

***SELF – DETERMINATION, TERRITORIAL INTEGRITY  
AND INTERNATIONAL STABILITY: THE CASE OF  
YUGOSLAVIA***

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## LIST OF ACRONYMS

<b>ASHSH</b>	: Akademia e Shkencave te Shqiperise, Tirane
<b>AVNOJ</b>	: Antifasisticko Vece Narodnog Oslobodenja Jugoslavije
<b>BADINTER</b>	: Robert Badinter
<b>CET</b>	: Central European Time
<b>CSCE</b>	: Conference on Security and Cooperation in Europe
<b>ELIAMEP</b>	: The Hellenic Foundation for Defence and Foreign Policy
<b>EPC</b>	: European Peace Conference
<b>FNRJ</b>	: Federativna Narodna Republika Jugoslviije
<b>FRG</b>	: Federal Republic of Germany
<b>FRY</b>	: Federal Republic of Yugoslavia (Serbia and Montenegro)
<b>GAOR</b>	: General Assembly Resolution
<b>I.C.J.</b>	: International Court of Justice
<b>ICFY</b>	: International Conference on Former Yugoslavia
<b>IH</b>	: Instituti I Historise , Prishtine
<b>ILM</b>	: International Legal Materials
<b>NATO</b>	: North Atlantic Treaty Organization
<b>NGO</b>	: Nongovernmental Organizations
<b>OAU</b>	: Organization Of African Unity
<b>OSCE</b>	: Organization on Security and Cooperation in Europe
<b>PLAN Z4</b>	: International Plan Concerning the Croatian Serbs
<b>RADIO SLOBODNA EVROPA</b>	: Radio Free Europe
<b>RFE/RL NEWSLINE</b>	: Radio Free Europe/ Radio Liberty
<b>RSFJ</b>	: Republika Socialiste Federative e Jugoslavise
<b>SANU</b>	: Srpska Akademija Nauka i Umetnosti (Beograd)
<b>SFRJ</b>	: Socialisticka Federativna Republika Jugoslavije
<b>SHS</b>	: Srba, Hrvata i Slovenaca
<b>TRAVAUX PREPARATOIRS</b>	: Working Papers
<b>UN Doc.</b>	: United Nations Document
<b>UNTS</b>	: United Nations Treaty Series
<b>UN CHARTER</b>	: United Nations Charter
<b>UN</b>	: United Nations
<b>URSS</b>	: Union des Republiques Socialistes Sovietiques
<b>USTAV SSSR</b>	: Ustav Saveza Sovjetskih Socialistickih Republika
<b>USSR</b>	: Union of the Socialist Soviet Republics
<b>YPA</b>	: Yugoslav Peoples' Army

## Abstract

This study analyzes the issue of self-determination, territorial integrity and international stability, within the Yugoslav context. However, it is not confined to the Yugoslav case of self-determination alone. The study stretches over other several cases of self-determination and analyzes the historical background of the phenomenon itself. The argument of this dissertation in terms of the history of self-determination, is that the phenomenon has gradually crystallized over the last two centuries. In addition, self-determination is viewed in connection with two other issues: territorial integrity and international stability. In fact, these two segments have been and remain intrinsic to every discussion of self-determination.

The conclusion of this study is that the Yugoslav case of self-determination should not be singled out from other similar cases of its time. This covers not only the period following the end of the Cold War, but also the period prior to the South Slav unification of 1918 and thereafter. In all cases, the Yugoslav case reflects the features of self-determination as they appeared at the times under discussion. Evidence of this is best seen from the last period of the Yugoslav self-determination after the Cold War. In this period, Yugoslav self-determination was nothing but a part of the wider picture of self-determination covering all former Communist Federations (Soviet Union and Czechoslovakia). This further supports the argument that the Yugoslav case did not set any precedent in terms of self-determination that could be applicable in the future: self-determination as a principle has not been altered. It remains a political principle with a moral value only, without any legally binding effect. The relevance of this principle for the future rests in the fact that it has further crystallized one of the aspects of self-determination, that is, the principle of *uti possidetis*. The Yugoslav case has shown that the fixed territorial borders, as a rule of international law and relations that limits the territorial scope of self-determination, is a rule of utmost acceptance.

The Yugoslav case of self-determination, however, has some unique features. It concerns the nature of nationalism of its constituent nations, most notably the Serbs. The interpretation of self-determination put forth by these nations was unique as compared to the whole Communist world that collapsed after the Cold War. Namely, they perceived self-determination in pure ethnic terms, thus excluding other nations from being beneficiaries of the same right. This perception was not without practical implications. The realization of pure ethnic self-determination resulted in ethnic cleansing of non-Serbs and the destruction of other cultures within the territory of former Yugoslavia. In addition to stopping the war in the territories of former Yugoslavia, efforts of the international community have also been focused on preventing the implementation of ethnic self-determination. The issue of human rights, the rule of law and democracy take prominence in the efforts of the international community in these regards. In some cases, these efforts have been combined with the use of force and sanctions against some of the Yugoslav actors.

## ÖZET

Bu çalışma, kendi kaderini tayin etme, toprak bütünlüğü ve uluslararası istikrar gibi konuları Yugoslavya bağlamında incelemektedir. Ancak, çalışmanın içeriği yalnızca Yugoslavya ile sınırlı olmayıp diğer kendi kaderini tayin etme konulu olayları da kapsamına almakta ve olgunun tarihi altyapısını analiz etmektedir. Kendi kaderini tayin etme bağlamında bu tezin savı, adı geçen olgunun son iki yüzyılda giderek daha da belirginleşmiş olmasıdır. Kendi kaderini tayin etme iki diğer konuyla bağlantılı olarak ele alınmaktadır: toprak bütünlüğü ve uluslararası istikrar. Hatta bu iki olgu konuyla ilgili her tartışmanın özünü oluşturmuş ve oluşturmaya da devam etmektedir.

Bu çalışmanın sonucu, Yugoslavya bağlamındaki kendi kaderini tayin etme olgusunun, zamanın benzer kendi kaderini tayin etme örneklerinden bağımsız olarak ele alınmaması gerektiğidir. Bu süreç yalnızca Soğuk Savaş bitimini takip eden dönemi değil, aynı zamanda 1918 öncesi Güney Slav birleşmesini ve sonrasını da kapsamına almaktadır. Yugoslav örneği bütün zaman dilimlerinde, ele alınan bu süreçlerde gözlemlendiği şekilde kendi kaderini tayin etme olgusunun özelliklerini yansıtmaktadır. Bunun en iyi kanıtı Soğuk Savaş sonrasında Yugoslavya'da son süreç olarak ortaya çıkan kendi kaderini tayin etme anlayışıdır. Bu dönemde Yugoslavya'da kendi kaderini tayin etme olgusu bütün eski Komünist Federasyonları (Sovyetler Birliği'ni ve Çekoslovakya'yı) kapsayan geniş bir tablonun bir parçası olmaktan ibaretti. Bu da, Yugoslav örneğinin kendi kaderini tayin etme bağlamında, gelecekte uygulanabilirliği olabilecek bir emsal teşkil etmediği savını daha da güçlendirmektedir: bir ilke olarak değerlendirildiğinde kendi kaderini tayin etme herhangi bir değişikliğe uğramamıştır. Yasal olarak bağlayıcı bir etkisi olmamakla birlikte, yalnızca ahlaki boyutla, siyasi bir ilke olarak varlığını sürdürmektedir. Bu ilkenin gelecekle olan bağlantısı, ilkenin kendi dahilinde olan bir boyutu daha da belirginleştirmiş olması gerçeğinde yatmaktadır: *uti possidetis* ilkesi. Yugoslav örneği, bir uluslararası hukuk ve uluslararası ilişkiler kuralı olan, ayrıca kendi kaderini tayin etme olgusunun topraksal boyutunu sınırlayan, "değişmez toprak bütünlüğü"nü kabul gören bir kural olduğunu göstermiştir.

Ancak, Yugoslavya örneğinde gözlenen kendi kaderini tayin etme olgusunun kendine özgü birtakım özellikleri bulunmaktadır. Bu da Yugoslavya'daki kurucu ulusların, özellikle Sırp'ların milliyetçiliğinin doğasıyla ilintilidir. Bu ulusların kendi kaderini tayin etme olgusuna yükledikleri anlam, Soğuk Savaş sonrasında dağılan tüm komünist ülkelerle kıyaslandığında, kendine özgü özellikler sergilemektedir. Bu uluslar, kendi kaderini tayin etme olgusunu yalnızca etnik açıdan ele almışlar, böylelikle, diğer ulusların aynı haklardan fayda sağlamalarını engellemişlerdir. Bu algılama biçimi davranışa dönüşmüş, etnik olarak kendi kaderini tayin etme olgusunun hayata geçirilmesi eski Yugoslavya topraklarındaki Sırp olmayan nüfusların etnik temizliği ve diğer kültürlerin de zarar görmesi sonucunu doğurmuştur. Eski Yugoslavya topraklarındaki savaşı durdurmaya ek olarak, uluslararası toplumun çabaları, etnik olarak yorumlanan kendi kaderini tayin etme olgusunun uygulanmasını önlemek üzerine odaklanmıştır. Bu anlamda, insan hakları, hukukun üstünlüğü ve demokrasi uluslararası toplumun çabalarında önemli yer tutmaktadır. Bazı örneklerde ise bu çabalara güç kullanımı ve bazı Yugoslav unsurlara uygulanan yaptırımlar eklenmiştir.

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## CHAPTER I:

### INTRODUCTION

In the years following the Cold War, self-determination has been a frequently used concept. It has been associated with both ethnic conflicts and with wars causing large-scale human suffering and tragedy. In addition to this, self-determination has remained connected to two other concepts: territorial integrity and international stability. Together with these, the concept of self-determination forms the core of this dissertation.

The very aim of this work is to describe and explain the issue of self-determination, both as a right and as a political and moral principle, as well as its relationship with the concepts of territorial integrity and international stability. In line with this, the significance of this study lies in the fact that, although specifically related to the Yugoslav case of self-determination, its results are equally applicable to other cases of self-determination. The existing literature on self-determination, it is our hope, will be enriched by this work whose aim is to explain that the Yugoslav case has confirmed and added to the strength of the prevailing international norm on self-determination, its scope and practical implications.

There are two reasons that render the Yugoslav case of self-determination equally applicable to other cases and do not confine the results of this study to this single case. One is that the Yugoslav case has, since its appearance as an international problem, been very closely connected to the Soviet Union case, both in political and legal terms. In fact, the approach of the international community towards the Yugoslav self-determination has been applied, *mutatis mutandis*, to the Soviet Union. For this reason, we do not refer to the Soviet case very often unless we need to show, through examples, the identical features for both. The second reason for the narrow interpretation of the Yugoslav case relates to the very phenomenon of self-determination. This phenomenon has, throughout its development, manifested some general

features. This is obvious when we look at the scope of self-determination as well as at the key actors who have played an important role in the development of this phenomenon. These are the main factors behind the decision to devote two chapters to the historical development of self-determination and its relationship to the concepts of territorial integrity and international stability.

Entitled “The Fundamental Concepts”, the second chapter explains the core concepts related to self-determination from a historical perspective. This is done with the hope that the third chapter, “Self-Determination: From the Peace of Westphalia (1648) to the End of the Cold War”, would naturally fit into the overall treatment of the phenomenon of self-determination and its ramifications, the Yugoslav case included, which can be seen throughout the four sections of the second chapter. Thus, in the “Content and Function of the Uti Possidetis Principle” (section one of the second chapter) we try to give an overview as to the development of this important rule that sets out the territorial scope of self-determination. Section two of this chapter, “the Concept of International Stability”, although theoretical in nature, nevertheless deals with the issue from a historical perspective, so as to enable us to see the obsolescence of some of the elements regarding the definition of the concept of international stability, whereas the third section deals with the Cold War. Needless to say, this is a part of our common past. However, our approach tries to connect the concept of the Cold War with that of self-determination. This is mainly due to the fact that the case we are studying is closely connected to the end of the Cold War. In essence, in this section we try to explain the relationship between the violent nature of the Yugoslav and other post-Cold War self-determination with the collapse of Communism and the end of the Cold War. Such an approach paves the way for the closure of the second chapter of this work. This is achieved through a lengthy discussion of the various types of self-determination existing at the present. Among them we single out two forms: territorial and ethnic self-determination. A historical overview of these forms of self-determination is given as well.

The third chapter, as noted above, is devoted to the development of self-determination since the Peace of Westphalia. The first section discusses the

dynastic legitimacy as the first initial form of self-determination and is followed by the balance of power system and the role it played in the development of self-determination (second section). However, it should be noted that the existence of self-determination was not recognized as such. The so-called principle of nationality was only one of the historical forms of self-determination, as was the principle of dynastic legitimacy. Only within the Versailles system after World War One did the existence of self-determination become a reality. We discuss this in the third section of this chapter entitled, "The Principal Manifestations of Self-Determination Between the Two Wars (1918-1939)". Under this heading fall the Wilsonian and Lenin conceptions on self-determination. The views of these two statesmen, together with the international practice developed in the Aaland Islands case (also discussed under this heading), have been a decisive factor in the development of self-determination within the Versailles system and beyond. In this period emerged two basic types of self-determination, one Communist and the other Western. These types were to dominate international relations in the years following the Second World War. It is these two forms that served as a basis for the birth of colonial self-determination, an issue to be discussed at length in section 4.1. of the present chapter. This does not mean that these two forms of self-determination that developed at the international level have seen a harmonious coexistence. There was a clash between them. Throughout the Cold War, however, considerable attempts were made to render feasible the coexistence of these two forms of self-determination. These efforts culminated in the Conference on Security and Cooperation in Europe, CSCE (now OSCE), held in Helsinki in 1975. This is an issue we discuss in subsection 4.2. of this chapter and bears the title "The Conference on Security and Cooperation in Europe: Its Background and Beyond". Throughout this chapter we argue that both forms of self-determination, Communist and Western alike, have contributed to a unified manifestation of the phenomenon of self-determination. This unified manifestation is expressed in the self-determination based on territory. The other form, based on ethnicity, is also discussed in the last paragraphs of this chapter.

In the fourth chapter we elaborate about Yugoslav self-determination since its emergence in the 19th century. The crucial stage in the development of Yugoslav self-determination is the creation of the Yugoslav state in 1918. In the second section, we attempt to answer the main question as to whether its creation in 1918 represented the embodiment of the principle of self-determination or rather the hegemony of one nation. The following section covers Yugoslav self-determination as developed during the Second World War. This is then followed by the section regarding Communist Yugoslavia and the final dissolution of the Yugoslav state in 1992. The issue concerning the succession of the former Yugoslavia is analyzed in the last section of this chapter. This is done not so much for the sake of discussion about the legal niceties in the field of state succession but rather to demonstrate that Serbia's insistence on its state continuity with former Yugoslavia is nothing but a continuation of the centuries-old project of Greater Serbia. This, in fact, answers the question as to whether this Serbian view has been the main factor that has led to the dissolution of the first common state of the South Slavs (apart from the Bulgarians). It is in the next chapter that we turn to the issue of the Yugoslav dissolution.

Chapter five, nevertheless, is not reserved solely for the issue of Yugoslavia's dissolution. It is also a place for the discussion of the forms of self-determination that emerged within the territory of the former Yugoslavia. In this context, in the first section we try to distinguish between the "Western-type" of self-determination that developed in the north of Yugoslavia (Slovenia and Croatia) and the other "non-Western" self-determination forms of the south. Here we also argue that Bosnia-Herzegovina and Macedonia were inclined more towards the Western-type of self-determination. However, we argue as well that these republics made this choice as a result of having a precarious position during Yugoslavia's existence. Following this treatment, in the next section we turn again to Serbia's war aims. This is done in order to find a potential causal relationship between Serbia's war aims and Yugoslavia's violent break up in 1992. Serbian aims were not confined to Serbia proper. Rather they extended to other former Yugoslav republics, an issue to which we devote section four of this



chapter. The crux of the problem here is to demonstrate that the Serbs living outside Serbia proper, especially in Bosnia-Herzegovina and Croatia, misinterpreted the internationally recognized criteria for international statehood. What have been the consequences of this misinterpretation and how has the international community reacted. We try to answer these questions in section five of chapter five, which relates specifically to the Kosova issue.

The penultimate chapter of this dissertation is reserved for discussions about the international community's efforts to prevent the illegal and illegitimate ways of the implementation of self-determination within the territory of the former Yugoslavia. This chapter comprises our elaborations regarding the legal and political criteria for international statehood. These criteria were put together by the international community, mainly by the member states of the European Community (now the European Union), and served as a guide for the judgment over the legal and legitimate ways to be pursued in the process of realization of self-determination within the territory of the former Yugoslavia (and other Communist federations, the Soviet Union and Czechoslovakia). These issues are dealt with in sections one to three of the present chapter. The practical implementation of self-determination, however, represents a different problem. Our past history has shown that in most cases this process was violent and, not often, pursued through illegitimate methods. The Yugoslav case is no exception to this. Nevertheless, the international community has always had at its disposal some means to counteract these illegitimate ways, pursued by various actors in their quest for self-determination. So it did in the Yugoslav case. The means that the international community has had at its disposal to counteract these illegal and illegitimate ways is discussed in the last paragraph of this chapter. It treats both the coercive and non-coercive means used by the international community in its dealings with the Yugoslav self-determination actors.

The final chapter of this dissertation is devoted to our conclusions. In this part we draw some conclusions as to the overall situation in the field of self-determination and the impact the Yugoslav case might have had on it. The main

conclusion of this dissertation attempts to answer one single question: did the Yugoslav case set up any precedent in the realm of self-determination?

This would lack clarity if we did not say something about the method used in this work. In this context, the theoretical framework that will inform the analysis of this study is the “English School” of International Relations, which reflects a Grotian and rationalist approach. This is an approach that recognizes the role played by shared norms, rules, values and institutions in international relations but that orders them in priority vis-à-vis international order and stability. The latter, it is assumed by the majority of writers within this approach, takes precedence. Translated in concrete terms of the subject we study, this means that shared norms, rules, values, and institutions pertaining to self-determination are fruitfully reviewed from the above theoretical standpoint. In addition to this, the “English School” has been the IR approach that brought into the scholarly agenda the issues of colonialism and juridical statehood, wherefrom stems the *uti possidetis* principle, which is one of the core concepts in this study.

To achieve the above we have made use of the all relevant material in English, Serbian/Croatian, Italian, French, and Albanian regarding the Yugoslav case and beyond, although they are related mostly to the internal dynamics and nationalism within the Yugoslav society. Moreover, this material often lacks theoretical and legal perspective, a gap which this work aims to fill. To this end, primary sources about self-determination, territorial integrity and international stability as perceived and applied in the former Yugoslavia, like the opinions of the Badinter Commission (1991-1993) and the documents of the two international conferences on Yugoslavia, have been utilized extensively.

## CHAPTER II:

### FUNDAMENTAL CONCEPTS

#### ***1. The Content and Function of the Uti Possidetis Principle***

The content and the function of *uti possidetis* as it stands at the present, refers to inviolability of previous administrative borders, both within and outside the colonial context. This means that *uti possidetis* does not cover the frontiers of the existing states, although the impact of this principle remains practically the same for both situations. For a better understanding of today's *uti possidetis*, an overview of the historical development and transformation of the principle is needed. This overview starts with the Medieval times,<sup>1</sup> Latin American independence of the 19<sup>th</sup> century, nationalist movements in the Balkans and the two world wars, ending up with the process of decolonization in the 1960s. The application of this principle after the end of Cold War will be discussed in the sixth chapter of this study, with specific reference to the former Yugoslavia.

The existence of two forms of *uti possidetis* best reflects the historical development of the principle. One form is called *uti possidetis juris*, while the other is *uti possidetis de facto*<sup>2</sup>. The first form is applicable at present, while the latter belongs to the past history and its origin is traceable as far back as the Medieval period. In fact, the latter form belongs to the period when Roman law was transmitted into the realm of interstate relations. The division of territories in these times had been based on an analogy with private property : Pope

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<sup>1</sup> In the realm of interstate relations, - the area of military operations-, the term *uti possidetis* was first used by Richelieu. As an architect of the *raison d'etat*, he proposed that an armistice be concluded along the *uti possidetis* line, in a time when the Congress of Cologne was still meeting. If accepted, this would have meant that the military of the warring parties had to have stayed in the frontlines as of the time of the armistice. The proposal had been made in an apparent hope to paving the way for calling to order the Congress of Westphalia, held between 1644-1648. See, Kenneth Colegrove, "Diplomatic Procedure Preliminary to the Congress of Westphalia". *American Journal of International Law* Vol. 13 No. 3 (July, 1919) pp. 450-482 at 475.

<sup>2</sup> Steven Ratner, "Drawing a Better Line: *Uti Possidetis* and the Borders of New States". *American Journal of International Law* Vol. 90 No. 4 (October 1996) pp. 590-624 at 594-595.

Alexander VI was well known for his issuance of bulls (deeds) naming the title holder of a given territory (usually various Christian rulers of the time). In some cases, the title allocated in this way stretched over vast territories of a continent, sometimes covering areas in Europe.<sup>3</sup>

In Roman Law, from where the principle was taken, there existed a quite different and opposite meaning of the *uti possidetis* principle than in the realm of international relations. The *Pretorian Edicts* of Republican (Classical) Rome, regulating the issue of private property, made a distinction between the possession of things and the ownership over them. Possession and ownership in Roman Law were considered as two different and separate issues. When the possession of things was gained in good faith, that is, not by use of force or by fraudulent means, the Roman magistrates applied the famous rule "*uti possidetis, ita possidetis*" (as you possess, so you possess) . This rule did not allow for any judgement as to the ownership: the issue of ownership over things was to be decided through the regular procedure before the courts of law.<sup>4</sup> The gradual evolution of *uti possidetis* from private to international, as well as its transformation into a rule of wider application, has gone in two directions. One area of impact dealt with the practical implications of the application of *uti possidetis* (the transformation of *uti possidetis* from a rule pertaining to the claims over private property into that concerning state or territorial sovereignty), while the other had to do with the possible status of a situation coming under the domain of *uti possidetis* (the transformation of possession as a factual and provisional situation over things in private law into a permanent legal status of sovereign rights over certain state territory). This gradual transformation of *uti possidetis* should not be surprising if the timing of this process is taken into

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<sup>3</sup> Jesse S. Reves, "International Boundaries". *American Journal of International Law*, Vol. 38 No. 4 (October 1944) pp. 533-545 at 539-541; Frederich von der Heydte, "Discovery, Symbolic Annexation and Virtual Effectiveness in International Law". *American Journal of International Law* Vol. 29, Issue 3 (July 1935) pp.448-471 at 452.

<sup>4</sup> For the Roman Law, see, in W. Michael Reisman, "Protecting Indigenous Rights in International Adjudication". *American Journal of International Law* Vol. 89 Issue 2 (April 1995) pp. 350-362, at 352, footnotes 8 and 9. In this study, the author gives an overview of a theory founded by Moore confirming that *uti possidetis* had been taken into the realm of interstate relations from the Roman (private) Law by the late Medieval lawyers.

account. The process developed at a time when the use of unlimited force between states with the view of gaining territories was not considered as illegal and illegitimate.<sup>5</sup> This state of affairs lasted until the Second World War.

*Uti possidetis juris*, as it stands at present, has been the result of development of two other principles: 1) self-determination and 2) non-interference in internal affairs of other countries. Both of these have their origin in Latin America at the beginning of the 19<sup>th</sup> century. The birth of *uti possidetis* and its first formal application in Latin America reflects the nature of the relations among Europeans themselves, on one side, and between them and the Latin American countries following the Napoleonic Wars (1815), on the other. Europe continuously interfered with the affairs of the Latin American countries in the search for *terra nullius* (no-man's land), later to become colonies.<sup>6</sup> This interference was especially obvious following the Latin American independence (April 1810 – December 1824). Thereafter, the Europeans transferred the balance of power practice into Latin America.<sup>7</sup> In order to divert frequent European interference, the Latin American leaders, after independence, accepted the *uti possidetis juris* principle in their mutual relationships (except Brazil until recent years). So, the territorial delimitation of the new sovereignties was based on the *uti possidetis juris* form, not *uti possidetis de facto*. This meant

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<sup>5</sup> Frantz Despagne, *Cours de Droit International* (Paris: Sirey, 1910) pp. 117-132; 575; 579-584; Thomas Joseph Lawrence, *Les Principes de Droit International* (Oxford: Imprimerie de la Universite, 1920) pp. 766; Thomas Baty, "Can an Anarchy be a State?" *American Journal of International Law* Vol. 28 Issue 3 (July 1934) pp. 444-455 at 444, 446, 454; Karl Strupp, "Les Regles General du Droit de la Paix". *Recueil de Cours de l'Academie de Droit International*, Tome 47 (I), 1934 pp. 473-474; Lauterpacht (ed.), *Oppenheim's International Law*, Vol. II, Seventh Edition (London: Longman, 1952) pp. 598-599; Sarah Joseph, "Resolving Conflicting Claims of Territorial Sovereignty and External Self-Determination". Part 1 *The International Journal of Human Rights* Vol. 3 No. 1 (Spring 1999) pp. 40-61 at 49-50.

<sup>6</sup> A theory enunciated by the well-known lawyer *Emerich de Vattel*, set out three major epochs of *terra nullius* corresponding to our analysis of *uti possidetis*. These epochs can be briefly summarised as the sixteenth century Roman Law concept, when *terra nullius* referred to all non-Roman territory; the seventeenth and eighteenth tenet, where non-Christian territory was considered *terra nullius*; and finally the nineteenth century claim that territory not belonging to a 'civilised state' would be considered *terra nullius*. As cited by Joshua Castellino, "Territoriality and Identity in International Law: The Struggle for Self-Determination in the Western Sahara", *Millennium: Journal of International Studies* Vol. 28 No. 2 (1999), pp. 523-551 at 547. The case of Latin America belongs to first category of *terra nullius*, while the rest of colonies fall under the heading of 'territory not belonging to civilised state'.

that the jurisdictions of these countries were confined along the former colonial administrative borders and there were no *terra nullius* in that part of the world. In this regard, the principle of *uti possidetis* preceded by a decade the *Monroe Doctrine*, proclaimed by the U.S. President in 1823, concerning the non-interference in internal affairs of the American continent.<sup>8</sup> At the same time, the acceptance of *possidetis juris uti* by Latin American states was designed to prevent further conflicts over borders among these countries. This issue is closely connected with the previous one for the Europeans usually used the border complexities and disputes in Latin America as an excuse to interfere and pit the local leaders against each other. At the end, neither European interference nor the conflicts over borders ceased, especially during the first decades of the 19<sup>th</sup> century.<sup>9</sup> There is no Latin American country, with the exception of Argentina's armed conflict with Great Britain over the Falkland Islands in 1982, that has been immune from conflicts over borders. At the same time, to prevent frequent European interference within the region, Latin American states convened three

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<sup>7</sup> Norman Rich, *Great Power Diplomacy: 1814-1914*. (New York: McGraw-Hill, Inc. 1992) pp.28-44; 167-184; 347-364.

<sup>8</sup> Paul de Lapradelle, *La Frontiere. Etude de Droit International* (Paris: Imprimerie du Centre Issoudun, 1928) pp. 76-87; George Schwarzenberger, "Title to Territory: Response to a Challenge". *American Journal of International Law* Vol. 51 Issue 2 (April 1957) pp. 308-324 at 320.

<sup>9</sup> The last contest over borders, which was settled in 1992, has been between El Salvador and Honduras, with Nicaragua intervening. For an overall account of the history of conflicts over borders in the region of Latin America since the 19<sup>th</sup> century, see, Alejandro Alvarez, "Latin America and International Law". *American Journal of International Law* Vol. 3 Issue 2 (April 1909) pp. 269-353; James Brown Scott, "The Swiss Decision in the Boundary Dispute Between Colombia and Venezuela". *American Journal of International Law* Vol. 16 Issue 3 (July 1922) pp. 428-431; Chandler P. Anderson, "The Costa Rica-Panama Boundary Dispute", *American Journal of International Law* Vol. 15 Issue 2 (April 1921) pp. 236-240; L.H. Woolsey, "The Bolivia - Paraguay Dispute". *American Journal of International Law* Vol. 24 Issue 1 (January 1930) pp. 573-577; L.H. Woolsey, "Boundary Disputes in Latin America". *American Journal of International Law* Vol. 25 Issue 2 (April 1931) pp.324-333; F.C. Fisher, "The Arbitration of the Guatemalan-Honduras Boundary Dispute". *American Journal of International Law* Vol. 27 Issue 3 (July 1933) pp. 403-427; L.H. Woolsey, "The Equator-Peru Boundary Controversy". *American Journal of International Law* Vol. 31 Issue 1 (January 1937) pp. 97-100; Josef L. Kunz, "Guatemala vs. Great Britain: In Re Belice", *American Journal of International Law* Vol. 40 Issue 2 (April 1946) pp. 383-390; C.G. Fenwick, "The Honduras - Nicaragua Boundary Dispute". *American Journal of International Law* Vol. 51 Issue 4 (October 1957) pp. 761-765; Georg Maier, "The Boundary Dispute between Ecuador and Peru". *American Journal of International Law* Vol. 63 Issue 1 (January 1969) pp. 28-46; Alan J. Day (ed.), *Border and Territorial Disputes*. (Detroit: Gale Research Company, 1982) pp. 332-388; Gideon Rottem, "Land, Island and Maritime Frontier Dispute". *American Journal of International Law* Vol. 87 Issue 4 (October 1993) pp. 618-626.

congresses (held in 1826, 1847 - 48 and 1884). At the end of these congresses, the Latin American states foresaw the creation of a confederation among themselves as well as the need to avoid conflicts over borders and a unified stance against the European interference.<sup>10</sup> All these arrangements ended up in failure but the Latin American contribution, *inter alia*, to the development of rules on the territorial limits of the extension of new sovereignties remained considerable, although this has not been noticed until very recently.<sup>11</sup>

As it has already been pointed out, the *uti possidetis* principle, at the outset, has had a regional character, as did the *Monroe Doctrine* on the principle of non-interference in the internal affairs of sovereign states. Both became principles of general application only after the end of the Second World War following the process of decolonization. In the period between 1815-1945, the rules on territorial sovereignty in Europe were based on a different set of criteria. This was especially true for some parts of Europe – the Balkans. The philosophy and practice of the so-called ‘spheres of interest’, born in the Congress of Vienna (1815), was also extended to the Balkans. This meant that no consideration, apart from geostrategy, would be given to the ethnic composition of the territories to be partitioned. No consideration, apart from the use of brute force, was given to the previous administrative borders of the Ottoman and Austro-Hungarian empires respectively. The basic premise of the European borders in the Balkan region after the Balkan wars was the preservation of stability and security, thus excluding any real interest in the nations affected by the new territorial rearrangements<sup>12</sup>

After the end of the Second World War, following the example of Latin America, the African leaders, having won the struggle against colonialism,

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<sup>10</sup> Alejandro Alvarez, “Latin America and International Law”, pp. 221-230; 278-281; 286-287; 291; Paul de Lapradelle, *La Frontiere. Etude de Droit International*, pp. 76-87.

<sup>11</sup> Alejandro Alvarez, “Latin America and International Law”, pp. 344-353; Philip Jessup, “Diversity and Uniformity in the Law of Nations”. *American Journal of International Law* Vol. 58, Issue 2 (April 1964) pp. 341-358 at 347.

<sup>12</sup> Arthur W. Spencer, “The Balkan Question - Key to a Permanent Peace”. *The American Political Science Review*, Vol. 8 Issue 4 (November 1914), pp. 563-582 at 563; 569-570; 575; 577; 580-581; Jesse S. Reves, “International Boundaries”, pp. 533-545 at 545; Michael Roux, *Les Albanais en Yugoslavie. Minorite Nationales, Territoire et Developpement* (Paris: Fondation de la Maison des Science de l’ Home, 1992) pp. 175-185; 187-191.

insisted upon the respect of pre-existing colonial administrative borders.<sup>13</sup> In the case of Africa, the principle of *uti possidetis juris* cannot be properly understood without some comprehension of history related to the Berlin Congo Conference (1884-1885), which is inaccurately thought of as a meeting that divided Africa.<sup>14</sup> In fact, Africa had been divided before this date. The Final Act of the Berlin Congo Conference, signed on 26 February 1885, provided for the free movement of goods and persons within territories that were under the sovereignty of the then colonial powers (Britain, France, Germany, Portugal and Belgium), as well as for the banning the slave trade.<sup>15</sup> The sovereign rights of these powers over their respective territories were designed not on the basis of the effective administrative control, as it used to be the case in Europe, but relying on the astronomic criteria of certain longitudes and latitudes. The starting point of the criteria of territorial delimitation were the coasts of Africa and not its hinterland. Any state that would thereafter take into possession a piece of African land had to notify other colonial powers in order to prevent mutual conflicts over territories. Colonial powers were not allowed to set up any effective administration in these lands. Given a colonial power's minimal effective control along the coasts of Africa sufficed to secure its rights over other powers, to regulate movement of goods and persons, as well as to prevent the slave trade. Any extension of the European administration to the African hinterland was deemed as an expensive and difficult task not worth pursuing by European colonists. Article 35 of the General Act of the Conference spoke of the creation of a basic line of control along the coasts of the continent only. From these coasts, the administrative control and the protection of the above colonial rights were to be exercised.<sup>16</sup> This European approach has been used for the sole purpose of modifying and mitigating the exclusive nature of territorial sovereignty, that is, the function of conflict - prevention over territory among the colonial powers. Dividing Africa into

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<sup>13</sup> See, also, Rupert Emmerson, *From Empire to Nation*. (Cambridge: Harvard University Press, 1960), Chapters VI and XVI.

<sup>14</sup> See, more on this, in Daniel de Leon, "The Conference at Berlin on the West-African Question", *Political Science Quarterly* Vol. 1 No 1 (March 1886) pp. 103-139.

<sup>15</sup> Norman Rich, *Great Power Diplomacy: 1814-1914*, pp. 237-242.



'spheres of influence' among the Europeans had yet another impact *vis-à-vis* the local population. To regulate relations with local populations, various protectorates, neutral and 'buffer' zones and suzerainties were set up. There was no attempt made whatsoever to establish a form of modern political organization. With the collapse of colonial rule, most of the abstract lines running along given longitudes and latitudes, dividing the colonial 'spheres of influence', were converted into international boundaries based on the principle of *uti possidetis juris*. This meant the acceptance and recognition of the previous colonial administrative borders existing at the time of independence of these countries.<sup>17</sup> Here lies the difference with Latin America. Whereas in the case of Africa some institutions were set up, aimed at regulating the division of 'spheres of influence' as well as the relations with the local population, in Latin America no such institutions existed. In the latter case, *uti possidetis juris* meant that the new borders would be respected, not based on the existence of some international arrangements establishing quasi sovereign institutions but on the internal administrative acts of the Spanish (and Portuguese ) crowns.

Despite the fact that forty per cent of African borders are straight lines dividing scores of different ethnic groups, in most cases they proved to be stable and viable.<sup>18</sup> African leaders have very often claimed that their borders are artificial and imposed arbitrarily by the foreign powers. However, since independence these leaders have subscribed to the fact that today's borders are the only viable solution for the continent. The Organization of African Unity (OAU) stressed in 1964, a year after its formation, that the borders of Africa reflect a "tangible reality", while its leaders made a commitment to the effect of respecting the borders existing at the time of independence (*uti possidetis juris*). Those African countries that expressed territorial claims based on other than *uti possidetis juris* principle, such as ethnic or historic claims, have lost their case and were

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<sup>16</sup> *The General Act of the Berlin Congo Conference*. In Arthur Berriedale Keith, *The Belgian Congo and the Berlin Act* (Oxford: Clarendon Press, 1919) pp. 314-315.

<sup>17</sup> Friedrich Kratochwil, "Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System". *World Politics* Vol. 39 Issue 1 (October 1986) pp. 27-52 at 36-41.

<sup>18</sup> Jeffrey Herbst, "The Creation and Maintenance of National Boundaries in Africa". *International Organization* Vol. 43 Issue 4 (Autumn 1989) pp. 673-692, at 674.

ostracized. The cases of Morocco and Somalia are the most conspicuous examples<sup>19</sup> By the same token, those ethnic groups attempting secession from the parent state were prevented from it by the whole international community, such as in the case of Katanga (Zaire/Congo) and Biafra (Nigeria) in the 1960s. On the other side, colonial powers that tried to forcefully hinder their former colonies from becoming independent, such as in the cases of Algeria or Guinea Bissau, were barred from this via the so-called *premature recognition of the new states and movements fighting for national liberation*, a concept designed primarily to help the process of independence of former colonies.<sup>20</sup> To gain international recognition, in the African case, it sufficed that a country (former colony) possessed a government that was in control of its capital alone. The premature recognition by other states, in essence, stemmed from the practice and philosophy of the Berlin Congo Conference, which required that the colonial powers have only some minimal control along the coasts of Africa without a need to extend that control deep inside their respective 'spheres of influence'. The sovereign rights of the colonial powers followed the abstract lines of certain longitudes and latitudes over the African continent.<sup>21</sup> The OAU and its African leaders adopted the same philosophy and practice as their colonizers: the rules of the OAU, like those created by the Congo Berlin Conference, were designed to preserve the external borders and relations among the new sovereign states of Africa; internally, it sufficed that a given country maintained a minimal administrative control, quite symbolic and centred mostly around the capital

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<sup>19</sup> Ravi L. Kapil, "On the Conflict Potential of Inherited Boundaries in Africa", *World Politics* Vol. 18 Issue 4 (January 1966) pp. 656-673 at 633-634; Patricia Berko Wild, "The Organization of African Unity and the Algeria-Maroccan Border Conflict: A Study of New Machinery for Peacekeeping and for the Peaceful Settlement of Disputes Among African States". *International Organization* Vol. 20 Issue 1 (Winter 1966), pp. 18-36 at 19-20; 27; 29-36; Saadia Touval, "The Organization of African Unity and African Borders". *International Organization* Vol. 21 Issue 1 (Winter, 1967) pp. 102-127 at 105-119; Robert O. Matthews, "Interstate Conflicts in Africa". *International Organization* Vol. 24 No. 2 (Spring 1970) pp. 335-360 at 339-342.

<sup>20</sup> Heather Wilson, *International Law and the Use of Force by National Liberation Movements*. (Oxford: Clarendon Press, 1988) pp. 119 -120 at footnote 101.

<sup>21</sup> "We (the colonial powers) have engaged ... in drawing lines upon maps where no white man's feet ever trod; we have been giving away mountains and rivers and lakes to each other, but we have only been hindered by the small impediment that we never knew where exactly these mountains and rivers and lakes were". Lord Salisbury, British prime minister of the late 19<sup>th</sup>

city.<sup>22</sup> In other words, an African colony was said to have attained independence when it had moved from the status of being under foreign rule to the status of conducting foreign relations with full authority, notwithstanding the domestic (internal) situation.<sup>23</sup> This means that the international law of the 1880s created to mitigate and regulate quarrels over borders served as a model for the laws of 1960s and 1970s, when anti-colonial self-determination movements gained international legitimacy. Other rules or principles, apart from *uti possidetis*, such as those regarding ethnic self-determination, if applied would have only complicated matters further, taking into consideration the existing ethnic diversity in Africa. It would have certainly been too difficult, if not entirely impossible, to find out the ethnic “selves” entitled to self-determination, meaning full independence.<sup>24</sup> The African concept of self-determination has remained, like that in Latin America, based on territory, not ethnicity. The claims for self-determination, meaning independence of various indigenous populations in these two continents, have not been recognized, either by scholars<sup>25</sup> or states,<sup>26</sup> meaning that the principle of *uti possidetis* “bestowed an aura of historical legality

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century, as quoted in Joshua Castellino, “Territoriality and Identity in International Law: The Struggle for Self-Determination in the Western Sahara”, pp. 523-551 at 529.

<sup>22</sup> Jeffrey Herbst, “The Creation and Maintenance of National Boundaries in Africa”, pp. 673-692 at 687-689.

<sup>23</sup> Ali A. Mazrui, “The United Nations and Some African Political Attitudes”. *International Organization*, Volume 18 Issue 3 (Summer 1964), pp. 499-520 at 499. This author has euphemistically named the very process of attaining independence in the African context as a transition “from foreign rule to foreign relations”. *Ibid.* p. 499.

<sup>24</sup> Rupert Emerson, “Pan-Africanism”, *International Organization* Vol. 16 Issue 2 (Spring 1962), pp. 275-290 at 276-283.

<sup>25</sup> “Not only do no territories ‘nullius’ exist on the American continent, but further, and in consequence thereof, no international value is given to the possession of certain regions held since time immemorial by native tribes not recognising the sovereignty of the country within whose limits they find themselves. Two important consequences follow from there : that the occupation of those regions by the natives is a matter of internal public law of each country and not only of International Law; and second, that the governments have, in certain cases, an international responsibility for the acts of natives within their boundaries, even though those natives do not recognise the sovereignty of the State”. Alejandro Alvarez, “Latin American and International Law”, pp. 342-343 at footnote 95.

