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**Self-determination and national
minorities: the difficulties of 'making' a
referendum in Schleswig-Holstein and
why to think twice in Kosovo**

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European Centre for Minority Issues (ECMI)

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Self-determination and national minorities: the difficulties of ‘making’ a referendum in Schleswig-Holstein and why to think twice in Kosovo

The unofficial, non-binding referendum in Northern Kosovo and the ongoing debate in the international community about solutions for the Serbian minority bring the problem of self-determination for national minorities back to the fore. The right to vote on national allegiance and sovereign borders has never been a simple matter in European inter-state relations, let alone in international law. Such a referendum is not respected unless it holds international backing, even if it is considered a domestic matter. And a referendum on sovereign international borders is usually the result of long and often drawn out geo-political processes, including tediously negotiated settlements after major bellicose conflicts. It is not something national minorities can unilaterally decide to undertake independently. This is at least one of the lessons that European history has taught us. Thus, the case of Northern Kosovo is not likely to be any different than past referenda on national allegiance and sovereign borders. Drawing on the experience of the 1920 referendum in the Danish-German border region, this Issue Brief will put the problem of self-determination for the Serbs in Northern Kosovo in an historical perspective as a basis for a contemporary analysis.

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I. INTRODUCTION

The referendum in Northern Kosovo in February 2012 was not explicitly about borders. But it was clearly about national allegiance, since it asked voters whether they accepted the authority of the institutions of the Republic of Kosovo.¹

Approximately 50.000 Serbs live in Northern Kosovo. The respondents answered almost 100 per cent in the negative thus providing an image of national self-determination for the territory of Northern Kosovo.² Unfortunately, the notion of national self-determination is not very transparent, nor is the ideal of the right of self-

determination. It is thus important to separate the two notions.

The right of self-determination can only be exercised through a process of choice, i.e. making a conscious decision. When a settlement is reached without the possibility of the involved subjects to exercise a choice, there is no self-determination act. The argument for how to settle self-determination conflicts on the basis of self-determination claims can thus be misleading.³ With regard to national self-determination, the tension between national allegiance and territorial integrity is the main reason why this notion is unclear. Problems arise



if independence is the end goal, as this challenges the principle of territorial integrity laid out in international law. The coupling of the national and a territory is thus restricted to ‘nations’ that can demonstrate certain power over not only territory and population but also exert external power which yields international respect.⁴ In other words, the ability to claim total sovereignty not only legally but also morally is required. The debate on defining national self-determination in relation to secession has been going on for decades among scholars and practitioners.⁵ It is not the purpose here to interfere with this issue.

However, self-determination as a democratic concept can also be a matter of individual choice over non-sovereignty issues, such as everyday choices and preferences for a good and free life.⁶ While this type of self-determination may also be about national belonging, it is often based on issues of cultural and material well-being as well as civic and human rights issues. This type of ‘plebiscite self-determination’ is not necessarily less controversial than the secession type, especially if it will result in redrawing a sovereign border. But if it is non-secessionist and non-irredentist and based on mutual consent among all players involved, it is likely to gain support. Non-secession, non-irredentist plebiscites aimed at internal self-determination are used to settle administrative boundaries inside sovereign states – the so-called micro-referenda. This we have seen successfully in the establishment of the Jura Canton of Switzerland in 1979.⁷ In addition, it can be used to reunite national minorities with a non-irredentist mother state. This we have seen in the case of the Danish minority in the Danish-German border region in 1920. In both cases the plebiscites were based on moral consensus and the idea that it would provide the desired effect of democratic self-determination. And in both cases, it was a matter of explicit decision making at the individual level through a vote.

Notwithstanding the ongoing on-off status dialogue on Kosovo and the provisions for Northern Kosovo in the Ahtisaari, but also

assuming that the issue is going to be on the international agenda for a while, it might be instructive in the case of Kosovo to recall how the referendum was ‘made’ that settled the issue of a small disputed piece of land linking Denmark and Germany in which both the Danish and German cultures had co-existed for centuries – the former Duchy of Schleswig.

