

RESUME

Daniel TURP

Self-Determination, the Right of Peoples to Decide and the Obligation of States to Negotiate

The fundamental and collective right of self-determination of peoples has been and continues to be claimed by many independence and autonomist movements. This article argues that international practice tends to show that attempts to contain this right to self-determination to the colonial sphere and to refuse non-colonial peoples the benefit of independence or autonomy has not been successful during the last part of the 20th century and the beginning of the 21st century. The major attribute of the right of self-determination is “the right of peoples to decide”, but it comes with an essential corollary, “the obligation for States to negotiate” which was affirmed in the Supreme Court of Canada’s *Reference re Secession of Québec* and that can also be found in article 1 common to the same *International Covenants on Human Right*. The author suggests that peoples affirm their right to self-determination, including their right to freely determine their political status and call upon the States to abide by their obligation to negotiate and to their commitment to promote the realization of the right of self-determination.

Xabier EZEIZABARRENA

**Minority autonomy and the internal aspects
of self-determination in the EU: Brief comparative
approach from the Basque Country**

This paper analyses the contemporary concept of the right to self-determination within the complicated framework of the European Union. In that context, whereas the concept of autonomy is widely assumed in decentralised countries there is also a shifting concept of co-sovereignty in the EU framework through which it might be useful to foster new trends towards self-determination mainly through political negotiation and agreements. The study includes a brief comparative approach analysing the constitutional situation of the Basque Country and its Historical Rights or Titles.

Lothar HÖBELT

**No "Road to Canossa" and no "Death Warrant":
The End of Austria-Hungary Revisited**

It has often been argued that the Sixtus affair in April 1918 turned the Habsburg monarchy into a "vassal state" of Germany, thus in turn prompting the Entente powers to sign Austria-Hungary's "death warrant". However, the facts do not seem to support that theory. After the Russian collapse, the Austrians were far less dependent on Germany than in any of the previous years of the war. In turn, German interest in an ever-closer union with the Habsburg monarchy waned in favour of the possibilities offered by a domination of Russia. The Entente, too, was far from having made up its mind about the fate of Austria-Hungary. All the Western powers did in the summer of 1918 was to provide an incentive for Masaryk and Benes to put the Siberian-based

Czechoslovak Legion at their disposal to fight Lenin. In terms of domestic politics, the political elites of the Slav “nationalities” did not suddenly turn away from the monarchy in a Road to Damascus-like conversion, but tried to make the most of the constraints and options available by following a policy of “two irons in the fire”. It was only after the Central Powers had clearly lost the war that they felt free to opt for independence.

Tibor GLANT

The Inquiry and the Paris Peace Conference: American Preparations for Peace and the Future of Hungary, 1917-1920

During the First World War the Inquiry was established under the leadership of Colonel House, recruited scholar mainly from the East Coast universities, and was charged with the American peace preparatory work. President Wilson’s proposed “scientific peace” was designed to put an end to war once and for all and guarantee peaceful international cooperation. It was to be the key to Wilson’s new world order, but in its final report the Austro-Hungarian study group, which is described in detail in our study, wrote that it was unable to propose justifiable and practically feasible international borders on the territory of the former Habsburg Empire, in the key region between the Germans and the Russians. It also meant that the plan for a “Pax Americana” based on a “scientific peace” had failed before the peace conference was opened. After that, in 1919 the Inquiry’s experts had a mandate of diplomatic and political tasks as well as of intelligence, although they were obviously not prepared for this. In this paper we introduce and evaluate the performance of the Austro-Hungarian study group of the Inquiry and those decisions of the American peace delegation which had Hungarian relevance on the basis of sources that have not

yet been studied. We present the circumstances of the establishment of the Inquiry, its operational proceedings, its personal networks, and the most important members thereof. In addition, we analyze the American plans regarding the future of the Habsburg Monarchy and Hungary as well as their partial implementation in Paris. In conclusion, we offer an evaluation of the performance of the Inquiry, focusing on its Austro-Hungarian study group.

Patrik SZEGHÓ

Yugoslav Unity and the Dissolution of Austria-Hungary

With the revival of the Yugoslav idea at the beginning of the 20th century, the Croatian *novi kurs* (new direction) political movement successfully mobilized the entrepreneur classes in most of the Yugoslav Habsburg territories during the Hungarian constitutional crisis (1905–1906). Forming an alliance of Croatian and Serbian parties, the so-called Croato-Serb Coalition promoted the idea of civic equality among Yugoslavs and overtly supported the opponents of Dualism in Hungary with the prospect of a revision on the Croatian-Hungarian Sub-Compromise (*Nagodba*).