<sup>26</sup> In the rulings of the International Court of Justice (I.C.J.), international borders follow the line of *uti possidetis juris*, that is, the colonial administrative divisions or loyalties belonging to pre-colonial era. This stance of the Court has been, among others, confirmed in the cases of Western Sahara (1975); El Salvador v. Honduras, with Nicaragua intervening (1992); and, recently, in the territorial dispute between Libya and Chad (1994). See, more, in W. Michael Reisman, “Protecting Indigenous Rights in International Adjudication”, pp. 350-362 at 354-357.

to the expropriation of the lands of indigenous peoples".<sup>27</sup> In practical terms this meant that the appropriation of *uti possidetis juris* in the determination of the post-colonial boundaries did not recognize the right to "restoration of authentic communities destroyed by alien rule".<sup>28</sup>

Asia is different in this regard. Scholars put forward various explanations for this difference. Among them, the history of colonialism and preserved state traditions in Asia take precedence. In Asia, the system of frontiers set up by the colonial powers (Britain and France) in most cases emulated the Western system, leaving untouched pre-colonial state structures. This meant that after the independence these countries inherited state borders of the already existing sovereignties with a long state tradition. The implementation of self-determination, therefore, was accomplished through full restoration of the pre-colonial forms of state organization. This was especially obvious in South-East Asia.<sup>29</sup> As opposed to Africa, in this part of the world, respect for *uti possidetis* was met with wide acceptance.<sup>30</sup> It should be noted, however, that in this case the application of the *uti possidetis* did not have the same role as in Africa, which meant that it did not set the territorial limits for the realization of self-determination. In the Asian context, *uti possidetis* had rather to do with the classical sovereignty disputes over narrow strips of territory, scarcely populated and with no need to ask for the wishes of the tiny populations. In the practice of the International Court of Justice (I.C.J.), only one case is recorded<sup>31</sup>, upon which

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<sup>27</sup> Malcolm Shaw, "The Heritage of States: The Principle of *Uti Possidetis* Today", *British Yearbook of International Law* 67 (1996), pp. 75-154 at 98.

<sup>28</sup> Martti Koskenniemi, "National Self-Determination Today: Problems of Legal Theory and Practice". *International and Comparative Law Quarterly* Vol. 43 April 1994, Part 2, pp. 241-269 at 243.

<sup>29</sup> See, Robert L. Solomon, "Boundary Concepts and Practices in Southeast Asia". *World Politics* Vol. 23 Issue 1 (October 1970) pp. 1-23.

<sup>30</sup> Ibid. p.46. In the practice of the I.C.J., the dispute between Thailand and Cambodia over the Temple *Preah Vihear* is the most conspicuous one (upon which theoretical observations on *uti possidetis juris* in Asia are based). Cf. Gunter Wiesberg, "Maps as Evidence in International Boundary Disputes: A Reappraisal". *American Journal of International Law* Vol. 57 Issue 4 (October 1963) pp. 781-803 at 792-796.

<sup>31</sup> *Case Concerning the Temple of Preah Vihear* (Merits). Judgement of 15 June 1962. *I.C.J. Reports* (1962). In this contest between Thailand and Cambodia, the Court recognized the sovereignty of the latter over the disputed temple, based on the Annex I map that authentically depicted, in Court's view, the factual situation existing since the beginning of the 20<sup>th</sup> century. No

theoretical observations on *uti possidetis* in Asia are based.<sup>32</sup> This means that the Asian case over the *Temple Preah of Vihear* had to do with a classic border dispute in which case *uti possidetis* served only as a reference point regarding the sovereignty of Cambodia over the disputed *Temple Preah of Vihear*, thus excluding any question concerning the will of the local population (although the area was scarcely populated)

## **2. The Concept of International Stability**

The concept of international stability is probably one of the most widely used concepts in the self-determination discourse, especially following the end of the Cold War. The principle of territorial integrity of states, the restrictive interpretation of self-determination, and the extreme caution in recognizing new self-determination claims following Cold War's demise, have cumulatively been justified by an appeal to the values of international (peace) and the stability of international order. However, the concept under discussion is not related to self-determination issues only. It is wider in scope and far more complex in its content than it appears at first sight. The concept of international stability should not only be seen as an end result of the self-interest and power politics pursued by states in their mutual relationships. In the era of interdependence and globalization that we live in, other principles and values, norms and institutions certainly influence the interstate relationships, no matter how confused these principles, values, norms and institutions might be. These are the factors that we to take into

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attention was given by the Court to the wishes of the 'population' that, in fact, were few local clergy serving the Temple. The verdict of the Court stated, *inter alia*, as follows:

"In the present case, Cambodia alleges a violation on the part of Thailand of Cambodia's territorial sovereignty over the region of the *Temple of Preah* and its precincts. Thailand replies by affirming that the area in question lies on the Thai side of the common frontier between the two countries and is under the sovereignty of Thailand. This is a dispute about territorial sovereignty...". As quoted by the Court in the *Case Concerning the Temple of Preah Vihear* (Cambodia vs. Thailand), Merits of the Case. See, *I.C.J. Reports* (1962) p. 6.

<sup>32</sup> For scholarly comments on this case, see, Gunter Wiesberg, "Maps as Evidence in International Boundary Disputed: A Reappraisal", pp. 781-803 at 792-796; Covey T. Oliver, "Case Concerning the Temple Preah Vihear", pp. 978-983; Covey T. Oliver, "Case Concerning the Temple *Preah Vihear*". *American Journal of International Law* Vol. 56 No. 4 (October 1962) pp. 1033-1053.

consideration in the following paragraphs. We start our elaboration in order to answer two general questions: 1) what is international stability and 2) what are the sources of international (in) stability?

In International Relations literature a clear cut definition of the concept of international stability *per se* is not given. Its definition is contrived from the analyses and observations made by scholars as to the nature of the international system (bipolarity vs. multipolarity); the means or institutions designed for the management of power relations within the international system (balance of power, hegemony, collective security, world government, peacekeeping and peacemaking, war, international law and diplomacy); finally, the analyses and observations concerning the very nature of international actors, e.g. states (democracies vs. non-democracies).

When defined, though, the concept of international stability in its essence captures the main features of either the international system or of its components. In both situations, the definition of the concept focuses on state-as-actor unit, rational in its actions, thus excluding other non-state entities from this conceptualization. These non-state actors, such as national or religious groups, terrorist organizations, etc., may as well be incorporated into the definition of the concept.

Of the definitions focusing on a state-as-actor, those offered by *Karl Deutsch* and *J. David Singer*, are singled out as the most important. Although probabilistic in its nature, this definition purports to take as a vantage point both the total system and the individual states comprising it. From the broader, or systemic, point of view, these authors define the stability as “the probability that the system retains all of its essential characteristics; that no single nation becomes dominant; that most of its members continue to survive; and that large-scale war does not occur”. And, from the more limited perspective of the individual actors, stability would refer to the “probability of their continued political independence and territorial integrity without any significant probability of becoming engaged in

a war for survival".<sup>33</sup> This conceptualization of international stability does not account for non-state entities and their actions are not taken into account as a potential source of international instability. These non-state entities, following the end of the Cold War, proved to be a huge source of instability not only in interstate relations but also in the relations and affairs that develop within sovereign states. These non-state factors were at the end one of the major causes of the dissolution of the former Communist federations (Soviet Union, Yugoslavia and Czechoslovakia). The ethnic claims for self-determination triggered by the rising nationalism in the post-Cold War era threatened and continue to threaten the regional and wider stability, this being admitted by liberal<sup>34</sup> and realist<sup>35</sup> scholars alike. The case we study, the former Yugoslavia, is a metaphor for the new international system, that is, a system which is more turbulent and anarchic at present than ever before during the recent history.<sup>36</sup> This is not to say that the international system of the Cold War period was not anarchic. It did not have an overreaching supranational authority entrusted with securing the order and stability in the system. However, it did have some relative stability and the mechanism to maintain this state of affairs, which rested with the two superpowers who took on the role of disciplinarian within its own blocks (or spheres of influence). With the collapse of this system, new logic of anarchy ushered in focusing not only on interstate relations but also on the internal dynamics of the existing sovereign states. With the demise of the Warsaw Pact, NATO's new security role dramatically changed accordingly. This new security role of NATO had to be formally accepted in the light of new changes in the structure of the international system. Thus, meeting in Rome in November 1991, the alliance's heads of state and government adopted what they called NATO's

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<sup>33</sup> Karl W. Deutsch and J. David Singer, "Multipolar Power Systems and International Stability". *World Politics* Vol. 16 Issue 3 (April, 1964) pp. 390-406 at 390-391.

<sup>34</sup> See, for example, Stephen Van Evera, "Primed for Peace: Europe after the Cold War". *International Security* Vol. 15 Issue 3 (Winter 199/91) pp. 7-57.

<sup>35</sup> See, for example, John J. Mearsheimer, "Back to the Future: Instability in Europe after the Cold War", *International Security* Vol. 15 Issue 1 (Summer 1990), pp. 5-56.

<sup>36</sup> A thorough analysis of the Yugoslav case in the above sense can be found in Richard H. Ullman, "The Wars in Yugoslavia and the International System after the Cold War". In Richard H. Ullmand (ed.), *The World and Yugoslavia's Wars* (New York: Council on Foreign Relations, 1998) Chapter 2.

“new strategic concept”. The danger the alliance faced was no longer “calculated aggression” from Moscow but “instabilities that may arise from the serious economic, social and political difficulties, including ethnic rivalries and territorial disputes, which are faced by many countries in Central and Eastern Europe”.<sup>37</sup>

The initial debate regarding the international stability focused on the international system and its structure. Some scholars asserted that the multipolar world was less stable compared to that composed only of two powers (bipolarity).<sup>38</sup> In this debate, some other scholars denied the existence of bipolarity and multipolarity in international politics.<sup>39</sup> Some others saw the nuclear deterrent as the main source of international stability, ignoring the role of the structure of the system itself.<sup>40</sup> Empirical evidence relied upon by these scholars belongs mainly to the pre-WW II period. This evidence is put forward both to support and oppose the distribution of capabilities (bipolarity and multipolarity) as the sources of international stability in K. Waltz’s terms. The debate was heated in particular after the Cold War and was triggered by John Mearsheimer’s famous article *Back to the Future*<sup>41</sup>.

Scholarly works examine various means and institutions designed for power management in international politics. They are ranked and classified, according

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<sup>37</sup> See, North Atlantic Treaty Organization, *NATO Handbook* (Brussels: NATO Office of Information and Press, 1993), appendix II, the Alliance’s Strategic Concept Agreed by the Heads of State and Government Participating in the Meeting of the North Atlantic Council in Rome on 7<sup>th</sup> and 8<sup>th</sup> November 1991.

<sup>38</sup> More on this debate, see, Karl Deutsch and J. David Singer, “Multipolar Power Systems and International Stability”, pp. 390-406; Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*. 4<sup>th</sup> ed. (New York: Alfred A. Knopf, 1966); Richard Rosecrance, “Bipolarity, Multipolarity and the Future”. *Journal of Conflict Resolution*. 10 (September 1966), pp. 314-327; Kenneth N. Waltz, *Theory of International Politics* (Addison, Wesley: Reading Mass, 1979) ; John Lewis Gaddis, “The Long Peace: Elements of Stability in the Postwar System”. *International Security*, 10 (Spring, 1986) pp. 99-192.

<sup>39</sup> Thus, R. Harrison Wagner, proposes distinction between the tight power distribution of the Cold War and the loose distribution following it. Cf. R. Harrison Wagner, “What Was Bipolarity”. *International Organisation*, Vol. 47 Issue 1 (Winter, 1993), pp. 77-106.

<sup>40</sup> James M. Goldgeier and Michael McFaul, “A Tale of Two Worlds: Core and Periphery in the Post-Cold War Era”. *International Organisation* Vol. 46 Issue 2 (Spring 1992), pp. 467-491. For the opposite view, see, Kenneth Waltz, *Theory of International Politics*, pp.180-182.

<sup>41</sup> The crux of the issue in this article is the bleak future of humanity the author foresees after the Cold War. Mearsheimer believed that the new system of multipolarity created after the Cold War would be more war-prone. He also believed that the stability of the past 45 years shall not be seen again in the decades to follow. Among the reasons for this, Mearsheimer included



to their order of importance in different ways. In common, they mostly relate to the following concepts: balance of power, hegemony, collective security, world government, peacekeeping and peacemaking, war, international law and diplomacy.<sup>42</sup> Among these means and institutions, the balance of power takes the most prominent place in scholarly analysis as well as in interstate relations.<sup>43</sup> For this reason we devote some more attention to the balance of power in the following pages, while the rest of the instruments and institutions will be dealt with throughout the appropriate parts of this dissertation, with special reference to the former Yugoslavia.

Balance of power is an end result of the activities of the state-as-unitary actor acting in an essentially anarchical environment. Although there are very few differences among the scholars as to the side effects of the balancing behavior of states, such as that concerning the possibility of cooperation under the conditions of anarchy, most of the authors agree that the balances of power are formed systematically.<sup>44</sup>

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the hyper-nationalism, especially in Eastern Europe. See, John Mearsheimer, "Back to the Future: Instability in Europe after the Cold War", pp. 5-56.

<sup>42</sup> See more on this in E.H. Carr, *The Twenty Years' Crisis: 1919-1939. An Introduction to the Study of International Relations*. (London: Macmillan, 1946; Hedley Bull, *The Anarchical Society. A Study of Order in World Politics*. (London: Macmillan, 1977; Inis L. Claude, *Swords Into Ploughshares: The problems and Progress of International Organization* (New York: Random House, 1984); Robert Gilpin, *War and Change in World Politics*. (Cambridge : Cambridge University Press, 1981); Charles W. Kegley, *The Long Postwar Peace*. (New York: Harper Collins, 1991); Thomas J. Volgy and Lawrence E. Imwalle, "Hegemonic and Bipolar Perspectives on the New World Order". *American Journal of Political Science* Vol. 39 Issue 4 (November 1995) pp. 819-834.

<sup>43</sup> See more on the development and the history of the idea of balance of power, in Evan Luard, *The Balance of Power. The System of International Relations, 1648-1815*. (London: Macmillan, 1992), pp. 1-30.

<sup>44</sup> Hedley Bull, though, says that balances of power may come into being through conscious efforts and policies of one or all sides. Hedley Bull, *Anarchical Society*, pp. 104-106. Among these types of the formed balances fall the Concert of Europe (1815-1919). This system of great power management of international affairs did achieve the greatest ever success in maintaining the stability in international affairs. There were wars among great powers during this time as well: Britain, France and Russia fought in the Crimea in 1854-1855 and Bismark went to war first with Austria and then with France to unify the German states in 1870-1871. Nevertheless, a certain amount of conflict may be accommodated and is accommodated by the international system without the system itself losing its overall stability. It is stability, at the end, not conflict, that has been normal condition of the international system. See, also, Andreas Osiander, *The States System of Europe, 1640-1990. Peacemaking and the Conditions of International Stability*. (Oxford: Clarendon Press, 1994), pp. 3-4.

As we have seen earlier, the second part of the definition of international stability focuses on the state, or the second level of analysis. From this perspective it is assumed that stability exists when states continue to preserve their political independence and territorial integrity without the need to pursue the struggle for survival. Is this definition, which we label a “classical” one, accurate enough to cover all forms of stability pertaining not only to the present but to the Cold War era as well? In trying to give an answer to this, IR scholars have focused their attention on the internal dynamics of states and their social, political and economic fabric they are made of. This line of reasoning, by and large present during Cold War years, has produced a large amount of evidence and very useful theoretical insights, known as the “theory of democratic peace”.

The main premise of this liberal view on international stability is that democracies are war-prone but that do not go to war with each other.<sup>45</sup> In their mutual relationship, democratic states observe and externalize the democratic norms, rules and procedures and institutions which, in turn, prevent the recurrence of the logic of balance of power and security dilemma. The logic of anarchy and its consequences, say these authors, remain valid only among the undemocratic and authoritarian states that are, in some cases, named as the “outer concentric circles”,<sup>46</sup> or the “periphery” of international society.<sup>47</sup> The “theory of democratic peace” is not confined to the interstate relations only.

Within this liberal view there has also emerged another stream of thought focusing on intra-state relations. The assumption, notes *Kelvi Holsti*, that the problem of war (conflict) is primarily a problem of relations between states has to

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<sup>45</sup> See, more on this in Michael W. Doyle, “Liberalism and World Politics”. *American Political Science Review* Vol. 80 (December 1986) pp. 1151-1169; Joanne Gowa, “Democratic States and International Disputes”. *International Organization* Vol. 49 No. 3 (Summer 1995) pp. 511-521; John M. Owen, “How Liberalism Produces Peace”. *International Security* Vol. 19 No. 2 (Fall 1994) pp. 87-125.

<sup>46</sup> Barry Buzan, “From International System to International Society: Structural Realism and Regime Theory Meet the English School”. *International Organization* Vol. 47 Issue 3 (Summer 1993) pp. 327-352 at 349-352.

<sup>47</sup> James M. Goldgeir, Michael McFaul, “A Tale of Two Worlds: Core and Periphery in the Post-Cold War Era” pp. 476-491.

be seriously questioned.<sup>48</sup> In essence this assumption was earlier questioned in scholarly work, in the studies regarding the phenomena of state-building of the nations that emerged from the process of decolonization. As we shall see in the following chapter, these new states did not have to struggle for their survival in an anarchical society of states in order to secure and preserve their newly won independence and territorial integrity. Their political independence and territorial integrity were rather guaranteed and preserved by the same “anarchical” society. This was done through the norms on sovereign equality of states, fixed territorial borders and the so-called juridical statehood<sup>49</sup>. The international regime providing for these norms proved to be very stable in the long run and has favored the political independence and territorial integrity of these states but to the detriment of political and economic development and the social cohesion of these countries.<sup>50</sup> The legitimacy of the ruling elite that took on the task of state-building following the end of decolonization derived not from the will of those governed but from the norms on equality of states, fixed territorial borders and juridical statehood. These qualities, in essence, enshrined the collective will of the majority of the members of international society.<sup>51</sup> However, as we shall argue later, any other approach other than the above one, supporting former administrative (colonial) borders as a basis for international statehood, would have proved more destabilising, especially had it been based on the ethnic principle.

The analysis of state building, both in theory and practice, in former colonies and its impact on the international stability has further been extended to the new states that emerged after the collapse of Communist federations following the end of the Cold War. Long before these new states emerged, the Communist

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<sup>48</sup> Kalevi J. Holsti, *The State, War and the State of War* (Cambridge: Cambridge University Press, 1996) p.15.

<sup>49</sup> More on this, see, the eloquent study by Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and Third World* (Cambridge: Cambridge University Press, 1990).

<sup>50</sup> Jean François Bayart, *The State in Africa: The Politics of Belly*. (London: Longman, 1993) pp. 41-118.

<sup>51</sup> I. William Zartman, *Collapsed States. The Disintegration and Restoration of Legitimate Authority* (Boulder: L. Rienner Publishers, 1995) pp.1-11; 207-273.

federations had descended into anarchy and violence, imperiling their own citizens and threatening their neighbors through refugee flows, political instability, and random warfare. This second wave of the failed (collapsed/or weak) states, whose very existence rested with the presence of juridical statehood in international realm, produced the instability in the system (in one case even causing a serious rift among the great powers of the present-day international system : Kosova during NATO air campaign of March – June 1999). These types of states are associated with the resurgence of ethnic nationalism and the violence it produces.<sup>52</sup>

Ethnic nationalism, as a divisive and destabilizing force in international relations, has been treated with equal care as even the state system itself. In fact, those who studied ethnic conflicts as a source of international instability have made a parallel between the behavior of ethnic groups and the states. *Barry R. Posen* is among them. He states that ethnic (and other religious and cultural) groups enter into competition with each other, amassing more power than needed for security and thus begin to threaten others. The crux of this argument is that ethnic (and other religious and cultural) groups behave, upon the collapse of the previous state structures, in the same manner as do the sovereign states under the conditions of anarchy.<sup>53</sup> Nevertheless, as opposed to the previous wave of the failed states, this time the role and the commitment (military and non military) on the part of international community, in terms of preserving the political independence and territorial integrity of its newly accepted members, is by far greater and more effective than in the past. As a sign of this role and commitment, the international community has added new norms and

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<sup>52</sup> They are called this way because of the weaknesses of the state institutions and the lack of political and social cohesion within these states. See, Gerard B. Helman and Steven R. Ratner, "Collapsing Into Anarchy". *Current Issue* 353 (June 1993); Lawrence Freedman, "Weak States and the West". *Society* Vol. 32 Issue 1 (November-December 1994) (<http://www.Epnet.com/>).

<sup>53</sup> See, Barry R. Posen, "The Security Dilemma and Ethnic Conflict". *Survival* Vol. 35 Issue 1 (Spring 1996) pp. 27-45. Identical view is expressed also by Markus Fischer, but regarding medieval times. This author says that the behaviour of communes, duchies, principalities and other actors of this period was more or less like the behaviour of modern states acting under the conditions of anarchy. Cf. Markus Fischer, "Feudal Europe, 800-1300:

procedures concerning democracy, the rule of law and the respect for human and minority rights (apart from old ones regarding the sovereign equality of states, fixed territorial borders and juridical statehood). There was given a qualitatively new meaning to the territorial integrity of states that emerged from former Communist federations. In some cases, as in the Balkans, this new interpretation was brought to the foreground by the use of force, huge military deployments as well as economic and other assistance on the part of the international community. This was done in order to render meaningful the new concept of territorial integrity that should be seen in close connection with the internal political and economic infrastructure of these new countries. For this purpose, new institutional mechanisms and programs, such as the Stability Pact for Southeastern Europe, were set up. This means that the assumption of the “democratic peace”, that the liberal and democratic states are producers of peace and stability in the system, is gaining weight and proving to be correct, in Europe at least.

### **3. The End of the Cold War**

The purpose of this section is not to give any account as to when the Cold War commenced or ended nor why it ended in the way it did<sup>54</sup>. Our aim is modest: to offer an overview about the processes triggered by the Cold War’s

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Communal Discourse and Conflictual Practices”. *International Organization* Vol. 46 Issue 2 (Spring 1992) pp. 427-466.

<sup>54</sup> The term “cold war” was first coined by Walter Lippmann to describe the initial confusing period of conflict between the United States and the Soviet Union over the shape of the postwar world. After the Second World War, many people believed that it would be followed by a complex negotiations leading eventually to a peace treaty with the defeated countries and a new reconstruction of the international system. Nearly a decade passed before it became clear that such a settlement would not take place and it soon became clear that disagreements between the U.S. and the Soviet Union governments about an eventual peace treaty were much grater then had been anticipated. See, more on this, in Walter Lippmann, *The Cold War: A Study in U.S. Foreign Policy* (New York: Harper Torchbooks, 1972). This book first appeared as a series of newspaper articles criticising George Kennan’s famous article *The Sources of Soviet Conduct*, which was written in *Foreign Affairs* in 1947 under the pseudonym “X”. Kennan’s article was, of course, wherefrom the idea of containment was first sketched out for the general public. More on this period until its end, see, the eloquent elaboration by Henry Kissinger, *Diplomacy* (New York: Simon and Schuster, 1994) pp. 423-446, 762-804. Kissinger gives in a comprehensive manner an account of Cold War’s demise (the fall of the Berlin Wall) and the reasons for it.

end, first and foremost those concerning self-determination and the response of the international community to them.

The most important single event after the fall of the Berlin Wall was the attempted *coup* in the former Soviet Union in August 1991. That week of August looked as if the Second Russian Revolution would restore the Communist world and stop the trends of history. Yet, the coup failed and *Michael Gorbachev* restored his authority. It raised hopes throughout the world. However, in 1992, negative trends suddenly slanted downwards. The dream of global harmony and exaggerated expectations of democracy, human rights and prosperity generated by the collapse of Communism, were harshly jolted, if not exploded. Someone accurately described this as a “new pessimism”,<sup>55</sup> while others predicted a world full of interstate conflicts. Statesmen, like George Bush, were more optimistic. Bush himself uttered a hopeful phrase about “new world order” and the reality behind it seemed suddenly more chaotic just as described by scholars. And, meaner, too, whether in the murderous clashes of Hindu and Muslim in India or the epidemic scale famine caused by corrupt warlords in Somalia. Even amid the promise of new democracies in the Philippines, Nicaragua, or South Africa, the path seemed more vulnerable than it seemed. The role of the great powers as keepers of the world’s peace and stability, soon dashed away. The Gulf War remained a past memory of the unity of the great powers and the UN in opposing the classical case of aggression. As a matter of fact, the Gulf War went into shadow within a short period of time not as much because of the great powers’ disunity as due to the pressures from the claims to ethnic self-determination of the long-time suppressed peoples. Most of the conflicts and wars following the Gulf War have been intra-state wars, or, as one author has put it, “third type wars”.<sup>56</sup> These conflicts and wars, driven by the quest for ethnic self-determination, began in the Balkans, at a time when Europe itself was striving for unity and common defense and security policy agreed upon in Maastricht in

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<sup>55</sup> Charles Williams Maynes, “The New Pessimism”. *Foreign Policy* No. 100 (Fall 1995) pp. 33-49.

<sup>56</sup> Martin van Kreveld, *The Transformation of War* (London: the Free Press, 1991), pp. 35-37; 48-49; 192-293.

December 1991. The world watched in horror as proud assertions of independence in what used to be Yugoslavia turned into a barbarous ethnic conflict among Serbs, Croats, and Bosniacs. The term “ethnic cleansing” resurfaced again from the same region and nation, almost a century and a half later.<sup>57</sup>

After four years of fruitless negotiations under international mediation, hundreds of broken ceasefires and a hostage crisis, involving the kidnapping of UN troops by Serbs, the 1995 Dayton Accords marked a turning point in the international approach. It showed that when dealing with tough minded Balkan politicians, a credible threat of force can cause them to be more reasonable. The tragedy repeated itself though. This time in Kosova during 1998-1999, but with some difference. While in Bosnia-Herzegovina the West’s publicly declared political aim was to implement the basic tenets of the principle of territorial integrity of that state, in the Kosova case, the preservation of the FRY’s territorial integrity was only a side-effect of an international action designed to prevent an unraveling human tragedy, threatening international peace and security.

In other parts of Europe, the Communist legacy did not prove so violent and tragic as in former Yugoslavia. Czechoslovakia was divided into two, its

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<sup>57</sup> The term “ethnic cleansing” is a brain child of *Vuk Karadjic*, the leader of the Serbian Enlightenment of the 19<sup>th</sup> century. Karadjic in 1860 used the term to describe the retaking of Belgrade from the Ottomans in 1805 when all non-Serbs had been expelled and their culture destroyed. Cf. Patric Cabanel, *Nation, Nationalites et Nationalisms en Europe: 1850-1920*. (Bruxelles: Editions Ophrys, 1996) pp.212-213.

Not all would agree with this. Some would, furthermore, argue that the term itself has been coined by foreign policy-makers in the West to convince their constituencies of the need to stop a target nation e. g. the Serbs from committing atrocities against innocent civilians. In short, this term was introduced, according to some authors, to convey to the public opinion an aggressor-victim relationship. Cf. Dov Ronen, *The Challenge of Ethnic Conflict, Democracy and Self-Determination in Central Europe*. (London: Frank Cass, 1997) pp. XXXIII. The evidence shows, however, that the term itself was neither forged term to serve foreign policy purposes nor an end result of the conflict and war in former Yugoslav territory. It proved to be the very aim of war instead. That the crime of ethnic cleansing was an orchestrated policy and endeavour of the Belgrade regime is documented by the former UN Special Rapporteur for Human Rights in Former Yugoslavia, Tadeusz Mazowiecki. See, the UN documents under the symbol UN Doc. A/47/666/ and S/24809 of 17 November 1992. For the comments about the phenomenon of ethnic cleansing, see, Alfred de Zayas, “The Right to One’s Homeland, Ethnic Cleansing and the International Criminal for Former Yugoslavia”. *Criminal Law Forum* Vol. 6 No. 2 (1995) pp. 260-301 at 294-296; Drazen Petrovic, “Ethnic Cleansing - An Attempt at Methodology”. *European Journal of International Law* Vol 5 No. 3 (Spring, 1994) pp. 342-360. To stop this opaque occurrence in intra-state relations, it took too much time.

“velvet revolution” showed that it was unable to sustain the unity of Czech and Slovak nations. It was a peaceful separation so that two nations joined the rest of the former Communist countries in the process of social, political and economic transformation but it was not without painful symptoms of readjustments. In the case of Czechoslovakia, the application of self-determination along former administrative lines (borders) proved to be an exemplar for the rest: none of the nations expressed conflicting self-determination claims stretching beyond their former republican (administrative) borders<sup>58</sup>. Further inside the Communist world, the situation was quite different, resembling in many aspects that of Yugoslavia. In the Caucasus, violent conflict brought new bloodshed between Armenia and Azerbaijan over Nagorno Karabakh. The old Soviet state of Georgia was torn apart by war among Georgians, Ossetians, and Abkhazians. At the root of these conflicts were quests for self-determination and territorial integrity that were either denied in a violent manner or demanded in the same way by one of the parties to the conflict. Within the territory of former Soviet Union, the war in Chechnya was another example of the prevalence of *uti possidetis* over self-determination and independent statehood<sup>59</sup>.

The Balkan war was a test for President Bush’s “new world order”. At the outset, both the Europeans in NATO and the United States shied away from military intervention, initially on grounds that the war was an internal conflict, later arguing that intervention would be a quagmire. To stop the carnage, first in Bosnia and later in Kosovo, NATO undertook military operations that were unimaginable just a decade earlier. “Out of area” operations of NATO encompassed not only military intervention but also large peacekeeping and peace-enforcement operations, aimed at restoring the peace and stability of the war-torn countries. This segment, made possible under conditions of globalization in international relations, besides the problems of poverty, hunger,

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<sup>58</sup> With regard to the application of *uti possidetis* to the dissolution of Czechoslovak Federation, see, J. Malenovsky, “Problems Juridiques Lies a la Partition de la Tchechoslovaque” . *Annuaire Français de Droit International* Vol. XXXIX (1993) pp. 325-338 at 328.

<sup>59</sup> For an eloquent overview of the prevalence of *uti possidetis* over self-determination and independent statehood in the case of Chechnya, see, Gail W. Lapidus, “Contested



crime, human rights, environment protection and global economics, ushered in a new era in the concept of state sovereignty. NATO military engagement in the Balkan wars and after has definitively rendered the concept of sovereignty futile one for some areas of the world, or, to use UN General Secretary's own words, there are now "two emerging concepts of sovereignty".<sup>60</sup> Some have labeled this as a "new NATO expansion". NATO's eventual interests apart, the fact remains that the decade after the Cold War has offered more tragedy than triumph, less economic and political liberation than economic dislocation and political disintegration, more disenchantment and despair than renaissance and reassurance. This period shall long be remembered as an era of the outburst of the claims and counterclaims for self-determination. It will also be remembered for a new concern regarding relations between ethnic groups and states, and between the polyethnic and multiethnic character of actually existing states and the stability of the international order. The alleged right to self-determination, which had been assimilated by the anti-colonialist ideology, the Westphalian consensus (albeit broken very often during the course of history, starting with the French Revolution) and *uti possidetis juris*, has in recent decade been revitalized by a new surge of (sometimes) violent self-determination claims and counterclaims. One effect of this new crisis situation in the relations among the international order and its component states (and peoples) was a reconsideration of the underlying political theory and the practice of self-determination. To this issue we turn next.

#### **4. Territorial and Ethnic Self-Determination**

In the case of self-determination, the main issue is to decide who the "selves" entitled to self-determination are. Next to it comes the question concerning the legitimate authority to decide about who the "selves" are. In principle, the "selves"

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Sovereignty: The Tragedy of Chechnya". *International Security* Vol. 23 No. 1 (Summer 1998) pp. 5-49.

<sup>60</sup> Kofi Annan, "Two Concepts of Sovereignty". *The Economist* 18 September 1999. (<http://www.un.org>).

could be considered entire peoples inhabiting certain portions of a territory. This begs the next question: What is the meaning of “peoples”? Or, which parts of territory form the territorial base for the legitimate exercise of self-determination? On the top of this comes the issues of legitimate authority: Who shall decide on the legitimate categories of self-determination, be it territories or populations ?

Scholars have made efforts to answer the above questions. For this purpose, there have been made various classifications. In most cases, they followed the practice of states on self-determination, although theoretical and abstract observations on the topic have been present. To this latter category we devote much of the discussion to follow. Among others, *Dov Ronen’s* theoretical explanations and classifications of self-determination have been a valuable guide in our work.

*Ronen* sees five manifestations of the self-determination that have been dominant at successive periods from the French Revolution to the present. They are: mid-nineteenth-century European national self-determination, late-nineteenth-century Marxist class self-determination, post-WW I Wilsonian minorities’ self-determination, and post-WW II non-European/racial self-determination.<sup>61</sup>

In order to define self-determination, or “nationalism” as he put it, *Ronen* takes the examples of German and Italian movements during the nineteenth century (the Belgian and Greek cases are mentioned as well). This type of quest for self-determination “bridges over religious, ethnic and linguistic differences and thus functions as a centrifugal force in pursuing its goals... and it needs a state as a machinery to administer problems caused by these differences”<sup>62</sup>. Here the state serves as a reference point to distinguish between ethnic and national self-determination. In the former case, as opposed to the latter, the quest for self-determination emerges within a framework of the state that nationalism has often created. This type emerges in states “where democratic representation, if not

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<sup>61</sup> Dov Ronen, *The Quest for Self-Determination* (New Haven and London: Yale University Press, 1979), pp. 25-26.

<sup>62</sup> *Ibid.* p. 29.

adhered to in practice, is at least paid service”<sup>63</sup>. The “selves” are defined as against the rule of an alien nation, e.g., the French domination, exacerbated by the Napoleonic wars (the cases of Germany and Italy); the alien Dutch rule (in the case of Belgians, both Walloons and Flemish); and the Ottoman rule in the case of the Greeks. Here are included the 1848 national revolutions as well (to be discussed in the next chapter).<sup>64</sup>

The next manifestation of self-determination is that related to Marxist or class quest for self-determination. The core of the Marxist conception of self-determination is almost the same with other already mentioned cases: It also tries to get rid of the alien rule. But, the definition of this alien rule is different in Marxist thought. This rule is made up of the owners of the means of production (the capitalist class) who rule over the working class (proletariat). The aim is to create a common “us” in pursuit of self-determination, meaning a communist society. So, in this case the fundamental dichotomy and conflict is not between the “us” and “them” of nations, but between polar groups inversely related to the means of production<sup>65</sup>.

The following, and most interesting, typology made by *Ronen* is that concerning Wilsonian self-determination. This type is labeled as “Wilsonian Self-Determination of Minorities”.<sup>66</sup> Since we discuss this issue in the following chapter, it suffices here to talk about the reasons behind *Ronen’s* labeling of this type of self-determination as “minorities’ self-determination”. *Ronen* has again taken the concept of state as a reference point. Wilson’s appeal to “people” did not mean human beings in general; he referred to unrepresented minorities and, within them, the politically conscious, the elite, who had rocked Europe with

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<sup>63</sup> Ibid. p. 29.

<sup>64</sup> *Ronen* uses the German word *Volk* to express best what national self-determination and the nation-state mean. The connotation of this word embraces the German sense of history (Historismus) of the *Volk*; it emphasises national uniqueness and the German people’s unifying sense of community. The German “nation” gives the state an indivisible homogeneous content. Cf. Ibid. pp. 27-28.

<sup>65</sup> Ibid. pp. 29-30.

<sup>66</sup> Ibid. pp. 30-32.

nationalist fervor in the mid-nineteenth century revolutions and who had raised their voices in the beginning of the twentieth century.<sup>67</sup>

The third manifestation, which does not take the state as a reference point, is that belonging to the African quest for self-rule. In the development of this quest for self-determination since the French Revolution, have emerged three manifestations: Pan-Africanism, formulated in the mid nineteenth century and persisting as such until WW II; Decolonization, which began after WW II and continued throughout 1960s, the decade of independence; finally, the activation of ethnic identity, in process since post-independence period of the 1950s, which may be considered as a third manifestation, but is dealt with separately by *Ronen*.<sup>68</sup>

Pan-Africanism, according to the author, embraces all the movements, protests, conferences, and activities aimed at easing the sufferings of the blacks, obtaining more rights for them, and gaining their equality as human beings. Decolonization, differs from the above-mentioned manifestations. It is an attempt to materialize the “desire for liberation from colonial rule, a rejection of political domination by a foreign society, especially of a different race, and not merely the will to secure more rights within the colonial framework, as during the Pan-African phase”.<sup>69</sup> The crux of the issue here is the activation of non-European/racial identities.

The last and the most divisive and destabilizing form of self-determination is the one based on ethnicity. It is called ethnic self-determination, or ethno-nationalism. This is a type of self-determination through which the ethnic identity is activated aiming at the independence and sovereignty of certain states. There are two reasons for this activation: the slowing down of the process of integration within states (mostly newly independent states) and the speedy process of modernization.<sup>70</sup> The latter brought about integration and also spread the message of self-determination. Then, the process of integration slowed down.

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<sup>67</sup> Ibid. p. 32.

<sup>68</sup> Ibid. pp. 35-43.

<sup>69</sup> Ibid. p. 36.

<sup>70</sup> Ibid. p. 48.

However, the message still sounded loud and clear. The quest for self-determination was there, and the glue to unite people was needed. National self-determination, as described above, now does not make sense, because its embodiment in the (nation-) state is precisely the problem; class self-determination is less available, for one reason because of social mobility; minorities' self-determination is impractical, because the issue is not democratic rights, strictly speaking; racial identity is out, because the rules cannot be defined in these terms. Ethnic - linguistic, cultural, regional, and historical past identity – lends itself as an effective adhesive, and the ethnic group emerges.<sup>71</sup> This description may be slightly oversimplified so as to stand for the point that the very same people, in different circumstances, could have activated other than ethnic identities. But still we have to cope with the side-effects of the age of modernity.

Among the definitions following the state practice, two are worth mentioning here. One is undertaken by James Crawford and belongs to the Cold War period, while the other refers to the period after Cold War's demise. We chose these two authors in a belief that they captures the essence of our original division between ethnic and territorial self-determination<sup>72</sup>. As we shall see in the next chapter, for most of the time since 1945, customary international law and the practice of states have recognized the right to self-determination. Analyses focusing on state (or inter-governmental organizations') practice as the evidence of the so-called *opinio juris*, suggest that, although expressed as "people's right", self-determination has in fact been applied to (or recognized on behalf of) certain

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<sup>71</sup> Ibid. p. 48.

<sup>72</sup> The division we make is more or less similar to Carr's distinction between the principle of self/determination and the principle of nationality. The principle of nationality tended to be "one of disintegration", whereas "self-determination did not necessary entail that" Men may "determine themselves into larger as readily as into smaller units", Carr concluded. E. H. Carr, *Conditions of Peace* (London: Macmillan 1942) pp.59-60. The crux of this statement is that self-determination based on territory is less destabilizing as opposed to that based on ethnicity. One author, Hannum Hurst, pleads about the neo-decolonization approach to self-determination. He thinks, however, that "it is less stabilizing than that based on ethnicity". See, Hannum Hurst, "Rethinking Self-Determination". In Robert McCorquodale (ed.), *Self-Determination in International Law* (Dartmouth: Ashgate, 2000) pp. 195-263 at 232.

territorial units, even when these units were inhabited by nomadic peoples (the case of Western Sahara).<sup>73</sup>

The above stance on territorial units was stated by Crawford in 1979 in his revised doctoral dissertation, stating that “self-determination had hitherto applied and recognized in practice only to the territorial ‘units of self-determination’ falling within one of four categories: 1) mandated territories, trust territories, and territories treated as non-self-governing under Chapter XI of the UN Charter; 2) states (except those parts of states which are themselves units of self-determination); 3) distinct political-geographical entities subject to *carence de souverainete*; and 4) other territories in respect of which self-determination is applied by the parties”<sup>74</sup>.

The first category above refers to the anti-colonial self-determination while the second refers to the self-determination of the existing states as foreseen by the UN Charter and other regional instruments. In this is included the so-called constitutional right to self-determination (the case of Quebec in Canada), or any other equivalent solution concerning the territorial units within (con) federal states. The third case, associated with the *carence de souverainete*, was first mentioned in the Aaland Islands Case after WW I (to be discussed later) and taken into consideration after the Second World War (the secession of Bangladesh). Although the UN and individual states recognized Bangladesh as a

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<sup>73</sup> For an excellent analysis of the territory as a basis for the group identity in the case of Western Sahara, see, Joshua Castellino, “Territoriality and Identity in International Law. The Struggle for Self-Determination in the Western Sahara”, pp. 423-551; For the role of territory in common identity formation, see also, John Agnew, “Mapping Political Power Beyond State Boundaries: Territory, Identity, and Movement in World Politics”. *Millenium: Journal of International Studies* Vol. 28 No. 3 (1999) pp. 499-521; Daniele Conversi, “Nationalism, Boundaries and Violence”. *Millenium: Journal of International Studies*. Vol. 28 No. 3 (1999) pp. 675-698.