II. CONFLICT

The notion of national self-determination on the basis of national allegiance became institutionalized in Europe after World War I when the President of the United States incorporated his view of it into the peace negotiations in Paris in 1919.⁸ The principle became implemented through the Treaty of Versailles with mixed results. It provided for national self-determination for smaller sovereign states but it did not provide for self-determination on the basis of national allegiance for all Europeans. Many of the proposed new borders in Europe created new national minorities who felt they belonged to nations which were destined to secede land to neighbouring states. Most of these minorities were not provided a right of self-determination to determine via a referendum to which nation they wished to belong. Instead, they became protected under the Minority Treaties system under the League of Nations and confined to live without a final say about their own lives and land. A few borders were, however, settled via a referendum. One such was the border between Denmark and Germany which was contested for centuries and had been redrawn half a century before.⁹ The Austro-Prussian war against Denmark in 1864 resulted in a large portion of Danish territory, the Duchy of Schleswig, being transferred to Prussia in 1867.

The conflict had emerged in the 1840s when a Danish language movement had sprung up in the southern part of the Duchy of Schleswig. While the northern part had remained mainly Danish speaking, the southern part – between the present day national border and the river Eider –



had developed into a German speaking region. Only the non-educated, lower income groups in society had continued to speak Danish. The clergy and many schools had become German language based. When the Danish language movement began to insist on more Danish in schools and during church services, tensions arose within the Duchy of Schleswig as well as between the Duchy of Schleswig and the Duchy of Holstein both of which had been united in a double duchy or a political union since 1386. As a result, a counter movement arose in the Duchy of Schleswig around 1844. It adopted its own flag and hymn, and asked for independence from the Danish King in 1848.

However, the King refused, and armies were mobilized on both sides of the invisible language border near the river Eider. One battle in 1848 was lost by the Danes; another in 1850 was won. Although the Danish King had made a promise to the Austro-Prussian side to keep the Duchy of Schleswig together with the Duchy of Holstein, he nevertheless broke his promise in 1863 when he declared the Duchy of Schleswig part of the Danish Kingdom and constitutional realm. Austria and Prussia invaded the Duchy of Schleswig in January of 1864, and after a few battles near Flensburg and in what is today southern Denmark, the King lost and had to cede the Duchy to the victors.

It would be a few more years before the Duchy actually became a legal entity of Prussia. In the meantime, members of the new Danish minority did not waste time. In September 1864, just a few months after the last shots had rung out, a delegation travelled to Paris to seek audience with Napoleon III. They did not meet the Emperor but were received by the French Foreign Minister. They delivered a plea for a referendum in Schleswig based on national allegiance. While it is not known if it influenced the Emperor's thinking, he nevertheless expressed his support for the idea of self-determination of peoples in 1865. This in turn led the Danes in the area set to become part of Prussia to begin collecting signatures for a referendum. Unfortunately, the new Prussian

authorities did not let the Danes get far with the effort. The police found and destroyed most of the signatures.

III. TOWARDS THE RECOGNITION OF THE RIGHT OF SELF-DETERMINATION

In 1866 Austria and Prussia went to war against each other in large part due to a disagreement over the territory and management of the duchies of Schleswig and Holstein. Austria lost the war, and a peace agreement was reached with Napoleon III acting as mediator. The Peace of Prague signed 23 August 1866 therefore included in paragraph 5 the right of self-determination based on national allegiance for the Danes in northern Schleswig. The right was moreover guaranteed not only by Austria and Prussia, the signees to the treaty, but was also subject to a third party guarantee which meant that it could not be annulled by Austria and Prussia alone; a third party would have to agree. This gave the referendum an international dimension and became significant a number of years later when Austria and Prussia decided to annul the paragraph. In the area of Northern Schleswig there was an expectation that the referendum would be granted soon. The Danish minority even sent a delegation to Berlin to thank the Prussian Emperor Wilhelm I. However, no referendum was granted and on 24 January 1867 the area of Northern Schleswig together with the rest of Schleswig and Holstein became part of Prussia.

A period of democratization followed, and democratic elections became the norm as opposed to the rather authoritarian rule which the Danish kings had exerted. This notwithstanding, the Danish minority became subject to Prussian Germanization, and a purge of Danes from the Church and state authorities took place. The Danish minority was allowed freedom of association except in cases of political aims. However, in 1878 Prussia and Austria decided to annul paragraph 5. When it



became known in the region, the Danish minority became radicalized and mobilized on a stronger nationalistic notion. The Danish language again became an issue although many among the minority had spoken German as a mother tongue for years. Support for Danish leaning politicians grew and at the elections to the German Reichstag in 1881, the region elected two Danish minority members. The success only lasted briefly, and by 1884 the Danish identity was weakening among voters in large part due to the success of Germanification. A generational shift in the leadership of the Danish minority further exacerbated this. The new leaders were not even Danish speakers.