As it was soon revealed, after the 30-year rule of the Liberal Party the promising regime change in Hungary did not fulfil any long-awaited expectations among the Southern Slavs. In lieu of solving social and national discontent the Independence Party and its grand electoral coalition (the Liberal Party's successors in power) turned to nationalist rhetoric to deter attention from their unfulfilled but aspiring electoral promises by overexaggerating the peril the non-Magyars posed to the Hungarian Kingdom. Disillusioned with Austria-Hungary, the intellectual fathers of the *novi kurs* then looked for the Serbian Kingdom as a possible Piedmont for the Yugoslavs, which could have liberated and unified all the Southern Slav territories.

At the outbreak of the First World War, some of the Southern Slav political leaders left the Habsburg Empire and endeavoured to convince the leaders of the Entente Powers to support the creation of a united Yugoslav state. Their political mission had been seemingly whole-heartedly supported by the Serbian Kingdom, which contributed financial assistance to the creation of the Yugoslav Committee, a London-based wartime Yugoslav émigré organization.

During the course of the First World War, of all Habsburg nationalities the case and aspirations of the Southern Slavs occupied the most precarious and seemingly hopeless position. In an age when national self-determination was not universally accepted as the basis of state frontiers and peace-making, the crusade for the creation of an independent and unified Yugoslav state at the expense of the Habsburg Empire's dismemberment seemed to be a lost cause. Besides the Entente high officials' wish to reform and preserve the Habsburg Empire as a future counterpoise to Germany in the post-bellum epoch, territories inhabited by Yugoslavs became the object of bargaining for Bulgaria, Italy and Romania's entry into the war. Meanwhile, the disagreements between the Yugoslav Committee and the Serbian Cabinet on the method of unification and the future form of government antagonized the international campaign which intended to promote the Yugoslav idea as the embodiment of Southern Slav national self-determination. Moreover, this complicated the process of Allied recognition of the future Yugoslav state at the end of The Great War.

This study aims to investigate the Southern Slav question and the path to Yugoslav unification in the last decades of Habsburg Empire.

László KOMÁROMI

The Question of Territorial Plebiscites after the first World War with Special Regard to Hungary

The idea to decide territorial questions by means of plebiscite first played a significant role during the French Revolution of 1789. It obtained practical importance in the course of the Italian unification process and seemed to decline in the last decades of the 19th century. However, during the First World War, partly due to President Wilson's advocacy of the principle of national self-determination, the idea was again referred to quite frequently as a desirable means for post-war arrangement. It became a matter of common knowledge and was planned to be a widely applied and accepted solution for territorial disputes.

Owing to this, in relation to the borders between Germany and its neighbouring countries, namely Denmark, Poland, France and Belgium, the Paris Peace Conference provided for plebiscites in Schleswig, Allenstein and Marienwerder (1920), Upper Silesia (1921), the Saar territory (1935) and prescribed unilateral popular consultations in Eupen and Malmédy (1920). As for the Austrian-Yugoslavian border, a plebiscite was held in the Klagenfurt Basin (1920). Direct popular votes were proposed by the victorious Great Powers or by other concerned parties in other territorial issues as well, these suggestions were, however, not realized, either because they would have – in most cases – opposed the interests of the winners, or the issue was related to the border between victorious powers and the parties could not reach an agreement on holding a plebiscite.

As a consequence, not only was the dual state of Austria-Hungary dissolved; but Hungary was also forced to cede approximately two-thirds of its historical territory. It is not surprising that the Hungarian governments repeatedly referred to the principle of national self-determination and the peace delegation of Hungary also requested plebiscites in every area planned to be detached by the Peace Conference. The reference to national sovereignty was, however, effaced by

other arguments like the historical right of Hungary to its territories and the economic and geographic unity of the Carpathian Basin, which underlined the insistence on the territorial integrity of the country. Finally, neither the historic, economic and geographic arguments were accepted nor the requests for plebiscites were fulfilled. The only territorial plebiscite was held due to a separate agreement between the Austrian and Hungarian governments on the future of the city of Sopron and its environs (1921). This region remained finally with Hungary; all other parts of Burgenland became part of Austria.