<sup>74</sup> James Crawford, *The Creation of States in International Law*. (Oxford: Clarendon Press, 1979) pp. 84-102. The same view has recently been expressed in his article “State Practice and International Law in Relation to Unilateral Secession” (<http://www.canada.justice.gc.ca/>). There is some controversy in Crawford’s later essays on the subject. Thus, in his essay *Democracy and International Law* (Cambridge: Cambridge University Press, 1994), pp. 1-43 at 8-10, the author qualifies as undemocratic the prevalence of the principle of territorial integrity over that regarding self-determination. A similar restrictive approach to self-determination in the Cold War era was expressed by Antonio Cassese. Cf. Antonio Cassese, *Self-Determination of Peoples. A Legal Reappraisal* (Cambridge: Cambridge University Press, 1996).

sovereign state based on systemic and widespread denial of human rights of the East Bengali population (*carance de souverainete*) and took the geographical distance between East and West (two former parts of Pakistan), the same precedent was not applied elsewhere. This precedent could have well been applied following the Cold War but was not, in part out of fear of anarchy and in part out of self-interest. Kosova and Chechnya, despite the systematic and widespread violation of human rights of their populations and their distance from Belgrade and Moscow respectively, have been denied full independence based on the above precedent of Bangladesh. The issue of Kosova shall be discussed later.

Finally, the fourth case refers to the self-determination as agreed upon by the parties and has to do with the plebiscites and referenda as recognizable forms for the expression of the free popular will. This form of self-determination mostly relates to the border areas and regions without entailing the creation of any new entities. To this we turn again in the following chapter, focusing mainly on the period between the two wars (1919-1939) when the plebiscite and referenda were widely applied. The cases after WW II shall be mentioned in passing only.

Later, some scholars extended the above list to include the cases and practices that emerged after Cold War's demise. The focus has been on the former Communist federations. It is believed that the new precedent was created with the dissolution of former Communist federations so that the above list should now include the following : 1) highest level of constituent units of a federal states that has been (or is in the process of being) dissolved by agreement among all (or, in the case of Yugoslavia, most) of the constituent units; and 2) formerly independent entities reasserting their independence with at least tacit consent of the established state where the incorporation into other state, although effective and enduring *de facto*, was illegal or of dubious legality (the three Baltic states).<sup>75</sup>

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<sup>75</sup> Benedict Kingsbury, "Self-Determination and 'Indigenous Peoples' ". *Proceedings of the American Society of International Law: the 86<sup>th</sup> Annual Meeting* (Washington, D.C. April 1-4, 1992), pp. 383-394 at 384 footnote no.1. Similar view is expressed by Marc Weller concerning the Yugoslav precedent. Cf. Marc Weller, "The International Response to the Dissolution of the

While the latter point (the three Baltic states) did not cause a serious divergence of opinions, the former one triggered a debate over the so-called 'federal right to self-determination'.<sup>76</sup> This 'federal right to self-determination' is different and should be distinguished from the above mentioned case concerning the constitutional right to secession (the case of Quebec in Canada). In the former case, as this example implies, self-determination is conceived as a right according to which certain federated states are entitled to dissolve the common (federal) state whenever they want to. This cannot be the practice of states in the future. If this were to be the case, then it would mean the precedent set up by the collapse of the former Communist federations shall have to apply to future similar cases, thus encouraging the dismemberment of the existing federations. This precedent, if accepted, would have yet another side effect concerning the rights of the suppressed peoples living within sovereign and independent states that are not federations. This would mean that these peoples have no right to independence and secession, no matter the level of violence exercised against them. This cannot be the case. As it has been argued for quite a long time,

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Socialist Federal Republic of Yugoslavia". *American Journal of International Law* Vol. 86 Issue 3 (July, 1992) pp. 569-607 at 606.

<sup>76</sup> On this debate, that is, whether there exists such a right, see, Otto Kiminich, "A 'Federal' Right of Self-Determination". In Christian Tomuschat (ed.), *Modern Law of Self-Determination*. (The Hague: Martinus Nijhof Publishers, 1993) pp. 83-100; Partic Thornberry, "The Democratic or Internal Aspect of Self-Determination with some Remarks on Federalism". In Christian Tomuschat (ed.), *Modern Law of Self-Determination*, pp. 101-138. Other authors have been engaged in this debate in an indirect manner, mostly through criticizing the way the Yugoslav precedent had been applied. Thus, Rolan Rich thinks that "if a nation with its own federal unit is entitled to secede, it would be strange that secession be limited to such federal units and not extended to nations within unitary states". See, Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union". *European Journal of International Law* Vol. 4 No. 1 (1993) pp. 36-65 at 61. Similar view is expressed by Radan Peter in his article "Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness", published in *East European Quarterly* Vol. 33 Issue 2 (Summer 1999) p. 137, 19 p (<http://www.EBSCOhost.com/>). For the critics of this view and the fear that the Yugoslav precedent might discourage states to devolve more power to the autonomous regions in their efforts to meet realistic and effective claims for self-determination, see, Hannum Hurst, "Rethinking Self-Determination". In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 195-263 at 232-233; Hannum Hurst has also expressed a general feat throughout his book *Autonomy, Sovereignty and Self-Determination* (Philadelphia: University of Pennsylvania Press, 1990); See, also, Marc Weller, "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia", pp. 569-606, footnote 215; Donald Horowitz, *Ethnic Groups in Conflict*, pp. 563-684.



international law has a neutral stance towards state formation and secession<sup>77</sup>. This implies that there does not exist a right to revolution leading to secession.<sup>78</sup> The line followed by the international community in the case of former Communist federations, especially in the case of Yugoslavia, was based on considerations pertaining to regional and wider peace and stability rather than relying upon some abstract administrative lines and divisions. These administrative lines have served and still serve the purpose of this peace and stability in interstate relations, not the opposite. Whatever the level of their correctness, the selection by the *Badinter Commission for former Yugoslavia* (and the international community as a whole) of former administrative borders (of the federated republics) as a reference point for the evaluation as to who was entitled to a sovereign statehood, along with the fulfillment of other traditional requirements for international statehood, was considered as a stabilizing factor in the process of the creation of new states after Cold War's demise.<sup>79</sup> Initially

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<sup>77</sup> International law, in principle, has always had a 'neutral' stance towards the domestic regimes of states, their creation and disappearance. The same applies to their legitimacy. Cf. Gaetano Arangio Ruiz, *Gli Enti Soggetti Dell' Ordinamento Internazionale*. (Milano: Editore Giuffrè, 1951) pp. 344-345. See, also, Gaetano Arangio Ruiz, *L' Etat dans le sens du Droit des Gens et de la Notion du Droit International* (Bologna: Cooperativa Libreria Universitaria, 1975) pp. 6-9, 22-63. Nevertheless, there are some cases from the past when international law has put some burden on the states as to their treatment of their own nationals. This was, however, made on a contractual basis. Thus, the articles 15 and 17 of the Peace Treaty with Italy foresaw an obligation on the part of Italy to respect the fundamental rights and freedoms of the persons who fell within here jurisdiction according to the above treaty of peace. Similar provision had been stipulated in article 3 of the Treaty of Havana (between the U.S. and Cuba), concluded in 1903. Cf. Gaetano Arangio Ruiz, *Gli Enti Soggetti*, pp. 344-345; See, also, Gaetano Arangio Ruiz, *L' Etat dans le sens du Droit des Gens et de la Notion du Droit International*, pp. 28-63. In cases like these, one has always to deal with contractual obligations not having an universal character and whose legitimacy does not go beyond the reach of individual contracting parties. On the other side, there are situations in which state's legitimacy is measured internationally based on the respect for international human rights standards. This has been a very frequent occurrence following the end of the Cold War and shall be discussed later in details in Chapter VI.

<sup>78</sup> See, David Armstrong, *Revolution and World Order. The Revolutionary State in International Society* (Oxford: Clarendon Press, 1993). Heather Wilson also writes that the "use of force by elements opposed to an established government, for whatever cause, was neither condoned nor condemned by customary law. The resort to the use of force in the first place remained a matter of self-help beyond the purview of international law." Heather Wilson, *International Law and the Use of Force by National Liberation Movements*, p. 28. See, also, pp. 55-88 of the same book, confirming the above-quoted stance on the rights to revolution.

<sup>79</sup> In scholarly work, we have found only one author linking directly, as we do, the peace and stability in Europe and wider with the consequent application of *uti possidetis* as suggested by the Badinter Commission and the international community as a whole. Cf. Vladimir Djuro Degan, "L'Arbitrage Juridique Ignore: La Jurisprudence De La Commission Badinter". In Marie-

designed to prevent the total unraveling of the state structures over the transition period from decolonization to independence, the principle of *uti possidetis* has gradually legitimized former colonial administrative lines for all times. As a matter of policy, *uti possidetis* has ever since militated in favor of territorial stability<sup>80</sup>, notwithstanding the opinion of the inhabitants concerning the transfer of territory by states.<sup>81</sup> Having been considered a success story in Africa, the precedent was further extended in the 1990s to the unraveling of the Soviet Union, Yugoslavia, and Czechoslovakia. In all three cases, the parent states broke down under the pressure of ethnic nationalism of the different peoples living within them. Facing the threat of destabilization, the international community once more responded by calling on the principle of *uti possidetis* as a reference point for setting the territorial scope of the new quests for self-determination<sup>82</sup>. New entities claiming international statehood could do so only along the fault lines already in place during the time they were administrative units within the parent state. Paradoxically, though, the quest for self-determination was ethnically based and heavily relied upon ethnicity while its final realization went along the former administrative borders of a certain type (along the borders of former federated republic only). So, no ethnic self-determination has been recognized or encouraged by the international community after the Cold War.<sup>83</sup> The only

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Françoise Allain et al. (eds.), *L' Ex Yougoslavie En Europe. De La Fallite Des Democraties Au Processus De Paix* (Paris: Edition L'Harmattan, 1997) pp. 31-43. Other scholars have, as we shall see later, discussed either legal aspects of the Commission's ruling or put the whole blame for war and conflict on Badinter's work.

<sup>80</sup> Ian Brownlie, "General Course on Public International Law". *Recueil des Cours* Tome 225 de la Collection (1995). *Academie de Droit International de la Hague* (1996), pp. 71-72.

<sup>81</sup> Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1990) pp. 170-171.

<sup>82</sup> It must be appreciated that there is a complementarity between *uti possidetis* and the principle of self-determination in certain aspects. It is *uti possidetis* which creates the ambit of the putative unit of self-determination. Ian Brownlie, "General Course on Public International Law", p. 72.

<sup>83</sup> Ethnic claims for self-determination call into question the legitimacy of states and governments. This is where the reluctance of states to recognise these claims stems from. The regulation of ethnic conflict by international law, the consequences of such an eventual regulation included, like it was the case with anti-colonial self-determination, remains a doctrinaire issue for the time being. See, David Wippman (ed.), *International Law and Ethnic Conflict* (Ithaca: Cornell University Press, 1998) pp.1-7; Anne Marie Slaughter, "Pushing Limits of the Liberal Peace: Ethnic Conflict and the 'Ideal Polity' ". In David Wippman (ed.), *International Law and Ethnic Conflict*, pp. 128-144; Michael Freeman, "The Right to Self-Determination in International

document recognizing such a right, the 1993 Vienna Declaration, is in the process of gaining acceptance on this issue and thus cannot be said to represent a strong *opinio juris* in favour of ethnic self-determination<sup>84</sup>.

Apart from the territorially based self-determination as described so far, in the post-1945 era, “selves” have also been considered territories under military occupation and territories where majority colored populations were victims of institutionalized apartheid at the hands of Europeans. In both cases, self-determination did not entail the creation of new state entities. Self determination was, in these cases, attached to the very position of the inhabitants of certain territories, inhabitants and territories who at the same time enjoyed some limited international status. In order to improve their limited international standing, they were entitled to the so-called internal self-determination aiming at the improvement of their self-governing position, their human rights or their right to full-fledged and genuine democracy.<sup>85</sup> We turn to this issue in the next chapter again. Now, without claiming to have exhausted the first part of this section, we shall examine the next question we asked at the outset: Who decides as to who the “selves” are ?

When President Wilson announced his appeal for self-determination, the U.S. Secretary of State, Robert Lansing, expressed his fears about the extent of self-determination and those entitled to decide on that matter. On the surface,

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Politics: Six Theories in Search of a Policy”. *Review of International Studies* 25 (1999), pp. 355-370 at 357-359.

<sup>84</sup> After having declared the right of “all peoples to self-determination”, the 1993 Vienna Declaration states the following:

“In accordance with the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting 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 of any kind”. See, *The Vienna Declaration and Programme of Action. World Conference on Human Rights*, June 1993 (New York: The UN Department of Public Information, 1993) para. 2 at page 29.

<sup>85</sup> Cf. Patric Thornberry, “The Democratic or Internal Aspect of Self-Determination with some Remarks on Federalism”. In Christian Tomuschat (ed.), *Modern Law of Self-Determination*, pp. 101-138; Allan Rosas, “Internal Self-Determination”. In Christian Tomuschat (ed.), *Modern Law of Self-Determination*, pp. 225-252; Jean Salmon, “ Internal Aspects of the Right to Self-Determination: Towards a Democratic Legitimacy Principle? ”. In Christian Tomuschat (ed.), *Modern Law of Self-Determination*, pp. 253-282.

said Lansing, it seemed reasonable: let people decide. "In fact it was ridiculous because people cannot decide until someone decides who the people are".<sup>86</sup> Scholarly work has given a very simple answer to this by denoting the international community as the bearer of this responsibility. The community of nations decides who the "selves" are.<sup>87</sup> Nevertheless, this answer begs another question regarding the legitimacy to decide on the above, as it has been apparent throughout the Yugoslav process of dissolution. Which/or whose international community decides about who the "selves" entitled to self-determination are? Since there is no superior organ of the international community entitled to decide on the matter, a simple question follows: which organ of this community should decide upon the issues raised above? The practice of states, acting individually or collectively, has differed from time to time and from one case to the other. The following are some initial observations in this regard.

Recent practice, following the Cold War's end and the collapse of former Communist federations, demonstrated that a regional organisation can decide on the above issues. It was then that the European Community (now European Union) decided on behalf of the whole international community as to the "selves" entitled to self-determination and the scope of its application. The then EC (now EU) did so through an arbitration procedure, naming a French judge, *Robert Badinter*, as its chair. The *Badinter Commission* (initially called 'Committee') was an organ of the EC, whose legal opinions had an advisory and non-binding character on parties, both regarding the issues of self-determination and succession. However, the work of this body had a huge impact on the Yugoslav crisis and beyond, extending to all former Communist federations. The rules the Commission set up were more or less designed to follow the policies of the EU and, later, the rest of the international community.

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<sup>86</sup> Quoted by Ivor Jennings, *The Approach to Self-Governance* (Cambridge: Cambridge University Press, 1956) pp.55-56.

<sup>87</sup> Allain Pellet, *Droit International Public* (Paris: L.G.D.J., 1994) pp.500-501. For the both sides of self-determination, regressive and progressive, see, more, Necati Polat, "Regressive Versus Progressive Self-Determination". *Peace Review* Vol. 10 No. 2 (June 1998) pp. 121-226.

In a similar fashion, the UN had to follow the pace of events and create norms, rules and procedures (institutions) concerning anti-colonial self-determination. Although the UN acted on behalf of the whole international community, thus having a wider constituency than the EC, its actions on the issue of self-determination's implementation, had been followed for the most part by the Third World Countries (in cooperation with the Soviet Block). Before the decolonization started in full swing, the actors knew more or less the territorial limits of their would-be political actions and the rights and duties vested on them by the international community (upon the attainment of their independence). This was not the case after the Cold War. Apart from the Western leaders, mainly from Europe, the rest of the local actors knew nothing about who the "selves" were to be and, consequently, their political actions went far beyond the territorial limits of the units they were ruling. Therefore, the conflicts over self-determination were pushed well above the administrative borders of the local rulers. What this case had in common with the former, is that in both situations the regional initiatives and bodies (the EU and the OAU respectively) proved to be ineffective in stopping the violence and tragedies created as a result of the conflicts and wars over self-determination. Their effectiveness increased after an initial failure and a deep involvement of the other outside actors: the UN during the decolonization process and the U.S./ NATO throughout the Yugoslav drama. In terms of legitimacy of the actions undertaken on behalf of the international community, the case of the OAU presents itself as more legitimate, compared with the EU's involvement in Yugoslavia. In the former case, the OAU dealt with its own members, an element clearly missing in the latter's case<sup>88</sup>.

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<sup>88</sup> In scholarly work, there have been proposals aimed at unifying the practice of international community as to the legitimate authority to decide about the subjects entitled to self-determination. Thus, *Kemal S. Shehadi* believes that the international community must clarify its conception of self-determination; this conception must balance the principle of the territorial integrity of states with the aspirations of aggrieved nations; and there should be international institutions with the authority to settle self-determination disputes in accordance with the rule of law rather than the rule of force. See, more, in Kemal S. Shehadi, "Ethnic Self-Determination and the Break-Up of States". *Adelphi Paper* No. 283 (London: The International Institute for Strategic Studies, 1993) pp. 1-90 at 81-85.

### **CHAPTER III:**

## **SELF-DETERMINATION: FROM THE PEACE OF WESTPHALIA (1648) TO THE END OF THE COLD WAR**

### **1. Dynastic Legitimacy (1648-1815)**

There are three periods through which self-determination has gone during the history of its own development. First period starts with the Peace of Westphalia and ends up with the Congress of Vienna (1648-1815). This phase is better known as the period of dynastic or monarchic legitimacy, meaning that the right to rule over people derived not from their will but from a divine law instead<sup>89</sup>. The

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<sup>89</sup> Hedley Bull, *The Anarchical Society. A Study of Order in World Politics*. (London: Macmillan, 1977), especially the section "European International Society", pp. 33-38. A similar typology is expressed by Martin Wight in his book *Systems of States* (London: Leicester University Press and London School of Economics, 1977), especially Chapter 6. According to Wight, there have been three main epochs in the modern states system. In its early history, the dynastic principle determined membership of the system and established the rights and duties of sovereign rulers. In the following period, the idea of national self-determination revolutionarized the rules of membership with the result that the political boundaries of multinational states in Europe were substantially redrawn. In a thirds phase, which succeeded the struggle for self-

other two phases shall be discussed in the following sections. They are: the period of the balance of power (1815-1914) and the period between the two wars (1918-1939). In this second phase, self-determination served more or less as a guide for the conduct of international relations rather than as a revolutionary principle.

The Peace of Westphalia marks the starting point in the development of the modern state system. From this time until the American and French revolutions respectively, the international society was made ripe for ushering in the phase of nation states as we know today. At the same time, scholars prepared the intellectual setting for this modern-type self-determination. It covered not only the concept of the nation state but as well the realm of individual human rights. Self-determination in this period was a logical consequence of these two aspects of the intellectual work, that is, the recognition of individual human rights and the idea of the nation state. These ideas of the thinkers of the 17<sup>th</sup> and 18<sup>th</sup> centuries found their application in the above-mentioned revolutions. "Bill of Right" (1776) and the "Declaration of Man and Citizen" (1789) were the first (legal) documents that had a great impact on the outside countries. The 1789 Declaration in particular has had a universal impact and influenced the ensuing events elsewhere.

During the *ancien regime*, the monarch was equated with the state. They were absolute rulers, both domestically and on the international plane. No right was recognised in favour of citizens or the population because the monarchs ruled in the name of God. This practice dominated until the American and French revolutions. This does not mean that there were not opposite views. Some intellectuals opposed the way the monarchs ruled. The opposition grew especially after the Reformation. Following the Reformation many thinkers openly challenged the divine right of Kings to rule in absolute terms. Among these, John Locke and Jean Jacques Rousseau deserve special merit and credit<sup>90</sup>.

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decolonization, Third World regimes defended the colonial frontiers against attempts to secede from the newly independent states.

<sup>90</sup> S. Calogeropoulos-Straits, *Les Droit Des Peuples a Disposes d'eux Memes*. (Bruxelles: Bruylant, 1973) pp.16-17. This synthesis between the nation state and individual

In practice, it was the French Revolution that proclaimed self-determination as a revolutionary principle against despotism and monarchic rule. According to this principle all citizens were declared equal before the law. The divine right ceased to serve as the basis of legitimate rule. The above-mentioned French document on human rights was later supplemented by the Declaration on the Rights of Peoples. The Declaration asserted the inviolability of all peoples, respect for their independence and sovereignty, the condemnation of war and aggression, and the principle of non-intervention. These were to be the foundations of the new society.<sup>91</sup> Inter-dynastic law was replaced by interstate or positive law. No divine law was recognised as the source of law. Every law stemmed from the will of the people which acted through the state and its organs. The dream of a universal monarchy was abandoned, the authority of the Church matched by that of state, and the human beings became conscious of their destiny.

The nationality principle, proclaimed by these two revolutions, proved to be troublesome and very soon made room for the state principle. Following revolutionary heydays, it became difficult, as it is at present, to recognise the nationality principle as a basis of international law and order in its original form. The modification of its initial form made it possible for the new rulers to see their own nationals through the lenses of state whose citizens enjoy the right to freely chose the government they desire. For nations without state and under foreign rule the appeal of the original nationality principle has remained valid. This meant that they were entitled to have their own state organisation. It is precisely in this context that the principle of nationality has emerged as a destabilizing factor. The principle of nationality did not relate any more to the denial of dynastic or divine rule but to the refusal of being under foreign rule or control , no matter the nature of political organization. The cases of Greece and Belgium, as well as some of the 1848 revolutions in Europe, single out in this regard. This extension of the

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human rights was conspicuous in particular in the scholarly work of Locke and Rousseau. See, also, John Locke, *Two Treatises of Government*, ed., P.Laslett (Cambridge: Cambridge University Press, 1964), pp. 430-431; Jean Jacques Rousseau, *The Social Contract*. In Jean Jacques Rousseau, *Political Writings*, trans. and ed., F. Watkins (Edinburgh: Nelson, 1953), pp. 3-4.

<sup>91</sup> S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, pp.18-19.



principle of nationality beyond the state borders is a merit of the French Revolution and Napoleonic Wars, as it is the transformation of the balance of power system following Napoleon's defeat. It is the conflict between the principle of nationality and the balance of power that permeated the period between 1815-1918. However, the balance of power, not the principle of nationality, had been the rule in interstate relations in this period of time. To this issue we turn next.

## **2. The Balance of Power (1815-1914)**

Next period in the development of self-determination starts with the Congress of Vienna, which introduced a new philosophy and the concept of self-determination in power management. This period ended around the years 1917-1918.

The Congress of Vienna (1815) suppressed the nationality principle and installed the balance of power based on dynastic legitimacy as an order of the day. This meant that territories could be traded for the sake of stability notwithstanding the wishes of the population. For the sake of preserving the balance of power, the Congress allowed the application of the previous methods of ceding and partitioning the territories of sovereign states without consulting the populations concerned. Attempts at secession were ruthlessly suppressed. Throughout this period the opposition to the nationality principle was institutionalised and linked to the political alliances and their structures (such as the Congress of Vienna), contrary to the modern opposition which centres on the fear that uncontrolled exercise of self-determination may seriously threaten and destroy the international peace and stability<sup>92</sup>. This institutional opposition, linked to the Congress of Vienna and its mechanisms, was the rule and the philosophy on which the application of self-determination was based until 1917-1918. However, there were exceptions to this, either regarding the complete secession or the expression of the will of a given population. Among these exceptions the

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<sup>92</sup> Elizabeth Chadwick, *Self-Determination, Terrorism and International Humanitarian Law of Armed Conflict* (The Hague: Martinus Nijhoff Publishers, 1996) pp.20-21.

most notable were the cases of Greek and Belgian independence, the 1840s revolutions, Italian plebiscites leading to Italy's unification and, finally, the German and Italian acts of unification.

The Greek and Belgian cases represent a complete secession and a triumph of the principle of nationality against the alien dynastic rule, whereas the plebiscites held in some areas in Italy leading to its unification were an exception to the rule and did not entail the formation of new states. The Italian and German acts of unification, though, match the American and French revolutions respectively. In all cases, however, the balance of power was an order of the day. It was designed to protect certain states (dynasties) from internal upheavals (revolution). Since the balance of power is a system designed for power management on the international stage, in the above cases as well this system had no choice but to pursue power configurations as they formed at the international level, as an end result of the struggle for power developing among states. This means that in the cases under discussion (the Greek and Belgian successful secessions, Italian plebiscites, and the Italian and German unifications), the balance of power ran against the principle of dynastic rule, be it domestic or alien. This rendered necessary the need for a limited or controlled application of the nationality principle. This further means that the peacemakers of 1815 never allowed the principle of nationality to become a rule in interstate relations. The same balance of power that exceptionally promoted the principle of nationality in the above-mentioned cases, in a later stage, such as the 1848 revolutions in Europe, had been used to ruthlessly suppress the wishes of other nations. So was the rule.

Self-determination in its secessionist form, in the case of Greece demonstrated how correct were those who argued that "states that end up supporting secessionist movements do so either primarily or exclusively for economic, political and other instrumental motives", meaning that "rarely, if ever, do so for affective reasons such as ideological, ethnic, or religious affinity".<sup>93</sup>

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<sup>93</sup> Alexis Heraclides, "Secessionist Minorities and External Environment". *International Organization* Vol. 44 Issue 3 (Summer 1990) pp. 341-378 at 343.

Despite sentimental sympathy for Greeks nourished at the outset of the armed struggle against the Ottomans, it never overwhelmed the calculations of the European great powers who were far more concerned with the political implications of the Greek uprising. This Greek revolt against the Ottoman Empire (in the 1820s) was far more dangerous than earlier cases in Spain and Italy because Greece had a geostrategic value in the eyes of the Great Powers. The suppression of the revolution in Greece was seen from the beginning as an essential step foreword to preserve the general stability and peace in Europe.<sup>94</sup> As things dragged on, the Great Powers were unable to unite to suppress the Greek revolution as *Metternich* of Austria had advocated. To preserve the balance of power and prevent the Russian influence over Greece, the allied British and French forces even fought the *Battle of Navarino* against the Ottomans (September 1827). The recognition of the Greek independence (February 3, 1830) marked the major first change in the map of Europe since 1815, but this change did not unleash major European war as *Metternich* feared it would. However, the Greek successful secession shook the international system in another sense. It exposed the weaknesses of the Ottoman Empire so that even Sultan's own subjects started to challenge his supremacy. Thus, *Mehmed Ali Pasha*, the ruler of Egypt, encouraged by the success of Greece and Russia, attacked his nominal overlord, the *Sultan* of Turkey, to make some territorial gains of his own. Apart from this, Greece's independence brought to the surface Russia's threat to security, interests and stability of all states of Europe.<sup>95</sup>

Lasting almost for a decade, the Greek uprising led some scholars to argue that secession's long duration is in general one of the precondition for success, legality and legitimacy of this form of self-determination.<sup>96</sup> We do not share this view because political calculations in connection with a given balance of forces, rather than the long duration of secession are the decisive factors in the success,

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<sup>94</sup> Norman Rich, *Great Power Diplomacy: 1814-1914*, p.49.

<sup>95</sup> Ibid. pp. 50-57; A.I. Macfie, *The Eastern Question, 1774-1923* ( London and New York: Longman, 1996) pp.14-26; Frederich B. Artz, *Reaction and Revolution, 1814-1832* ( London and New York: Harper Torchbooks, 1934) pp.250-262.

<sup>96</sup> S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, pp. 189-190.

legality and legitimacy of the secessionist forms of self-determination. The pattern of Greece repeated itself in many cases but no success story was recorded in terms of duration of the secessionist movements. These are some of the issues we discuss later throughout the next chapters.

The following case where the nationality principle prevailed over that of dynastic legitimacy is the case of Belgian independence of 1830. Of the 1830s revolutions, the Belgian uprising proved the most single serious threat to the general peace of Europe. The Union with Holland, erected in the peace settlements of 1814-1815 (with the view of creating a bulwark against France), now stood as a new test of the principle of legitimacy.<sup>97</sup> In this case, it was not the Russian fear that counted for the great powers caution towards the intervention into Belgian crisis. France and Britain were not so much concerned about Russia as about each other. The British for their part feared that France would take advantage of the crisis to annex Belgium and therewith gain a springboard for further expansion in Western Europe – or for an invasion of England.<sup>98</sup> To avoid shifts in the balance of power caused by the Belgian independence, great powers decided to establish an independent and neutral Belgium. This was done on November 15, 1831, when the great powers and Belgium signed the Treaty of London.<sup>99</sup> This neutrality proved to be a good replacement for Belgium's role as a bulwark against France, but at the same time it proved as well to be a seductive lure for Napoleon III in the 1860s. However, it was Germany's violation of Belgian neutrality in 1914 that propelled Britain into World War I. This history demonstrates that fears of the peacemakers of 1814-1815 were not without justification in the Belgian case.

The 1848 revolutions were of two sorts: liberal and national. Greater threat to the international peace and stability was posed by the national revolutions in the Hapsburg Empire (Bohemia, Hungary and Italy) and those that developed in *Schleswig-Holstein* duchies. The revolutions in France and Germany (Prussia)

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<sup>97</sup> Norman Rich, *Great Power Diplomacy*, pp.59-61; Frederich B. Artz, *The Eastern Question*, 270-276 and 289.

<sup>98</sup> Norman Rich, *Great Power Diplomacy*, p. 59-60.

<sup>99</sup> *Ibid.* p. 61; Frederich B. Artz, *Reaction and Revolution*, p. 275.

were of liberal nature, that is, they aimed at changing the internal constitutional order of these countries forcing them to be liberal democracies. It was due in large to what might be called a rump Concert of Europe, in which Britain and Russia played a principal role, that none of the 1848 revolutions set off a general European war, and that the widespread domestic upheavals did not destroy the international order established in 1815 or upset the European balance of power.<sup>100</sup> However, after 1848 only Russia had remained the staunch supporter of the 1814-1815 peace settlements because the national consciousness that developed out of the 1848 revolutions proved to be much stronger than it was thought of at the time of their occurrence. First unifications (of Italy and Germany) owed very much to the spirit created during the 1848 revolutionary upheavals.

Before we turn to other issues, it is a proper place to give here an overview of other manifestations of self-determination. Apart from the above forms, the plebiscites represent a very common form of self-determination used for the expression of the popular will. As in the case of secessions, the plebiscites were used only as an exception to the rule as foreseen by the peacemakers of 1814-1815. They were certainly not a proper expressions of the popular will as the term would imply. Their development and realisation occurred within the limits of the conventional (international) law at the time. The basics of this law were set up by the great powers as a means to maintain the international peace and stability (mainly through congresses and conferences).

First plebiscites were held in the Italian provinces of Nice and Savoy (then Sardinian provinces). The agreement on their cession was reached between Napoleon III of France and Victor Emmanuel of Italy in the city of Turin on 12 March 1860 (in fact, Napoleon III signed the Treaty two days earlier in Paris).<sup>101</sup> Although they were formally handed over to France following the plebiscites, their cession represents a clear-cut example of the victory of the balance of power over the nationality principle.<sup>102</sup> As soon as the unification of Italy was completed

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<sup>100</sup> Norman Rich, *Great Power Diplomacy*, pp.78-100, at 99.

<sup>101</sup> *Ibid.* p. 139.

<sup>102</sup> *Ibid.* pp. 136-139.

(30 June 1871), Italian nationalists laid their claim to the above provinces on the basis of nationality principle.

Italian unification, made possible at its final stages by the French defeat at the hands of Prussians, was a long process. But it did not seriously affect the European equilibrium set up in 1814-1815 (and adjusted thereafter). Even after unification, Italy proved unable to mobilise its own resources to join the ranks of the great powers.<sup>103</sup> This equilibrium and this potential will be threatened and mobilised respectively only after the German unification. In this case, the nationality principle would manifest itself in a total opposition to the previous cases since the French Revolution. The policy of the “iron fist”, or from top-down, associated with *Bismark*, proved as well to be yet another manner for the implementation of the nationality principle.

German unification was the major shift in the balance of power in Europe since 1815. It was proclaimed rather tactlessly by the Prussian leadership on January 18, 1871, in the Hall of Mirrors of Versailles.<sup>104</sup> The proclamation of German independence in the French territory showed in a symbolic way the emergence of the new European balance of forces. Germans got united, their pride was restored, but not their security. The “nightmare of coalitions”, to use Bismark’s wording for the system of alliances, faced new German statesmen who ruled after Bismark. The Iron Chancellor’s inability to institutionalise his policies forced Germany onto a diplomatic treadmill it could only escape, first by an arms race, and then by war. By the end of the twentieth century, the Concert of Europe, which had maintained peace for a century, had for all practical purposes ceased to exist.

Territorial arrangements of Europe after Napoleon’s wars (1814-1815) were designed to prevent any political, economic and military shifts from going to whichever great power that might threaten the already established balance of forces. These arrangements left no room for the popular wishes. The latter had to follow the territory, not the opposite. The principle of nationality, successful in

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<sup>103</sup> Ibid. pp. 123-146.

<sup>104</sup> Henry Kissinger, *Diplomacy*, pp. 103-136 at 119.+

some exceptional cases that we already discussed, was made use of only for practical exigencies of politics of the balance of power that emerged with the rise of national consciousness and the industrial revolution of the 19<sup>th</sup> century. These events proved to be a powerful forces for change in the international system in the century. However, the forces under discussion proved no match for the old thinking in the foreign policy of the existing states at the turn of the century. Centuries old conduct of foreign affairs remained the same well into the years proceeding the Balkan Wars (1912-1913) and WW I (1914-1918).<sup>105</sup> In and around the Balkans particularly, this state of affairs in the conduct of foreign policy proved to be a prelude to the Great War and, after that, to the defeat of the nationality principle: not even an inch of territory of the former Ottoman Empire in Europe was divided along previous administrative lines existing in the Ottoman time, or based on the nationality principle. Territorial gains were treated as a war spoil to be divided only on the basis of strategic and national security considerations. These aspects, not the national composition of a given territory, were considered as conducive to the peace and stability of the Balkans and wider.<sup>106</sup> The same disregard for the previous administrative borders and, to some extent, to the nationality principle, was shown after the collapse of the Austro-Hungary in 1918.

### **3. The Principal Manifestations of Self-Determination Between the Two Wars (1918-1939)**

The end of the First World War marks the beginning of the third phase in the development of self-determination. After this war, self-determination does not appear any more as a revolutionary principle but as a guide to the conduct of

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<sup>105</sup> Andreas Osiander, "Re-reading Early Twentieth Century IR Theory:Idealism Revisited". *International Studies Quarterly* Vol. 42 No. 3 (September 1998) pp. 409-432 at 417.

<sup>106</sup> Norman Dwight Harris, "The Effect of the Balkan Wars on European Alliances and the Future of the Ottoman Empire". *Proceedings of the American Political Science Association*. Vol. 10, Tenth Annual Meeting (1913), pp. 105-116 at 107-111; Arthur W. Spencer, "The Balkan Question-The Key to a Permanent Peace". *The American Political Science Review* Vol. 8 Issue 4 (November 1914) pp. 563-582 at 569-570; Michael Roux, *Les Albanais en Yugoslavie. Minorite Nationale, Territoire et Development* pp. 175-185; 187-191.

day-to-day international relations. Through this guiding aspect of self-determination, it was made possible the restoration of the previously lost political and international status of states and/or nations, such as Poland, Czechoslovakia, Romania, Yugoslavia, Baltic States, Ukraine and Finland. The expression of the free will of the populations, as a basic premise of the genuine self-determination, was either presumed (in most cases) or it was foreseen by the Versailles Conference as one of the means of political settlement but only for certain territories (Danzing, Memmel, and Saar Territory). This in no way means that strategic, security, political and economic considerations withered away during this period.<sup>107</sup> These considerations were instead to serve as a guidance in the application of self-determination between two wars. However, its application was confined, as a rule, only to the cases expressly stipulated by the Versailles Peace Arrangements. In a similar way to that pursued after the Second World War (the process of decolonisation), self-determination served as a concept accepted by major powers as a basis for negotiating the details of the competing claims in the name of the new arrangements and patterns of sovereignty. It had a multilateral character and the analysis of self-determination's application in this as in earlier periods was bound to have multiple character. This multilateral character of the self-determination claims, which must be given due attention in its actual implementation of self-determination, is often ignored in the rhetoric that asserts the self-determination itself.<sup>108</sup> Neither the balance of power, nor the principle of self-determination itself, could in their own be sufficient to maintain the international peace and stability. The latter has always relied on the operation of two or more principles or factors (strategic, economic, political, and security), which may modify one another in their practical effects.<sup>109</sup> This complex character of self-determination was expressed both through theoretical observations made during this time and

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<sup>107</sup> S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, p.41.

<sup>108</sup> See, Charles R. Nixon, "Self-Determination: The Nigeria-Biafra Case". *World Politics* Vol. 24 Issue 4 (July 1972) pp. 473-497 at 494.

<sup>109</sup> See, Andreas Osiander, *The States System of Europe, 1640-1990. Peacemaking and the Conditions of International Stability* (Oxford: Clarendon University Press, 1994) Chapters 4 and 5.



via the practice of self-determination's implementation (which, as we noted, was strictly confined to the contractual provisions stipulated by the Versailles Peace Settlements). The following is the discussion of theory (Lenin's and Wilson's views on self-determination), followed by the international practice as pursued in the Aaland Islands Case. The Aaland Case reflects both theoretical approaches of the time.<sup>110</sup> Lenin and Wilsonian conceptions on self-determination and the message conveyed by the international practice in the Aaland Islands case are indispensable for an understanding of self-determination as it stands at present. Pursuing this line of argument will enable us to trace back and grasp the basic manifestations of self-determination during this period. One of them is the so-called presumed expression of the free will (the cases of Poland, Czechoslovakia, Baltic States, Ukraine and Finland), while the other concerns the allegedly express manifestations of the free will in order to make minor territorial arrangements. In the latter cases, it is assumed that economic factors have played an important role (the cases of Saar Territory, Memel and Danzing, although in some of these cases, it should be noted, no expression of the free will ever took place). The issue of "Munich self-determination" demonstrated how an entire nation could be sacrificed for the sake of international stability.

### **3.1. Lenin and the Soviet Conception of Self-Determination**

The speed with which Lenin agreed to recognise the independence of Baltic States and Finland before and after Brest-Litovsk arrangements, led to a belief at

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<sup>110</sup> Very unusual approach to self-determination is the interpretation and the practice pursued by the Nazi Germany. To Hitler and the Nazi scholars, self-determination was based on blood (race). It meant the self-determination of the superior race (so-called aryan race). The Nazi conception of nation refused the recognition of the will (of a people) or the right of an individual to determine their "self". It was the same conception as that taught by Communists. The main difference is that in the former case, self-determination was based on blood (race) while in the latter it rested with the working class (proletariat). See, S. Calogeropoulos-Straits, *Les Droit Des Peoples a Disposes d'eux Memes*, pp. 20-21. Apart from this, Hitler used minorities' self-determination as an excuse to militarily intervene against the sovereign states of Europe. This had as a consequence the enforcement of the belief about the validity and the international legitimacy of the state-centred approach to self-determination following Second World War. This means that ethnic self-determination was seriously compromised by Hitler and its war campaign

that time that he was a German spy.<sup>111</sup> A closer look at the events preceding the October Revolution and its success reveal entirely different reasons behind the Soviet behaviour before and after the Brest-Litovsk peace process and the years following it. The reasons of power politics were the main factor that explain Soviet (Communist) attitude towards self-determination and its forms of manifestation (the so-called Socialist Federations of the Soviet style). Internal dynamics and the structure of the Soviet Russia lay behind Lenin's policy of self-determination and his policy of appeasement towards the Poles, the Finnes and other nationalities of the Tsarist Empire. This appeasement policy was dictated by the internal conditions prevailing in the first years following the Soviet (October) Revolution and lasted only for a certain period of time, that is, until Lenin consolidated his power base.

Besides a long autocratic tradition, three years of war absorbed most of Russia's available resources and brought the country to the brink of financial and economic ruin. The discontent became widespread, famine in many parts of the country imminent. Little wonder that, after the overthrow of autocracy, the poor and the suffering, the cold and the hungry, were willing to accept any regime that promised them relief. And, Bolsheviks of Lenin promised that. The Revolution of 1917, unlike many abortive attempts during the 19<sup>th</sup> century and beginning of the 20<sup>th</sup> century, found sober Russia ready to follow her liberators<sup>112</sup>. Foreign policy of the Soviet Russia had to reflect this political, economic, financial and military collapse of the Russian society. Separate peace at Brest-Litovsk with Germany (March 1918) was first test and the challenge to Lenin's diplomacy of the Proletarian Dictatorship.<sup>113</sup> As soon as they came to power in Russia, Bolsheviks announced the principle of self-determination in favour of the nationalities living

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against sovereign states of Europe. No territorial changes made by Hitler were recognised after Second World War.

<sup>111</sup> Simon Litman, "Revolutionary Russia". *The American Political Science Review* Vol. 12 Issue 2 (May 1918) pp.181-191 at 190; Charles G. Fenwick, "The Russian Peace Treaties". *The American Political Science Review* Vol. 12 Issue 4 (November 1918) pp.706-711 at 711. Others, though, have tried to find the reasons behind such behaviour of Lenin in the ideological fabric of the new Soviet regime.

<sup>112</sup> Simon Litman, "Revolutionary Russia", pp. 182-183, 185, 188.

<sup>113</sup> Political Events, "V. Continental Europe". *Political Science Quarterly*. Vol. 33 Issue 3 (Supplement, September 1918) pp. 48-64.

within the former Russian Empire. This was not a matter of principle but a sign of deep weakness of the new regime and a tactical move undertaken by Lenin. Within a few months of recovery (November 1918), Lenin denounced the Brest-Litovsk Peace Treaties and, in the case of Ukraine and Finland, he even sent his troops to retake them again.<sup>114</sup> Lenin now argued that self-determination was a useful revolutionary slogan which would lose its force once the revolutionary class had seized power and multinational states merged into a unitary socialist order, e.g., socialist (communist) federation.<sup>115</sup> However, these countries, including Romania, would gain their independence on the basis of the nationality principle (presumed expression of the will through the Versailles Settlements).