Internal debates about the continuation of the claim to the right of self-determination also split the minority. Some felt that it was counter-productive to insist on the right of self-determination in part because economic co-operation with Prussia had proven advantageous as opposed to co-operation with the rump state of Denmark which had little to offer. Moreover, the social democratic movement grew due to the increased industrialization, and material needs took a primary position with many voters. Even though the Social Democrats in the region maintained the demand for self-determination in their programme, the social agenda had priority and thus national feelings for Denmark waned.

In 1908, the German authorities issued a new law on associations which banned all meetings in Danish with the exception of voter meetings preparing for elections to the Reichstag. Some counties in the north – today's Denmark – were granted dispensation from the rule until 1928. Moreover, during the years leading up to World War I, the Danish minority experienced intensified Germanification. School children were singled out by teachers if they committed to speaking Danish at home. After the outbreak of war, leaders of the Danish minority were interned briefly for a couple of months. Many were drafted and many died on the front.

IV. THE TREATY OF VERSAILLES

As soon as the armistice ending hostilities had been signed, a delegation of the Danish minority went to the Danish government to ask for support for a referendum. The government was reluctant and took a wait-and-see position. On 23 October 1918, the leader of the Danish minority put forth the claim in the German Reichstag. However, the German government referred to the annulment by the Austro-Prussian regime in 1878. Nevertheless, a few weeks later, on 14 November, the German Foreign Minister sent a letter to the minority to the effect that the referendum was to be put on the agenda for the Paris negotiations. Immediately after receiving the letter, the Danish minority met on 16-17 November to draft the first implementation plan for the referendum. The meeting adopted a plan for the northern counties. This was due to the fact that the weakening Danish identity in the south of the Duchy could influence the outcome negatively. There was a fear that if the entire Duchy voted together the overall result would be negative because the southern counties had become more German over the years.

The plan became not surprisingly a cause for concern among the Danes in the southern counties, as they were faced with becoming included in the German state for good. They thus began mobilization for their own referendum, a second referendum for the southern counties. They collected signatures under much stress and pressure from the German population, and they appealed not only to the right of self-determination on the basis of national allegiance but also to the historical facts, that the only reason why the southern counties had become more German was that they had been subjected to assimilation policies over the years. However, the adopted plan for the northern counties alone was presented to the Danish government which passed it on to the negotiators in Paris on 28 November. Subsequently, the Danish government was asked to posit its own position on the referendum which it did in a letter of 12 December 1918. The statement insisted on a



majority vote for Denmark in Northern Schleswig. The plan not to include the southern counties resulted in a plea to the Danish government to come to the rescue of the Danish minority left behind in the southern counties. During the Paris negotiations, the Danish ambassador therefore submitted the request for the northern counties and asked the parties to consider that a second referendum be issued for the southern counties.

However, there remained concern among the northern counties and in the Danish parliament that even if some or all of the southern counties were to cast positive votes, they could in the long run create a security problem for Denmark due to the not entirely clear split in identities between German and Danish allegiance. At the time a Schleswig-Holstein movement had also emerged in favour of not having a referendum, and on both sides it was openly known that whatever the result, assimilation would eventually have to take place to secure the peace. The fear of assimilation had supporters not only in the southern counties but also in Copenhagen.

