals would be able to acquire title to land in Slovenia, but also to the effect that EU nationals who at any time had their residence for three years in Slovenia (read Italian nationals whose property had been expropriated) could acquire title to land immediately after the process of ratification would be completed. This amendment of the Constitution will supposedly suffice for the ratification process of the *Association Agreement* to be completed, but there is a long way to go before full membership is acquired.

³¹ Germany is already under some domestic political pressure to deal with the issue of nationalized property in the Czech Republic. But other pressure groups may emerge in various other countries on different issues as well.

institution of the 19th century nation state and may prove to be utterly insufficient in a multinational parliament as has been recently witnessed in some multinational CEES.

Yet, if at the present stage of European integration the decision-making process may still be considered as satisfactory, in the near future some new actors will surely demand their say in the decision-making process. Primarily we think of subnational regions and their transfrontier and international associations, of local authorities and their transfrontier and international associations, but also of various nations (peoples) without own states as well as of different minorities. It seems that European integration may not remain only a unification process of states, that the New European Architecture may not provide just for a Common European House, but that it has to respect the declared "grass-roots" democracy and has to create a Common European Home for all nations and minorities, in short - for all people. Anything short of that will cause people to ponder upon the project.

If there is some time left for creating the New European Home, security matters call for more urgent action. There are numerous security arrangements in existence³² yet all of them performed poorly in the conflict in Bosnia or in other areas for that matter. By tolerating Serbian policy to unite all Serbs in one state, one may hardly be surprised by Russian demands for special rights in the "near abroad" or their claim for the right to protect their minorities with all means wherever they may be. Regrettably this is of course also due to the poor system for the protection of minorities, but negative examples tend to have fatal attraction and in Europe there are still many unresolved issues. Europe would need to improve its efficiency in stopping armed conflicts, although it might well be undisputed that peace and security depend primarily on economic and social progress and the development of democracy. The Partnership for Peace alone, which was offered to the CEES, nor other existing institutional links (e.g. the North Atlantic Cooperation Council - NACC or the Euro-Atlantic Partnership Council - EAPC or the Cooperation forum of WEU) do not meet the requirements of their security.

The creation of states solved some, but created also new problems. The war in Bosnia is only one cardinal example of how old concepts of the strength of a state based on the largeness of the territory and number of people is still disastrous and misleading. But even other new nations which aspired equality within the community of nations encountered various disappointments as regards their neighbors. Not only did the idea of joining Western Europe prove to be an illusion, also creating nation states seems to have been a lost battle from the beginning. Even if some nations or ethnic groups achieved statehood in recent times, this in no way diminished the extent of the issue of minorities (Devetak *et al.* 1993). Minorities are not only a durable phenomenon, they seem to be gaining on importance due to their quantitative expansion and the raise of the standards of human rights. The issue of the protection of minorities

³² E.g. collective security within the OUN, mechanisms of the Organization on Security and Cooperation in Europe (OSCE), structures of collective self-defense of NATO or the WEU.

is crucial for the assessment of the achieved level of democracy in the newly democratized countries, yet they receive poor guidance from the practice of old democracies.

Through history, rather slowly, gradually the system for the protection of minorities developed. Although in theory it has been often claimed that minorities serve the purpose of multiculturalism and that therefore their protection is worthwhile, or even more, that they represent an enrichment of existing societies, the reality was and is often quite different. Minorities are vulnerable and exposed to pressures from the majority, while their overall protection stays poor. This is particularly true with regard to international global or even regional protection and less in cases where states conclude bilateral treaties, where states themselves watch over the implementation of minority rights for parts of their own nation outside national borders. And their protection does not derive so much from their positive assessment of minorities but rather to prevent major threats to peace and security. In no way should we underestimate contemporary international efforts of dealing with this burning issue: In 1990 within the CE a special list of minority rights has been drawn, in 1992 UNGA for the first time in its history adopted a special Declaration, there is a new European Convention for Regional or Minority Languages, within the OSCE a High Commissioner for National Minorities has been established and many more activities could be mentioned. Yet efforts were intensified only after tragic events had happened in Eastern Europe and after the threat of new outbreaks of violence became a reality.