As a means to foster Russian political and strategic goals, Lenin resorted to a new form of political organization. This form, known as “the Soviet Federalism”, would in later years serve as a model for the rest of the Communist world. The Soviet Federalism was in a contradiction with the principle of self-determination and human freedom. It made possible a huge concentration of power at the hands of Moscow and the Communist Party. Moscow was to become, as one author has rightly put it, “a new international Rome”<sup>116</sup>, a mission that was possible to accomplish only through persistent propaganda. Moscow became a home country to the Proletarian Revolution and propaganda exercised for this matter became successful only after Moscow gained full control over the means to push it throughout the world.<sup>117</sup> Lenin and his Bolsheviks managed within a short period of time to subordinate the Communist International to the Soviet

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<sup>114</sup> Amos S. Hershey, “Legal Status of the Brest-Litovsk and Bucharest Treaties in the Light of Recent Disclosures and of International Law”. *American Journal of International Law* Vol. 12 Issue 4 (October 1918) pp. 815-820; Charles G. Fenwick, “The Russian Peace Treaties”, pp. 706-711; Charles G. Fenwick, “The Ukrainian and Finish Peace Treaties”. *The American Political Science Review*, Vol. 12 Issue 4 (November 1918), pp. 711-713; Jurij Borys, *The Sovietisation of Ukraine: 1917-1923. The Communist Doctrine and Practice of National Self-Determination* (Edmonton: The Canadian Institute of Ukrainian Studies, 1980) pp.12-51; 195-206.

<sup>115</sup> Bernard Morris, “Soviet Policy Toward National Communism: The Limits of Diversity”. *The American Political Science Review* Vol. 53 Issue 1 (March 1959) pp. 128-137 at 130.

<sup>116</sup> Alfred C.P. Dennis, “Soviet Russia and Federated Russia”. *Political Science Quarterly*, Volume 38 Issue 4 (December 1923) pp.529-551 at 540.

<sup>117</sup> E.H. Carr, *Twenty Years' Crisis: 1919-1939*, pp. 132-145.

Union's national policy, which soon became a deep continuity rather than break in Russian foreign policy.<sup>118</sup>

Ukraine was the first ill fated attempt to achieve its political independence while other states recognised by Lenin's Russia would very soon either be annexed or become satellites of the Soviet Union (save Finland). Lenin's or Soviet Russia, commenced its life as a state with four Union Republics<sup>119</sup> to end up with fifteen and with as much "autonomous republics" and other entities invented and reinvented by Communists in the run up to the dictates of *realpolitik*.<sup>120</sup> Border drawings and the population transfers were a frequent phenomenon in former Soviet Union, especially in the course of the Second World War.

In the cases of Soviet Union and the Nazi Germany, it is apparently seen the role the "theory as practice", to use Jim George's words, plays in the shaping and reshaping of state behaviour. This sort of state behaviour would later be externalised to reach vast areas and populations of the world. Without studying the basic tenets of the concepts of self-determination in these two countries, the "dictatorship of the proletariat" and the "race superiority", no successful

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<sup>118</sup> Alfred J. Rieber, "Persistent Factors in Russian Foreign Policy: An Interpretative Essay". In Hugh Ragsdale (ed.), *Imperial Russian Foreign Policy* (Cambridge: Woodrow Wilson Centre Press and Cambridge University Press: 1993) pp. 314-360 at 319-320.

<sup>119</sup> In fact, the "Fundamental Law of the Russian Socialist Federated Republic", adopted on July 10, 1918 by the Resolution of the Fifth All-Russian Congress of Soviets, foresaw a federal union of an extremely loose type composed of rural areas (volost), counties (uyezo), and provinces (gubernia). There was also a region (oblast) as a part of this federation. See, Raymond Garfield Gettell, "The Russian Soviet Constitution". *The American Political Science Review* Vol. 13 Issue 2 (May, 1919) pp. 293-297 at 294-295. That the soviet-style of self-determination would mean nothing but a tight centralisation and despotism in administration of the new state, it became clear only after the signature of a treaty between the Soviet Russia, Soviet Ukraine, the Trans-Caucasian Soviet Republics and the White Russian Soviet Republic on 30 December 1922. This treaty stipulated the supremacy of Moscow in all crucial matters regarding the state-running. No power was left for the constituent units of the new state so that the Communist self-determination faded away in the face of the new power base, already on a way to full consolidation. See, Alfred L.P. Dennis, "Soviet Russia and Federated Russia", pp. 529-551 at 549-550; Dragan Medvedovic, *Nastanak Sovjetske Federacije* (Zagreb: Informator, 1980) pp. 107-170.

<sup>120</sup> Article 71 of the 1977 Soviet Constitutions (in force when the state dissolved in 1991), enumerates fifteen Union Republics. Article 85 of the same constitutions spoke of a system of the so-called Autonomous Socialist Soviet Republics. Finally, articles 87 and 88 of that constitution mentioned eight Autonomous Regions and scores of Autonomous Areas (the number is not marked in the Constitution). See, *Ustav SSSR iz 1977* (Beograd: Institut za Uperedno Pravo, 1978).

understanding of the events between the two wars can be achieved. The Soviet and Nazi Germany manifestations of self-determination reflect the internal dynamics of these countries, their theory and practice.<sup>121</sup> The basic premises of both cases are based on the concept of nation, its definition and conceptualisation made to serve pure exigencies of power politics.

Communist conceptions of nation are based on Stalin's definition who excluded from the definition all subjective or individual elements ("expression of the free will"): the Communist Party, as an *avant-garde* of the proletarians, should decide on behalf of a given population about the territory this people shall inhabit, the economy they shall live from and, above all, the language, culture and psychology they shall belong to.<sup>122</sup> This conception stemmed from the fact that Communism in its early stages (original Marx/Engels version of Communism) did not recognise the role the nations play in state formation and, in this context, the place the state itself takes in international relations.<sup>123</sup> It was the Jewish section of the Second Internationale that raised the nationality question in theoretical sense (the end of the 19<sup>th</sup> century).<sup>124</sup> From this time onwards, Lenin

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<sup>121</sup> From an International Relations perspective, the behaviour of the Soviet Union and the Nazi Germany are best explained if their respective political culture is taken into account rather than focusing exclusively on the logic of realism. See, Michael Desch, "Culture Clash: Assessing the Importance of Ideas in Security Studies". *International Security* Vol.23 No. 1 (January 1998), pp. 141-170; Jeffrey Checkel, "Constructivist Turn in International Relations Theory". *World Politics* Vol. 50 (January 1998), pp. 324-348; Ted Hopf, "The Promise of Constructivism in International Relations Theory". *International Security* Vol. 23 No. 1 (Summer 1998) pp. 171-199; Roland L. Jepperson, Alexander Wendt, and Peter J. Katzenstein, "Norms, Identity, and Culture in National Security. In Peter J. Katzenstein (ed.), *The Culture of National Security. Norms and Identity in World Politics* (New York: Columbia University Press, 1996) pp. 33-74.

<sup>122</sup> Michael Krykov, "Self-Determination from Marx to Mao". *Ethnic and Racial Studies* Vol. 19 No. 2 (April 1996) pp. 352-377; Zoltan D. Barany, "The Roots of Nationalism in Postcommunist Europe" *Balkan Forum* (Skopje: Macedonia) Vol. 2 No. 2 (March 1994) pp. 111-122; See, also, G.I. Tunkin, *Theory of International Law*. (Cambridge and Massachusetts: Harvard University Press, 1971) pp. 7-13 and 68-69.

<sup>123</sup> Cf. Joseph A. Petrus, "Marx and Engels on the National Question". *The Journal of Politics* Vol. 33 Issue 3 (August, 1971) pp. 797-824 at 718; 801; 804; 810-811; 818-819; 824; R.N. Berki, "On Marxian Thought and the Problem of International Relations". *World Politics* Vol. 24 Issue 1 (October, 1971) pp. 80-105. Both Marx and Engels were very hostile to the nationality question, especially regarding, as they termed, "unhistorical nations" (small nations). They later made concessions only to Irish and Polish questions. See, Jurij Boris, *The Sovietisation of Ukraine: 1917-1923. The Communist Doctrine and Practice of National Self-Determination*. pp. 12-51.

<sup>124</sup> Andrew Linklater, *Beyond Realism and Marxism. Critical Theory and International Relations*. (London: Macmillan, 1990) pp. 55-75.

analysed the issue of nationality more seriously and ordered Stalin to draft a proposal about the definition of the term nation to serve strategic and practical aims of the new revolution to come. The main thrust of Lenin's order was that the future definition to be made by Stalin and the practice to come shall have to take into full account the then existing national question in Russia. Stalin's definition, therefore, was based on the already mentioned elements<sup>125</sup>. This was contrary to Lenin's opinion about the dominant role of the working class and the mode of production. This attitude of Lenin slightly changed when WW I broke out in 1914. Then, the working class, contrary to Lenin's expectations, sided with the national capitalist classes and their leaders. This fact seriously challenged basic premises of Communism as to the nationality and state issues. This left no room for Lenin but to further use self-determination for strategic purposes of his foreign policy until he saw the disintegrating force of nationality. The principle of self-determination in Lenin's foreign policy meant the right of colonial people to throw off alien rule, not coincidentally, capitalist domination<sup>126</sup>. In addition to this, Lenin invented one another form of this strategic use of self-determination. This consisted in Lenin's resort to the idea of the "Socialist (Communist) Federalism" as a means to foster Russian national interests. In this way he promised a local autonomy to the Russian nationalities because Russian tsars had extended their influence and power over a wide range of other non Russian nationalities. The sole purpose of Lenin's "Federalism" was to territorially expand along the frontiers of Tsarist Russia, an aim achieved with an enormous speed. By the end of WW II, the Soviet Union managed to put under its control around 178, 000 square miles of European territory<sup>127</sup>. This was nothing but the realisation of Stalin's ambitions presented by his foreign minister, Molotov, to the Germans on the eve of WW II.<sup>128</sup> These ambitions exceeded by far Russia's pre-1914

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<sup>125</sup> Cf. E.J. Hobsbaum, *Kombet dhe Nacionalismi që nga 1780-a. Programi, Miti, Realiteti* (Tiranë: Toena dhe Fondacioni Soros, 1996) pp. 1-13; 15-45.

<sup>126</sup> Leo Brilmayer, "Secession and Self-Determination: A Territorial Interpretation". In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 451-476 at 455.

<sup>127</sup> Russel H. Fifield, "International Affairs: The Postwar World Map – New States and Boundary Changes". *The American Political Science Review*. Vol. 42 Issue 3 (June 1948) pp. 533-541 at 536.

<sup>128</sup> Henry Kissinger, *Diplomacy*, pp. 350-368; 394-446.

frontiers.<sup>129</sup> At the same time, political influence of the Soviet Union became even greater than physical control.

Until its demise in 1991, the Soviet Union had to struggle between reconciling two principles: that of self-determination and federalism. Federation had been emphatically rejected by Marx, Engels and Lenin himself. But, this was done only in earlier stages of the revolutionary developments. After the 1917 Revolution in Russia, the federal concept of the new state emerged as the post-revolutionary antidote to the pre-revolutionary doctrine of self-determination. Federalism was designed to absorb national self-determination as the latter was redefined within the framework of the former.<sup>130</sup> The immediate aim of the Soviet Federalism was twofold: first, to prevent further separation and, second, to entice the already seceded border areas back into the Russian state.<sup>131</sup> The so-called right to secession was a myth, not reality<sup>132</sup>. Its only purpose was to serve as an ideological bromide to lull the various nations into believing that the Union was a “voluntary amalgamation”. Although foreseen in Article 4 of the 1924 Soviet Constitution, any attempt to assert that right would be regarded *ipso facto* an act of counter-revolution.<sup>133</sup> This attitude towards secession remained unaltered until the Soviet dissolution. No federalism in its Western sense have ever existed in former Soviet Union. Perhaps the term cultural autonomy for the non-Russian republics and nations would better describe the situation that prevailed in this state: Soviet Union never managed to develop a political and state organization capable of satisfying non-Russians. National inequalities presided all along. Apart from the unequal status of the non-Russian republics (Union/or Federated

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<sup>129</sup> Hajo Holborn, “The Collpase of the European Political System: 1914-1945”. *World Politics* Vol. 1 Issue 4 (July 1949) pp. 442-446 at 461.

<sup>130</sup> Vernon V. Aspaturin, “The Theory and Practice of Soviet Federalism”. *The Journal of Politics* Vol. 12 Issue 1 (February, 1959) pp. 20-51 at 20-21; 25.

<sup>131</sup> *Ibid.* p. 26; See, also, Paul Gronski, “The Soviet System of Federalism”. *The American Political Science Review* Vol. 23 Issue 1 (February, 1929) pp. 159-167 at 159, 165, 167.

<sup>132</sup> Article 4 of the 1924 Soviet Constitution said that “ the rights to self-determination up to secession belongs to Soviet Republics”. However, this right could be “implemented only if it means that the rights of the working class and Communism are best served and protected”. Only under these conditions the secession could be valid. See, *Ustav SSSR iz 1924* (Beograd: Institut za Uperedno Pravo, 1958). The same formulation was stipulated in Article 16 of the 1924 Agreement on the Establishment of the USSR and later repeated in the 1933 Soviet Constitution (Article 17).

Republics), there were other aspects of this discriminatory situation. The most conspicuous discriminatory situations were those regarding the status of the so-called “political and territorial autonomies” granted to the various non-Russian nationalities living within the Soviet Union.

The concept of “political and territorial autonomy” was introduced in the Soviet system in order to neutralise the idea of cultural autonomy, first put forward by Austro-Hungarian Marxists in 1899 by their Jewish section of the Second Socialist Internationale. This “political and territorial autonomy” served as a means to deny to the well established national communities the status of a nation. These communities usually belonged to nations not loyal to the Soviet regime. This kind of autonomy was a punitive measure applied almost during the whole Soviet Union’s existence<sup>134</sup>. Internal administrative borders, as noted earlier, were very often drawn and re-drawn to fit the punitive needs of this kind of autonomous status and to meet the exigencies of the Soviet dictatorship. The denial of the status of a Union Republic to certain categories of national communities and the imposition on them the “political and territorial autonomy” was always accompanied with the internal border drawings and population shifts. This practice was entirely arbitrary and depended on the will of the Soviet dictators, Stalin being the most notorious among them<sup>135</sup>.

### **3.2. Wilson and His Views Regarding Self-Determination**

Another statesman who greatly contributed to the theory and practice of self-determination is the U.S. President Woodrow Wilson. He is associated with the content and the form of self-determination as it stands today. The attitude he

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<sup>133</sup> Vernon Aspaturin, “The Theory and Practice of Soviet Federalism”, p. 27.

<sup>134</sup> Paul Globe, “The End of the Nationality Question”. *RFE/RL NEWSLINE*, 20 December 1999 (<http://www.rferl.org/newsline>).

<sup>135</sup> This as well applied to the creation of the Soviet Republics, but only in some cases when it was meant to dilute or obfuscate a given nationality. Apart from the Republic of Belarus (Byelorussia), in literature the case of the Republic of Moldova singles out as an example of the Tsarist-Stalinist obfuscation of a Molodavian nationality with a 2.5 million majority population ethnically, linguistically and to a large extent historically, linked with Romania. See. Martti Koskenniemi, “National Self-Determination Today: Problems of Legal Theory and Practice”. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 77-140 at 71.



adopted and the Aaland Islands case (1921) reflect the contemporary understanding of self-determination, both internal and external. However, his views on self-determination were not in conformity with the international practice of the time, especially the practice that developed within the League of Nations (not to mention the already discussed Soviet practice).

Wilson's espousal of self-determination as a central element of the post-WW I peace was reactive to both Bolshevik initiatives and wartime exigencies.<sup>136</sup> However, Wilson did not use in public the term self-determination until February 11, 1918 (contrary to popular believe, the term itself does not appear nowhere in his fourteen points). Before that date he had used the "consent of the governed" meaning democracy (internal self-determination). This was covered by his notion of "self-government". As for external self-determination, Wilson was very much against the dismemberment of Austro-Hungarian Empire.<sup>137</sup> External form of self-determination evolved in Wilson's discourse later and meant two things: the right of people to choose their own sovereignty and their own allegiance and not to be handed about from sovereignty to sovereignty as if they were property.<sup>138</sup> The complexities of Europe, though, were too great to allow for an outright application of self-determination along nationality lines. At the same time, Wilson was rebuffed not only by Europeans but also by his own colleagues and advisers.<sup>139</sup> His Secretary of State, Robert Lansing, characterised self-determination

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<sup>136</sup> Michla Pomerance, "The United States and Self-Determination: Perspectives on the Wilsonian Conception". *American Journal of International Law* Vol. 70 Issue 1 (January 1976) pp. 1-27 at 2; 12. "Wilson proposed a new international system in which all nations might share in the benefits of war and ultimately bear together the burdens it had imposed. Wilsonism meant a sort of United States of Western Civilisation". See, William E. Dodd, "Wilsonism". *Political Sciences Quarterly* Vol. 38 Issue 1 (March 19123) pp.115-132 at 131. Wilson seems to have been convinced that only through the espousing of full self-determination there can be avoided the practice of the balance of power in international system. To avoid this, he declared in his famous Fourteen Points and during the first days of the Paris Conference that the respect for the consent of the governed was one of the basic conditions for world peace and stability. His idea of the League of Nations was to serve this purpose as well. Cf. Arthur Walworth, *Woodrow Wilson. Book Two: World Prophet* (New York: W.W. Norton and Company, 1978) pp.176-198; Ruth Cranston, *The Story of Woodrow Wilson*. (New York: Simon and Schuster, 1945) pp.280-292.

<sup>137</sup> Derek Heather, *National Self-Determination: Woodrow Wilson and His Legacy* (New York: St. Martin Press, 1994) pp. 42; 47-52.

<sup>138</sup> Michla Pomerance, "The United States and Self-Determination", p. 18.

<sup>139</sup> Cf. Thomas J. Knock, *To End All Wars. Woodrow Wilson and the Quest for a New World Order* (Princeton: Princeton University Press, 1995) pp. 123-147; 167-193.

propounded by Wilson as a dynamite, that is, a principle with enormous destabilising force when faced with practical realisation<sup>140</sup>. He rightly saw the difficulties faced in the process of determining who the “selves” should be: race, territory, community, or all of them cumulatively?

There should be no wonder then that great powers of the time did not endorse Wilson’s proposal to include self-determination within Article X of the Covenant of the League of Nations. This article in its final form referred only to the respect for territorial integrity and existing political independence of the Members of the League.<sup>141</sup> Self-determination was diverted from its universal application. It applied only in the cases expressly foreseen by the peacemakers of the Paris Peace Conference and, as far as plebiscites and minority rights were concerned, their implementation could be enacted only through a procedure provided for by the Covenant of the League of Nations. Although the League was not to Wilson’s ideal and his vision, he still regarded the League and minority protection (plebiscites included) as a progress towards the realisation of the nationality principle. Apart from this, the no-annexation clause for the Mandate System was Wilson’s merit. While the Mandates System paved the way for the realisation of self-determination in certain cases, Minorities System of the League proved to be ineffective and was used by Hitler as an excuse for aggression against other states. Two reasons stand for latter’s ineffectiveness: the System had no universal application (great powers were not bound by the minority protection arrangements) and no implementation mechanism to render effective internationally recognised minority rights. Nevertheless, the plebiscites (used more than ever before, albeit not so extensively), the Mandates System and the Minority Rights, despite all imperfections, facilitated the subsequent universalisation of self-determination ( to embrace colonial areas following WW II).

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<sup>140</sup> Derek Heater, *National Self-Determination: Woodrow Wilson and His Legacy*, p. 53.

<sup>141</sup> Inevitably, in the course of the concreting the abstract principle of self-determination during the Paris Peace Conference, pragmatic economic and strategic considerations were taken into account. Derek Heather, *National Self-Determination: Woodrow Wilson and His Legacy*, pp. 53-77.

On 28 June 1919, the representatives of Germany and the Allied and Associated Powers signed the Peace Treaty at a ceremony in the Hall of Mirrors in the Palace of Versailles. Part II of the Peace Treaty with Germany (Arts.27-30) describes the new boundaries of Germany. Six former German areas, apart from the territories ceded to France (Alsace-Lorraine), Poland (West Prussia and Posen), Czechoslovakia (a very small portion of Upper Silesia), Lithuania (Memel) and other colonies handed over to the League of Nations (including the Free City of Danzing), were to be decided by plebiscite. These areas were Allenstein and Marinwerder portions of East Prussia, Eupen and Malmedy, the Saar Basin, Schelswig and Upper Silesia. Plebiscites, along with the minority provisions and the mandate system, were a compensating devices for inadequacies and the imperfect application of the post-WWI self-determination. They were mostly directed against former German/Austro-Hungarian and, in the case of Mandates, Ottoman territories. In these cases, quite apparently, economic and strategic considerations prevailed over the nationality principle. The cases of Upper Silesia and the Saar Basin were the most significant and controversial ones.<sup>142</sup> In the case of Upper Silesia in particular, it was obvious how difficult is it to define self-determination through plebiscite. In a plebiscite, held on March 1921, majority voted for union with Germany. Since the area was mixed and there were allegations of fraud during the plebiscite, clashes between German and Polish peasants followed. In the end, the League gave to Germany the bulk of Upper Silesia but most of the rich coalmines to Poland. Both sides remained unsatisfied and civil war ensued. The message of the Saar Basin case is that it demonstrated as to what happens if a given area is not handed over to the country it belongs to. The results of plebiscite in Saar, held in January 1935, only demonstrated something that had been known for long: the unification with Germany.

In other parts of Central and Eastern Europe no plebiscites were foreseen. Vast minorities existed within the states established on the basis of the self-determination principle after WW I: Yugoslavia, Austria, Czechoslovakia,

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<sup>142</sup> Ibid. p. 80.

Romania, Poland and Hungary. Their rights were supposed to be protected by the minority regime of the League of Nations, which was ineffective. The new State of Czechoslovakia was Hitler's first test and the Munich Settlement his preliminary success in the way to WW II.<sup>143</sup>

### **3.3. The Aaland Islands Case**

When the *Aaland Islands* case emerged in 1920, self-determination meant full independence. This is the reason why in the scholarly work it is said that the refusal by the League of Nations to recognise the right of the Islanders to unite with Sweden was tantamount to the very denial of self-determination. Taking into account both internal and external aspects of self-determination the League of Nations confirmed Wilson's conception of self-determination instead. In this way, the League laid a solid ground for further development of modern self-determination. The Aaland Islands case would later serve as a basis for a wider and more liberal interpretation of self-determination, albeit not too often invoked in this sense. The following discussion is only as to the self-determination aspects of the case, leaving aside the constitutional issues of Aaland's autonomy,<sup>144</sup> as well as the demilitarisation/neutralisation aspects of the Aaland Islands.<sup>145</sup>

Deliberations on the Aaland Islands issue could be divided into legal and political parts. The problem itself arose during Finland's consolidation of its

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<sup>143</sup> The British appeasement policy towards Hitler, pursued by Chamberlain, is usually blamed in scholarly work for the success of Nazi Germany in the realisation of its racist-type self-determination that started with the victimisation of the Czechoslovak nation and ended up in WW II. See, more, in Jacques de Launay, *Les Grand Controverses du Temps Present: 1914-1945. Premier Partie* (Lausanne: Edition Rencontre, 1967) pp. 194-200; William L. Shirer, *The Rise and Fall of the Third Reich. A History of Nazi Germany* (New York: Crest Book, 1963) pp. 485-611.

<sup>144</sup> See, more on this in Hurst Hannum and Richard B. Lillich, "The Concept of Autonomy in International Law". *American Journal of International Law* Vol. 74 Issue u4 (October 1980) pp. 858-889.

<sup>145</sup> More on the issue of Aaland's demilitarisation, see, Philip Marshall Brawn, "The Aaland Islands Question". *American Journal of International Law* Vol. 15 Issue 2 (April 1921) pp. 268-272 at 271-272; Charles Noble Gregory, "The Neutralisation of the Aaland Islands". *American Journal of International Law* Vol. 17 Issue 1 (January 1923) pp.63-76 at 70-74; Norman J.Padelford and K. Kosta Anderson, "The Aaland Island Question". *American Journal of International Law* Vol. 73 Issue 3 (July 1939) pp. 465-487 at 477-487.

independence from Russia following the outbreak of October Revolution in 1917. Legal issues were dealt with by Commission of Jurists, while political ones by the Commission of Rapporteurs. Both issues concerned the issues of the Aaland's self-determination.

Finland declared its independence from Russia on the 15<sup>th</sup> of November 1917 and was finally recognised by the Soviet Government of Russia on the 4<sup>th</sup> of January 1918. The Swedish government recognised Finland on the same date. The United States extended its own recognition only after the establishment of the newly elected democratic government of Finland. France and Britain followed the suit, too. Upon the proclamation of Finland's independence, no representatives from the Aaland Islands took part in the Finish action. The Islanders were busy with their own bid for independence from Russia. For this matter, they had expressed their desire for a union with Sweden in a referendum held on December 31, 1917. Several representations were conducted before the King of Sweden showed a conciliatory mood towards Finland. Then came Brest-Litovsk, German invasion of the Islands, end of WW I and with it the annulment of the treaties concluded at Brest-Litovsk. The question was brought to the attention of the Council of the League of Nations by both the inhabitants of the Aaland Islands and the Swedish government. A resolution was unanimously adopted by the Council, with the assent of Sweden and Finland, on 12<sup>th</sup> July 1920.<sup>146</sup> When the question was brought before the Council, Finland objected. The Finish Government stated that: "In opposing the Swedish Government's proposal to submit the question to the future status of the Islands to a plebiscite of the population, this government is following the principles according to which several territorial questions were decided by the Peace Conference, in cases of conflict, as here, between the wishes of a minority and the economic and military

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<sup>146</sup> For a full account of the Aaland Islands question before the League of Nations, see, a mammoth work by James Barros, *The Aaland Islands Question: Its Settlement by the League of Nations* (New Haven: Yale University Press, 1968), especially Chapters I to III; Markku Suksi, "The Aaland Islands in Finland". In *Local Self-Government, Territorial Integrity and Protection of Minorities*. Proceedings of the UniDem Seminar in Lausanne, 25-27 April 1996. Science and Technique of Democracy, No. 16. *Council of Europe* (1996) pp. 25-50.

situation of a nation".<sup>147</sup> Before the said resolution was adopted on the 12<sup>th</sup> of July 1920, the officials of the League of Nations circulated the materials of the case with a brief and simple note which said, among others, that the case was " a matter affecting international relations" and that "unfortunately threatens to disturb the good understanding between nations upon which peace depends".<sup>148</sup> The Council of the League, acting as intermediary, stressed in its resolution of the 12<sup>th</sup> July 1920 that "an International Commission of three jurists shall be appointed for the purpose of submitting to the Council, with the least possible delay, their opinion, *inter alia*, as to whether, within the meaning of paragraph 8 of Article 15 of the Covenant, the case presented by Sweden to the Council with reference to the Aaland Islands deals with a question that should, according to International Law, be entirely left to the domestic jurisdiction of Finland." The next issue to be dealt with by the Commission of Jurists referred to the demilitarisation.<sup>149</sup>

The Commission of Jurists, in dealing with other self-determination issues (apart from the above-mentioned ones) made some points which are of importance for the present. Thus, in its conclusions of 5<sup>th</sup> of September 1920, the Commission made a distinction between domestic and international jurisdiction, giving the reasons behind this distinction as well.<sup>150</sup> Second, the Commission announced that self-determination was not an absolute right but a right that is

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<sup>147</sup> Quoted in Philip Marshall Brawn, "The Aaland Islands Question", p. 269.

<sup>148</sup> Quoted in full, in Charles Noble Gregory, "The Neutralisation of the Aaland Islands", p.63.

<sup>149</sup> *Official Journal, League of Nations, Special Supplement* No. 1 (August 1920) p.5. For comments, see, Philip Marshall Brawn, "The Aaland Islands Question", p. 269.

<sup>150</sup> The Commission stressed the following reasons behind its conclusion: 1) The dispute between Finland and Sweden does not refer to a definitive political situation, depending exclusively upon the territorial sovereignty of a State; 2) On the contrary, the dispute arose from a *de facto* situation caused by and originated in the separatist movement among the inhabitants, who invoked the principle of national self-determination, and certain military events which accompanied and followed the separation of Finland from the Russian Empire at a time when Finland had not yet acquired the character of a definitively constituted state; 3) It follows from the above that the dispute does not refer to a question which is left by international law to the domestic jurisdiction of Finland; 4) The Council of the League of Nations, therefore, is competent under paragraph 4 of Article 15, to make any recommendation which it deems just and proper in the case". *Official Journal, League of Nations. Special Supplement* No. 3 (October 1920) p. 14. For comments, see, Philip Marshall Brawn, "The Aaland Islands Question", p.270.

realised on a case by case basis and upon an agreement. This further means that, apart from the will of the population, other factors such as economic, political and security ones, should be taken into account.<sup>151</sup> Finally, the Commission made a distinction between the consequences of self-determination that arise from the mere fact of state-formation and during that process and those emerging after a state has definitely established itself.<sup>152</sup>

The Council of the League, meeting in September 1920, heard the report of the Commission of Jurists, declared itself competent to consider the question, and decided to appoint a Commission of Rapporteurs to visit the Islands, investigate the problem and make recommendations for its solution. The Commission of Rapporteurs had to tackle only the political aspects of the issue. The report of the Commission of Rapporteurs, dated 16 April 1921, covers thirty-seven large printed folio pages and the annexes fourteen more pages. The Rapporteurs investigated the historical, political, strategic, and other facts having a bearing on the matter in dispute.<sup>153</sup> The Report certainly represents the most thorough and multidimensional treatment of self-determination ever made, the basis for its application and the consequences. Thus, after declaring, in its

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<sup>151</sup> “The fact must, however, not be lost sight of that the principle that nations must have the right of self-determination is not the only one to be taken into account. Even though it be regarded as the most important of the principles governing the formation of states, geographical, economic and other similar consideration may put obstacles in the way of its complete recognition. Under such circumstances, a solution in the nature of a compromise, based on an extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace”. *Official Journal, League of Nations. Special Supplement No. 3* (October 1920) p. 6.

<sup>152</sup> The Commission of Jurists held in its report that ordinarily a state could decide for itself whether it should cede territory to another state and that such a matter was purely a domestic question under international law. But, stressed the Commission, “the formation, transformation, and dismemberment of states as a result of revolutions and wars create situation of fact which, to a large extent, cannot be met by the application of the normal rules of positive law. The transformation from a *de facto* situation to a normal situation *de jure* cannot be considered as one confined entirely within the domestic jurisdiction of a state... This transition interests the community of states very deeply both from political and legal standpoints. Under such circumstances, the principle of self-determination of peoples may be called into play.” In this context, the Commission further held that it could not admit the fact that because the Islands had been unquestionably a part of Russian Empire, they should therefore automatically become a part of Finish State. *Official Journal, League of Nations, Special Supplement No. 3* (October 1920) pp. 9 and 14. For comments, see, Norman J. Padelford and K. Kosta Anderson, “The Aaland Island Question”, p.474.

<sup>153</sup> More on this, Charles Noble Gregory, *The Neutralisation of the Aaland Islands*, pp. 64-65.

preambular part, that the Finnish sovereignty stretches “within the frontiers of the Grand Duchy of Finland, as it existed during the Imperial Russia”, the Rapporteurs went on to say that:

“The principle is not, properly speaking, a rule of international law and the League of Nations has not entered it in its Covenant. This is also the opinion of the Commission of Jurists ... It is a principle of justice and of liberty, expressed by a vague and general formula which has given rise to most varied interpretations and differences of opinion... To concede to minorities, either of language or religion, or to any fraction of a population the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within states and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the state as a territorial and political unity... The separation of a minority from the state of which it forms a part and its incorporation in mother State can only be considered as an altogether exceptional solution, a last resort when the State lacks whether the will or the power to enact and apply just and effective guaranties”.<sup>154</sup>

After consideration of the Report of the Commission and further hearing of the parties, the Council of the League of Nations adopted a resolution on June 24, 1921, recognising Finland’s sovereignty over the Islands. In addition to this, in the following meeting of the Council, upon the Belgian proposal, Finland and Sweden reached an agreement guaranteeing the rights of the local populace as recommended by the Rapporteurs. This agreement was unanimously approved by the Council and terminated the consideration of the case<sup>155</sup>.

Although there was little development in the realm of self-determination before 1945, this case along with the plebiscites and the Mandates System (conventional application of self-determination in only exceptional cases, or the presumed expression of the free will as discussed earlier) demonstrated the

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<sup>154</sup> League of Nations, *Document B7.21/68/106/VII* at pp. 22-23. For comments, see, James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press, 1979) pp. 85-86.

<sup>155</sup> Cf. *League of Nations, Official Journal* (September 1921), at pp. 694-695; 701-702.



political force of self-determination in the inter-war period. The Aaland Islands case does represent in particular a precedent and the very basis around which has revolved and the momentum gathered concerning the practice and theory of self-determination as it stands at present. Even in the cases of the anti-colonial self-determination that developed in the years after 1945, the institutions that emerged during the Aaland Islands precedent, such as *carence de souverainete*, took prominent place in the so-called *premature recognition*, applied by some states during the decolonisation process. This issues are discussed later again<sup>156</sup>.

#### **4. Self-Determination After the Second World War**

The evolution of self-determination from a revolutionary and guiding principle into a legal entitlement following the end of WW II has not been a small process. This evolution in the post-1945 era has occurred within the opposing frameworks of sovereign state rights and state equality (juridical statehood). This opposition, in turn, resulted in alterations of the basis of international relations.<sup>157</sup> A new international standing was acquired and recognised to former colonies and their peoples. At the same time, no new states were created following the immediate aftermath of the Second World War (apart for controversial cases of East Germany, Korea and Vietnam). This is not to say that there were no changes in the territorial map of the world. They mainly related to border adjustments, sometimes stretching over vast areas. In these WW II border rearrangements,

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<sup>156</sup> Scholars who wrote on the issue of the Aaland Islands in its early days argued that the case was salutary on one point, that is, “on the limitation of the right of free self-determination, a toxic principle, which, unlimited and unrestrained, threatened the integrity and menaced the welfare of all nations and thus all men”. See, Charles Noble Gregory, “The Neutralisation of the Aaland Islands”, p. 76. However, we cannot accept this view because the League of Nations did not limit self-determination. It rather set up some basic criteria along which self-determination should be pursued in the future for the sake of peace and stability in the international system. The Aaland precedent has in later years up until now served as a guide to the UN and its organs, the practice of states and, not rarely, scholarly work. In terms of the respect for human rights and freedoms, implicitly present at the last paragraph quoted above (“...a last resort when the State lacks whether the will or the power to enact and apply just and effective guaranties”), the precedent is certainly a harbinger to the *Badinter Commission’s* (and international community’s) rulings over the Yugoslav self-determination and its connection to the corpus of human rights and freedoms.

former Soviet Union achieved the most (both in Europe and in Asia).<sup>158</sup> However, the end result was not the creation of new states.

The post-WW II international order resembled more than anything else the order created by the Congress of Vienna: it was a system based on the state sovereignty, that is, on the concept of state self-determination<sup>159</sup>. The Atlantic Charter of 14 August 1941, ascribed to by twenty-six Allied States as of January 1, 1942, bears no mention of self-determination. So does not the documents drafted in 1944 during the negotiation on the UN Charter held at Dumbarton Oaks in Washington. In the Atlantic Charter the focus of the Allies has been to declare null and void territorial changes made during the war and restore sovereign rights and self-government to those who had been forcefully deprived of them.<sup>160</sup> This attitude was later changed through regional proposals. Subsequent consultations at San Francisco, however, led to a further development which was ultimately to benefit the notion of self-determination: the consultations in San Francisco in 1946 saw an amendment tabled by the Soviet Union, which resulted in the insertion of the words “based on respect for the principle of equal rights and self-determination of peoples” in the text of Articles 1 (2) and 55 of the U.N. Charter. Given the multiethnic character of the Soviet Union, its support for self-determination has been cautious and selective since Lenin’s era and has served political purposes of Soviet expansion as discussed earlier. In an effort to forestall Soviet territorial expansion after WW II, the

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<sup>157</sup> Elizabeth Chadwick, *Self-Determination, Terrorism and International Humanitarian Law of Armed Conflict*. (The Hague: Martinus Nijhoff Publishers, 1996) pp. 20-21.

<sup>158</sup> Russel H. Fifield, “International Affairs: The Postwar World Map. New States and Boundary Changes”. *The American Political Science Review* Vol. 42, Issue 3 (June 1948) pp. 533-541 at 536-541.

<sup>159</sup> J. Samuel Barkin and Bruce Cronin, “The State and the Nation: Changing Norm and Rules of Sovereignty in International Relations”. *International Organisation* Vol. 48 No. 1 (Winter 1994) pp. 107-130 at 122-125.

<sup>160</sup> The Allies declared that they “desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned” and that they “respect the right of all peoples to choose the form of government under which they live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them”. Cf. “The Atlantic Charter”, reprinted in *American Journal of International Law* 35 (Supplement 1941). As for the Dumbarton Oaks negotiations, the British representatives rejected the inclusion of the self-determination phrase in the U.N. Charter because of the fears of her colonial possessions. Cf. Bengt Broms, *The United Nations* (Helsinki: Suomalainen Tiedeakatemia, 1990) pp. 41-48, 639-710.

Western countries suggested the trusteeship system. Nevertheless, the role played by the socialist (Communist) theory in the formation and subsequent development of the UN Charter system has been crucial to an increase in the number of the issues of “international concern” connected with self-determination: although the Charter’s self-determination has been and remained state-centric, the Preambular words “we the Peoples of the United Nations” have led to non-state-centric, cultural and other interpretations of the UN Charter and to demands for the redress of historic wrongs.

Provisions of the UN Charter ( Articles 1/2 and 55) laid down the essence of self-determination but only at the level of a principle. Articles 1/2 and 55 of the UN Charter neither point to the various specific areas in which self-determination should apply nor to the final goal of self-determination. The drafters of the UN Charter did not have in mind the later forms of self-determination that emerged during the Cold War period. What they had in mind, though, was the inclusion of self-determination’s application within the concept of the existing states. Self-determination in the UN Charter was state-centric and this was a result of the fact that this time self-determination, as opposed to WW I, was not a war aim.<sup>161</sup> The forms of self-determination that evolved later, as we shall see, were the result of political pressure stemming from socialist countries , later joined by increasing number of newly independent Third World countries. In all its forms, before it reached the level of a legal right through various international instruments, self-determination’s practical implementation was taken over by the events on the ground. In its first years of development, self-determination was equated with anti-colonialism. Apart from this initial form, self-determination took some other forms of manifestations in later years: the “selves” were now considered as well the territories under alien military occupation and territories where the majority of coloured population were victims of institutionalised apartheid at the hands of Europeans. All these manifestations of self-determination were mostly a product of the diplomatic and other efforts of Afro-Asian-Eastern Bloc countries. The final

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<sup>161</sup> Antonio Cassese, *Self-Determination of Peoples. A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995) pp. 37-43.

form, that of the 1975 Helsinki approach, did not consider self-determination to be relevant only in colonial situations, foreign military occupation and racist regimes. The 1975 Helsinki Final Act, following the spirit of the 1966 Pacts on Human Rights, provided for a definition of self-determination that broke new grounds in international relations. The innovative part of this approach related primarily to internal self-determination with a distinct anti-authoritarian and anti-democratic thrust, thus putting the relationship between human rights and self-determination into a qualitatively different perspective. This perspective gave its fruits only after long period of time, that is, with the collapse of Communism and the end of the Cold War. Before this, the single-party system was regarded as compatible with the concept of representative democracy; in particular, pluralism and the rule of law were not always, if ever, considered as indispensable elements of the true democracy. In this period, internal self-determination meant freedom from outside interference. This was the constant practice of the UN Human Rights Committee, a body set up by the 1966 Pact on Human Rights. Above all, this was practice in East-West relations.<sup>162</sup>

In all manifestations, though, self-determination meaning full independence was strongly connected to the principle of territorial integrity of the existing sovereign states.

#### ***4.1. The Process of Decolonisation: Territorial Integrity as a Means of Preserving Territorial Integrity***

Self-determination, as a right and a principle, did not appear in the 1948 Universal Declaration of Human Rights<sup>163</sup>, although its article 21 did set forth some rights later identified with internal self-determination, without labelling them as such<sup>164</sup>. The rights contained in the Declaration were more of an individual

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<sup>162</sup> See more on this in *Ibid.* pp. 62-65.

<sup>163</sup> See, *United Nations General Assembly Resolution* No. 217A, UN Doc. A/810 (1948).