It is important to note that the history of Denmark as ruler of the Duchy of Schleswig goes back to an agreement made in 813 between Charlemagne the Great and the Danish King Hemming to the effect that the Danish King could rule to the Eider River. The ramparts built by the Danish King to establish the limits of his rule are still visible today and were to become a symbol of Danish national identity during the centuries to follow. The ramparts thus play the same role in the minds of many Danes perhaps in the same vein as the Gazimestan in Kosovo does for the Serbs or Jerusalem for the Palestinians. Moreover, the Kaiser Wilhelm II Canal linking the Baltic Sea with the North Sea and finished in 1895 – now known as the Nord-Ostsee-Kanal in Germany and the Kieler Kanal in Denmark – was believed to become international territory with Treaty of Versailles and was thus perceived as a natural border between the two cultures of Denmark and Germany by promoters of the historical view of

self-determination. These views were championed by a private person in Copenhagen, Ionas Collins who went to Paris on his own and promoted the ideas. Ironically, the French government listened to him, most likely because he spoke to their views about curtailing Germany's power over its neighbours. As a result, the draft Treaty of Versailles included a third referendum for the most southern flank of the Duchy of Schleswig near the Canal.

The Danish government did not agree with the draft of the Treaty and the third area for a referendum. It immediately protested and the final text of the Treaty included the two zones which had been proposed by the Danish ambassador. Thus, the Treaty of Versailles signed on 28 June 1919 included a double referendum for the Duchy of Schleswig. The northern counties, which had remained predominantly Danish-speaking, were to vote first, and the result would be counted in all counties as one. The southern counties eligible for a referendum were to vote a month later. The results would be counted according to county thus leaving flexibility for rather small entities to enjoy self-determination. The entire process was to be implemented and monitored by an international commission. The Treaty of Versailles went into force in January 1920 and the two referenda were set for 10 February 1920 in the north (zone 1) and 14 March in the south (zone 2). The referendum question asked eligible voters whether they wanted to belong to Germany or Denmark.

V. THE REFERENDUM

The months before the voting saw a very volatile situation in the southern counties, especially in the main city of Flensburg which was considered by many a jewel in the Danish crown and still housed many loyal to the Kingdom. Articulations were made to the effect that Denmark should accept the city into the realm of the Kingdom no matter what the result. The Danish government countered this rhetoric with



the clear statement that Flensburg would not become Danish unless a majority of the residents had cast their vote for it. Ironically, several of the cities and towns in the northern counties were not expected to yield a majority either but this was to become irrelevant because of the different voting system. The campaigns for and against the referendum thus became very heated in the southern counties and especially in Flensburg. While the campaign was not violent, there were skirmishes in a number of cases. Moreover, the major employers in the city announced just a few days before the voting that they would close and move south if the referendum was in favour of Denmark. The Social Democratic Party also advised workers that the new Weimar Republic would provide more freedoms and entitlements than Denmark. Clearly the lines were drawn in the sand.

The results of the two referenda did not surprisingly follow the identity lines which had emerged over the last decades. The voting in the northern counties resulted as expected in a majority for unification with Denmark. 74,9% vote for and 25,1% voted against. Of the four major towns, however, only one – Haderslev – could muster a majority for Denmark. In the southern counties the overall vote was 20% for Denmark and 80% for Germany. In Flensburg 25% voted for unification with Denmark. In the days prior to the voting in the southern counties, eligible voters from both the south and the north had been brought to the region. Many living outside the Duchy were eligible to vote due to prior ties to the region. They were either bussed or shipped into the region. This did not, however, make any difference to the result. The city of Flensburg and most of the southern countries were not able to provide a positive result.

The negative result in the south caused great disappointment especially in Flensburg. A delegation of leaders of the Danish minority immediately went to Copenhagen to request the help of the government. They also felt that the mood of the Danish population had turned to their favour; Flensburg should be welcomed in

the Kingdom in spite of the result of the referendum. However, the Prime Minister Carl Theodor Zahle and his government refused. They maintained the position stated in 1918. Individuals of the opposite view contacted the King and made him dismiss the government which was in his power. Nevertheless, the next government also maintained the line of the Zahle government. Instead, the delegation from Flensburg decided to seek international support and demand that it became a protectorate under the League of Nations. The new Danish government did not support this but also did not declare opposition to it, in the event the delegation had success. The Flensburg delegation therefore went to Paris to present its demand. It was not however successful and the dream of many that the crown jewel of the Danish Kingdom return to its ‘owner’ never became fulfilled. The city became the most northern town in the new Weimar Republic.

VI. OUTLOOK

What does it take to ‘make’ a referendum regarding the borders of a disputed area of land which is home to a group of people who fear that they may become assimilated against their will? If the two referenda in Schleswig are any indication, at least four observations can be made.