István SZABÓ

The Impact of Trianon on Public Law Traditions

The study examines the impact of Hungary's post-Great War losses of territory on public law traditions. The loss of war was followed by a revolution aiming to break with the past. This break was primarily motivated by hope for more favourable peace conditions. However, this hope was soon shattered and the territorial breakup of the country sealed by the Peace Treaty of Trianon led to a revival of traditions. Its most marked example was the definition of the system of government, where the *de facto* and *de jure* situation was permanently separated. As a result of the royal throne being unfilled, republican elements dominated the operation of government, that is, the country was a *de facto* republic, yet the national assembly defined the system of government as a kingdom for reasons of holding on to traditions.

Barna BODÓ

Between Yesterday and Tomorrow – What Happened to the Memorials in Banat after 1918

Upon changing systems or power, it is a recurring question what to do with the memorials (statues, plaques, monuments) that were brought to life in an earlier era and symbolise the values and political purposes of that period. In this particular case: what to do with the memorials connected to the Hungarian history and culture in Transylvania, Romania. In lack of any bilateral or international agreement or forum regulating it, Romania has the right to answer this question in her own way.

It is a crucial question for the Hungarian people living in Transylvania how the new power is going to handle the former memorials symbolising national or local values after Trianon. Although there has been some research, no exhaustive analysis has been carried out in Banat, Romania, which would have included all the memorials that have fallen prey to the history, and no comparative analysis has been carried out which would have tracked the memorials of more local ethnics. As Banat does not exist as an administrative region but is still remembered by the locals as a historic region, moreover, the current administrative division does not represent the exact location of the historic region, thus, in order to insist on the frames, I have researched the story of the memorials in three counties: Arad, Timis and Caras-Severin. We are not able to cite a concrete number owing to the fact that we are not aware of each and every lost / disappeared memorial, we presume that nearly a hundred statues, plaques and other memorials have fallen faded in the history, most of which were related to Hungary, but some of them were German/Swabish and a small portion of them was connected to Romania. No Serbian-related memorial has been reported to have disappeared. My collection mentions 85 of these memorials. As for the destroyed Hungarian memorials, some of them have been reinstalled over the last three decades.

Gábor KARDOS

**Trianon and International Law: Arguments
of Hungarian Scholars of International Law against
the Treaty of Trianon**

The stringent peace treaties and the confident moral superiority of the victors led to the strong dictate of the peace treaties signed in the palaces in the vicinity of Paris in 1920: land acquisition, economic and security requirements were met to a much greater extent than in previous post-war settlements. The Hungarian legal literature in international law between the two world wars devoted intense attention to potential arguments against the Treaty of Trianon. In connection with the anniversary, this short article draws attention to the arguments of some prominent Hungarian international lawyers without seeking a complete picture in the presentation of the Hungarian legal literature in the matter. The main arguments were as follows: after the end of the First World War, the Entente Powers used illegal coercion against Hungary, crossing the demarcation lines designated by the truce. This article refers to the French Prime Minister Alexandre Millerand's letter of 6 May 1920, which deceived the Hungarian Government and led them to sign the Treaty of Trianon.

Laura GYENEY - Ágoston KOROM

**Restitution for Immovable Property: the Beneš-Decrees
from the Perspective of European Union Law - the Legal
Status of Claimants for Confiscations prior to 1948
on the Grounds of the Principle of *lex specialis***

This article examines the Slovak Act NO. 503/2003 Coll. on the Restitution of Agricultural Property, which also concerns certain provisions

of the Beneš Decrees, and the administrative and judicial practice interpreting it. As is well known, Member States are not obligated to provide restitution for property taken without compensation before their accession to the EU. However, if restitution measures are introduced after accession, they must comply with the criteria of the free movement of capital, such as the principle of non-discrimination on grounds of nationality at its core.

In view of the discriminatory clauses of the Slovak Restitution Act, which make restitution bound to Slovak nationality and permanent residence in Slovakia, the European Commission has recognised that the law in question infringes EU law for the period following the accession to the EU of the Member State concerned. Nevertheless, it did not wish to launch an infringement procedure *ex officio* at the request of more than one thousand complainants. It justified its decision, inter alia, on the grounds that the persons concerned were able to assert their claims under the EU legal order before the Slovak courts.

In our study, we try to answer the question as to whether any enforcement of the above property could affect the properties taken away as a result of the Beneš Decrees, or whether it could only cover properties confiscated by law during the period called “the decisive period” such as the nationalisations after February 1948. In our analysis, we call for a little-known and rarely applied general principle of EU law, namely the *lex specialis derogat legi generali* principle.