<sup>164</sup> Article 21 of the *Universal Declaration* says that:

“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

and general character rather than referring to the specific claims to self-determination. In this latter form it appeared in the General Assembly's 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples* (hereinafter referred to as Colonial Declaration)<sup>165</sup> to be incorporated as a human right in both of the 1966 UN Covenants on Human Rights.<sup>166</sup> In political terms, the turning point in this development was the *Bandung Conference* (1956). The emphasis of this conference was shifted from peaceful relations among sovereign states to independence from colonial rule. The final legal instrument in this respect was the 1970 *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations* (Hereinafter referred to as Friendly Relations Declaration)<sup>167</sup>. This document was the first to recognise a growing

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(3) The will of the people shall be the basis of the authority of Government; this will shall be expressed in period and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." See, UN Doc. A/811. For comments, see, Bengt Broms, *The United Nations*, pp. 574-584.

<sup>165</sup> See, *United Nations General Assembly Resolution No. 1514* (1960), Supplement No.16 UN Doc. A / 4684 (1960).

<sup>166</sup> *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, Article 1, 993 United Nations Treaty Series (UNTS) 3; *International Covenant on Civil and Political Rights*, December 16, 1966, Article 1, 999 United Nations Treaty Series (UNTS) 171.

<sup>167</sup> See, *United Nations General Assembly Resolution No. 2625* (XXV), 24 October 1970. The 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples foresaw the formation of a Special Committee of 24 to supervise its implementation. In the period until 1970, the work of this committee was sterile as a result of Soviet Union's use of this organ for Communist propaganda. This attitude was also obvious in the Mexico and New York City sessions of the Special Committee on Friendly Relations, held in 1964 and 1966 respectively. In later cases, though, Soviet Union and its satellites, with the support of some Third World countries, tried to limit the implementation of self-determination to colonial possessions only. This was without success because the 1970 Friendly Relations Declaration recognised the right to internal self-determination to other groups living within sovereign states and paved the way for further development of internal self-determination based on the rule of law, democracy and the respect for human and minority rights. The above groups included black majority in Southern Rhodesia and South Africa whose right to government was denied by the white minority. See, more on these issues, as well as the *travaux préparatoires* of the Special Committee of 24, the Special Committee on Friendly Relations and the comments on the 1970 Friendly Relations, in Robert Rosenstock, "The Declaration of Principles of International Law Concerning Friendly Relations: A Survey". *American Journal of International Law* Vol. 65 Issue 4 (October 1972) pp. 713-735 at 719-720, 724-726, 729-733; Seymour M. Finger, "A New Approach to Colonial Problems at the United Nations". *International Organization* Vol. 26 Issue 1 (Winter 1972) pp. 143-153; Elliot E. Goodman, "The Cry of National Liberation: Recent Soviet Attitudes Toward National Self-Determination". *International Organization* Vol. 14 Issue 1 (Winter 1960) pp. 92-106 at 93, 96-97, 101-102, 106; Eduard McWheeney, "The 'New' Countries and the 'New' International Law: The United Nations' Special Conference on Friendly Relations and Cooperation Among States". *American Journal of International Law* Vol. 60 Issue 1 (January

consensus concerning the extension of self-determination other than to colonial areas.

The forms of self-determination enshrined in the above documents had previously been backed up by the practice of states and the events on the ground. No ethnic self-determination appeared within them and the states did not endorse it either. Ethnic self-determination became a feature of Cold War's end. Only after this time onwards the states had to face the fact of dealing with ethnic claims to self-determination. This does not mean that these claims were recognized in practice. They were given due attention though. This was done in 1993 when the OSCE Vienna Declaration recognized the right to self-determination for ethnic groups under certain circumstances (see, *infra* page 38, footnote no. 84). This document, too, put a strong emphasis on the territorial integrity.<sup>168</sup>

Until the mid-1950s, the issue of self-determination was not a pressing one. The UN focused mainly on the Cold War tensions and the role the Soviet Union played was a minor one compared to the later periods.<sup>169</sup> In this period,

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1966) pp. 1-33 at 9-11, 15, 19-22, 26, 30-33; Piet Hein Houben, "Principles of International Law Concerning Friendly Relations and Cooperation Among States", *American Journal of International Law* Vol. 61 Issue 3 (July 1967) pp. 703-736 at 704, 709-710, 723-724, 729, 731, 734-735; Antonio Cassese, *Self-Determination of Peoples*, pp.124-125.

<sup>168</sup> Compare the Preamble of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, and the paragraphs 4 and 6, the Preamble and the "principle of equal rights and self-determination of peoples" of the 1970 Declaration on Friendly Relations. Along these lines, the Vienna Declaration on Human Rights, adopted by consensus on 15 June 1993 by 160 Member States of the UN, takes up the saving clause of the Declaration on Friendly Relations concerning conditions under which the territorial integrity of states shall be protected. However, the 1993 Vienna Declaration does not include the qualification relating to "race, creed or colour". It is now stated that a "representative government" is a government "representing the whole people...without distinction of any kind". This means that territorial integrity of states is protected by saving clause only for those states whose governments represent the whole belonging to the territory without distinction of any kind.

<sup>169</sup> The U.S. and the Western states considered the UN in this period as one of the aims and priority activities of their foreign policy. The famous "X" article of George Kennan, published in *Foreign Affairs* in 1947 (serving as a groundwork for the future Western policy of containment towards the Soviets), ascribed the same role and importance to the UN in the US foreign policy. This was a normal consequence of Western policy during the Cold War tensions existing in interstate relationships. Cf. Quincy Wright, "American Policy Toward Russia". *World Politics* Vol. 2 Issue 4 (July 1950) pp. 463-481 at 466, 469-713. As soon as the colonial self-determination emerged threatening the stability of the international system during the 1950s, the Western countries gradually lost their interest and the faith in the UN as an instrument of their national policy. The UN became, especially its General Assembly, the propaganda tool in the Soviet Union's hands.

even a resolution was passed by the General Assembly to circumvent the veto power of the Soviet Union (the Uniting for Peace Resolution of 3 November 1950). It looked as if two-pronged and evolutionary strategy of the West on colonialism would work.<sup>170</sup> The accumulation of the anti-colonial sentiment as a result of the WW II events<sup>171</sup> gave to the Soviets by 1955 an upper hand expressing more radical views on self-determination of colonies as opposed to Western evolutionary views on this issue.<sup>172</sup>

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<sup>170</sup> In this regard, the UN Charter seemingly offered a strategy in its chapters XI, XII and XIII. First, in chapters XII and XIII the trusteeship system is discussed, the direct successor of the League of Nations' mandate system. This system covers:

- a) territories now held under mandate,
- b) territories which could be detached from enemy states as a result of the Second World War, and
- c) territories voluntarily placed under the system by states responsible for their administration (*UN Charter, article 77(I)*).

The Trusteeship Council, operating under the authority of the General Assembly and composed of governmental representatives, was set up to exercise the functions of the UN with respect to trust territories. It was given the power to consider reports submitted by administering power, to accept petitions without prior submission to the administrative power, to accept petitions without prior submission to the administering authority, and to make periodic visits to trust territories. *Ibid. Article 87*.

As a counterpart to the trusteeship system, the Charter in Chapter XI (the Declaration Regarding Non-Self-Governing Territories), embodied a commitment by the Members controlling territories not placed under the trusteeship system to "accept as a sacred trust the obligation to promote to the utmost...the well-being of the inhabitants of these territories". *Ibid. Article 73*.

<sup>171</sup> Of this nature were the shattering of the colonial empires in the Far East after 1941, the mobilisation of the economies and recruitment of the manpower of the dependent territories as the war developed, the ideological influence of the Atlantic Charter, and the decline of Europe. All these events combined to release the forces for change in what by the 1950s was being called the Third World. Paul Kennedy, *The Rise and Fall of the Great Powers* (London: Fontana Press, 1988) p. 506; Brian Lappig, *End of Empire* (London: Paladin Books, 1989) pp. 25-42.

<sup>172</sup> Bernard Morris, "Soviet Policy Toward National Communism: The Limits of Diversity". *The American Political Science Review*. Vol. 53 Issue 1 (March, 1959) pp. 128-137 at 128, Rupert Emerson and Inis L. Claude, Jr., "The Soviet Union and the United Nations. An Essay in Interpretation". *International Organization*. Vol. 6 Issue 1 (February 1952) pp.1-26 at 21-23; Rupert Emerson, "Colonialism, Political Development and the United Nations". *International Organization* Vol. 19 Issue 3 (Summer, 1965) pp. 484-503 at 490-493.

Following Second World War, leading Soviet lawyers (Korovin, S.B. Krylov, Tunkin, etc.) laid the doctrinal groundwork for the Soviet politics on anti-colonial self-determination. The essence of the Soviet doctrine was a gradual shift from state sovereignty as provided for in the UN Charter to the sovereignty of the dependent peoples and territories. Thus, sovereignty became a slogan of anti-colonial self-determination and lost its legal meaning as an attribute of statehood: the colonial peoples and their territories were accepted as subjects of international law and relations. Cf. W.W. Kulski, "The Soviet Interpretation of International Law". *American Journal of International Law* Vol. 49 Issue 4 (October, 1955) pp. 518-534 at 521, 525-526.

The 1955 *Bandung Conference* was the first major political event in the process of decolonization.<sup>173</sup> This conference pressed more than any other organ before it for a speedy realization of decolonization process, for the UN to focus more on issues other than the usual Cold War's "peace and security matters", and for "measures to change a world which was still economically dominated by white men". The movement started in 1955 and culminated in 1960 with the admission to the UN of seventeen ex-colonized states, sixteen of them African, and Cyprus. Five years later, the UN membership rose to 114 to which Africa no longer contributed four or five states but 35, while the Asian members had risen to fifteen and Middle Eastern to eleven.<sup>174</sup>

The year 1960 marks the turning point in the development of the international system as we know it today.<sup>175</sup> With the adoption by the General Assembly of the *Colonial Declaration* ( 14 December 1960), a new era in inter-state relations ushered in. The concept of juridical statehood, as opposed to the empirical one which had prevailed since the 1930s,<sup>176</sup> based on full territorial

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<sup>173</sup> By this time, Asia had achieved its independence and Africa was at its most militant phase in the quest of its own. The final communiqué of the *Bandung Conference* expressed this quest of Africa:

"The Asia-African Conference declared its full support of the fundamental principles of human rights as set forth in the Charter of the United Nations and took note of the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations.

The Conference declared its full support for the principles of self-determination of peoples and nations as set forth in the Charter of the United Nations and took note of the United Nations resolutions on the rights of peoples and nations to self-determination, which is a pre-requisite of the full enjoyment of all fundamental Human Rights". Full text reprinted in Robert A. Goldwin, Ralph Lerner and Gerald Sourzh (eds.), *Readings in World Politics*. (New York: Oxford University Press, 1959) p. 539.

<sup>174</sup> Rupert Emerson, "Colonialism, Political Development, and the UN". *International Organization* Vol. 19 Issue 3 (Summer 1965) pp. 484-503 at 485.

<sup>175</sup> Alexis Heraclides, "Secessionist Minorities and External Involvement". *International Organization* Vol. 44 Issue 3 (Summer 1990) pp.341-378 at 344; Robert H. Jackson, "Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and the Third World". *International Organization* Vol. 41 Issue 4 (Autumn, 1987) pp. 519-549 at 524.

<sup>176</sup> The usual point of departure for empirical statehood is Article 1 of the Montevideo Convention on Rights and Duties of States (1933), which declares as follows: "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". As quoted in Ian Brownlie, *Principles of Public International Law*, p. 74. The principle of effectiveness meant that international statehood was empirical, not juridical. That is to say, a state had to prove unambiguously that it fulfilled all of the above criteria for international statehood before it gained international recognition of its statehood. This practice prevailed well until 1945. See, Gaetano Arangio Ruiz, *L'Etat dans le sens du Droit des Gents et la Notion du Droit International* (Bologna:



integrity of former colonial borders affected the interstate relations in time of peace but also in times of war by recognizing an international standing for non-state actors. Sovereignty now belonged to self-determination units (former colonies), not the state per se. This was an invention of the Soviet doctrine.<sup>177</sup> Democracy, the rule of law, respect for human and minority rights were not a precondition for the international realisation of (juridical) statehood.<sup>178</sup> The jurisdiction of these new states stretched, as noted (see, infra pp. 14-16), along former colonial administrative borders and over highly heterogeneous populations.<sup>179</sup> This “new territorial nationalism” in Africa and elsewhere took the existing colonies as setting the frame of political reference.<sup>180</sup> The ethnic

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Cooperativa Libreria Universitaria, 1975) pp. 265-281. This, in essence Westphalian concept does not mean that after 1945 there were changes in the realm of international statehood as described here. All it means is that by this time the principle of effective government was not that important regarding colonies. This further meant that outside the colonial context the principle of effective government would apply in full. The basic tenets of this Westphalian or realist concept remained unaltered, meaning that states retain their responsibility to mutually recognize each others autonomy and juridical equality. Cf. Daniel Deudney and G. John Ikenberry, “The Nature and Sources of Liberal International Order”. *Review of International Studies*. Vol. 25 No. 2 (April 1999) pp. 179-196 at 187.

<sup>177</sup> For the development of this idea in practice, see also, Heather Wilson, *The Use of Force by National Liberation Movements*, Chapters II and III ; Elizabeth Chadwick, *Self-Determination, Terrorism*, Chapters I to III.

<sup>178</sup> In some cases, Africa being the worst case, bad record on human rights and the non-fulfillment of the above postulates were tolerated instead. This was done for the sake of international stability. The juridical statehood meant that new African leaders had to take care only about their external or foreign relationships. See, Robert H. Jackson, *Quasi States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990) pp. 139-163; Rupert Emerson, “The Fate of Human Rights in the Third World”. *World Politics* Vol. 27 No. 2 (January 1975) pp. 201-226.

<sup>179</sup> For example, on the African continent only four sovereign states, - Swaziland, Lesotho, Botswana and Somalia, - certainly not among most powerful, contain ethnically homogeneous population. Asia is different in this regard. The juridical statehood was not applied because the European-based, empirical statehood, was in place even after the colonization and the border system and the regime for their maintenance were more or less based on Western concepts. In Asia the effect of the era of colonization was less marked because the ethnic identity of the peoples had already been established . Korea, for example, had an ancient heritage of independent existence under its own ruler so that Japanese domination served less as a unifying force than a stimulant to national awareness and political action. In Indochina, much the same was for the Vietnamese and the Cambodians, both of which peoples looked back , after becoming colonies, to long centuries of separate, if checked, existence. Cf. Rupert Emerson, “Nationalism and Political Development”. *The Journal of Politics* Vol. 22 Issue 1 (February 1960) pp.3-28; Robert I. Solomon, “Boundary Concepts and Practice in Southeast Asia”. *World Politics* Vol. 23 Issue (October 1970) pp.1-23 at 15-16.

<sup>180</sup> Rupert Emerson, “Nationalism and Political Development”, pp. 3-28 at 14. The role of the new states in Africa and elsewhere in former colonies has been to shape new nations composed of various nationalities. By the time of independence of these new countries, the nations existed only in the persons of the nationalists themselves since they were the only

mixture, combined with the lack of state traditions on the part of these states, could not but produce undemocratic regimes. The new multiethnic states, largely supported by the international rules, norms and institutions on territorial integrity and sovereign equality of states, tended to become less and less democratic in their response to the growing threat of nationalistic movements within them.<sup>181</sup>

The invention of juridical statehood during the decolonization process was based on the international rules, norms and institutions on territorial integrity and sovereign equality of states. This development has been considered as one of the ways of the expansion of international society, which by 1960 took an universal character.<sup>182</sup> Independence of these new states, therefore, was not a result of the development of individual colonies to the point of meeting qualifications for statehood in its empirical sense. On the contrary, their statehood stemmed from a rather sudden and widespread change of mind and mood about the international legitimacy of colonialism which aimed at and resulted in its abolition as an international institution.<sup>183</sup> This is not to say that the process of decolonization leading to this kind of new statehood in favor of former colonies developed within the United Nations *per se*. Or, at least, it was not a result of its initiative. The United Nations role in this period was to promote self-determination only in the sense of determining territorial independence<sup>184</sup>. At the same time, the UN served as a place where national policies on colonialism were reflected and, consequently, the views on the anti-colonial self-determination

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people who had beyond the tribal horizons and had come to a broader sense of the society in which they lived. *Ibid.* pp.14-17. Formally speaking, former colonies in Africa and Asia have been under a common government with its uniform economy and system of law and administration, but in practice they have lingered very largely within the framework of their traditional societies and have barely, if ever, been brought into any significant degree of association with their fellow colonisers.

<sup>181</sup> Walker Connor, "Self-Determination: The New Phase". *World Politics* Vol. 20 Issue 1 (October 1967) pp.30-53 at 51-52.

<sup>182</sup> For a remarkable collection of essays analysing this process of expansion, see, Hedley Bull and Adam Watson (eds.), *The Expansion of International Society*. (Oxford: Clarendon Press, 1984), especially Parts I and II.

<sup>183</sup> Robert H. Jackson, "Quasi-States, Dual Regimes, and Neoclassical Theory: International Jurisprudence and Third World", pp. 519-549 at 524-526.

<sup>184</sup> Ali A. Mazrui, "The United Nations and Some African Attitudes". *International Organization*, Vol. 18 Issue 3 (Summer 1964) pp. 469-520 at 519-520.

crystallised.<sup>185</sup> Among these views, those pertaining to the juridical statehood (negative, not positive/or empirical, sovereignty) based on the territorial integrity of former colonies took the most prominent place.<sup>186</sup>

Besides the first and the second, a third type of self-determination that emerged in this period was that of peoples living under military occupation. Compared with the Colonial Declaration, this self-determination was not based on territory but on the position of the peoples living under military occupation, a situation similar to that foreseen by the Friendly Relations Declaration. However,

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<sup>185</sup> Viewed in the large, the long struggle for self-determination in Africa, both north and south of the Sahara, came to eventual fruition outside rather than within the United Nations. In a very real sense the UN was instrumental in advancing the independence of Somalia, Togoland, the Cameroons, and Tanganyika by means of the stimulus, pressures and assistance brought to bear through the trusteeship system. The UN certainly aided Libya in achieving its independence and establishing its statehood. It would be foolhardy to say that the debates and resolutions in the General Assembly on the Tunisian and Moroccan questions in 1950-1951 did not play some part in hastening ultimate French agreement to their independence. And, at the time of Suez, the actions of the special emergency session of the General Assembly in calling by an overwhelming vote for a cease fire and the withdrawal of British, French and Israeli forces from Egyptian soil, together with the establishment of the UN Emergency Force to take over the Suez and then to police the Gaza strip, certainly were not an insignificant factor in preserving the independence and the territorial integrity of Egypt. For the vast majority of the newly independent states, nevertheless, actions taken by Britain, France, and Belgium outside the UN through the collaboration or at least agreement with nationalist leaders of the various lands were the decisive factor in their attainment of independence. However, not all scholars agree on this matter. Ali Mazrui, for example, goes so far as to blame the UN for having had a destructive and destabilising role in the process of decolonisation. He thinks that the UN was involved in the process of destroying the empires and that this process was “ a process of unconscious long-term self-destruction”. Cf. Ali A. Mazrui, “The United Nations and Some African Political Attitudes”, pp. 499-520 at 500 and 517.

<sup>186</sup> Negative sovereignty, as opposed to positive or empirical one, meant that independence would belong only to the former colonies and as such not be extended to nationalities or ethnic communities or groups living within former colonies. See, more, in Robert H. Jackson, *Quasi- States: Sovereignty, International Relations, and the Third World*, pp. 50-81, especially at pp. 74-78. With the attainment of independence, the African states “crossed the divide” from the dynamics of self-determination into the area of states – that is, the maintenance of independence and of frontiers – and the protection of territorial integrity became a meeting place of the old quest for self-determination and the new concern for the status quo. For many African states the problem had become transformed from the political issue of urging self-determination to the legal and political one of insisting on territorial integrity. Such a concept had no meaning in itself without the territorial definition supplied by the adoption of the existing boundaries drawn in the past by the colonial powers, however artificial they might have been in terms of ethnic, economic or geographic factors. Cf. John H. Spencer, “Africa at the UN: Some Observations”. *International Organization*, Volume 16 Issue 2 (Spring 1962) pp. 375-386 at 382; Robert O. Matthews, “Interstate Conflicts in Africa: A Review”, *International Organization* Vol. 24 No. 2 (Spring 1970) pp. 335-360 at 339-342; David Meyers, “Interregional Conflict Management by the Organization of African Unity” *International Organization* Vol. 28 No. 3 (Summer 1974) pp. 345-373 at 364-365; Sarah Joseph, “Resolving Conflicting Claims of Territorial Sovereignty and

as opposed to the latter, self-determination pertaining to the peoples living under military occupation did not have an internal character (nature). This means that it was not related to the self-government of the peoples living within sovereign and independent states.<sup>187</sup>

From among the forms of self-determination discussed so far that concerning the institution of colonialism and its abolition was strongly connected to territory. As soon as self-determination was achieved, meaning full independence, no right to secession was recognized for ethnic, religious or linguistic groups or communities living within newly independent states<sup>188</sup>. The UN itself and most of the members of the international community strongly supported the territorial integrity of former colonies, now sovereign and independent states. *U Thant*, in his capacity as the UN Secretary General, stated in February 1970 that the United Nations “has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member State”.<sup>189</sup> This attitude was fully endorsed by the *International Court of Justice*,<sup>190</sup> while the scholars remained divided over it.

Those scholars who predicted that the “anti-colonial character of nationalist movements in colonial countries was likely to lend a deceptive sense

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External Self-Determination: Part 1” *The International Journal of Human Rights* Vol. 3 No. 1 (Spring 1999) pp. 40-61 at 42, 44, 47, 52.

<sup>187</sup> This form of self-determination concerns the cases of the Arab territories occupied by Israel, Cambodia and Germany after WW II. These cases are known in literature as a “prolonged military occupation”. See, Adam Roberts, “Prolonged Military Occupation: the Israeli-Occupied Territories Since 1967”. *American Journal of International Law* Vol. 84 No. 1 (January 1990) pp. 44-103; Eyal Benvenisti, *The International Law of Occupation* (Princeton, New Jersey: Princeton University Press, 1993) pp. 107-190.

<sup>188</sup> Michael K. Addo, “Political Self-determination within the Context of the African Charter on Human Rights”. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 257-278; Richard N. Kiwanuka, “The Meaning of ‘People’ in the African Charter on Human and Peoples’ Rights”. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 279-300.

<sup>189</sup> 7 *United Nations Monthly Chronicle* 36 (February 1970) p.1.

<sup>190</sup> In the practice of the International Court of Justice, the principle of the inviolability of the previous administrative borders (*uti possidetis juris*) was discussed in the *Western Sahara Case* (1971); *Burkina Faso v. Republic of Mali Case* (1986); and in the *Territorial Dispute Case: Libya v. Chad* (1994). Among them, only two previous cases are discussed in this dissertation. In the latter case, Libya and Chad submitted to the Court a long standing dispute over territorial claims in their border region, including the *Aouzu* strip. The Court allocated virtually all of the disputed territory to Chad, in accordance with the *uti possidetis* principle, not taking into account

of national unity” and that “the fact that a people can stage a consolidated anti-imperial movement conveys no assurance that it will be able to maintain political coherence once the imperial enemy has vanished” proved to have been correct.<sup>191</sup> In the aftermath of the first, the largest ever wave of decolonisation that occurred by the end of 1950s and the beginning of 1960s, national coherence of new states was challenged. However, in one case only the secessionist movement was successful (Bangladesh), while in other cases the movements were suppressed (Katanga and Biafra). The reasons behind this state of affairs rest upon the preservation of international (peace) and stability, which in scholarly work has been explained through different perspectives and concepts.

These reasons can be divided into two groups, subjective and objective ones. Some authors believe that in Africa new leaders accepted the former colonial borders as international frontiers, like in Latin America a century earlier, due to personal inclinations of the new African elite towards the metropolis.<sup>192</sup> As for the objective or external reasons, scholars most frequently mention the spheres of interest. That is, new African states accepted as valid those abstract lines (borders) that were set up in 1844-45 in the Berlin Colonial Conference without any account given to the internal factors and their dynamics already under way within these states. Ethnic diversity and highly diversified social structure of African societies fitted well to the concept of colonial borders. The other way around would have only caused consecutive wars of secession and bloodshed, as seen in the cases of *Katanga* and *Biafra*, or in protracted interstate conflicts as in the Horn of Africa.<sup>193</sup> In other cases, the territorial integrity of the

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other historical, geographic, ethnic or other factors. Cf. *Territorial Dispute (Libya v. Chad)*, 1994 ICJ Reports (February 3), also reprinted in 33 *International Legal Materials* (ILM) 371 (1994).

<sup>191</sup> Rupert Emerson, “Nationalism and Political Development”, p. 8.

<sup>192</sup> Alejandro Alvarez, “Latin America and International Law”, pp.269-353 at 288; Steven R. Ratner, “Drawing a Better Line: *Uti Possidetis* and the Borders of New States”. *American Journal of International Law* Vol. 90 Issue 4 (October 1996) pp. 590-624 at 592; Jeffrey Herbst, “The Creation and Maintenance of National Boundaries in Africa”, pp. 676-678.

<sup>193</sup> Ravi L. Kapil, “On the Conflict Potential of Inherited Boundaries in Africa”, pp. 656-673; Patricia Berko Wild, “The Organization of African Unity and the Algeria-Maroccan Border Conflict: A Study of New Machinery for Peacekeeping and for the Peaceful Settlement of

former colonial borders delimiting the jurisdiction of the new states turned out to be a source of ethnic conflict leading to the largest ever commitment undertaken by the international community (the case of Cyprus). The remaining cases, unsettled as yet, such as Western Sahara and Kashmir, to mention just a few, are maverick examples of the colonial heritage. In the case of Sahara, a large body of practice worth of further theoretical elaboration has been produced. This case exercised an impact on the frame and basic texture of self-determination, in particular concerning the manner of manifestation of the wishes of the potential “selves” (the expression of the free will of the population). This is the reason behind our decision to examine the Western Sahara case further before taking up the cases of *Bangladesh*, *Biafra* and *Katanga*.<sup>194</sup>

#### **4.1.1. The Case of Western Sahara**

Western Sahara is a small country, rich in mineral resources but scarcely populated. In regard to the self-determination issue, the case of Western Sahara represents a unique case, not only because it remains unsettled as of today but also due to the fact that it conclusively confirmed newly emerged rules on colonial self-determination as discussed here. This confirmation came first from

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Disputes Among African States”, pp.18-36; Friedrich Kratochwil, “Of Systems, Boundaries, and Territoriality: An Inquiry Into the Formation of the State System”, pp. 36-41.

<sup>194</sup> The case of Cyprus, not discussed here in details, is from a formal (legal) standpoint very similar to that of today’s Bosnia-Herzegovina. The Dayton solution for Bosnia (1992) and the solutions agreed upon at the *Zurich Talks on Cyprus* (February 10-11, 1959) between the representatives of Turkey, Greece and the Turkish and Greek communities of Cyprus and additional agreements signed at the *Cyprus Conference* (London, February 19, 1959) equally protect the territorial integrity and sovereignty of these two states based on the principle of *uti possidetis juris*. The solutions for both cases during the crisis in these two countries were based on the above principle. The situation on the ground, though, differs very much. While in the case of Cyprus the areas inhabited by its constituent nations, Greek and Turkish Cypriots respectively, correspond to the pre-1962 situation, in the case of Bosnia the territories inhabited by its constituent nations were carved up by violent means leading to the commission of crimes against peace and humanity ( the Serb and Croat areas respectively). Full texts on the Cyprus case, see, *the Conference on Cyprus, British Parliament Papers, NO. 4/Misc. Cmd. 679* (London, 1959). For comments on this, see, also, Meir Ydit, *Internationalised Territories* (Leyden: A. W. Sythoff, 1961) pp. 77-83; Zaim M. Necatigil. *The Cyprus Question and the Turkish Position in International Law* (Oxford: Oxford University Press, 1989), especially Chapter 1, pp. 1-28 and Chapter 13, pp. 272-288; For the Bosnian case, see, The Dayton Peace Accords (<http://www.State.gov/www/current/bosnia/daytable.html>). For comments on the status of Bosnia according to the Dayton solution, see, Noel Malcolm, *Bosnia. A Short History*. (London: Macmillan, 1997); P. Rubin, *Dayton, Bosnia and the Limits of Law*”. *The National Interest* No. 46 (Winter 1996/97) pp.41-46.

the International Court of Justice<sup>195</sup> and was already endorsed, with few exceptions, by the OAU and most of the members of the international community.<sup>196</sup> There were two major issues in this case. First, the Court did not allow states, or did not recognize their right, to help themselves to adjacent territories on the basis of historic claims or titles: self-determination must be exercised within the confines of former (colonial) borders as of the time of independence.<sup>197</sup> Second, in line with the first point, boundary readjustments

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<sup>195</sup> See, *Advisory Opinion on Western Sahara* (1975) ICJ Reports 12. This opinion was asked by the *UN General Assembly Resolution No. 3292, 29 GAOR, Supplement 31, UN Doc. A/9631 (1974)* at 103-104. See, also, Santiago Martinez Caro, *International Law and Organization: Cases and Materials* (Ankara: Meteksan, 2000) pp. 50-51 and 69-70.

The questions put to the Court by this resolution were as follows:

I. Was Western Sahara (Rio de Oro and Sakiet El Hamara) at the time of colonisation by Spain a territory belonging to no one (*terra nullius*)? If the answer to the first question is in the negative,

II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?"

<sup>196</sup> Cf. The Assembly of the Organization of African Unity, AHG/Res.17 (I), Cairo Ordinary Session, 17 - 21 July 1964. See, also, the Charter of the Organization of African Unity, Article 3 (3), which pledges respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence. As for the universal level of support, the first of a stream of resolutions calling on Spain to implement the Sahara's right to self-determination was passed in the UN Special Committee on the Situation with Regard to the Implementation of the Declaration on Granting of Independence to Colonial Countries and Peoples. (General Assembly Resolution 1654, 16 GAOR Supplement 17 at 65, UN Doc.A/5100 (1961), October 16, 1964; 19 General Assembly, GAOR, Annexes, Annex No. 8, Part I, at 290-291, UN Doc.A/5800/Rev.1 (1964); the General Assembly followed suit one year later. Cf. General Assembly Resolution No. 2072, 20GAOR, Supplement 14, at 59-60, UN Doc. A/6014 (1965). Despite a rare and repeated display of public unanimity aiming among all the key states at the beginning of 1960s, the clear and normative prescriptions of the Charter of the OAU and the UN resolutions were not followed. Instead, what occurred during the second half of the 1960s was the acceleration of efforts by all parties to arrange their preferred outcome behind a façade of support for self-determination. At present, though, only Morocco sticks to historic title over Western Sahara while Spain and Mauritania have given up their claims over that territory. Cf. Thomas M. Franck, "The Stealing of Sahara". *American Journal of International Law* Vol. 70 Issue 4 (October 1976) pp. 694-721 at 703-707.

<sup>197</sup> By refusing to be narrowly bound to the questions asked by the UN General Assembly the Court was able to reframe the question essentially in the manner earlier proposed by Spain, i.e., how important in the final act of decolonisation is historic title as compared to the right of self-determination? Addressing its own question, the Court found that self-determination had become the rule and that independence, free association with another state, or integration into another state, while all legitimate forms of decolonisation, must come about only as a "result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage". Cf. General Assembly 1541 (XV), 15 GAOR Supplement 16 at 29-30, UN Document A/4684 (1960), cited by the International Court of Justice with approval in its *Advisory Opinion*, pp. 1-120 at 32-30. The Court cited with approval various UN General Assembly resolutions setting out these prerequisites of popular consultation as ones specifically applying to the Sahara itself. *Ibid.* at 34-35. "All these resolutions", the Court

must come as an expression of the democratically expressed will of those subject to the readjustment.<sup>198</sup> The occupation of Western Sahara by Morocco (and Mauritania for some time at the beginning), caused a continued bloodshed in Northern Africa which became an arena of Cold War's superpower rivalries, at the expense of the right to self-determination of the Sahrawi people. Moreover, the Saharan precedent has had an impact on the stability of the international system. The respect for existing boundaries and the rejection of the revisionist territorial claims based on allegations of historic rights were not taken into account in this case. This case showed the futility of the UN and the domination of politics over law notwithstanding the destabilising effects of the Sahara's precedent.<sup>199</sup>

#### **4.1.2. The Secession of Bangladesh**

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noted, "were adopted in the face of reminders by Morocco and Mauritania of their respective claims that Western Sahara constituted an integral part of their territory". Ibid. at 35. These claims were based on historic title. With that, the Court went on to consider the issue of historic title. After some examination of the evidence of political, military, religious, and fiscal practices in the region before Spain's arrival, the Court declared that "the information before the Court does not support Morocco's claim to have exercised territorial sovereignty over Western Sahara". While the information before it shows the display of some authority by the (Moroccan) Sultan" over some, but only some, of the nomadic tribes of the region, the evidence "does not establish any tie of territorial sovereignty between Western Sahara and that State". It does not show that Morocco displayed effective and exclusive State activity in the Western Sahara". The "inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are, therefore, in accord in not providing indications of the existence, at the relevant period, of any legal tie of territorial sovereignty between Western Sahara and the Moroccan state". Ibid. pp. 48-49; 56-57.

In respect to Mauritania's claim, the Court's answer was essentially the same. Although there is evidence, said the Court, of the "existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and territory of Western Sahara... the Court's conclusion is that the materials and information presented to it do not establish and tie of territorial sovereignty between the territory of Western Sahara and ... the Mauritanian entity. Ibid. p. 68.

<sup>198</sup> The results of the Court were a sharp and essentially anonymous rejection both of Morocco's and Mauritania's historic claims. More important, the Court emphatically rejected the assertion that "automatic retrocession" can take precedence over the inhabitant's rights to self-determination. Thus, the Court concluded that the rules applicable to decolonisation require respect for "the right of the population of Western Sahara to determine their future political status by their own freely expressed will". Ibid. pp. 36 and 120.

<sup>199</sup> About the impact of the Sahara case on East Timor, Somalia's behaviour within the international system, the security of Israel, Gibraltar and the Falkland Islands, see, more in Thomas Franck, "The Stealing of Sahara", pp. 694-721 at 719-721.



The case of Bangladesh is a unique one. This uniqueness stems from different factors: the case of Bangladesh has been and remains the only case of successful secession outside the colonial context, without having repercussions for other similar situations.<sup>200</sup> In literature on the subject of self-determination of East Pakistan, there have been given various reasons as to the international community's reluctance to forcefully prevent the secession of this country and its final independence from the West Pakistan as it did in the cases of Biafra and Katanga a decade earlier. Human sufferings due to military crackdown by West Pakistan's military, physical separation of East Pakistan from the West and their reciprocal ethnic, linguistic and cultural differences, the economic exploitation of East Pakistan from the West of the country and, finally, the fact that there was a majority determination by vote of independence for East Pakistan are among the reasons listed in literature in favour of the above stance of the international community towards this case.<sup>201</sup>

Physical separation of the East from the West Pakistan, comprising miles of Indian territory, rendered the Eastern claims for independent statehood far more feasible in the eyes of international community than it did in the cases of *Katanga* and *Biafra*. An independent East Pakistan (Bangladesh) was not seen

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<sup>200</sup> Conflict over Bangladesh began in March 1971 following the election victory by the Awami League of the East Pakistan (or Eastern Bengali as it used to be called) in December 1970. This league had been seeking an autonomous development and, by the end of 1960s, full scale independence from West Pakistan. To prevent this, West Pakistan sent into region huge military force which committed unseen atrocities against civilians, around ten millions of whom fled to neighbouring India. The latter was eventually dragged into conflict and won over military forces of West Pakistan. This military victory led to the establishment of an independent state of Bangladesh in December 1971. Despite widespread condemnation of the actions of the West Pakistan's military from Western, Eastern and Third World countries, the UN Security Council and the General Assembly did not discuss the situation until a full-scale war between India and Pakistan had started. See, *United Nations Security Council Resolution No. 307 (1971)*, adopted on December 21, 1971; *UN General Assembly Resolution No. 2793 (XXVI)*, adopted on December 1971. See, also, the UN Secretary General's Report on the situation, *UN Document No. S/10410 and Add.1*, December 3 and 4, 1971. For the genesis of this crisis, its development and the reaction of individual states, various NGOs and the UN organs and bodies, see, more in Ved P. Nanda, "Self-Determination in International Law: The Tragic Tale of Two Cities-Islamabad (West Pakistan) and Dacca (East Pakistan)". *American Journal of International Law* Vol. 66 Issue 2 (April 1972) pp. 321-336; Ivo Skrabalo, *Samoodredjenje i Otcepljenje. Pouke iz Nastanka Drzave Banglades*. (Zagreb: Skolske Novine, 1997).

as a destabilising unit in Asia, nor did it threaten the economic viability and political stability of its mother (parent) country, circumstances clearly absent in the cases of Biafra and Katanga. Seen as a factor of stability in the eyes of the international community, rather than the opposite, the Bangladeshi government gained speedy recognition of its international statehood as early as the beginning of 1972.<sup>202</sup> The physical position of former Pakistan (East and West), along with the internal dynamics of that society following the separation from India in 1947, rendered the principle of territorial integrity useless, that is, its further preservation was seen as a continuous threat to the peace and stability in that part of Asia. In Africa, the situation was different: any major change in colonial borders would have led to a chain of domino effects throughout the countries bordering Biafra and Katanga respectively.

As we saw earlier in Chapter II, borders in Africa have had a different history. The ethnic diversity of the Continent is highest in the world and this makes costly any border redrawing. It would certainly have had wider implications for peace and stability in this part of the world.<sup>203</sup> Paradoxically, though, this fact stands at the same time for, and makes of, the very crux of the African stability. This situation explains the international community's reluctance and its strong opposition to Katanga's and Biafra's secessions. In Africa there was, compared with other situations, a striking contradiction between the right of "all peoples" to self-determination and the right of states to their "territorial integrity". It is the African context which led some notable authors, Rupert Emerson, James Crawford and Antonio Cassese, to see too little room left for self-determination, meaning independent statehood, apart from the pure colonial context.<sup>204</sup> The UN practice has supported the conclusions arrived at by these

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<sup>201</sup> See, more on this, in Ved P. Nanda, "Self-Determination in International Law", pp. 321-336 at 328-324; 336; Ivo Skrabalo, *Samoodredjenje i Otcepljenje*, pp. 43-50.

<sup>202</sup> Ved P. Nanda, "Self-Determination in International Law", pp. 334-336; Ivo Skrabalo, *Samoodredjenje i Otcepljenje*, pp. 65-71.

<sup>203</sup> Jeffrey Herbst, "The Creation and Maintenance of Borders in Africa", p. 692.

<sup>204</sup> Cf. Rupert Emerson, "Self-Determination". *American Journal of International Law* Vol. 65 Issue 3 (July 1971) pp. 459-475; James Crawford, *State Practice and International Law in Relation to Unilateral Secession*. (Cambridge: Cambridge University Press, 1997). (<http://>

authors: the cases of Katanga (Zaire/Kongo) and Biafra (Nigeria) are the most conspicuous examples of the prevalence of the principle of territorial integrity over self-determination of peoples, no matter the popular wishes and the human costs engaged. The principle of territorial integrity proved to be a stabilising factor in the countries bordering Congo/Zaire and Nigeria respectively.

#### **4.1.3. Two Failed Attempts at Secession: Katanga and Biafra**

Katanga, a province of Congo/Zaire, is an area with an enormous economic wealth in natural resources.<sup>205</sup> Its natural resources seems to have been the main cause of secession from Congo/Zaire<sup>206</sup>. In the years preceding the declaration of independence on 11 July 1960, there had been formed scores of political organizations representing various interest groups : settlers (*Federation des Associations de Colones du Congo et du Ruanda - Urundi - Fedacol*), tribes of Katanga (*Confederation des Associations Tribales du Katanga – Conakat*), and “alien” tribes , mainly Kasain immigrants (*Federation Kasaienne*

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[www.Canada.Justice.gc.ca/](http://www.Canada.Justice.gc.ca/)). But, Crawford has also labelled the principle of territorial integrity as “undemocratic” in his earlier essay *Democracy in International Law* (Cambridge: Cambridge University Press, 1994) pp. 8-10, thus extending the principle’s application beyond original colonial context. In a similar fashion, Antonio Cassese, in his book *Self-Determination of Peoples. A Legal Reappraisal*, pp. 315-365, strongly supports the restrictive view of self-determination, not extending its application to sovereign and independent states. While discussing the dissolution of former communist states (Soviet Union, Yugoslavia and Czechoslovakia), Cassese clearly compares them with former colonies thus excluding any right to self-determination in favour of non-federal (or non-Union) republics existing in these countries at the time.

<sup>205</sup> See, in details, on this in Rene Lemarchand, “The Limits of Self-Determination: The Case of Katanga Secession”. *The American Political Science Review* Vol. 56 Issue 2 (June 1962) pp. 104-416 at 405-406.

<sup>206</sup> In literature, economic considerations are put foreword as one of the causes of secession. Liberal view supports this argument as well. Thus, *Buchanan* holds that the right to secession must be derived from variety of ethical considerations. Two features of his theory are particularly noteworthy. The first is that it emphasises *economic discrimination* as a relatively strong ground for secession. The second is the low value that it accords to the preservation of cultures, because cultures change over time; because liberal should value culturally plural states; because secession for the sake of cultural self-determination would lead to indefinite divisibility; and because culturally-based secessions are likely to lead to serious human-rights violations. Cf. A. Buchanan, *Secession: The Morality of Political Divorce from Sumter to Lithuania and Quebec* (Boulder: Westview Press, 1991) pp. 48-51.