It has been said (Bučar 1994:231-232) that minorities derive their misfortune and problems from the fact that they are competing for the same issues, values and scarce resources in the society as the majority: they strive for the emancipation and well-being of the individual and the group. Often the majority tries to achieve the same goals at the expense of the minority. Yet despite all efforts by the majority to eliminate the seemingly disturbing element of an otherwise seemingly harmonious society, minorities remain a persistent and durable phenomenon, through history rather rising in quality and quantity than vanishing in the haze of development. In no way should we forget all the minorities that have already perished and have by their extinction impoverished the genetic and cultural heritage of mankind. Yet the fact remains that besides so-called old minorities - linguistic, ethnic, cultural, national and religious - new social, political and other minorities are emerging. Even the issue of non-political minorities is always a political issue and hence the minority is bound to claim political autonomy. And it is therefore not only an issue of the minority itself, but also an issue of the majority since the problem itself is rather a problem with the majority than a problem with the minority.

Politics and policies are rarely made by those who are most vulnerable to its effects. The role of majority and minority in any decision-making process is an old controversy and a never ending debate. Sometimes in practice the problem tries to be solved in a democratic and political way, but it often brings poor results because it fails to see that emancipation and equality of man may not be settled once and for all, but is rather a continuing process. Mechanisms for adjusting always new and different challenges are therefore of essential importance as well as an awareness that we are not dealing with never-ending unjustified claims. Failing these mechanisms and a political readiness to change conditions and circumstances may well result in "continuation of politics with

other means". Hence terrorism or genocide which in our guilt we have shamefully re-named to ethnic cleansing. But it is not only violence and war, atrocities, mass-murder of civilians and rape why we have to discuss again and again the issue of minorities. This debate is called for by the development of humanity, by the evolution of legal and moral norms - by the dignity of mankind. If there will be no constant improvement, the human race has a dim future. It is therefore, and it will remain, a contemporary issue, a test for our civilization.

It seems that the New European Architecture still searches for recipes of how to overcome the heritage of borders, hoping that the solving of this formal problem will solve the substantial problem of minorities. Yet even if this is achieved the issue of political representation remains, as do minorities outside however expanded borders which call for a constant improvement of international instruments of protection and an effective system of implementation. And once this is achieved, at least to a considerable extent, the problem of the borders within the minds of people will have to be dealt with. Only then multiculturalism will stand a chance.

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Povzetek

Nastanek novih držav, meja in manjšin

Avtor obravnava nastanek novih držav v Evropi, ki so med drugim rezultat zahtev po samoodločbi narodov, ki so se v večjih večinacionalnih državah počutili neenakopravne. Toda tudi nove razmejitev niso zagotovile enonacionalnih držav in problematika manjšin je porasla v kvantitativnem in kvalitativnem smislu. Obstoječa mednarodna ureditev ni imela ustreznih mehanizmov zaščite in implementacije manjšinskih pravic, zato so se pospešeno iskale nove oblike in vsebine pravne in politične zaščite manjšin, toda predvsem zaradi ohranjanja miru in varnosti med državami. Nekatere novonastale države pa so postale izpostavljene različnim pritiskom starejših in močnejših držav ter so s tem spoznale vso relativnost enakopravnosti držav v mednarodni skupnosti. Tudi zato si novonastale države prizadevajo, da bi postale polnopravne članice EU, ki velja za model enakopravnosti narodov, organiziranih v države. Toda širitev EU bo s seboj prinesla zahteve po spremembi načina odločanja in ta lahko na osnovi zgodovinskega izročila evropskega racionalizma postane tudi vir neenakopravnosti, še posebno, če se bo sledilo vzorcem demokracije enonacionalnih držav 19. stoletja. EU pa je še vedno zveza držav in znotraj nje še ne pridejo do izraza interesi različnih nedržavnih akterjev, kot so med drugim manjšine. Tudi njim bo potrebno zagotoviti ustrezno politično predstavništvo, če želimo, da manjšine ne bodo neprestan vir nestabilnosti in če menimo, da mora Evropa postati model zaščite človekovih pravic in "demokracije pri koreninah". Obstoječa mednarodna ureditev tega kljub vsem sodobnim spremembam instrumentarija mednarodne manjšinske zaščite še ne zagotavlja. Nadaljne spremembe so potrebne na pravnem in političnem področju, toda predvsem tudi v psihologiji odnosa večine do manjšine. Nekatere obstoječe koncepte in vrednote demokracije in človekovih pravic pa bo potrebno na novo premisliti.