First, the outcome of the conflict would have to be considered unfair by a major power player. In the case of Schleswig, Napoleon III made the issue a moral issue for Europe backed by his own political standing.¹⁰ At the time, there was no League of Nations or UN that could have mediated and secured the rights of the Danish minority. Napoleon III was the only other most powerful person aside from Prussia. Today, the Serbs in Northern Kosovo have some support from the UN through the UNSC Resolution 1244, but they would have to get the UN to take further steps. Since the UN has already made its position clear through the Resolution and the endorsement of the Ahtisaari Plan, the redrawing of the border is not currently open to them



because the Ahtisaari Plan envisions self-government for Northern Kosovo. Alternatively, the EU might be seen as the moral force that supports the Serbian minority. Notwithstanding the fact that at this point it is not clear how Kosovo proper will be included in the EU and the fact that the EU supports UNSC Resolution 1244, this is also not very likely given its history with other EU conflict areas, such as Northern Ireland, the Basque Country and Northern Cyprus. ‘Looking the other way’, has been the EU strategy with regard to these conflicts, so it is not likely to make an exception in the case of Northern Kosovo.

Secondly, it may take years during which the ball is thrown back-and-forth between players and institutions. The period from 1866, when the Peace of Prague recognized the right of self-determination for the Danish minority in Schleswig, to 1919, when the Peace of Paris finally implemented the recognition, was in fact half a century. During this period the Danish minority continued to stand on its right and demanded the referendum. In contradistinction, the Serbs in Northern Kosovo declared unilaterally and with no international backing a referendum only four years after the declaration of independence by Kosovo and 12 years after the end of the conflict. While the unofficial reference was most likely an articulation of discontent, much more quiet diplomacy and negotiation would clearly be in the cards for the Serbian minority if they wish to pursue the matter. Moreover, the overall status issue of Kosovo has more urgency to the international community. Since Serbia’s membership of the EU is not a promise for resolve, but rather for a status quo, and it is not clear how Kosovo will enter the EU, the Serbian minority may expect to see the ping-pong game continue for quite some time to come unless a personality of leadership and high moral standing intervenes, if such exists. Most likely, the Serbian minority is ‘stuck’ with the Ahtisaari Plan, which in the long run might provide more individual choice than if the minority opts to rejoin Serbia.

Thirdly, a major bellicose geo-political conflict may help put the issue in new perspective. In Schleswig the event that eventually allowed the right of self-determination to re-emerge on the agenda was the peace negotiations after World War I. After major upheavals, which have upset the establishment of states and the general power structure as well as the received notion of peace, political space often emerges for new issues or issues that have been rejected in earlier paradigms.¹¹ This happened of course in the Balkans in the late 1990s and early 2000s. Unlike the Peace of Paris which was negotiated over some months, the settlement of the Balkan conflicts is still ongoing. Of course, the Serb referendum could be seen in this perspective. Unfortunately, the EU’s regional approach, implemented through the Stability and Accession Process, is not very clear on conflict management, and conditionality on minority protection has been applied bilaterally as in previous enlargements. However, it may require disregarding the bilateral approach (EU-Serbia and EU-Kosovo) and looking to the multilateral level. Here the EU might have some leverage with respect to the ongoing enlargement efforts. In contradistinction to the bilateral approach, the ‘regional approach’ to preparing the Western Balkans for membership may hold potential for the Serbs in Northern Kosovo. A ‘regional conditionality’ which includes a solution for Northern Kosovo might be needed.

Fourthly, even if an internationally backed referendum were to be held, it might not provide full justice to all involved. The case of the second referendum in Schleswig showed that a referendum may not bring happiness to all members of a minority. The members of the Danish minority living in the southern counties of Schleswig were not only losers; they were also left without any right to self-government or autonomy within the Weimar Republic. Like in Schleswig, a referendum for Northern Kosovo might leave more than half of the Serbian minority in Kosovo without any right of self-determination. This is because the Serbs living in the so-called enclaves, municipalities within the rest of Kosovo, would also have to be taken



into consideration. They number around 60 per cent of the Serbs living in Kosovo. No doubt they would claim a right of self-determination, too. In addition, there are Serbs living among Albanians in districts which are predominantly Albanian. If the timeframe of Schleswig is any indication, the enclaves in Kosovo may have changed demographically by the time a referendum is held. This means uncertainty about the outcome, and could spell new trouble for Kosovo.