– *Fedeka*).<sup>207</sup> Apart from these political groupings there existed other Belgian-run, for economic and commercial purposes, corporations, such as the *Union Miniere du Haut Katanga (UMHK)* and the *Compagnie du Chemin de Fer du Bas Congo au Katanga (Beceka)*. Ultimate control over the *UMHK* and *Beceka*, however, was exercised by the *Societe Generale de Belgique*, unquestionably the most powerful of the five corporate groups which dominated the Congo economy during its colonial days.<sup>208</sup>

Among the several factors which predisposed the Katanga leaders to claim full independence, at least three deserve emphasis. One is the sense of economic grievance which forged the attitude of the *Conakat* towards the inhabitants of the other provinces of Congo/Zaire. A second factor was the part played by the *Fedacol* in making the idea of secession both economically attractive and politically meaningful. A third explanatory factor lies in the outside support accorded by Belgian metropolitan interests to the advocates of secession. This by itself did not provoke the emergence of secessionist claims. But it provided the external stimulus which made the prospects of a secession increasingly attractive. And in the event, this is what made it feasible.

For the most part, individual states did not recognize the independence of Katanga,<sup>209</sup> while the Belgian government itself made a declaration as far back as in January of 1959, making it quite plain that Belgium recognized the claims of the Congo/Zaire to self-government. Equally plain was the assumption that the entire Congo/Zaire was destined to remain a distinct geographical and political unit.<sup>210</sup> Nevertheless, its independence was not recognized internationally. Threats to the peace and stability in the African continent seems

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<sup>207</sup> See, more, in Rene Lemarchand, "The Limits of Self-Determination", pp. 410-412; Ivo Skrabaló, *Samoodredjenje i Otcepljenje*, pp. 43-50.

<sup>208</sup> See, Rene Lemarchand, "The Limits of Self-Determination", pp. 405-406.

<sup>209</sup> United Nations (ed.), *The Blue Helmets. A Review of United Nations Peace - Keeping* (New York: UN Department of Public Information, 1990) pp. 239-340. In the Katanga affair, East-West cleavage, characteristic of the Cold War, come to the surface, with the West sympathetic to President *Tshombe* of the Katanga Province and the East supporting the central government of Congo/Zaire. Cf. John H. Spencer, "Africa at the UN: Some Observations", pp. 375-386 at 377. However, on the issue of formal recognition, no serious steps were taken by the West or Western-oriented countries of the UN.

<sup>210</sup> As quoted in Rene Lemarchand, "The Limits of Self-Determination", p. 410.

to have led the individual states' rejection of Katanga's independence.<sup>211</sup> By the same token, its collective recognition was also denied on the same ground. This was clearly expressed by the UN Security Resolution, adopted on November 24, 1961, "completely rejecting the claim of the Katanga as a sovereign independent nation" and "recognizing the government of the Republic of Congo as exclusively responsible for the conduct of the external affairs of the Congo".<sup>212</sup>

Biafra (Nigeria) was the next test for the international community where the principle of territorial integrity clashed with the ethnic/regional self-determination. It is in many respects identical with the case of Katanga. However, this case is the most tragic event in post-colonial Africa as far as self-determination is concerned: the resulting war, which lasted two and a half years, produced over a million casualties from military action, disease, and starvation<sup>213</sup>. In the case of Biafra, it was proved continuously that the opening article of the *Covenants on Human Rights* to the effect that "All peoples and all nations shall have the right to self-determination" carries much less weight in postcolonial Africa than the seemingly contrary principle of the 1960 *Colonial Declaration*, which stipulates that "Any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".<sup>214</sup>

The independence of Biafra was declared on May 30, 1967, following the tragic events of July 29, 1966. On this latter date, a *coup* occurred in the Nigerian capital. The Northern troops systematically killed about 240 Southern officers and men, of whom at least three-quarters were Easterners. This action destroyed the Nigerian army as an effective agent of Nigerian unity.<sup>215</sup> A series of unilateral moves in the areas of economic and political relations by both the East

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<sup>211</sup> Cf. *Ibid.* p. 416 ; Rupert Emerson, "Pan-Africanism". *International Organization* Vol. 16 Issue 2 (Spring 1962) pp. 275-290 at 277 and 279.

<sup>212</sup> See, UN Security Council Resolution S/5002 (S/4985/Rev.1, as amended ).

<sup>213</sup> Charles R. Nixon, "Self-Determination: The Nigeria/Biafra Case". *World Politics* Vol. 24 Issue 4 (July 1972) pp. 473-497 at 473.

<sup>214</sup> Rupert Emerson, "Self-Determination Revisited in the Era of Decolonisation". *Occasional Paper No. 9* (Harvard: Centre for International Affairs of the Harvard University, December 1964) pp. 1-29 at 27-29.

<sup>215</sup> Charles R. Nixon, "Self-Determination: The Nigeria-Biafra Case", pp. 473-497 at 475.

and the centre of Nigeria undertaken between July 1966-May 1967, simply served to escalate the conflict which lasted until the collapse of Biafra in January 1970.<sup>216</sup>

There are several factors that scholars have put forward in their attempts to explain the causes of Biafra's attempt at secession. The leaders of Biafra (the Easterners) believed that the security of their lives and property could not be maintained if they were subject to the control of the Nigerian government as then constituted. Second, they believed that a negotiated solution had been effectively frustrated by the central government. Third, the Easterners also believed that the secession would be recognized as a legitimate step throughout Nigeria, if not actually supported and/or imitated by the rest of the Nigeria. Fourth, they believed that the move to independence had popular support in the Eastern region.<sup>217</sup>

The recognition of Nigeria's independence on October 1, 1960, along with the discovery of huge amount of oil reserves, changed the internal dynamics of the Nigerian civil war. Other regions of the country turned united against the Biafra Region.<sup>218</sup> Only the internal support never seriously weakened. On the other hand, the individual states (apart from five African countries) were highly reluctant to recognize the independence of Biafra<sup>219</sup>. Even France and Portugal,

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<sup>216</sup> However, Biafra was recognized as a sovereign and independent state by Tanzania (17 April 1968), Gabon (( May 1968), Zambia (20 May 1968) and, lately, Haiti. See, Chris N. Okeke, *Controversial Subjects of Contemporary International Law* (The Netherlands: Rotterdam University Press, 1974) pp. 158; See, also, David Meyers, "Interregional Conflict Management by the Organization of African Unity". *International Organization*, pp. 345-373 at 364-365.

<sup>217</sup> Charles R. Nixon, "Self-Determination", pp. 476-482.

<sup>218</sup> As the prospects of Eastern independence and secession became more likely, the detrimental consequences of this for other areas become clearer. These concerns, plus the already strong commitment of many leaders to the principles of Nigerian unity – which they viewed as being as vital to Nigeria's future development as the preservation of the American Union in 1861 was to America's future – served to build support within Nigeria for the conviction that Biafran independence was indeed incompatible with the development of Nigeria. Thus, neither a simple moral concept which an abused people (the Biafrans) can invoke unilaterally to impose its own solution on others, nor the strong support within the region claiming independence (Biafra itself), did suffice for the attainment of an internationally recognized statehood. It was the already established norm on territorial integrity of former colonial borders that proved stronger than the above facts.

<sup>219</sup> It has been suggested that there was no real consensus in Africa as to the opposition to the attempted secession of Biafra from Nigeria. In this regard, only TANZANIA, Gabon, Ivory

who favoured very much the Biafran claims, did not recognize its independence due to the same reasons as those put forward in the case of Katanga. At the regional level, the OAU, despite its divisions over the issue, firmly stood against the independence of Biafra. The UN followed the suit even more united than the OAU.<sup>220</sup> Fear that the success of Biafra would stimulate similar claims elsewhere was one important constraint on further recognition of Biafra: there prevailed assumption that the principle of self-determination applied equally to all colonial territories but that once independence was attained, the principle of self-determination was fulfilled. After this, the concept had no further applicability to subsequent political changes in former colonial areas.

#### **4.2. The Conference on Security and Cooperation in Europe: Its Background and Beyond**

The Conference on Security and Cooperation in Europe represents a follow-up to the process of *détente* that emerged in the 1970s in the East-West relations. The OSCE process based on the Helsinki Final Act was of a dual nature, especially concerning its principles. On the one hand, it was an instrument of *détente* policy aimed at reducing tensions, building confidence, and strengthening cooperation. On the other, it could be used to challenge the status quo in the East of Europe and to promote a far-reaching system change, which in fact it did by the time the Cold War ended.<sup>221</sup>

The Final Act of the Conference on Security and Co-operation in Europe (later renamed OSCE, hereinafter referred to as OSCE) was signed in Helsinki on August 1, 1975, by Chiefs of State and other high representatives of 33

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Coast, Zambia and Haiti formally recognized Biafra's independence. See, Alexis Heraclides, *The Self-Determination of Minorities in International Politics*, pp. 95, 103.

<sup>220</sup> See, in a more detailed manner, in Chris N. Okeke, *Controversial Subjects of Contemporary International Law*, pp. 158-177.

<sup>221</sup> See, more, in Stephan Lehne, *The Vienna Meeting of the Conference on Security and Cooperation in Europe, 1986-1989*. (Westview Press: Boulder, San Francisco, Oxford, 1991) pp. 1-55; Ljubivoje Acimovic, *Problemi Bezbednosti i Saradnje u Evropi* ( Beograd: IMPP i Prosveta, 1978) pp. 31-68.

European countries,<sup>222</sup> the United States and Canada. The Final Act is divided into what has become known as three “baskets”. Basket I deals with questions relating to security in Europe and comprises *Declaration on Principles Guiding Relations Between Participating States*, some related texts concerning implementation of the principle of abstention from the threat or use of force, and a proposal for a new system for the peaceful settlement of disputes as well as some modest confidence-building measures entailing notification of military manoeuvres and voluntary exchange of observers at such manoeuvres. Basket II deals in general terms with co-operation in the fields economics, science and technology, and the environment. Finally, Basket III deals with co-operation in humanitarian and other fields.

OSCE was initially a Soviet project dating at least a decade before its signature in August of 1975. The former Soviet Union aimed at securing the Western recognition of its post-war position in Eastern Europe, through a statement concerning inviolability of frontiers. At the same time, it wished to introduce the German Democratic Republic (GDR) into the community of nations through such a conference.<sup>223</sup> Work of the Conference began in Helsinki in September 1972 and was preceded by a *rapprochement* in East-West relations.<sup>224</sup> Following a nine month of frequently difficult negotiations, that started in Helsinki in September 1972, a twenty-seven page mandate was produced under the title “Final Recommendations of the Helsinki Consultations”.

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<sup>222</sup> European participants were: Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, German Democratic Republic, Federal Republic of Germany, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of the Soviet Socialist Republics, the United Kingdom, and Yugoslavia. For a complete sixty printed pages of the text of the Helsinki Final, see, 14 *International Legal Materials* (ILM) 1293 (1975).

<sup>223</sup> Harold S. Russel, “The Helsinki Declaration: Brobdingang or Lilliput ? “ *American Journal of International Law* Vol. 70 Issue 2 (April 1976) pp. 242-272 at 244-246.

<sup>224</sup> The signing of the Non-Aggression Treaty between the USSR and the Federal Republic of Germany, 9 *International Legal Materials* 1026 (1970), and the Treaty Concerning Basis for Normalizing Relations Between Poland and the Federal of Germany, 10 *International Legal Materials* 127 (1971), represented initial steps towards the Conference. However, the signature of the Quadripartite Agreement on Berlin on September 3, 1971, 10 *International Legal Materials* 895 (1971), although providing benefits to all parties, was considered by the three Western powers (Britain, France and the U.S.) to be a sufficient Soviet statement in each of relations to justify Western attendance at a CSCE.



Foreign Ministers met in Helsinki in July 1973 for a week of speeches to “adopt” the Helsinki Recommendations at stage 1 of the CSCE. Stage 2 met in Geneva from September 1973 until July 1975, producing the Final Act which was signed at stage 3 in Helsinki.<sup>225</sup>

Although legally unbinding,<sup>226</sup> the Final Act, especially the Declaration on Principles, did have an impact on the overall political climate in Europe in the years after its adoption. Thus, for example, the third principle on the inviolability of frontiers, in particular the part containing a clause confirming that the “participating States consider that their frontiers can be changed only in accordance with international law by peaceful means and by agreement”, showed as much its validity after Cold War’s end as it did during its full reign. The same holds true for two other principles from the Declaration on Principles which are of interest to our study, that is, respectively the principles on Territorial Integrity of States<sup>227</sup> and the “Respect for Human Rights and Fundamental Freedoms, including the Freedom of Thought, Conscience, Religion, and Belief”.<sup>228</sup> The “Principle of Equal Rights and Self - Determination of Peoples” (Principle VIII) is a somewhat odd reproduction of the spirit of the 1970 UN

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<sup>225</sup> See, more, on the dynamics of these stages and the difficulties in East-West negotiations throughout, in Arie Bloed, *The Conference on Security and Co-operation in Europe: Analysis and Basic Achievements, 1972-1993*. (The Hague: Kluwer Academic Publishers, 1993) pp. 4-11; 45-50.

<sup>226</sup> Upon the insistence of the Western countries, the Final Act was not registered with the Secretariat of the UN and published by it as foreseen by the Article 102 of the UN Charter. From the very earliest discussions in Geneva it became clear that virtually all delegations desired documents that were morally compelling but not legally binding. See, Harold S. Russell, “The Helsinki Declaration”, pp. 242-272 at 248; Alfred Bloed, *From Helsinki to Vienna: Basic Documents of the Helsinki Process*. (Marinus Nijhoff Publishers: Dordrecht/London: 1990) pp. 11-12; Arie Bloed, *The Conference on Security and Cooperation in Europe*, pp. 22-25.

<sup>227</sup> This principle, Principle IV, speaks of refraining from “any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State...”. The final paragraph of this principle states that “no occupation or acquisition of territory resulting from military occupation or other direct or indirect measure of force in contravention of international law will not be recognized as legal”

<sup>228</sup> This principle, along with the Principle X (“Fulfilment in Good Faith of Obligations Under International Law”), is the longest of the principles.

Friendly Declaration,<sup>229</sup> the only difference being that in the former case the reference is made to “all peoples”.<sup>230</sup>

By referring to “peaceful change” and “international law” in the third principle, a wording insisted upon by the Western States, the Final Act made possible for the Soviet Union to obtain a language it sought. That is, a language legitimising the forceful occupation of the Baltic States and the creation of the German Democratic Republic. The Soviet Union insisted upon, and sought, similar concessions as those obtained in the treaties concluded by the FR of Germany with the USSR and Poland concerning normalization of borders<sup>231</sup> This

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<sup>229</sup> The “ Principle of Equal Rights and Self-Determination of Peoples” of the UN Declaration on Friendly Relations has almost a similar wording noting, *inter alia*, that

“Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed and colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other States or country”.

<sup>230</sup> Principle VIII: Equal Rights and Self - Determination of Peoples. “The participating States will respect the equal rights of peoples and their right to self-determination , acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

By virtue of the principle of equal rights and self-determination, all 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.

The participating States, reaffirm the universal significance of respect for and effective exercise of equal rights and self-determination of peoples for the development of friendly relations among themselves as among all States; they also recall the importance of the elimination of any form of violation of this principle.”

<sup>231</sup> The Warsaw Treaty dealt with the inviolability of frontiers based entirely on the classical international law theory and practice. Thus, in its preambular part , the Warsaw Treaty confirms the classical formulae of international law on the awareness of the contracting parties as to “the inviolability of frontiers and respect for the territorial integrity and sovereignty” in this case not only of the FRG and Poland but “of all States of Europe within their present frontiers”, which is considered, as elsewhere, as “the basic condition of peace”. To achieve this objective of peace, two States had agreed, in Article 1, paras. 2 and 3, on the inviolability of their existing frontiers for the times to come and had renounced any territorial claims against one another, also for all times to come.

The Moscow Treaty contained similar language. Thus, after referring to Article 2 of the UN Charter (Article 2 of the Moscow Treaty), two countries made a commitment to the effect of recognizing that “the peace in Europe can be maintained only if no one encroaches on the present-day frontiers”. Going further than the previous treaty, Article 3 of the Moscow Treaty stipulated that two States “ undertake scrupulously to respect the territorial integrity of all States in Europe in their present frontiers. They declare that they have no territorial claims whatever against anyone and will not advance such claims in the future. They regard as inviolable new and

was a wise approach on the side of the Western countries that gave its results later. By the end of the Cold War, the fruits of this western approach regarding the frontiers will be seen in the cases of Baltic States' claim to self-determination. They based their claim mainly on the right to restore their lost sovereignty on the eve of WW II.<sup>232</sup> By the same token, the issue of succession of the former GDR was not even posed because the German issue was considered as a reunification of a divided nation rather than as a case of the state dissolution<sup>233</sup>. The Western insight and vision seems more clear when the above issues are considered from the vantage point of the territorial integrity of sovereign States.

The fact that the Soviet Union had even accepted a separate principle on human rights (Principle VII), laying down the basic principles for the maintenance of security and co-operation in Europe of the Cold War was one of the miracles of the OSCE. The text is not only the longest of the principles, a fact which troubled the Soviet negotiators, but also contains some of the most innovative concepts contained in the Declaration which gradually set up the stage for a free Europe and the collapse of Communism. Of the same visionary character was the principle regarding self-determination, introduced with the insistence of the Federal Republic of Germany and other Western countries. The FRG saw this principle as *a sine qua non* for its argument favouring the fact that the Declaration on Principles left open the possibility of reunification of the German nation, not two German states. The Soviet Union and other Eastern countries

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in the future the frontiers of all States in Europe as they are on the day of the signing of this treaty, including the Oder - Neisse line, which forms the western frontier of the Polish People's Republic, and the frontier between the Federal Republic of Germany and the German Democratic Republic".

<sup>232</sup> Antonio Cassese, "Self-Determination of Peoples and the Recent Break-up of USSR and Yugoslavia". In Roland St. John Macdonald (ed.), *Essays in Honor of Wang Tieya*. (The Hague: Kluwer Academic Publishers, 1994) pp. 131-144 at 133-137; Michael Bothe et Christian Schmidt, "Sur Quelques Questions du Succession Poses par la Dissolution de l'URSS et celle de la Yougoslavie". *Revue Generale de Droit International Public*. Tome XCVI (1992, Paris) pp. 812-841.

<sup>233</sup> Jean-Paul Jacque, "German Unification and the European Community". *European Journal of International Law* Vol. 2 No. 1 (1991), pp. 1-18; Kay Hailbronner, "Legal Aspects of the Unification of the Two German States". *European Journal of International Law* Vol. 2 No. 1 (1991) pp. 18-42; Dieter Popenfub, "The Fate of the International Treaties of the GDR within the

considered that this principle should not be inserted in the Final Act on the ground that self-determination had traditionally been associated with the right of colonial peoples to establish their independence. Inserting this concept only in the form of a principle said a great deal about the inability of some States in Europe to determine their own internal and external political, economic, social and cultural system during the Cold War times<sup>234</sup>.

#### **CHAPTER IV:**

### **SELF-DETERMINATION IN THE FORMER YUGOSLAVIA: FROM ITS CREATION TO ITS DISSOLUTION (1918-1992)**

#### ***1. The Origins of the "Yugoslav Idea" and the Serbian Nationalism***

The idea of the South Slav unification has historically had two antecedents, one Croat and one Serb. Both emerged at the beginning of the 19th century under the heavy influence of the Napoleonic Wars and the ideas of the French Revolution that spread out in the former Yugoslav territory through Napoleon's war campaign. Apart from French, German literary thought has had an impact on the rise of national consciousness among the South Slavs, especially in Serbia.<sup>235</sup>

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Framework of German Unification". *American Journal of International Law* Vol. 92 No. 3 (July 1998) pp. 469-488.

<sup>234</sup> Western countries had three reasons to push for as much ambitious as possible a formulation concerning the principle of self-determination. First, there was the German interest for reunification. Second, there was an interest to keep open the issue of the Baltic States. Finally, there was an intention to support the Eastern countries in their quest for emancipation from the Soviet Union. See, more, in Ljubivoje Acimovic, *Problemi Bezbednosti i Saradnje u Evropi*, pp. 195-196.

<sup>235</sup> Herman Vendel, *Borba Jugoslovena za Slobodnu i Jedinstvo* (Narodna Prosveta: Beograd 1925) pp. 177-206

The Croat version of the South Slav unification emerged in the form of the "Yugoslav Idea" by *Ludevit Gaj*, the founder of the nebulous *Illyrian Movement* in the 1820s.<sup>236</sup> His ideas arose as a reaction to the German assimilation trends over Croats living within the then Austrian Empire and included not only Serbs, Croats and Slovenes but Bulgarians as well. The project was based, apart from the common Illyrian project, on the acceptance of the so-called *stokavski dialect*, a view propounded later by Serbian Enlightenment father Vuk Karadjic. But, for Karadjic the acceptance of this dialect meant that all those who spoke it were the Serbs, a generalization that, of course, embraced a majority of Croats. This conviction led logically to the next conclusion that those lands where *stokavian* was spoken, namely Croatian, Slavonia, Dalmatia, Istria, Bosnia, Herzegovina, and Vojvodina – belonged to Serbia. This further meant that Gaj's ideas on South Slav unification ran counter to Karadjic's for whom the Greater Serbian project had stronger appeal. What Karadjic tried through the language was later to become an official state policy of Serbia in the first famous national program known as *Nacertanije* (the Outline). It was drafted by *Ilija Garasanin* in 1844 - he served several times as foreign minister until 1867 - as a secret document. Garasanin made clear that his goal was the unification of all Serbs, not all South Slavs. His views of the future Serbian state centered on the lands that had been included in *Dusan's* medieval empire (Serbian Tzar), but he also favored the acquisition of territory in which there were large Catholic, Muslim, Albanian and Bulgarian populations – for instance Bosnia-Herzegovina, Dalmatia, Vojvodina, Macedonia, Kosova and Albania.<sup>237</sup> In slightly changed forms, this project of

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<sup>236</sup> Ibid. pp. 177-206; Gregory Peroche, *Histoire de la Croatie e des Nations Slave du Sud* (Paris: F.X. de Guibert, 1992) pp. 150-151; Charles Jelavich, *South Slav Nationalisms – Textbooks and Yugoslav Union Before 1914* (Colombia: Ohio State University, 1990) pp. 8-9; Lenard J. Cohen, *Broken Bonds. Yugoslavia's Disintegration and Balkan Politics in Transition*. (London: Westview Press, 1995) pp. 4-13.

<sup>237</sup> Gregory Peroche, *Histoire de la Croatie e des Nations Slave du Sud*, 174-175; Philip P. Cohen, *Serbia's Secret War. Propaganda and the Deceit of History*. (Texas: Texas A and M University Press, 1996) pp. 3-4; Djurdje Jelenic, *Nova Srbija i Nova Jugoslavija* (Drzavna Stamparija SHS: Beograd 1923) pp. 115-120; Dragoljub Zivojinovic, "Srbija and Jugoslavija: Past, Present, and Future". In Alex N. Draginich (ed.), *Serbia's Historical Heritage* (New York: Columbia University Press, 1994) pp. 53-63.

Greater Serbia reappeared continuously during Yugoslavia's existence until its final dissolution.<sup>238</sup>

The Yugoslav state was from the outset swept by the contradiction of two opposing ideas, one "Yugoslav", later transformed into the (conf) federal idea, and the other unitarist or Greater Serbian seeking the mere aggrandizement of the existing Serbian state along the lines of the medieval kingdom of Tzar Dusan.<sup>239</sup> The Yugoslav (con) federal idea, pursued by Croats, meant in practice inclusive and territorial self-determination, while that of Greater Serbia had exclusively been based on ethnicity no matter whether the Serbs were in the majority in the lands they claimed for themselves. When the idea of federation was espoused among the Serb politicians, as was the case with Nikola Pasic (Serb Prime Minister between 1914-1918), it meant ethnically-based federalism designed to prevent any possibility of Serbs becoming the minority (no matter where they lived).<sup>240</sup> The same pattern repeated itself on the eve of Yugoslavia's break up (1991-1992) when the slogan "All Serbs in One State" dominated the Serbian political discourse. Both of the above forms of the manifestation of self-determination among the South Slavs were conditioned by the type of nationalism cultivated among them, that is, aristocratic (in the case of Croats) and populist or egalitarian (in the case of Serbs).<sup>241</sup> These two types of self-

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<sup>238</sup> These Serbian national programs were drafted in 1937 (by Vasa Cubrilovic), and 1944-1945 (by Vasa Cubrilovic and Ivo Andric respectively). See, more on this, in Rexhep Cosja, "The Albanian National Question in Serbia's Political Programs during 1937-1944". *The Albanian Journal of International Studies* Vol. I Issue 1 (Fall 1997). ([http://www. Albanian.com.](http://www.Albanian.com)) and Philip P. Cohen, *Serbia's Secret War. Propaganda and the Deceit of History*, pp. 4-6, 19; Last among them was drafted by the Serbian Academy of Arts and Sciences in 1986 and is known as the *Memorandum SANU*. This and other related programs shall be discussed later again. (see, infra pp. 137-138 and 180-181).

<sup>239</sup> Paul Garde, "La Logique du Conflict". In Marie Françoise Allain et al (eds.), *L'Ex Yougoslavie en Europe. De la Faillite des Démocraties au Processus de Paix*. (Paris: Edition l'Harmattan, 1997) pp. 19-29; Branka Prpa Jovanovic, "The Making of Yugoslavia (1830-1945)". In Jasmina Udovicki and James Ridgeway (eds.), *Yugoslavia's Ethnic Nightmare* (New York: Lawrence Hill Book, 1995) pp.37-56; Milos Velimirovic, "Serbia's Cultural Legacy: the Middle Ages". In Alex N. Draginich (ed.), *Serbia's Historical Heritage*, pp. 1-17; Nicholas C.J. Pappas, "Between Two Empires: Serbian Survival in the Years After Kosovo". In Alex N. Draginich (ed.), *Serbia's Historical Heritage*, pp. 17-53.

<sup>240</sup> Ivo Banac, *The National Question in Yugoslavia. Origins, History, Politics* (Ithaca and London: Cornell University Press, 1984) pp. 165-166.

<sup>241</sup> Petar Sugar, "Nationalism in Eastern Europe". In John Hutchinson and Anthony Smith (eds.), *Nationalism*. (Oxford: Oxford University Press, 1994) pp. 176-177.

determination and the respective nationalisms that emerged thereafter were the result of the different historical development of these two Slavic nations. However, while the idea of Greater Serbia had a constant appeal among the Serbs, the "Yugoslav" idea underwent a radical transformation by the end of the 19th century and the beginning of the 20th.<sup>242</sup> It is worth stressing, nevertheless, that the Croat "Yugoslav idea", in its original version of Illyrianism or as a (con) federation, never turned into a Greater Croatia, although Croat politicians and a majority of their scholars never recognized the existence of the Bosniac nation as such and, consequently, the state of Bosnia-Herzegovina. The concept of Greater Croatia emerged in practice only in 1991 when the then Croat President Franjo Tudjman agreed with Milosevic on the partition of Bosnia-Herzegovina (the so-called Kradjordjevo Agreement between Tudjman and Milosevic, to be discussed later, *infra* pp. 172, footnote no. 384).<sup>243</sup> Among the Slovenes, one of the cofounders of Yugoslavia in 1918, the "Yugoslav idea" had an extremely weak appeal and never included Serbia, which was seen by the

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<sup>242</sup> This time the "Yugoslav" idea revived in the form of (con) federation of South Slavs, again among the Croats, not the Serbs. Thus, Josip Strossmayer, an excellent Croat intellectual, having formed the "Yugoslav Academy of Arts and Sciences" in Zagreb in 1860, further elaborated his "Yugoslav" ideas in 1874. In his plan about the "Union of South Slavs", the Bulgarians were taken into account as well. The plan was to be based on the principle of (con) federation. In 1878 it was apparent that Serb politicians were harbouring Bosnia-Herzegovina within the Serbian Kingdom so that Strossmayer had to abandon his initial ideas. The same problem over Bosnia arose again in 1908 (after the country was annexed by the Austro-Hungary) and on the eve of Yugoslavia's dissolution in 1991. This counts for the lack of force and appeal of the "Yugoslav idea" at the beginning of the 20<sup>th</sup> century and after, although the idea reappeared during WW I (among the ranks of the Yugoslav Committee, or *Yugoslovenski Odbor*, residing in London. This committee was composed of politicians of Croat and Slovene background that were the Austro-Hungarian subjects). But this time the "Yugoslav idea" was half-imposed due to the conditions surrounding the end of WW I.

<sup>243</sup> On the late 19<sup>th</sup> and the whole 20<sup>th</sup> century developments of the "Yugoslav idea", see, more in Ivo Banac, *The National Question*, pp. 141-225; Charles Jelavich, *South Slav Nationalisms. Textbooks and Yugoslav Union Before 1914* (Columbus: Ohio State University Press, 1990) pp. 6-31; Branka Prpa Jovanovic, "The Making of Yugoslavia (1830-1945)", pp.37-56; Gregory Peroche, *Histoire de la Croatie et des Nations Slaves du Sud*, pp. 151-165, Alex N. Draginich, *Serbs and Croats. The Struggle in Yugoslavia* (New York: Harcourt Brace Jovanovich Publishers, 1992) pp. 1-19; Djurdje Jelenic, *Nova Srbija i Jugoslavija*, Chaps. V, VIII and IX. This author, who represents Serb views, sees the Croatian ideas from the perspective of "Yugoslav unitarism", that is, from the perspective of Greater Serbia, something similar to that expressed by a German author. The German scholar put the Croat ideas on South Slav unification on an equal footing with those regarding Greater Serbian project as elaborated by Serbs themselves. Cf. Herman Vendel, *Borba Jugoslovena za Slobodu il Jedinstvo* (Beograd: Narodna Prosveta, 1925) Chaps. VIII, IX and X.

Slovenes as a backward country. Their main concern was to preserve their language through the control of their schools and the unification of their people in a single administrative unit. Unlike Croats and Serbs, who could look back to their medieval kingdoms, the Slovenes had except for a brief period in the eighth century, been continuously under foreign rule.

Serbian nationalism has been and remained throughout its existence a type of nationalism labeled by scholars as "popular" or "egalitarian". This nationalism was weakened and transformed into an aristocratic one only when Belgrade tried to dominate Zagreb and Ljubljana respectively following WW I. These nations, in turn, cultivated aristocratic and bourgeois nationalism. These different views in Belgrade, Zagreb (and Ljubljana following the unification in 1918) produced two different, opposite visions and practices regarding the "Yugoslav idea" and the state-running itself. These visions and practices dominated the political discourse, including the nature and the brutality of the wars seen in the former Yugoslav territories during 1941-1945 and 1991-1999. In the first vision and practice, the (con) federal concept was held in the west of Yugoslavia, while the second was held in the south and the centre (with Serbia and, until recently, its tiny ally Montenegro as champions). When the Communists took power in Belgrade in 1945, other nations and nationalities, composing the new state of Yugoslavia would embrace one of the above visions and practices depending on the circumstances.

Why has the nature of Serbian nationalism been popular (egalitarian), as opposed to the Croat and Slovene nationalism? The answer to this question is found in the history of the rise and development of the Serbian nationalism.

The Ottoman conquest, unlike that in the west of the former Yugoslavia, had an equalizing effect, that is, it entirely destroyed the class of landowners (the nobility). The class of landowners existed only in Bosnia-Herzegovina and partly in Macedonia where they converted into Islam. But their impact on the formation of Serbian nationalism was too little as compared to, for example, the case of Bulgaria. This was because the position of Slav landowners showed little difference from that of Ottoman landowners. Also, at this time, a trader class did



not exist in Serbia. The modest development of a trader class during the 19th century had a negligible impact on the birth of Serbian nationalism. At the same time, the hatred and the contempt of the Serbian peasantry were directed against these landowners. This peasantry managed, on the other hand, to preserve its traditional institutions and language due to the »*millet*« system of the Ottoman Empire, an administrative system that offered a basis for future Serbian nationalism of popular (egalitarian) nature. The leaders and promoters of this sort of nationalism within Serbian society were the village priests (middle clergy) and some traders who lived outside Serbia. The discontent as well as the goals of the clergy were the same as those of the peasantry, from which the clergy itself originated. Serbian intellectuals, both inside and outside Serbia, offered a theoretical and sophisticated framework for this sort of nationalism, which formulated and channelled the domestic factors in a form of popular (egalitarian) nationalism. Although in form it appeared westernized, under these socio-economic circumstances, it was the only type of nationalism that could have emerged in Serbian society. Neither bourgeois (Czechs) or aristocratic (Poland, Croatia, Slovenia and Hungary), nor bureaucratic (Turkey and Greece) forms of nationalism could have developed there.<sup>244</sup> This social fabric, supported by state and religious institutions when Serbia received full autonomy from the Ottomans in 1830, proved to be a viable ground for the lasting endurance of the Greater Serbian project and its almost full implementation in cases where other factors, international environments in particular, allowed for it. Such was the case during WW I and immediately after it, an issue to which we now turn.

## ***2. The Serb-Croat-Slovene Kingdom: The Embodiment of the Principle of Self-Determination or the Hegemony of One Nation?***

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<sup>244</sup> Cf. Petar Sugar, "Nationalism in Eastern Europe". In John Hutchinson and Anthony Smith (eds.), *Nationalism*, pp. 176-177; Ivo Banac, "Nationalism in Serbia". In Gunay Goksy and Ozdan Kemali Saybasili (eds.), *Balkans - A Mirror of the New International Order* (Istanbul: Marmara University, 1995) 136-137; Sabrina P. Ramet, "Nationalism and the 'Idiocy' of the Countryside: The Case of Serbia" *Ethnic and Racial Studies* Vol.19 No. 1 (January, 1996) pp. 70-85.

The creation of the Serb-Croat-Slovene Kingdom (after 1929 renamed into the Kingdom of Yugoslavia) represents a unique event in the history of the South Slavs (Bulgarians apart). It came into being as a result of various circumstances, both internal and international, created during the last months of the First World War (October-November). Very few cases present itself as clear as that of Yugoslavia, showing the almost decisive role the international system plays in the final shaping of a certain type of self-determination. The specificity of the 1918 Yugoslav self-determination is that its final implementation was quite opposite from the wishes and self-determination quests put forward by two other parties, the Croats and Slovenes respectively. Different national programs, aims and considerations of expedience worked together in the ever changing international situation which, opened new avenues for the solution of the South Slav national question, comprising only Serbs, Croats and Slovenes. In this process, divergent approaches came to be represented by three separate groups: the exiled Serbian government, then residing in Corfu (Greece), the organization of the Monarchy's South Slavic émigrés living in the Entente countries (*Jugoslovenski Odbor*) residing in London, and political leaders of the South Slavs who remained in Austro-Hungary, assembled at the National Council (*Narodno Vjeće*). Together with the workings of continental diplomacy, the changing fortunes on the European battlefields, and the disposition of the war-weary populace, the relative influence of the three South Slavic nuclei – not homogenous themselves - determined not only the path to Yugoslavia's unification but also the characteristic features of the emerging new state.<sup>245</sup>

In the process of the creation of Yugoslavia, a favourable international environment has played a crucial role. Among the international events having an important influence in the process of South Slavic unification, the dissolution of the Ottoman and Austro-Hungarian empires respectively singled out in particular. The U.S. entry into the European war theatre in 1917 counts for the speedy realisation of this unification as well. While the first empire, the Ottoman, was already in the process of dissolution when the war started, the latter, the Austro-

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<sup>245</sup> Ivo Banac, *National Question in Yugoslavia. Origins, History, Politics*, pp. 115.

Hungarian, had been vital and an important active actor on the international scene. The Austro-Hungarian empire appears in the Great Powers' strategic plans for the Great War. Its existence presented itself as a serious obstacle to South Slav unification because Great Powers of the time did not want its dissolution for different reasons. Britain, because she was afraid of further Russian influence in the Balkans, seeing Serbia as a natural ally of Russia. France, because she saw Germany as a threat to her security and not Austro-Hungary. Russia, due to dynastic reasons, but she was also afraid that with the South Slav unification, the Catholic Slovenes and Croats would gain advantage and ally themselves with the Vatican. Apart from this, the events on the ground and the situation in the battlefield dictated the pace of events in the process of South Slav unification. The Entente powers had more interest in seeing Italy, Bulgaria and Romania on their side than the unification of the South Slavs, especially Croats and Slovenes, which until late 1917 did not show an apparent desire to unite with Serbia.<sup>246</sup> For this reason, eastern coasts of Adriatic were promised to Italy with the 1915 Secret Treaty of London, while parts of Serbian Macedonia and Banat (in today's Vojvodina) were awarded to Bulgaria and Romania respectively. The latter were at the expense of Serbia, while the concessions given to Italy were directed mainly against the Croats and Slovenes.

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<sup>246</sup> As we have seen earlier, the Yugoslav idea was seriously compromised after 1908 (the Austro-Hungarian annexation of Bosnia-Herzegovina) when the Serb-Croat quarrel and differences over the South Slav unification reappeared. As far as Serbia was concerned, also noted earlier, its leaders throughout the nineteenth century concentrated on gaining these lands and territories which they claimed as theirs on historical or ethnic bases, an example followed, with few interruptions, during the next century. The political and military victory, particularly in the Balkan Wars (1912-1913), heightened Serbian national enthusiasm and served to attract the support of the Serbs of the Habsburg Monarchy. Although there were some signs of support for a Croat Yugoslav program, particularly among some youth groups, the official Serbian goals were not to create a Yugoslav state but to enlarge and enhance their own national state. These Serbian goals were made public on the eve of WW I. As soon as the war started, the Serbs, through their Prime Minister *Nikola Pasic*, delivered the first public declaration on Serbia's war aims (December 1914). This declaration stated Serbia's intention to enlarge to the detriment of others rather than South Slav unification. Cf. Ivo Banac, *National Question*, p.116; Alex N. Draginich, *Serbs and Croats. The Struggle in Yugoslavia*, p. 23. This counts for the lack of desire on the Croatian and Slovenian part for the union with Serbia. The Yugoslav Committee in exile representing the Habsburg subjects of the South Slav origin was in favour of a federation of all South Slavs on an equal basis, or the independence of Croatia and Slovenia on their own.

These powers were seen as more important to win over Entente's support than unification.<sup>247</sup>

When the news about the London Treaty leaked out, the Yugoslav Committee had no choice but to ask for cooperation with the Serbian government of Prime Minister *Nikola Pasic* residing in Corfu. This does not mean that the idea of equality as expressed in the federal project of the Yugoslav Committee would be abandoned. Instead, in May 1917, the Croats and Slovenes adopted the so-called Vienna Declaration asking for the federal union among the South Slavs<sup>248</sup>. The cooperation offered by the Yugoslav Committee consisted of the quest for being informed on the details surrounding the Treaty of London because Pasic kept secret the activities of his government from the Yugoslav Committee. He even made the concessions to the Allied Powers to the detriment of Croats and Slovenes regarding the same territories promised to Italy. While the London Treaty made it difficult to separate the independence of Croatia and Slovenia, the Revolution in Russia (1917) also rendered highly uncertain for Serbia to pursue its war aims for Greater Serbia because Pasic lost its ally – Tzarist Russia. Under these circumstances, Pasic and the Yugoslav Committee sought to seek a mutual understanding. In July 1917 they met in Corfu and on the 20th the Corfu Declaration was signed stating that the new Kingdom would be called "the Serb-Croat-Slovene Kingdom"; that its future dynasty will be that of the Serbian House of Karadjordjevic; the State would be a parliamentary democracy; and, finally, the new constitution would be adopted after the war by the majority of both sides, regulating the structure and the organization of the new state. The issue of federation or confederation, the internal autonomy and other details were left for discussion after the war because it was felt that the

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<sup>247</sup> See, more, in Ivo Banac, *The National Question*, pp. 115-140; Dimitrije Djordjevic, "Serbia: Ally of the West in Two Wars". In Alex N. Draginich (ed.), *Serbia's Historical Heritage*, pp. 63-79; C. J. Bartlett, *The Global Conflict: The International Rivalry of the Great Powers, 1880-1970* (London: Longman, 1984) pp. 82-105.

<sup>248</sup> Gregory Peroche, *Histoire de la Croatie et des Nations Slaves du Sud*, p. 212.

debate over them at that time could have endangered the whole process of negotiations in Corfu.<sup>249</sup>

Since as of January 1918, President Woodrow Wilson and the British Prime Minister *Lloyd George* declared that the Allied Powers had no intention of supporting the break-up of the Habsburg Empire and that they favored autonomy only for the oppressed nationalities living in it, because it made easier for the Allies to live up to the promises given to Italy in 1915 rather than to the South Slav cause. For this reason, Pasic was afraid and reneged on the Corfu Declaration by giving a hint that he would settle for territorial acquisitions promised to Serbia earlier, meaning the establishment of a Greater Serbia, as a reward for allying with the Entente powers. This worsened the relations with the Yugoslav Committee and some British officials, who accused Pasic of his plans for a Greater Serbia. The British officials from the Foreign office, *Wickham Steed* and *R.W. Seton-Watson*, were more blunt accusing Pasic for "making (Yugoslav) unification difficult, that he wanted to put everything under Serbia, that he was bent on annexation and rule by force".<sup>250</sup> Since the speedy end of the war was not foreseen in the Summer of 1918, the realization of a Greater Serbia project was not certain as yet. The pace of events changed throughout when on mid-September and early October 1918, there was a gradual collapse of the Austria-Hungary army in the territories inhabited by the South Slavs. The Slovenes and Croats seized this opportunity and formed their state structures. In September that year, the Slovenes formed their National Council as did Bosnia-Herzegovina, while on the 26th of October, the National Council of the Croats in Zagreb was formed. However, events took a more dramatic direction. Thus, on 29 October, Croatia declared its full independence expressing at the same time, its desire to join the Yugoslav project of the National Council of the Slovenes, Croats and Serbs. On October 31, the National Council of the Croats declared that it was merging with the National Council of the Slovenes, Croats and Serbs and that it

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<sup>249</sup> Ibid. pp. 212-313; Joseph Frankel, "Federalism in Yugoslavia". *American Political Science Review*. Vol. 49 Issue 2 (June 1955) pp. 416-430 at 417.

<sup>250</sup> Alex N. Draginich, *Serbs and Croats. The Struggle in Yugoslavia*, p. 30.

was ready to enter into a common state with Serbia and Montenegro.<sup>251</sup> From now onwards, the National Council of the Slovenes, Croats and Serbs (hereinafter referred to as the National Council) was supposed to speak on behalf of all South Slavs living in the former Habsburg Empire. These moves forced *Pasic* to ask for France to mediate in the conflict with these bodies of the South Slavs. For this purpose, a meeting in Geneva was held at the beginning of November 1918, but the Geneva Accord reached there was thrown by *Pasic* as soon as he came back to Belgrade.<sup>252</sup> In this case, there could be seen the striking similarity between the years 1991-1992 and the last months following WW I, both in terms of the internal dynamics going on within the former Yugoslav territory and concerning the international situation. However, after the Cold War the latter was very much to the Serbian disadvantage and their intention to enlarge at others' expense.

After the proclamation of a new state of Slovenes, Croats and Serbs on 29 October 1918, the National Council as its governing body hoped to reach an understanding with the Allied powers for its international recognition following the example pursued with the Polish and the Czech peoples<sup>253</sup>. But, here the situation presented itself in a totally different light. There was a general anarchy in most of today's Croatia and Slovenia, so that the National Council was not able to keep law and order.<sup>106</sup> After the collapse of Austro-Hungary's state structures, looting and burning by ordinary citizens ensued. The most critical problem was the widespread popular belief that the collapse of the Monarchy meant complete liberty, that is, a world free of bureaucrats, landlords, extortionists, merchants and usurers, and a redistribution of goods and lands. The leaders of the National

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<sup>251</sup> Ivo Banac, *National Question in Yugoslavia*, p.128.

<sup>252</sup> This was the first time that the Serbian government and the representatives of the Habsburg South Slavs met on an equal basis. The situation on the ground in the former Austro-Hungarian Empire changed dramatically during the late October and November 1918. This made possible for Serbia the realisation of the Serbian plans for a unitary state, e.g., the Greater Serbian project. See, Gregory Peroche, *Histoire de la Croatie et des Nations Slaves du Sud*, pp.213, 223-230.

<sup>253</sup> Only Serbia and Austro-Hungary had recognized the new state proclaimed in Zagreb. See, Gregory Peroche, *Histoire de la Croatie et des Nations Slaves du Sud*, pp.223-224.

<sup>254</sup> Livia Kordum, "Geneza Jugoslovenske Ideje i Pokreta Tjekom Prvog Svetskog Rata". *Politicka Misao* Vol. XXVIII No. 2 (Zagreb 1991) pp. 65-87 at 85.

Council of course had no intention of satisfying these expectations, and they had to rely on the existing administration to keep things in hand. This outraged the ordinary citizens. Apart from this, the National Council had difficulties in imposing its authority in areas of today's Vojvodina and Bosnia-Herzegovina. They declared, at the behest of the Serbian military being present there, the desire to unite with Serbia : Vojvodina's National Council, composed of Serbs 90 per cent, did so on 25 November 1918, while in Bosnia-Herzegovina, the local National Councils a few days later broke their ties with Zagreb and joined Serbia, being again in the majority composed by Serbs. The sovereign state of Montenegro declared its unification with Serbia on 26 November 1918, with the Serbian army in full occupation of its cities.<sup>255</sup>

Apart from the general anarchy and turmoil caused by internal disturbances, the Italian advance along the lines promised by the 1915 London Treaty stroke fear at the Croat and Slovene leaders of the National Council. Isolated, ignored by the Allies, its people repressed by the Italians, and the prevailing anarchy and turmoil all over the areas they were supposed to control, the leaders of the National Council were increasingly driven to seek Serbian Army to intervene. Under these circumstances, the National Council went to the liberated Belgrade in the last days of November 1918. Prior to this, on November 14, 1918, the

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<sup>255</sup> The restoration of Montenegro to independent status, it might be recalled, had been included in the Fourteen Points. It was one of the Fourteen Points "nearest" to President Wilson's heart. See, Michla Pomerance, "The United States and Self-Determination: Perspectives on the Wilsonian Conception", pp. 1-27 at 14, footnote no.4. There were also appeals to *Clemenceau* in the Versailles Peace Conference not to recognize Yugoslavia. This appeal was made on December 7, 1919. At this time the Montenegro question was still opened. On January 21, 1920, the Conference authorized the King of Montenegro to telegraph his people that they would be given an opportunity to choose their form of government. See, Robert C. Binkley, "New Light on the Paris Peace Conference". *Political Science Quarterly* Vol. 46 Issue 3 (September 1931) pp. 335-361 at 354, footnote 46. But nothing came out of this until 1945 when Tito granted a semi-state status on behalf of Montenegro.

Most of the scholars agree that Montenegro did not unite with the Kingdom of Serbia on November 1918. Rather, it was an act of annexation by Serbia, a lawful act for the time. This annexation had an impact on the legal status of Montenegro, causing its demise. See, Krystyna M Marek, *Identity and Continuity of States in Public International Law* (Librarie E. Droz: Geneve 1954) pp. 240-241; Robert Jennings (ed.), *Oppenheim's International Law*. Vol I, Peace, Introduction and Part 1 (London: Longman 1992) pp. 1948-1950; Dusan Bilandzic, "Drzavna Kriza Jugoslavije". *Politicka Misao*, Vol. XXV No. 2 (Zagreb 1991) pp. 47-57 at 50. For the events proceeding unification in 1918, see, Gregory Peroche, *Histoire de la Croatie et des Nations Slaves du Sud*, pp. 226-227; Ivo Banac, *National Question in Yugoslavia*, pp. 130-131.

Council had instructed in vein its delegates to be guided by a number of conditions in connection with the nature and the organization of the future state. Among these were the stipulations that the constituent assembly would decide whether the state should be a republic or a monarchy, that the future constitution be adopted by a two-thirds vote and that only certain specific functions be lodged in the central government, with remaining ones to be exercised by local units. But, the National Council had no time and possibility to press for these issues because the situation on the ground was disastrous and the Serbian regular army was already taking control over all areas formally part of the Austro-Hungary.<sup>256</sup> The delegates in their audience, together with Serbian King Alexander, who requested unification, mentioned none of the above conditions. The points they raised were of quite a different and vague nature: sovereign authority shall be exercised by Alexander; pending convocation of the constituent assembly, an agreement shall be reached on the establishment of a responsible cabinet and a temporary parliament; during the transition period, each unit shall retain its existing authority, although under the control of the cabinet; and the constituent assembly shall be elected on the basis of direct, universal, equal, and proportional suffrage. No other conditions were advanced for the situation did not allow for it.<sup>257</sup> On December 1, 1918, King Alexander proclaimed the creation of the Kingdom of the Serbs, Croats and Slovenes, after having heard the statement of the National Council's delegates. In this very day, the dream of Greater Serbia became reality.<sup>258</sup> At the same time, this marks the beginning of the hostilities between the Serbs and all other nations living in this new state. This is not to say that the National Council representing the Habsbourg subjects of the South Slavic origin was not aware of this state of affairs, which definitely shattered their dreams about the federal structure of the common state. Montenegro as well was hopeless in this regard. This was the victory of

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<sup>256</sup> Livia Kardum, "Geneza Jugosloveneske Ideje i Pokreta Tjekom Prvog Svetskog Rata", pp. 65-87 at 85-86.

<sup>257</sup> The conditions as put forward in this audience are listed in Alex N. Draginich, *Serbs and Croats. The Struggle for Yugoslavia*, p. 34.

<sup>258</sup> Dragoljub Zivojinovic, "Serbia and Yugoslavia. Past, Present, and Future". In Alex N. Draginich, *Serbia's Historical Heritage*, pp. 53-63.



*realpolitik* over the genuine will of its founders, which could be seen in the very way the new state was run as well as its internal territorial organization. The hegemony of one nation, the Serbs, was obvious also in power sharing terms. This favourable situation for the Serbs was also a result of the Great Powers' sympathies towards the Serbian concept of Yugoslavia - in fact Greater Serbia - stemming from their conviction that the Serbs had given a great contribution during the war and had been the victims of the Central Powers. These factors played very important, if not decisive, role in the final say about unification and the international recognition of the new state of the South Slavs.<sup>259</sup> The international sympathies for the Serbian concept of Yugoslavia was in large part derived from the very fact of Austro-Hungary's demise at the last moment. Thereafter, threats to the new European order came from Germany's Drang Nach Osten and the Soviets. Yugoslavia, together with Czechoslovakia, Poland and Romania, were to serve as barrier against the above Soviet/German threats. The term denoting this new role of Yugoslavia was *cordon sanitaire*, first used and defined by French Foreign Minister, Clemenceau, on 21 December 1918.<sup>260</sup>

The formation of the Yugoslav state on 1 December 1918 and its constitutional structure based on royal unitarism after 1921 (the so-called Vidovdan Constitution), represented a victory of the Serbian forces (political and military) over the others. Such a political development was an immediate result of the balance of forces in the last months of WW I, where the Serbian state was dominant among South Slavs. This domination was both internal (because the

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<sup>259</sup> Ivo Leder, *Yugoslavia at the Peace Conference: A Study in Frontiersmaking* (New Haven: Yale University Press, 1963), pp. 3-80, especially at 3, 24, 26, 35, 45 and 57; See, also, Aleksa Djilas, *The Contested Country: Yugoslavia and Communist Federation, 1919-1953* (Harvard: Harvard University Press, 1991) pp. 3-34; Mark Almond, *Europe's Backyard War. The War in the Balkans* (London: Heinemann, 1994) pp. 115-120; Alexander Pavkovic, *The Fragmentation of Yugoslavia: Nationalism in a Multinational State* (London: Macmillan, 1997) pp. 19-35; Dusko Sekulic, "The Creation and Dissolution of the Multinational State: The Case of Yugoslavia". *Nations and Nationalism*, Vol. 3 Part 2 (July 1997) pp. 165-179; R.G.D. Laffan, C.F., *The Serbs. The Guardians of the Gate* (New York: Dorset Press, 1989) pp. 70-86.

<sup>260</sup> Robert C. Binkely, "New Light on the Paris Peace Conference", pp. 335-361 at 354, footnote 45. See, also, Nicholas J. Spykman and Abbie A. Rollins, "Geographic Objectives in Foreign Policy", First Part. *The American Political Science Review* Vol. 33 Issue 3 (June 1939) pp. 391-410 at 404, Dusan Bilandic, a famous historian from the University of Zagreb (Croatia), in a long interview with *Radio Free Europe* (in South Slavic Languages), November 19, 1999. (<http://www.rferl.org/>)

Serbian Army was the only regular military force among South Slavs) and on the international plane (Serbia's allies were the victorious parts in WW I and shaped the post-War European order)<sup>261</sup>. As for Serbia's national aims, the creation of the Serb-Slovene-Croat Kingdom in 1918, renamed Yugoslav in 1929, represented almost a full realization of its national program as set out in the 1844 *Nacertanije* plan. For others living within that state, it opened up the issue of Serbian hegemony as a result of the complete Serbian control of its state structures.<sup>262</sup> This hegemonic position of Serbia lasted throughout the period between the two wars. However, the Serbs qualified it as a situation of equality whereby the national question of the South Slavs (apart from Bulgarians) had definitely and favourably been settled for all. They considered themselves to be a *Piedmonte* for the South Slavs.<sup>263</sup> Its creation, though, was a failed attempt at emulating the Piedmonte, leading to the forceful and brutal denial of the very existence of the national question of Croats, Albanians, Muslim Bosniacs, Macedonians and others.<sup>264</sup> Furthermore, the new state had such an internal administrative structure that did not take into account any of the previous administrative, historic and ethnic borders existing prior to unification in 1918. The only exception to this was the creation of the so-called *Hrvatska Banovina* in 1939, used for the purpose of appeasing the Croat national feelings on the eve of

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<sup>261</sup> Momir Stojkovic, "The Balance of Power as a Factor of Creation and Disintegration of the Yugoslav State". *Review of International Affairs* Vol. XLIX No. 1074-75 (Belgrade: 15 November – 15 December 1998) pp. 10-16.

<sup>262</sup> James Gow, *Triumph of the Lack of the Will. International Diplomacy and the Yugoslav War* (London: Hurst and Company, 1997) p. 15, Dusan Sekulic, "The Creation and Dissolution of the Multinational State: the Case of Yugoslavia", pp. 169-170, Philip J. Cohen, *Serbia's Secret War. Propaganda and the Deceit of History*, pp. 8-9; Dusan Subotic, *Misli o Ustavu i Politici*. (Drzavna Stamparija Kraljevine SHS: Beograd 1929); Oscar Randi, *I Popoli Balcanici* (Roma: Paolo Cremonese, 1929) pp. 140-141; Mark Almond, *Europe's Backyard War. The War in the Balkans*, pp. 115-120; James Gow, *Legitimacy and the Military: The Yugoslav Crisis* (New York: St. Martin Press, 1992) pp. 6-7; Ivo Banac, *National Question in Yugoslavia*, pp. 144-153; Vesna Godina, "The Outbreak of Nationalism on former Yugoslav Territory; A Historical Perspective on the Problem of Supranational Identity". *Nations and Nationalism*. Vol. 4 Part 3 (July 1998) pp. 409-422.

<sup>263</sup> Herman Vendel, *Borba Jugoslovena za Slobodu i Jednistvo*, pp. 575-704; Djurdje Jelenic, *Nova Srbija i Jugoslavija*, pp. 249-278, 378-472; Alex N. Draginich, *Serbs and Croats. The Struggle in Jugoslavija*, pp. 20-35, Radoslav Stojanovic, *Jugoslavija, Nacije i Politika* (Beograd: Nova Knjiga, 1998) pp. 115-119; Alex N. Draginich, *Serbia's Political Development and Europe's Political Tradition*. In Alex N. Draginich, *Serbia's Historical Heritage*, pp. 31-53.

<sup>264</sup> Mark Almond, *Europe's Backyard War. The War in the Balkans*, pp. 115-118.

WW II.<sup>265</sup> The Serbian rulers of pre-WW II Yugoslavia were too cautious not to allow any internal border-drawings that might associate on former administrative, ethnic or historical units.<sup>266</sup>

The Serbian claim to the role of Piedmonte of South Slavs has failed altogether. All it left behind concerns the legacy, as one famous Serbian scholar and former politician of the 1970s put it, of an imperial mentality, from which the Serbs have been facing too many difficulties to eradicate it.<sup>267</sup> The prevalence of this mentality for a long period of time, in essence, explains the tragedy of the Yugoslav self-determination. This is more so due to the huge amount of power that the Serbs held during the existence of the Yugoslav state. To this and related issues we turn in the following chapter, which deals with various types of

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<sup>265</sup> The issues of territorial internal organization in former Yugoslavia shall be discussed later again. Here we discuss in brief only some of the basic topics regarding the internal territorial divisions in Yugoslavia. Thus, from 1921 to 1929, the Serb-Croat-Slovene Kingdom was divided into 33 regions called *oblasti* (regions). In Art. 95 of the 1921 Constitution, it was expressed the intention to deliberately divide the State into a large, rather than small, number of administrative units, based upon natural, social and economic circumstances, and without regard to former historical and cultural boundaries, thereby precluding "tribalism". Bosnia-Herzegovina, although divided into six *oblasti*, remained within its 1878 (Berlin Congress) borders because the Yugoslav Muslim Party voted in favour of the 1921 Constitution. Also Serbian borders remained historic, that is, pre WW I borders. By a decree of 3 October 1929, King *Alexander Karadjordjevic* radically restructured the State. The existing 33 *oblasti* were replaced with 9 provinces, called *banovine*. The *banovine system* totally ignored historical and cultural borders which had existed before the creation of Yugoslavia and was designed to destroy them as a basis of identity. The names of the *banovine* were derived from bodies of water crossing through or by them, displacing the older historic names. The concessions of the Muslims of Bosnia-Herzegovina which had occurred in the establishment of the *oblast system* were now eliminated. The last pre-WW I territorial arrangement was that of the so-called *Sporazum* (the Agreement) of 23 August 1939. This agreement introduced a quasi-federal system in Yugoslavia. It was a desperate measure of the Prince Regent *Pavle* to bolster the Yugoslav unity and gain the Croat sympathies in the face of the rise of Nazi Germany. This was sort of a federation between Croatia (the *Banovina* of ) and the rest of Yugoslavia. See, Peter Radan, "Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness". *East European Quarterly* Vol. 33, Issue 2 p.137, 19p (<http://www.EBSCOhost.com>). See, also, John R. Lampe, *Yugoslavia as History. Twice There Was a Country* (Cambridge: Cambridge University Press, 1996) pp. 126-196.

<sup>266</sup> Ivo Banac, *National Question in Yugoslavia*, pp. 165-166. For a detailed account of the national composition of concrete Yugoslav municipalities, see. Djordje Jelenic, *Nova Serbia i Jugoslavia*, pp. 455-472. This issue shall be discussed later again when the entire period (1918-1992) of the Yugoslav state's internal administrative organization is dealt with in connection with the application of the *uti possidetis* principle (see, infra pp.224-233).

<sup>267</sup> Latinka Perivoc, former head of the Serbian Communists in the 1970s, in an interview with Radio Free Europe (In South Slav Languages), November 19, 1999 (<http://www.rferl.org>).

self-determination that have emerged within the Yugoslav context, despite their mutual contradictions.

### ***3. The Second World War and the Communist Conception of Self-Determination***

The Communist movement in Yugoslavia, since the creation in 1919, had to face the critical questions regarding self-determination within the Yugoslav context: who were the "selves" entitled to self-determination and who were to decide about this, ethnically defined nations or certain types of territories only? The development of the Yugoslav movement, like that in the Soviet Union, shows that self-determination of peoples (or national self-determination, to use the wording of the Communist movement) had been used as a tool for revolutionary purposes and in connection with the concept of territory, the latter coming into play more often only after a successful war and revolution. First national self-determination, then the one based on territory, were used for the promotion of the world (Communist) revolution dictated by the *Commintern*. National self-determination took the prominence in the period between 1919-1941 (with all its ups and downs, again dictated by *Commintern*) in a very abstract manner. The basis of this self-determination was the classical Marxist doctrine of the Communist (world) revolution. The issue of territory usually came into play only after war and revolution when it was used as a real means to balance the internal power politics within the newly created country. This was the Soviet model, more or less pursued in Yugoslavia even after Tito's break with Stalin in 1948 (with some minor modifications not essentially changing the core concept of Communist self-determination itself). By recognizing formally the right to self-determination (up to and including the right to secession, to use the Communist terminology), the Communists both in Soviet Union and Yugoslavia intended to preserve their old states and within them create new nations (Yugoslav and Soviet ones respectively), a mission not accomplished by the previous regimes of these countries. The process of defining who the "selves" entitled to self-

determination were had been highly centralized and concentrated at the hands of a Communist Party as an *avant-garde* of the working class (proletariat). This process was highly centralized and based entirely on the arbitrary (so-called objective) criteria (partially discussed in the previous chapter). The type of a State and its political organization appropriate for the achievement of the goal of national unification of various nations based on new (Communist) system of values was the (Communist) Federation.<sup>268</sup> After the creation of this federation, self-determination as an issue reverted to the territory, which could in this way be allocated in an arbitrary manner depending on the practical needs and the exigencies of the Communist party relying on power politics exclusively. The historic and ethnic criteria in the creation of the new internal administrative borders within these Communist federations was to be entirely subordinated to the above exigencies. The Yugoslav experience was not an exception to this. It was in essence an emulation of the Soviet theory and practice concerning self-determination, granting wide powers to the Communist Party, as an *avant-garde* of the Proletariat and the Peasantry, to decide as to who were the subjects entitled to self-determination, including the content and the scope itself. This

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<sup>268</sup> The Soviet, or Communist, Federation first emerged in the post-Revolution Russia in the form of an internal agreement concluded with former regions of the Tsarist Russia, made possible an immense extension of the power directed by Moscow. This was made possible both by the interpretation and practice of self-determination and by the application and development of the very idea of federation in the later years following the Revolution. The latter was meant to be the demonstration of the "dictatorship of the proletariat" as exercised by the handful of men who controlled and guided the power of the Communist party in Russia. The Soviet federated system was an attempt to reconcile self-determination with the absolutist practice of the Dictatorship of Proletariat. The various Soviet republics of the Soviet Union, in reality, presented a closer resemblance to the Russian provinces of the tsarist regime than to members of a federation. Federalism in the Soviet Union was nothing but a tool that absorbed national self-determination as the latter was modified within the framework of the former. The immediate aim of federalism in Soviet Union was twofold: first, to prevent further separation and, second, to entice those who seceded back into the Russian state (of those who declared independence after the October Revolution, only Finland remained untouched by the Soviets. All others were gradually incorporated within the Soviet Empire). In essence, the Soviet federalism was the very negation of the idea and practice of federation that have deep liberal and democratic foundations. See, more, on this in Paul P. Gronski, "The Soviet System of Federalism", pp. 159-167; Alfred L.P. Dennis, "Soviet Russia and Federated Russia", pp. 529-551; Vernon V. Aspaturin, "The Theory and Practice of Soviet Federalism" pp. 20-51; William S. Livingston, "A Note on the Nature of Federalism". *Political Science Quarterly* Vol. 67 Issue 1 (March 1952) pp. 81-95; Dragan Medvedovic, *Nastanak Sovjetske Federacije*, pp. 107-170; Ivan Simonovic, "Socialism, Federalism, and Ethnic Identity". In Dennison Rusinov (ed.), *Yugoslavia. A Fractured Federalism* (Washington D.C.: the Wilson Center Press, 1989) pp. 41-58.

development of self-determination within the Yugoslav Communist movement underwent two phases; one was more or less doctrinaire and was influenced by Lenin's and Stalin's ideas on self-determination pertaining to the pre-revolutionary era, while the other was more pragmatic and influenced by the Comintern (the Communist Internationale) and its efforts to extend the Soviet influence abroad. The first phase relates to the time when the Comintern was still weak while the second to the embodiment of the Soviet state.

In the first years of its existence, the Communist movement in Yugoslavia underestimated the revolutionary potential of the national question. The stance towards the Yugoslav state was anti-federalist, centralist and unitarist, as same as that of the existing Yugoslav state and its political establishment.<sup>269</sup> Of course, the Communists denounced the regime's oppressive policies against others, especially non-Slavs (Albanians, Hungarians and Germans) but as a whole they did underestimate the importance of the national question for the Yugoslav politics and for the future of the country, including the Communist revolutionary action. This phase was dominated by the doctrinary approach towards self-determination and was called the "right" of the Communist movement. The approach was based on Lenin's and Stalin's ideas of prerevolutionary period. This meant that every nation had to be given the right to self-determination, which did not necessarily entail the right to secession. Rather, it would entail the right to form autonomous units within Yugoslavia, thus preserving the unity of the State. So, Yugoslavia was defended as a union of sovereign nations, meaning usually Croats, Serbs and Slovenes, and not of sovereign states. It was believed, in a typical Marxist way, as predicted by Lenin and Stalin, that the conflict in Yugoslavia among its constituent nations was caused by the national bourgeoisies over the exploitation of one economic market: the three capitalist classes were fighting each other and trying to gain the support of their peoples through nationalist propaganda. These were in fact the

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<sup>269</sup> Aleksa Djilas, *The Contested Country. Yugoslav Unity and Communist Revolution, 1919-1963*, pp.59-62, 64; Ivo Banac, *National Question in Yugoslavia*, pp. 328-339; Ferdo Culinovic, *Drazavnopravni Razvitak Jugoslavije* (Zagreb: "Skolska Knjiga", 1963) pp. 159-172;

transplantations into the Yugoslav context of Lenin's and Stalin's ideas equating colonialism with self-determination of oppressed nations. So, this was basically class self-determination, meaning that the working class (and peasantry) should fight their own bourgeoisie who were suppressing them without putting into question the existence of the State of Yugoslavia.

On the other hand, the "left" within the Yugoslav Communist movement favored a more radical approach towards the national question. This happened after the Comintern became more strong. The Yugoslav Communists should not only struggle for the constitutional right to self-determination but also for its realization; there could never be a just solution to the national question within the Yugoslav "bourgeois" state. At this time, fighting Serbian nationalism took priority and considerable tolerance towards separatist nationalism was advised. This stance was quite the opposite from the above. This meant that Yugoslav Communists were slowly abandoning the dogmatic Marxism of Lenin and Stalin of the prerevolutionary days, which in the Yugoslav case reduced the whole national question in Yugoslavia to the competition for economic market by three equally greedy "tribal" bourgeoisies.<sup>270</sup> This began after the mid-1920s when the national question started to be used for revolutionary purposes, like in the Soviet Union after the Revolution. Self-determination now included the right to create separate states. However, nothing was said at this time about the borders of these new states, which shows that self-determination was used by Communists first and foremost as a tactical expedient for highly pragmatic purposes. The right to secession belonged not only to Yugoslavia's three constituent nations but also to Montenegrins, Macedonians and Muslims. Albanians and Hungarians, who were considered minorities by Communists, were to join Albania and Hungary only when these two countries had themselves undergone a revolution and become part of the federation of the Balkan workers' and peasants' republics.<sup>271</sup>

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Dragoslav Jankovic i Mirko Mirkovic (eds.), *Drzavnopravna Istorija Jugoslavije* (Beograd: "Naučna Knjiga", 1982) pp.396-403.

<sup>270</sup> Aleksa Djilas, *The Contested Country. Yugoslav Unity and Communist Revolution, 1919-1963*, pp. 65-71.

<sup>271</sup> *Ibid.* pp. 85-87.

After the rise of Hitler to power, the Comintern drastically changed its policy of self-determination towards Yugoslavia. The Yugoslav Communists after this time no longer described Yugoslavia as an imperialist and Versailles creation and they now called for self-rule for certain regions, in particular for Croatia, without mentioning any separation or full independence. The Comintern now suggested the preservation of Yugoslavia within its borders, to be reorganized on the same basis as the Soviet federation. The policy of the Popular Front of all anti-Hitlerite forces became an official policy of the Communist Party of Yugoslavia (CPY). After Tito resumed the post of the head of the Yugoslav Communists in 1937, the CPY attacked the Serbian hegemony but it equally opposed separatism relying on the Popular Front policy against Hitler and his allies. In the late 1930s, the idea of dividing Yugoslavia into independent states finally gave way to the idea of preserving the unity of the state while creating autonomous national units. From now onwards, the Communists would argue in favour of federalism. The sovereignty now fell into the hands of separate nations of Yugoslavia, like in the previous phase, but these imaginary federated units had no fixed borders as of yet. In the view of the Communists, federalism was not a permanent solution but a way towards the final unification of the proletariat of all nations.<sup>272</sup> Hence, there should be no need for borders and territories. This merger of the two approaches was pursued by the CPY all over the WW II. Apart from the Communists, the Serbian Chetnik Movement, representing the King and Yugoslavia's government in exile, was also for the restoration of the old state. The battle during the war time was among these two movements. The Communists won this battle because, unlike the Serbian Chetnik Movement, they had a wider Yugoslavian appeal involving representatives of almost all nations and had international support, both the East and West, who favoured Tito's war campaign. The Allied determination as espoused from the Atlantic Charter to Tehran and Yalta conferences on the restoration of the sovereignty and independence of all states destroyed by the Axis Powers played a very important

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<sup>272</sup> Ibid. pp. 96-97.



role on the victory of Communism and the preservation of the Yugoslav state as well.<sup>273</sup>

The CPY's policy on self-determination during WW II was based on four key assumptions. First, the ruling elite (the "bourgeoisie") had not succeeded in creating a common Yugoslav national consciousness, which by implication meant that it would be the duty of the Communists to do so within the framework of the Yugoslav state. To achieve this new unity on the all-Yugoslav basis, the CPY organized a Congress of its People's Liberation Movement. At its first meeting, on 26 and 27 November 1942, this body, under the name "the Anti-Fascist Council of People's Liberation of Yugoslavia" (AVNOJ or Antifasisticko Vece Narodnog Oslobodjenja Jugoslavije), proclaimed itself the only legitimate representative of the peoples of Yugoslavia. At its second meeting, held on 29 and 30 November 1943 in the Bosnian town of Jajce (the above mentioned was held in Bihac, Bosnia-Herzegovina), AVNOJ announced that after the war Yugoslavia would be organized on a federal basis. Communist leaders of Yugoslavia considered it important to reassure Yugoslavia's national groups that there would be constitutionally guaranteed national equality after the liberation of the country. They stated, however, that the final decisions about the organization of Yugoslavia would be made by popular vote after the war. Similar councils with that of AVNOJ were created later in other territories that would become republics following WW II. These were important actions in the way to creating the Yugoslav federation, thus imposing new Yugoslav identity.<sup>274</sup> The second

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<sup>273</sup> Dusan Bilandzic, "Interview". *Radio Free Europe* (In South Slavic Languages), 19 November 1999 ([www.http// rferl.org](http://rferl.org)).

<sup>274</sup> The documentary record of the AVNOJ shows that no promises were made to the Kosovar Albanians as to their future status of a constituent nation within Yugoslavia. See, Slavko Curuvija and Ivan Todorov, "The March to War (1980-1990)". In Jasmina Udovicki and James Ridgeway (eds.), *Yugoslavia's Ethnic Nightmare*, pp. 73-104 at 77. A handful of Communists in Kosova organized a similar gathering in their bid to emulate the practice of AVNOJ. The gathering, known as the Bunjaj Conference, took place from 31 December 1943 - 1 and 2 January 1944 in a mountainous area in northern Albania. See, more, on this in Noel Malcolm, *Kosovo. A Short History*. (London: Macmillan, 1988) pp. 307-308.

This is not, however, the view of the Albanian scholarly discourse. In this discourse, the Bunjaj Conference is presented as a cornerstone of the Kosovar Albanian statehood. See, Instituti i Historise (ed.), *Konferenca e Bujanit* (Prishtine: Instituti i Historise, 1998); Akademia e Shkencave e Republikes se Shqiperise (ed.), *Konferenca e Bujanit* (Tirane: ASHSH dhe IH, 1999)

assumption was that there was Serbian predominance in the pre-war Yugoslavia. To prevent this from happening again, the destiny of the former King of Yugoslavia was left to be decided after the war. When the war ended, his entry to Yugoslavia was strictly forbidden, even as a tourist. More concessions were also granted to the local Communists, while the Serbs were unable to form their own communist party well until the end of WW II. Third, it was assumed that every nation should have an inalienable right to secede, but, fourth, this was to be part of the Communists' revolutionary struggle for the liberation of the proletariat. In other words, the national question was connected to the class struggle and, in that way, with the Communist (world) revolution.<sup>275</sup> These four assumptions were, like in the Soviet Union, the CPY's tactics to win the support of all nations of Yugoslavia in order to fully realise the revolutionary potential of the national question, while preserving at the same time the Yugoslav state. The exact territories of the new republics were not known at this time.<sup>276</sup> Their delimitation was undertaken after the war and lasted well until the 1950s.<sup>277</sup> The CPY had a leading role in this process of territorial delimitation, as in the case of the Soviet Union, and was guided mainly by political exigencies of power politics, whereby the historic and ethnic principles were subordinate to the internal power politics.

Since most of the time the CPY had advocated national (ethnically-based) self-determination, after the war it faced a difficult task of finding the territorial base for each of Yugoslavia's constituent nations (apart from the Muslims of Bosnia-Herzegovina who were later in the 1970s recognized as a constituent nation, although they possessed their own republic). Self-determination now became not an abstract principle but a concrete task. In some cases, national self-determination coincided with a given territory (Slovenia); in others both nation and its territory had to be found (Macedonia); still in others, there was

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<sup>275</sup> See, also, Aleksa Djilas, *The Contested Country. Yugoslav Unity and Communist Revolution, 1919-1963* pp. 73-74.

<sup>276</sup> The AVNOJ focused instead on the preservation of the state of Yugoslavia within its pre-WW II borders. Stevan Djordjevic, *O Kontinuitetu Drazava s Posebnim Osvrtom na Medjunarodno-Pravni Kontinuitet Kraljevine Jugoslavije i FNRJ* (Beograd: Naučna Knjiga, 1967) pp. 90-91.

<sup>277</sup> Aleksa Djilas, *The Contested Country. Yugoslav Unity and Communist Revolution, 1919-1963*, p. 171.

territory but not a nation (Bosnia-Herzegovina); finally, there existed both the territorial base and a nation living in it in majority but no right to self-determination was recognized (non-South Slavs, mainly Hungarians and Albanians because others, such as Germans, were either expelled or fled *en masse* after the Communist takeover following the war's end). On the top of this was the reconciling of national self-determination with the new Yugoslav nation that the CPY undertook to create. To achieve this new "Yugoslav nation", other nations within the Yugoslav state were invented and, with this, vast portions of territory were allocated to them. The cases of Bosnia-Herzegovina, Kosova and Macedonia are the most obvious ones, reflecting this Communist policy about the nationality question. While the Slav Macedonians gained both their territory and the status of a (constituent) nation within Yugoslavia by the end of Second World War, Bosniac Muslims had to wait for two decades for the new power configuration to form so as to offer them an opportunity to have their status of nation be recognized by others (Bosnia-Herzegovina, though, was at all times considered by the CPY as a decisive factor for the very survival of Yugoslavia). Albanians and Hungarians were never recognized as a nation and their territory served as a basis for the creation of new states (federal Yugoslav republics).<sup>278</sup> The task of creating these new Yugoslav nations permeated the Yugoslav discourse on federalism, seeing national self-determination always (at least until Tito's death) as subordinate to this goal of Yugoslav (national) unity.

#### **4. Communist Yugoslavia : The Final Dissolution of the State**

The development of self-determination in the Communist Yugoslavia has gone through some simultaneous and overlapping phases. First, came the constitutional recognition and sanctioning of self-determination; second, was the territorial delimitation among Yugoslavia's constituent nations (in the form of a

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<sup>278</sup> Since the October Revolution, the Soviets had tried to create the new Soviet nation. Similar practice was pursued in China after the Communist takeover. See, more, on this in Michael Krykov, "Self-Determination from Marx to Mao", pp. 352-377; Zoltan D. Barany, "The Roots of Nationalism in Post-Communist Europe", pp. 32-45.

newly established federated republics). While the second phase ended up more or less in the 1950s, the previous one varied considerably and lasted during the years 1946 –1974. This entire period can be divided into two phases: centralist/or totalitarian-rule period and the decentralised/bureaucratic period. The former lasted from 1946 to 1967-68, while the second from these years until Yugoslavia's final dissolution in 1992. It should be noted, though, that the basic premise remained the same throughout: It was the CPY and its ruling elite that decided about the content and the scope of self-determination.

As noted, the Communist Yugoslavia was to become a federation so as to avoid the hegemony of one nation, the Serbs, and attract the popular support for the war efforts of the CPY. The idea of "Yugoslavism" did not have any mobilizing power because it had already been compromised in the interwar period. This is why the Communists until 1953 focused on the state of Yugoslavia and its constituent nationalities rather than on the preservation of the "Yugoslav nation" agenda. To achieve this, the CPY had to emulate the Soviet practice in its entirety, both during and after the war. This meant that in terms of self-determination there were no huge differences: In both cases the Communist Party, as an *avant-garde* of the proletarians and the peasantry, decided as to who the subjects entitled to self-determination were. In some cases, new nations were created. In this regard, despite some minor differences in appearance, the quality of the practice of self-determination was much the same in both countries.

When the second meeting of AVNOJ took place (29 November 1943), proclaiming the federal principle as a basis of the future constitution of Yugoslavia, the conceptualization of self-determination was much like in the Soviet Union. Thus, the statement from that meeting read as follows:

"On the basis of the right of all nations to self-determination, including union with or the secession from other nations, and in accordance with the true will of all the nations of Yugoslavia, the Anti-Fascist Council of National Liberation of Yugoslavia passes the following decisions: ...

2) ... Yugoslavia is being built on the federal principle, which will ensure full equality to the nations of Serbia, Croatia, Slovenia, Macedonia, Montenegro, Bosnia and Herzegovina.

3) In accordance with the federal organization of Yugoslavia ... organs of the people's authorities have been established in different parts of Yugoslavia in the form of National Liberation Committees and Provincial Anti-Fascist Councils of National Liberation.

4) National minorities of Yugoslavia will be secured all their rights".<sup>279</sup>

After the Second World War, no consideration was given to the previous administrative borders, in much the same way as following WW I.<sup>280</sup> This time, borders of the newly established Yugoslav republics were meant to be based on (or to satisfy the needs of) the nationality principle, meaning the above mentioned constituent nations of Yugoslavia, although the designation of Bosnia-Herzegovina as a nation meant primarily its territory and not the population. In this case, like in that concerning Serbia, Croatia, Slovenia and Montenegro<sup>281</sup>, it was said that the historic principle was more or less to be followed in the delimitation of new nations living within Yugoslav state. At the same time, the identity of other important historical and ethnic units, such as Vojvodina, Dalmatia, Kosova and Sandjak, was not recognized and these were not granted a status of the full federated republic.<sup>282</sup> In the case of Bosnia-Herzegovina, the

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<sup>279</sup> For the full text, see, *Prvo i Drugo Zasedanje Antifasistickog Veca Narodnog Oslobođenja Jugoslavije (po stenografskim beleškama i drugim izvorima)*. (Beograd: "Savremena Administracija", 1953) pp. 250-251. For comments, see, Fredo Culinovic, *Drzavnopravni Razvitak Jugoslavije*, pp.272-283; Dragoslav Jankovic i Mirko Mirkovic (eds.), *Drzavnopravna Istorija Jugoslavije*, pp. 470-485.

<sup>280</sup> See, also, John R. Lampe, *Yugoslavia as History. Twice There Was a Country* (Cambridge: Cambridge University Press, 1996) pp. 229-269.

<sup>281</sup> Tim Judah reveals a very interesting fact about Montenegro. Namely, that Montenegro did not want to be a republic of its own after WW II but that Tito set it up in 1945 to satisfy his own personal power politics ambitions. See, Timm Judah. *The Serbs. Myth and History* (New Haven and London: Yale University Press, 1997) pp. 158-159.

<sup>282</sup> Apart from the cases of Kosova, Dalmatia, Vojvodina and Sandjak, the historic principle was followed. In all cases, though, no body was formed to delimit the borders of the new republics. An exception to this was the case of Vojvodina, that is, the delimitation between Serbia and Croatia. For the rest, the decision had been made at the second meeting of the AVNOJ's Presidency, held on 24 February 1945. No legal document, the 1946 Yugoslav Constitution included, bears the mentioning on this issue. See, Peter Radan, "Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness", (<http://www.EBSCOhost.com>).

CPY's sole aim was to solve the long-standing conflict between the Serbs and Croats over it.<sup>283</sup> This, in fact, remained the alpha and omega of the Yugoslav Communists' policy on the national question and proved to be the crux of Yugoslavia's very survival<sup>284</sup>.

The Communist-organized and controlled bodies set up the local power structures who voted, as expected, for the new Yugoslavia as described above, constituting themselves as the governmental organs of the new federated republics. Also two Autonomous units were formed, the multi-national Autonomous Province of Vojvodina and the predominantly Albanian Autonomous District of Kosova. Thus, before the final liberation of Yugoslavia and long before the adoption of its constitution, the system of (Communist) government had been installed in fair detail. This was later reflected, more or less, in the Yugoslav Constitution, promulgated on 31 January 1946. Article one of this constitution defined the system of government in general terms, recognizing the existence of the national question as opposed to 1953 Constitutional Act of Yugoslavia, and based its solution on the principles of equality and voluntarism (much like in the former Soviet Union). Thus, the 1946 Constitution said that:

" The Federal People's Republic of Yugoslavia is a federal people's State of republican form, a community of peoples equal in rights who, basing themselves on the right to self-determination, which includes the right to separation, have expressed a will to live together in a federal state".<sup>285</sup>

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<sup>283</sup> Joseph Frankel, "Federalism in Yugoslavia", pp. 416-430 at 420. In a similar fashion was set up the new republic of Macedonia, that is, to avoid the conflict over it between Serbia and Bulgaria. Only in the case of Slovenia, the nation and the state were the two coterminous. The rest were ethnically mixed area. While there were some disputes, for example over Eastern Srem bordering Croatia and Vojvodina, in the main the division was uncontested because they were not considered as particularly important and were not seen as interstate borders. See, Tim Judah, *The Serbs. History, Myth and Destruction of Yugoslavia*, pp. 136-141.