‘Troubles’ is in fact the term occasionally used now to refer to the seemingly intractable issue of Northern Kosovo, thus drawing an analogy to the situation in Northern Ireland. While no case is similar, history does have an instructive effect. The situation in the Danish-German borderland was certainly a trouble to leaders and politicians for many years. And Northern Ireland, while by and large now peaceful, still experiences tension and skirmishes.

VII. CONCLUSIONS

Minority politics in Europe definitely happens in slow motion. It took almost a century to achieve full settlement in the Danish-German border region in spite of a moral momentum created at the beginning with Napoleon III endorsing the right of self-determination for the Danish minority in 1866. As the Danish government had rightly observed in 1918, the Danish minority in the southern counties would continue to seek justice. Thus, the border issue re-emerged again after World War II. At that time, the Danish government would not risk any further tensions. It issued a statement few hours after the armistice that had ended the fighting in Northern Germany to the effect that it would not seek to open up the border issue again. To some this was the last nail in the coffin. However, the Danish minority nevertheless continued to nurture the national allegiance with Denmark and vice versa. They were in turn rewarded with another settlement result in 1955 when Denmark and Germany agreed to issue jointly but unilaterally declarations of intent to protect the

national minorities residing in the border region, the so-called Bonn-Copenhagen Declarations.¹² Subsequently, the minorities on both sides of the border have achieved cultural autonomy in a number of areas, similar perhaps to the type of ‘autonomy’ that the Serbian minority in the enclaves of Kosovo currently experience through Serbian funding. In Schleswig the cultural autonomy is functional in that it is not enshrined in law as a minority right, and it is currently funded 40 per cent by the government of Schleswig-Holstein and 60 per cent by the Danish government. According to international law custom, this funding scheme is actually not good practice. Under international law, states are obliged to ensure the full protection of national minorities residing in their territory. So even in Schleswig-Holstein there is room for improvement almost one hundred years later.

This shows that a referendum alone is not a panacea for a national minority. It leaves most likely loose ends to be tied as well as some tidying up to do. In fact, it took another 35 years for the southern counties of Schleswig to get justice. Thus, the right of self-determination for the Danish minority was established in 1866; it was implemented in 1920, and for those not lucky in 1920, some satisfaction was achieved only in 1955. This is because while the 1866 paragraph 5 of the Peace of Prague established the legal right to self-determination for the Danish minority, it did not establish international moral consensus. This was only established later at the peace negotiations after World War I. Moreover, the loose ends were also tied through international negotiations even though the 1955 Declarations were issued on the basis of bilateral discussions. These discussions were part of the wish of Germany to become a member of NATO to which it sought the supportive vote of Denmark in the NATO Council. Denmark’s condition was a protection scheme for the part of the national minority in Schleswig which had not achieved self-determination. In Kosovo, the Serbian minority in the enclaves have begun to accept the authority of Kosovo institutions. This is most probably out of necessity and will lead to some



degree of assimilation if not administered correctly.

Aside from the four historical perspectives on process derived from the Schleswig issue, there is the perspective of state behaviour. In the case of Schleswig, the mother state showed restraint in terms of definition of the scope of the right of self-determination when the Danish government refrained from any irredentist articulations and even requested a more limited scope of the referendum than first offered by the Allied Powers in the first draft of the Treaty of Versailles. In the case of Northern Kosovo it would thus have to be established first and foremost whether it is a wish of the Serbian minority and not a wish of the mother state Serbia to have the northern territory returned to Serbia. Although Serbia is funding the institutions in Northern Kosovo, it is not entirely clear why this is happening. Is it driven by irredentism or humanitarian concerns? Thus, it would have to be established that it is a case of the well-being of the Serbian minority. This may be made on the basis of past oppression and the risk of future oppression, including the ability of the current territorial ruler to secure the well-being of the population in the disputed area. Given that the Ahtisaari Plan provides for arguably more self-government than the Serbian minority would achieve if Northern Kosovo was returned to Serbia, greater well-being might be guaranteed by refraining from the right of self-determination and a referendum and remaining within Kosovo sovereignty

This story may seem anachronistic so many years later, and perhaps it is if one contemplates the variables that are now available for minority politics in Europe. Two major variables exist for Northern Kosovo which did not exist in 1920. First, the European minority rights regime provides some outlook for claiming certain rights. Notwithstanding Kosovo's disputed

status, Kosovo is bound by direct applicability of international agreements and instruments through Article 22 of its 2008 Constitution. Thus, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the International Covenant on Civil and Political Rights and its Protocols, The Council of Europe Framework Convention for the Protection of National Minorities, and the Convention on the Elimination of All Forms of Racial Discrimination are applicable in Kosovo. Secondly, Chapter III of the Kosovo Constitution provides for a detailed and extensive minority rights regime in Kosovo and is considered a good practice example of minority protection and minority rights in Europe. The Danish minority in Schleswig did not have such an elaborate regime on which to rely in 1866.

No one is arguing that implementation of the Ahtisaari Plan will be the panacea for the Serbian minority in Kosovo. Experience in other minority regions in Europe can attest to the fact that it takes years to implement even good plans. Like the Danish minority in Schleswig, the German-speaking minority in Northern Italy had to wait 46 years before the settlement between Italy and Austria was fully implemented. The right to autonomy which was established in 1946 in the Gruber-De Gaspari Agreement only saw full implementation in 1992. However, both cases are today considered good practice scenarios precisely because they have provided the minorities with some options for individual choices, i.e. the power to decide on issues considered vital to individual identity and development. Politics which a century ago was seen as leading to assimilation need not do so anymore. Good state behaviour in terms of political will and reciprocity are the key to this.



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Notes

¹ Civil-Military Fusion Centre, "Governance", *Kosovo. A Bi-Monthly News Review*, February 2012, Available at: [https://civicweb.org/medbasin/Holder/Documents/k002CFCKosovoBiMonthlyReview\(29-Feb-2\).pdf](https://civicweb.org/medbasin/Holder/Documents/k002CFCKosovoBiMonthlyReview(29-Feb-2).pdf) (accessed 3 September 2012).

² Ibid.

³ For examples of conflict settlements based on self-determination claims, see Marc Weller, "Settling Self-determination Conflicts: Recent Developments" in the *European Journal of International Law*, Vol. 20, No. 1, pp. 111-165.

⁴ The four criteria of the 1933 Montevideo Convention by which states recognize each other in international law provide that 'The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.' Quoted in Brownlie, Ian, *Principles of Public International Law*, 5th edn. (Oxford: Oxford University Press, 1998), 70.

⁵ For an overview see, Margalit, Avishai and Raz, Joseph, "National Self-Determination" in *Journal of Philosophy*, Vol. 87 (1990), No. 9, pp. 439-461.

⁶ Sovereignty is of course a concept derived from the philosophical notion of sovereignty of the individual through individual autonomy and personal self-determination. This is now understood as the right of self-determination of peoples as enshrined in the UN Charter, Article 1 and in General Assembly Resolution 2625 (1970).

⁷ An example of a non-successful micro-referendum was the vote in certain counties of the Province of Veneto in Italy where the Ladin speaking minority live. The aim was to transfer the counties to the neighbouring Province of Bolzano where language rights for the Ladin minority are protected.

⁸ See: The Avalon Project, Yale Law School Library, "President Woodrow Wilson's Fourteen Points", Available at: http://avalon.law.yale.edu/20th_century/wilson14.asp (accessed 3 September 2012).



⁹ The recap of the year-old conflict in the Danish-German border region is based on the chapter by Rene Rasmussen, “Subjects of Prussia – 1864-1945” in Lars N. Henningsen (ed.), *Sydslesvigs danske historie* (Flensburg: Studiefdelingen, Dansk Centralbibliotek for Sydslesvig, 2009)

¹⁰ Of course, Napoleon III was not entirely without interest in the case. Bismarck had promised him Veneto, if he stayed out of the war between Austria and Prussia.

¹¹ Jackson Preece, Jennifer, *National Minorities and the European Nations-States System* (Oxford: Clarendon Press, 1998)

¹² The so-called Bonn-Copenhagen Declarations were the result of negotiations between Denmark and Germany about Germany’s pending membership of NATO. In return for its vote for Germany, Denmark received assurances about the Danish minority in Schleswig-Holstein.