<sup>284</sup> Dusan Bilandjic, "Interview". *Radio Free Europe* (In South Slavic Languages)

<sup>285</sup> See, *Ustav FNRJ* (Beograd: "Sluzbeni List, 1947). When this constitution was drafted, Tito himself was against the insertion of the right to secession (separation), although it had no meaning in practice. His another aide, *Mosa Pijade*, a member of the Central Committee of the Communist Party of Yugoslavia (CPY), was probably the most persistent defender of what might be called "once-and-for-all" interpretation of the unification of the Yugoslav nationalities. Fearful that the constitution might be interpreted as permitting separation, *Pijade* insisted that according to Article one, Yugoslav nations had exercised that right once and for all by the moment when they have decided to join in a Yugoslav federation. The same discourse reappeared in Yugoslavia on the eve of its dissolution in 1992. See, Aleksa Djilas, *The Contested Country. The Yugoslav Unity*

According to the 1946 Constitution, all authority stemmed from the people who realized it through organs of state authority, ranging from the People's Committees (the Yugoslav equivalent of the Russian Soviets) through Republican to Federal organs. The Constitution vested original sovereignty in the Republics and limited their competence only by the powers transferred to the Federation, leaving them residual powers (Articles 6 and 9 of the 1946 Constitution). The Yugoslavs adopted from Russian practice the institution of autonomous units, or the so-called political-territorial autonomy. This was designed for national minorities aiming at the very denial of their status of a nation (federated republic within Yugoslavia), no matter their number as compared with other constituent nations (federated republics of Yugoslavia).<sup>286</sup> Since the establishment of these units in the Soviet Union, their borders and their very existence have been quite arbitrary. This is the reason why their theoretical framework has never been properly analyzed in the constitutional discourse of former Yugoslavia, or, better to say, discussions on the issue of autonomy remained vague on purpose.

This sort of autonomy was applied in the former Yugoslavia concerning only two cases: Kosova and Vojvodina. Large parts of former's territory were allocated to Macedonia to enable it to become a nation (federated republic).<sup>287</sup> However, as opposed to Soviet Union, in Yugoslavia no frequent alteration in internal border regimes and in the status of its administrative units were effectuated.<sup>288</sup>

In 1950, following Tito's break up with Stalin, a new phase in the development of Communist Yugoslavia started. From this time onwards, the CPY tried to find out the new way, original one as it was said at the time, for the

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*and Communist Revolution: 1919-1953*, pp. 166-167; See, also, Tim Judah, *The Serbs*, pp. 140-141.

<sup>286</sup> Paul Globe, "A New Kind of Autonomy". *RFE/RL Newline*, 5 May 2000 (<http://www.rferl.org>).

<sup>287</sup> Apart from this, in literature has been noted that the autonomy of Kosova was designed to gradually incorporate the state of Albania into the Yugoslav federation following WW II and thus form a single Autonomous District. See, Joseph Frankel, "Federalism in Yugoslavia", pp. 416-430 at 421, 424 and footnote No. 33.

<sup>288</sup> *Ibid.* p. 425.

regulation of internal relations among Yugoslavs. However, new changes in the internal structure of the Yugoslav federation were by no way modeled upon the Western constitutions and their practice.<sup>289</sup> The CPY felt that the previous transitional period had vastly overcome the internal divisions among nationalities and republics. Edward Kardelj, the architect of the state system of the Communist Yugoslavia, acknowledged that the above divisions still existed but "that by now the Federation could not function along classical inter-republican and inter-nationality lines"<sup>290</sup> The republics, therefore, were considered only one of the several links in the chain of authority of the "working people" in the Yugoslav version of class self-determination.<sup>291</sup> Admittedly, the Yugoslavs had been successful in their national issue policies; they eliminated postwar national divisions and were able to develop backward areas politically, economically and culturally. All this was accomplished in a period of five years. This policy was expressed in the Fundamental Law pertaining to the Bases of the Social and Political Organization of the Federal People's Republic of Yugoslavia and of the Federal Organs of the State Authority of January 13, 1953, known also as the Fundamental Law.<sup>292</sup> This act left in place the 1946 Constitution of Yugoslavia but it replaced and supplemented the latter only in some of its basic parts. Similar Fundamental Law had been passed by all the People's Republics, much in the same way as was done following the promulgation of the 1946 Constitution.

In its first article, the Fundamental Law vaguely referred to the "sovereign peoples, equal in rights" but eschewed any reference to sovereignty or the sovereign powers of the Republics. It also omitted the concept of the original competence of the Republics and of the transfer of part of their powers to the Federation. The unitary element of the "Yugoslav working people" is emphasized at the beginning of the Fundamental Law. Although the Yugoslav Republics were still defined as states, the relations between them and the Federation cannot be considered as relations between states and governments in a liberal sense of the

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<sup>289</sup> Ibid. p. 426.

<sup>290</sup> Edvard Kardelj, "Govor na Sestoj Sednici Narodne Skupstine FNRJ". Belgrade-based daily newspaper *Borba*, 13 January 1953.

<sup>291</sup> Ibid.



term. The Council of Nations from the 1946 Constitution was abolished since it had been considered useless.<sup>293</sup> The Fundamental Law omitted the right of secession, mentioned in Article 1 of the 1946 Constitution. Although that article insisted that Yugoslavia's creation was irreversible, its absence from the Fundamental Law was a clear sign of further development towards Yugoslav unitarism.<sup>294</sup> This trend in unitarism aimed at the creation of the Yugoslav nation was based on two pillars, one vertical (the empowerment of the communes) and the other horizontal (the system of the socialist self-management).

Conflict with Stalin increased the risk of the State. Military and state security services were further empowered. The Communist Party became the leader in all aspects of social, political and economic life. When this conflict was over and threats from Stalin passed away, there were voices within the CPY for liberal reforms directed against an enormous bureaucracy. To meet these demands for reform, the CPY's sixth congress, held in Zagreb in November 1952, abandoned the old-type of Leninist, monolithic, disciplined, centralized and hierarchical party system as obsolete. To pave the way for the 1953

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<sup>292</sup> See, *Ustavni Zakon FNRJ* (Beograd: "Sluzbeni List, 1953).

<sup>293</sup> The Federal Council, which was the legislative assembly for the whole of Yugoslavia, remained enlarged by the addition of some representatives from the Council of Nations and a new second chamber was created and named the Council of Producers. Although the parliament had only symbolic power, this change emphasized a tendency toward a "withering away" of republics and the creation of a new Yugoslav nation. See, Art. 3 of the Fundamental Law. For Comments, see, Bruce McFarlane, *Yugoslavia. Politics, Economics and Society* (New York: Pinter Publishers, 1998) pp. 148-173; John R. Lampe, *Yugoslavia as History. Twice There Was a Country*, pp. 229-269, especially pp. 256-257.

*Edward Kardelj* gave the most complete and in some way most radically pro-Yugoslav interpretation of the Yugoslav federation and of the future of Yugoslavia in general. The "old type" of federation, that is, the one created immediately after the war, had been rendered obsolete by the development of Socialism. On the basis of the common interest of the working people, and within the framework of an already developed and unified socio-political system, a "unified Yugoslav community" was coming into being. This new community was overcoming the national consciousness of individual nations without at the same time becoming a nation in the old sense". As quoted in Aleksa Djilas, *The Contested Country. The Yugoslav Unity and Communist Revolution: 1919-1953*, p.180. As opposed to *Tito* who in private believed in the idea of a Yugoslav nation, some historians in former Yugoslavia have noted that Kardelj, also in private, used to be very suspicious on the same matter. This *Kardelj's* view stemmed from his fears about Serbian ceaseless hegemonic tendencies. Cf. Dusan Bilandzic, "Interview". *Radio Free Europe* (In South Slavic Languages)

<sup>294</sup> The CPY insisted that there was one single Yugoslav working class, and since it was the main element of the working people it seemed obvious that the working people would unite all the nations and republics of Yugoslavia. Cf. Aleksa Djilas, *The Contested Country. The Yugoslav Unity and Communist Revolution: 1919-1953*, p. 179.

constitutional reform, such a party was seen as a hindrance to the development of "democratic socialism". The CPY changed its name into the League of Communists of Yugoslavia (LCY) in an attempt to transform itself into a movement of "socialist forces". That would not command as previously but rather become an ideological center. From this time onwards, the power was to devolve to the "basis", e.g., factories and communes. Self-management, introduced at this time, initially was meant to weaken the republics and provinces (although the latter were already in a weak position by this time and played no role in the power struggle within the Yugoslav federation) and strengthen Yugoslavism. Genuinely free discussions, it was held, should take place via the elected delegates in factories and communes. At no point has this meant that the process of democratisation should go against the federal bodies. Its purpose and the very aim was to weaken the republics and provinces so as to dilute national loyalties that were about to develop at the expense of the Yugoslav patriotism and Yugoslavism in general. The introduction of the self-management, considered in Yugoslavia as a form of direct democracy, in communes and factories and the democratisation of the party were the main hopes for the promotion of Yugoslavism. But this had an adverse effect altogether because the role of the State and the CLY increased further and the Belgrade, that is, the Federation became filled in (and dominated) by the biggest nation, the Serbs, who turned the dictatorship of the proletariat into a dictatorship of one nation. Centralism suited the interests of the biggest nation in Yugoslavia – the Serbs.<sup>295</sup>

The power struggle against the Serb-dominated Yugoslavia and the centralism in general was won by Tito in 1966. The Serb-origin Interior Minister of Yugoslavia, Aleksander Rankovic, was then ousted by Tito and replaced with another more moderate Yugoslav leader, Koca Popovic, also a Serb. Aleksandar Rankovic, who became Yugoslavia's vice president, a few years before he was ousted in 1966, was known for his strong hand, favouring a unitary and centralized Yugoslav state. After 1996, the new phase, the so-called

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<sup>295</sup> Dusan Bilandzic, "Interview". *Radio Free Europe* (In South Slavic Languages). See, also, Tim Judah, *The Serbs*, pp. 143-145.

decentralisation of a beaucocratic nature, commenced. This had wider repercussions for Yugoslavia's later development until its final collapse in 1992. However, this period did not start in the terrain of politics.

In the early 1960s, there were talks about the economic reforms that quickly turned into the debate over national issues. The main focus here was on giving more power to republics for economic matters. The north of Yugoslavia, Slovenia and Croatia, pressed hard for more decentralisation and economic, market-oriented, reforms. Serbia with other poorer republics were against any hint at decentralising or making the economy and the society as a whole, market-oriented. This took more so into account that it would have taken from Serbia and its allies the privileges of development that they enjoyed. Apart from this, the centralized Yugoslavia bode well to Serbia's hegemonic aspirations, a prewar legacy still alive. In this context should be seen the north's accusations of being exploited by the south, that is, accusations raised against Serbia's parasitic manner of running the common state.<sup>296</sup> In the field of constitutional self-determination, the 1963 Constitution did not greatly change the basic premises regarding secession as compared to the 1946 and 1953 constitutional documents: class, rather than national/or republican, self-determination remained the dominant concept.<sup>297</sup> Only after the fall of Rankovic did the constitutional bias in favor of republican self-determination occur. Consequently, self-determination based on the old concepts of the "working class" was definitely abandoned. However, this self-determination centered on republics, not on nations *per se*.

The 1974 Constitution marks the climax of this approach to self-determination, that is, the approach that gave the greatest possible autonomy to the republics and, this time, also to the autonomous provinces of Kosova and Vojvodina. Although this bureaucratic decentralization allowed for the definition of the Yugoslav republics (not the autonomous provinces of Kosova and Vojvodina) as the "states" belonging to a given nation (s), it did not permit any right to secession. The right to self-determination itself was mentioned only in the

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<sup>296</sup> Tim Judah, *The Serbs*, pp. 143-144.

Preamble of the 1974 Constitution.<sup>298</sup> Thus, much like in the previous constitutional texts, the right to self-determination was considered as a right "once and for all" exercised when the Communist Yugoslavia was formed in 1945. However, the process of decentralization offered too many opportunities for the expression of national feelings, very often in an undemocratic manner due to the Communist nature of the State itself. This process, that culminated in 1974, started in the second half of the 1960s and is marked by important and crucial events for the future of the Yugoslav state. The events happened in Croatia and Kosova and were followed by Serbia's (mainly) liberal answer to the challenges at the end of the 1960s and beginning of the 1970s.

With the fall of Rankovic, Serbs and Montenegrins lost their privileged positions over Kosova's political and administrative apparatus. Albanians were allowed, after the hard years following the World War Second (living under police surveillance and repression), to freely air their national sentiments in a large-scale demonstration of November 28, 1968. They called for Kosova to become a full federated-republic. To grant such a status was officially seen as being merely the first step towards the unification of Kosova and other Albanian-inhabited regions, especially of Macedonia, with neighbouring Albania. The 1968 constitutional amendments granted the region of Kosova, for the first time, a republican-type prerogative. This was confirmed by the 1974 Constitution. Positive trends in Kosova were obvious: the institutional basis of Kosova was set up, rather separately from Serbia; the University of Prishtina was formed and a number of state, educational, cultural and administrative institutions were cut off from Belgrade and tied to the direct administrative and political control of Prishtina – Kosova's capital.<sup>299</sup> However, Tito did not grant a full republican status to Kosova. He preferred very careful and gradual improvements in Kosova

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<sup>297</sup> Cf. The Preamble of the two documents, the 1946 Constitution and the 1953 Fundamental Law.

<sup>298</sup> Cf. *Kushtetuta e RSFJ e vitit 1974* (Gazeta Zyrtare e RSFJ: Beograd 1974), Pjesa Hyrese. In literature there have been wrong interpretations of this part of the 1974 Constitution, arguing that it allowed for the right to secession within the Yugoslav context. See, Suzan Woodward, *Balkan Tragedy. Chaos and Dissolution after the Cold War* (Washington D.C.: the Brookings Institution, 1995) pp. 199-222.

<sup>299</sup> Mehmet Kraja, *Vitet e Humbura* (Tirane: Toena, 1995) pp. 73-74.

so that by the end of 1970s, the highly controlled autonomy of Kosova widened significantly. National aspirations of the Albanian population, Tito believed, would be satisfied through the economic integration of Kosova into Yugoslavia and its own gradual development and prosperity.<sup>300</sup> The call for a republic among the Kosovar Albanians had its roots in the awakening of a sense of intense national pride, which for a long time was denied to them, though tolerated in other Yugoslav nationalities. The Spring 1981 explosion was in many ways a product of the delayed consumation of national equality and rights. The size and ethnic compactness were, in the eyes of the Albanian population, sufficient reasons for changing the status of Kosova and advancing it into a full republic.<sup>301</sup> With the 1974 Constitution, Kosova became the catalyst of the nationality issue and a new serious actor in the balance-of-power game within the Communist Yugoslavia. But, unlike Croatian nationalism, Kosova and the Albanians represented no constant and principal threat to the integrity and stability of the state of Yugoslavia.<sup>302</sup>

The Croatian national issue reappeared with all its intensity, violence and war being excluded, during 1967 to 1971. Although it started as an economic debate over the future decentralization of the country's economy, it soon became political when the Croatian Literary Association asserted its views on the distinct Croatian language. The Yugoslav efforts to further portray the Serbo-Croatian language as a common thread of Yugoslavism were rejected by Croats as a bid to Serbianize the Croat language. The Croat intellectuals urged their compatriots not to use the Serbo-Croat language and the (Serbian) Cyrillic alphabet. When it came to the official use of the Croat language, the Croat intellectuals stressed the fact that a majority of the civil servants in Croatia were Serbs, albeit from Croatia. To this came the reply by the Serbian side, who demanded quite the opposite: the use of Cyrillic alphabet by the Serbs living in Croatia. Apart from the

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<sup>300</sup> J.F. Brown, *Nationalism, Democracy and Security in the Balkans* ( London: RAND, 1992) pp. 61-63.

<sup>301</sup> Branka Magas, *The Destruction of Yugoslavia. Tracing the Break Up 1980-92* (London and New York: Verso, 1993) pp. 9-10.

<sup>302</sup> Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia: 1962-1971* (Bloomington and Indianapolis: Indiana University Press, 1992) pp. 176; 270-179.

language, there were mutual exchanges of accusations on other issues, such as the low birth rate in Croatia and Serbian attempts to assimilate and Serbianize the republic, and the portrayal of Croats as criminals.<sup>303</sup> These exchanges culminated in the Croatian Spring of 1970-1971, or, as it is known by the Serb name, *Mass Movement* (In Serbian : *Maspok/Masovni Pokret*). The movement involved the young Communist leaders of Croatia, Savka Dabcevic Kucar and Miko Tripalo, while at its head was *Matica Hrvatska*, a Croat intellectual organization originally founded in 1884 and revived in 1967. At the height of this movement, *Matica Hrvatska* published various pamphlets and newspaper columns raising the personal Serb-Croat controversy: whose is the Croatia and Bosnia-Herzegovina. *Matica Hrvatska* published statistics showing the dominance of Bosnia by Serbs, although very soon it openly advocated the take over of large parts of Bosnia-Herzegovina. As for the issue of Croatia itself, it stressed the dilemma of its definition, namely whether it should be a State of the Croat nation or it should be a common state of other nations and nationalities living within it. At the end, it openly advocated the secession from Yugoslavia. This caused the reaction from Serbian side, who demanded an autonomous region for the Croat Lika, Kordun, Baranja and north-west Bosnia. In essence, this was a good pretext for the Serbs to revive their old idea that developed prior to the Second World War seeking the special status for these regions.<sup>304</sup> Tito tried to negotiate a solution with the Croat leaders but it did not yield any result and an eventual offer for military intervention to settle the issue was made by Leonid Brezhnev himself. Tito rejected the idea of Soviet intervention and himself called a meeting to thrash out the matter, using his own charisma. In the meeting held in the beautiful resort city of Karadjordjevo on 1 December 1971, Tito made a decision to crush the nationalist movement in Croatia and not allow, as he

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<sup>303</sup> Tim Judah, *The Serbs*, pp.145-146.

<sup>304</sup> When the so-called *Hrvatska Banovina* was created according to the 1939 Serb-Croat Agreement (better known as *Sporazum*), Serbian nationalists suggested that Serbs living within the newly established Croatian entity be included within their own Serbian *Banovina*. The idea was very much pressed by the Serbian Communists after the war but found no understanding. See, Tim Judah, *The Serbs*, pp. 147.

himself put it, the repetition of 1941.<sup>305</sup> The year Tito spoke about, nevertheless, repeated itself two decades later in quite a different national and international context, while the city of Karadjordjevo, the old royal hunting lodge in Vojvodina, was now different. The difference was that this time Milosevic and Tudjman agreed in principle in March 1991 to partition Bosnia-Herzegovina. It changed nothing, for while this meeting was taking place, the Serbs in Croatia were about to form their autonomous units, first, and then an independent entity within the Republic of Croatia, all this being done at the behest of Belgrade authorities with whom Tudjman was negotiating in Kradjordjevo.

The Croatian nationalist movement of 1967-1971 was not democratic at all and those who crushed it, new Communist cadres of Croatia following 1971, were compromised to make it easier for the leaders of the Croatian Spring to come back to the scene as soon as an opportunity would present itself. This opportunity presented itself indeed following the Cold War's demise. Franjo Tudjman, the former important actor in the Croatian Spring, formed the Croatian Democratic Union (or *Hrvatska Demokratska Zajednica*: HDZ), which had won the 1990 Republican elections in Croatia and led the country toward full independence and war.<sup>306</sup>

The next important movement in this period (until Tito's death in 1980) was that in Serbia, also known as Serbian Liberal Movement. In fact, unlike its Croatian counterpart, this movement was a true liberal movement and maybe a single such movement in the whole Communist world. It was also led by the leading Communist figures in Serbia, such as *Latinka Perovic* and *Marko Nikezic*.<sup>307</sup> The Serbian Liberal Movement started somewhere in 1968 when Belgrade University students took to the streets demanding more freedom and reform and

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<sup>305</sup> Ibid. p. 147; Ivan Siber, "The Impact of Nationalism, Values, and Ideological Orientations on Multi-Party Elections in Croatia". In Jim Seroka and Vukasin Pavlovic (eds.), *The Tragedy of Yugoslavia* (New York: ME Sharpe, 1992) pp. 141-172.

<sup>306</sup> For an analysis of the events following the failure of the Croat Spring movement until recently, see, the story of Josip Vrhovec, a young Communist who raised to power after 1971. Vrhovec was later Yugoslavia's Foreign Minister (1978-1982) and Member of the Yugoslav collective Presidency (1984-1989). Josip Vrhovec, "Nije Strasno Sto Su Je Srusili, Nego Kako Su Je Srusili". *South Slav Service* (In South Slavic Languages). 4 April 2000 (<http://www.rferl.org>).

<sup>307</sup> Tim Judah, *The Serbs*, pp. 148-149; Branka Magas, *The Destruction of Yugoslavia. Tracing the Break- Up 1980-92*, pp. 176-214; 318; 340; 352-53.

denouncing authoritarianism, unemployment and the Vietnam war. After having been supported verbally by Tito, the demonstrators went home but some professors from the Philosophy Faculty of the University of Belgrade were purged from their jobs. The most notable among them was Mihajlo Markovic, identified with the liberal journal *Praxis*, which was much admired in western Marxist circles. The same Markovic and the same journal, after 1981 would lead an anti-Albanian campaign and strongly support the basics of the 1986 Memorandum of the Serbian Academy of Arts and Sciences (Markovic himself was one of its drafters).<sup>308</sup>

Along with this highly liberal movement, which was seeking reforms and more freedom, in Belgrade developed yet another nationalist movement that would reappear again after 1986. *Mihajlo Djuric*, a Belgrade law professor, with some others demanded in the early 1970s, an autonomy for the Serbs living in Croatia, restrictions on Kosova's granted constitutional rights and, lastly, the redefinition of Yugoslavia's internal borders. This nationalist trend was defeated by Latinka Perovic and Marko Nikezic, the Serbian liberals. However, Tito felt that he should, for the sake of the internal balance of power following the 1971 Croat Spring, purge the Serb Liberals as well. Tito did this and, as strange as it might be, with the help of the old Partisan generation, non-reformers and others who were credited with the centralist version of Yugoslavia.<sup>309</sup> Thus, on the eve of the 1974 Constitution, there were nationalist movements threatening the national stability of Yugoslavia. A sad chapter in all this was that the only liberal movement in Yugoslavia was crushed. This probably had the most repercussions for the later developments in Serbia and Yugoslavia as a whole. From the turmoil of the early 1970s, it seems to have benefited only the Muslim Bosniacs, whose State and very identity had since 1945 been constantly denied. In 1971, to preserve the internal balance of power and keep Croats and Serbs apart, Tito recognized the existence of the Muslim Bosniac nation. An external

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<sup>308</sup> Branka Magas, *The Destruction of Yugoslavia. Tracing the Break-Up 1980-92*, pp. 3-4; 52-53; 55-73; 108.



factor seems to have also had an impact on this change in the Yugoslav Communists' policy *vis-a-vis* Bosnia-Herzegovina: Tito's policy of non-alignment had an effect on Yugoslavia's Muslims, stimulating interest among them in their Islamic heritage and in widening contacts, commercial and academic, with other Muslim countries. This led to an increase in the relations between Yugoslav Bosniac Muslims and the Muslim world, who invested in the religious infrastructure of Bosnia-Herzegovina. These contacts raised the Muslim consciousness among Bosnia's population and Tito needed this to gather support of the non-aligned Muslim world for economic and other financial help.<sup>310</sup> Still, the Bosnian syndrome would remain the same in the plans of the Serb and Croat nationalists, seeing Muslim Bosniacs as converted Serbs or Croats, much the same case as it had been for almost a century. This state of mind among the Serbs and Croats would later prove to be a basic precondition for the Bosnian tragedy (1992-1995).

As noted, the 1974 Yugoslav Constitution did not recognize the right to self-determination in its operative part. In terms of self-determination, this constitution was important in other aspects. It provided a legal framework foreseeing the republics and autonomous provinces as semi-independent actors, whose relationships with the Yugoslav Federation were based on cooperation and agreement. Both republics and autonomies had the right to veto the federal decisions affecting their interests. The country, following Tito's death, was to be run by the Yugoslav collective Presidency according to this constitution. Nevertheless, while the republics were defined as a State, within which given nations and nationalities realised their rights, no such definition was provided for Yugoslavia's two autonomous provinces of Kosova and Vojvodina. They were considered to be part of Serbia, albeit with semi-republican status.<sup>311</sup> This means that as sovereign entities were deemed to be only Yugoslav republics (if

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<sup>309</sup> Tim Judah, *The Serbs*, pp. 148-149; Dusan Bilandzic, "Interview". *Radio Free Europe (In South Slavic Languages)*; Stjepan Kljuic, "Gdje Ces Na Miteranda Pucati, Jadan Ne Bio". *Radio Free Europe (In South Slavic Languages)*, 16 April 2000 (<http://www.referl.org>).

<sup>310</sup> Tim Judah, *The Serbs*, pp. 145-155.

<sup>311</sup> See, Article 2 of the 1974 Yugoslav Constitution. Cf. *Kushtetuta e RSFJ* (Beograd: "Gazeta Zyrtare e RSFJ", 1974).

one could speak at all about sovereignty in modern sense of this term), not the Yugoslav nations or autonomous provinces. The Yugoslav nations (Serbs, Croats, Slovenes, Macedonians, Muslims) and nationalities (Albanians and Hungarians) were mentioned in the Preamble of the Constitution as the very founders of that state. The wording of this passage meant that the right to self-determination as a legal entitlement was once and forever consummated within the Yugoslav context. Its further realisation was designed and reserved for the outside world only.<sup>312</sup>

Since the definition of internal statehood was grounded on certain internal political organization (republics), not on ethnicity, later Yugoslav developments went along these lines, with Kosova and Vojvodina playing an important role in this new power relationship (although they were not defined as states/or republics). The 1974 Constitution with its apparently decentralist tendencies did not fit well with Serbia's internal dynamics. Immediately after its adoption, in Serbia was released in a semi-official way the so-called blue book, asking for the revision of the 1974 Constitution and branding it as discriminatory against Serbian national interests. This pamphlet also asked for the revision of the republican/provincial borders, which were guaranteed by the 1974 Federal Constitution,<sup>313</sup> urging instead for full ethnic self-determination of the Serbian

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<sup>312</sup> Cf. The Preamble of the 1974 Constitution dealing with Yugoslavia's foreign policy. In fact, this was the practice throughout Yugoslavia's existence. The same approach prevailed in other former Communist countries. For scholarly comments, Aleksander Magarasevic, "Samoopredeljenje i Medjunarodno Pravo". *Jugoslavovenska Revija za Medjunarodno Pravo* Vol. 1 No. 1 (Beograd, 1954) pp. 340-357; Aleksandar Bozovic, "Some Tendencies in the Development of the Right to Self-Determination". *Jugoslovenska Revija za Medjunarodno Pravo*, Vol. 5 No.1 (Belgrade, 1958) pp.30-42; Dura Nincic, *Problem Suverenosti u Povelji i Praksi Ujedinjenih Nacija*. (Beograd: Institut za Medjunarodnu Politiku i Privredu, 1967) pp. 253-307; Milan Bulajic, *Pravo na Samoopredeljenje* (Beograd: "Naucna Knjiga", 1964) pp.1-20; Ivo Skrabalo, "Pravo Naroda na Samoopredeljenje i Medjunarodna Zajednica". *Jugoslovenska Revija za Medjunarodno Pravo*. Vol. XXIII No.1-2 (Beograd, 1976) pp.47-59; Olga Sukovic, "Pravo Naroda na Samoopredeljenje i Ujedinjene Nacije". In Savez Udruzenja Pravnika Jugoslavije (ed.), *Ujedinjene Nacije i Savremeni Svet* (Beograd: Servis Udruzenja Pravnika Jugoslavije, 1970) pp. 151-162; Juraj Andrassy, "Kolonijalizam i Njegovo Ukidanje". In Savez Udruzenja za Ujedinjene Nacije Jugoslavije (ed.), *Ujedinjene Nacije i Savremeni Svet* (Beograd: Servis Zaveza Udruzenja Pravnika Jugoslavije, 1970) pp. 162-171; Milan Bulajic, *Pravo na Samoopredeljenje u Drustvu Naroda i Ujedinjenim Nacijama* (Beograd: Servis Saveza Udruzenja Pravnika Jugoslavije, 1963) pp. 140-191.

<sup>313</sup> Cf. Josip Vrhovec, "Nije Strasno Sto Su Je Srusili, Nego Kako Su Je Srusili". *South Slav Service* (In South Slavic Languages).

nation living outside Serbia proper. Especially harsh was the attack on Kosova's and Vojvodina's constitutional position, arguing that they represented "states within the state".

However, during Tito's reign, these quarrels did not represent any threat to Yugoslavia's internal stability and security. Almost all who ruled after Tito agree that his charisma and authoritarian rule counted for this stability and security of Yugoslavia. Next to this comes the favourable international environment and the role Yugoslavia played as a buffer between East and West.<sup>314</sup> The same views are shared by scholars who wrote on the dynamics and the structure of the Yugoslav society. This is quite a correct view as Yugoslavia began to crumble immediately following Tito's death in 1980<sup>315</sup> and this crumbling started with the 1981 Kosova Spring. Then, Kosovars asked for more rights, that is, full republican status on par with other constituent republics of Yugoslavia. The very name of that state, that is, Yugoslavia and the formal autonomous status enjoyed by Kosovars were discriminatory, despite their numerical size (third population, after the Serbs and Croats). However, the status of a republic was not recognized for Kosova. Such a demand was suppressed violently and considered as a grave criminal offence punishable severely by Yugoslav laws.<sup>316</sup>

The 1981 events in Kosova were used by Serbia as an excuse to revive the Greater Serbian project, this time in a more sophisticated manner. The project appeared in a form of a memorandum, known as *the 1986 Memorandum*

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<sup>314</sup> Ibid. Vrhovec was Yugoslavia's Foreign Minister (1978-82) and one of the eight members of the Yugoslav (collective) Presidency (1984-89); Stipe Suvar, "Interview". *South Slavic Service*. 03 December 1999. Suvar was member of the Yugoslav (collective) Presidency and head of the Yugoslav Communists (the LCY) during its last days (Interview in South Slavic languages); Raif Dizdarevic, "Interview". *South Slavic Service*. 16 September 1999 (In South Slavic languages). Dizdarevic was head of the Yugoslav (collective) Presidency and one of Tito's closest aides; Nandor Major, "Interview". 27 January 2000. *South Slavic Service* (In South Slavic languages). Major was the last head of the Vojvodina Presidency before it was stripped off its autonomy by Milosevic in 1989; Bosko Kronic, "Interview". *South Slavic Service*. 20 January 2000. (In South Slavic Languages). Kronic was from Vojvodina, one of the highest Communist officials and the close aide of Tito. Stjepan Mesic, "Interview". *South Slavic Service*. 7 to 9 May 2001. (In South Slavic Languages). These interviews are available in internet, in the following web site, <http://www.rferl.org>.

<sup>315</sup> See, Gregory Peroche, *Histoire de la Croatie et des Nations Slaves du Sud: 395-1992*, pp. 350-351; Mark Lamond, *Europe's Backyard War. The War in the Balkans*, pp. 171-189; Branka Magas, *The Destruction of Yugoslavia. Tracing the Break Up: 1980-92*, pp. 79-83.

<sup>316</sup> Branka Magas, *The Destruction of Yugoslavia*, pp. 6-48.

of the Serbian Academy of Arts and Sciences (in Serbian: *Memorandum SANU*). This was to be the only national program, ethnically based, in the territory of the former Yugoslavia until its dissolution in 1992.<sup>317</sup> The wording of the Memorandum was based on the standardization of nationalistic rhetoric with the view of destroying other cultures. It definitely set in motion the terminology that reflected the intentions of its drafters. There are found words such as "genocide against the Serbs", "the Serbian Holocaust", "martyrdom of the Serbs", "the Serbian tragedy of Kosova", "the sacred lands where Serbian graves lay", "the Serbian honor", "enemies of Serbia", "anti-Serbian coalition", etc. With this action, the Serbian Academy opened a Pandora's Box that in the years to come would prepare the terrain for violent ethnic cleansing of the non-Serbs and the territorial enlargement of Serbia to the detriment of others.<sup>318</sup> The closure of the Memorandum speaks of the drafters' "readiness to be in the service of the realization of the tasks outlined in it and for the sake of the dictates of history and our future generations". These tasks are easily traceable in the Memorandum when it speaks of the hard position of the Serbs living outside Serbia proper (in Croatia, Kosova and Bosnia-Herzegovina). This clearly shows how the Serbian academic circles paved the way for a certain policy - that of territorial expansion, with agreement or *manu militari*, as one of its drafters has put it (Dobrica Cosic) – and gave Serbian discourse an additional argument in the future fight for Greater Serbia.<sup>319</sup>

This document and the later actions undertaken by Milosevic after he came to power in 1986, managed to redefine the collective identity of the ordinary

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<sup>317</sup> For the full text of the Memorandum, see, "Memorandum Srpske Akademije Nauka i Umetnosti". *Nase Teme* Vol. 33 No. 1-2/89 (Zagreb: 1989) pp. 128-163. This memorandum marks the beginning of the emotional preparation of the Serbian society for the commission of the crime of ethnic cleansing and the destruction of other, non-Serb, cultures in the name of Greater Serbia. Some Serbian clergy, though, still believe that the Greater Serbian project was possible without conflict and ethnic cleansing campaign. See, "Father Sava Talks to RFE/RL". *RFE/RL Balkan Report* Vol. 3 No. 1., January 6, 1999. (<http://www.rferl.org/balkan-report>).

<sup>318</sup> For a similar view, see, also, Slavko Curuvija and Ivan Todorov, "The March to War: 1980-1990". In Jasmina Udovicki and James Ridgeway (eds.), *Yugoslavia's Ethnic Nightmare*, pp. 73-104.

<sup>319</sup> Philip J. Cohen, "The Conspiracy of Serbian Intellectuals in Genocide in the 1990s". In Thomas Cushman and Stjepan Meshtrovic (eds.), *This Time We Knew* (New York: New York University Press, 1996) pp. 39-64.

Serbs<sup>320</sup>. From this time forward, the Serbs would have to defend not their private property but "the sacred lands and Serbdom", a strategy outlined excately by the Memorandum. The slogan "all Serbs in one State" destroyed all possibilities for individual self-determination on behalf of the ordinary Serbs. To the non-Serbs, this was both an exclusive and discriminatory attitude.

However, the Memorandum had one basic drawback. Namely, it did not foresee the democratic changes that occurred in the international system following the collapse of Communism and the end of the Cold War. After Gorbachev embarked upon the course of reforms in his country, the bipolar system of the Cold War began to show signs of weakness leading to the democratic changes within the system itself. These changes in the structure of the system proved to be an enemy of the Greater Serbian project, but also an enemy to all other non-democratic behaviours in European soil. It was the same international system that had protected Yugoslavia during all the time of its precarious existence. This international system used to play an important role in Yugoslavia's creation in 1918 and, by implication, enabled the Serbs as a greater nation to dominate over the others living in that state (apart from the period

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<sup>320</sup> Not only in scholarly work, but also according to the main actors of the Yugoslav developments throughout 1980s, the famous 8<sup>th</sup> Session of the Serbian Communists (the Communist League of Serbia, or SKS in Serbian) is considered as the beginning of the implementation of the 1986 Memorandum. In this session, Milosevic ousted the moderate wing of the Serbian Communists led by Dragisa Pavlovic, the Belgrade chair of the Serbian Communists. In his account of this session, Pavlovic says that he had warned Milosevic's followers not to embark on the road of Serbian nationalism because it would inevitably lead to the conflict and war with all others living in former Yugoslavia. See, Dragisa Pavlovic, *Olako Obecana Brzina* (Zagreb: Globus, 1989) pp. 330-332. Other Yugoslav Communist officials taking part in that session also shared the same view with Pavlovic, apart from Borisav Jovic who belongs to Milosevic's group. See, Bosko Kronic (Vojvodina), "Interview". *South Slavic Service*. 08 October 1999 (In South Slavic languages); Stipe Suvar (Croatia), "Interview". *South Slavic Service*. 03 December 1999 (In South Slavic languages); Bogdan Bogdanovic (Serbia), "Interview". *South Slavic Service*. 25 June 1999 (In South Slavic languages); Josip Vrhovec (Croatia), "Interview", *South Slavic Service*, 05 April 1999; Nijaz Durakovic (Bosnia-Herzegovina), "Interview", *South Slavic Service* 19 May 2000. (all interviews are also available in internet: <http://www.rferl.org>).

For scholarly work on the developments in Serbia after September 1987 (8<sup>th</sup> session of the Serbian Communists), see, Darko Hudelist, *Kosovo: Bitka Bez Iluzija* (Zagreb: Centar za Informacije i Publicitet: Zagreb, 1989) pp. 34-37; 155-157; 165-166; 173-182; 188-200. See, also, Branka Magas, *The Destruction of Yugoslavia: 1980-1992*, pp. 105-121; Gregory Peroche, *L'Histoire de la Croatie e des Nations Slaves du Sud : 395-1992*, pp. 351-386.

related to the 1974 Constitution)<sup>321</sup>. Along with the collapse of this system is associated the dissolution of Yugoslavia and the end of Serb dominance. What remained of the Greater Serbian project was Belgrade's nostalgia for the past, but also some failed attempts for dominance, changing the nature of the Serbian national program. This changed nature is reflected in Belgrade's efforts (until recently) to achieve a privileged role of a sole successor to the former Yugoslav state (or a role of a state continuity with that state).

### ***5. From Greater-Serbian Project to the Serbian Insistence on State Continuity with Former Yugoslavia***

The former U.S. ambassador to Yugoslavia, Warren Zimmermann, notes in his book "Origins of a Catastrophe: Yugoslavia and Its Destroyers" (1996) that the then President Slobodan Milosevic of Serbia had asked him for American support in favor of the Serb-Montenegrin continuity with the Yugoslav state in case other Yugoslav republics seceded from it. This demand was put forward by Milosevic in the Summer of 1991, long before Yugoslavia broke up. Strange as it may be, Milosevic had assured his guest that he himself was not a criminal of any kind.<sup>322</sup>

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<sup>321</sup> The international legitimacy of the post-1945 Yugoslavia was different from the post-1919 version of that state. Yugoslavia's eloquent performance in the international system during the Cold War was made possible because of the superpowers' emphasis on order through minimizing the direct confrontation. This emphasis enabled Tito to solidify internal cohesiveness of the State and gave him a leeway to behave in ways that should have damaged its international (state-systemic) legitimacy if the rules of non-intervention and territorial integrity were not tied to the underpinning value of order in the international system. In short, Yugoslavia possessed a full "positive sovereignty", to use Jackson's term, compared with other Communist and colonial countries, but this sovereignty derived mostly from the international system. As soon as this international order was priority, internal dynamics of the Yugoslav society did not threaten its very existence, no matter how severe they were (especially since 1986). When the international system of the Cold War collapsed, with it went as well Yugoslavia's internal order. See, more, on the issue of Yugoslav legitimacy from a theoretical perspective, in an excellent work by John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia* (New York: St. Martin Press, 1998) pp. 47-94.

<sup>322</sup> See, Warren Zimmermann, *Origins of a Catastrophe. Yugoslavia and Its Destroyers: America's Last Ambassador Tells What Happened and Why* (Albanian translation by BESA publishing house, Tirana 1992) pp. 149-150; 170-191.

The issue of Yugoslavia's continuity is dealt with as other facet of the old project of Greater Serbia dating as far back as 1844 (*Nacertanije* or the "Outline"). The project itself was largely ignored and remained dormant in Communist Yugoslavia for understandable reasons related with the prevalent censorship over nationalist claims. It revived again on the eve of Yugoslavia's break up and took different forms, one of which is the Serb insistence on the state continuity with the former Yugoslavia.

The former Yugoslavia, set up as a Kingdom in 1918 and transformed into a Communist federation after 1945, ceased to exist in 1992. Within this time-span, it was considered, from an international standpoint, as one and the single state.<sup>323</sup> After its demise in 1992, none of its former republics, except for Serbia and Montenegro, claimed to be its sole successors or its continuity. Other republics claimed to be equal successors to the Yugoslav state and not its continuity, a claim firmly endorsed by the whole international community. At first sight, this appears to be a doctrinary issue involving scholarly niceties without any practical implications. However, this is not the case. The idea of Serbia's state continuity with the former Yugoslavia revived in a given context and with a clear aim, supported by its officials and the scholars alike. As an official position of the Belgrade regime, it was made public on the occasion of the FRY's (Federal Republic of Yugoslavia, composed of Serbia and Montenegro) response to the EC's *Guidelines on Recognition of New States in Eastern Europe and in the Soviet Union* of 16 December 1991, issued in a form of a declaration intended to impact the ongoing dissolution of the former Communist federations<sup>324</sup>. This document significantly influenced international relations on the issue of recognition of newly emerging states of Eastern Europe and served as a foreign policy tool to have an impact on the events on the ground. The recognition and other related issues shall be discussed later (see, Chapter VI).

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<sup>323</sup> H. Lauterpacht (ed.), *Oppenheim's International Law*. Vol. II Seventh Edition (Longman: London 1952) pp. 1948-1950.

<sup>324</sup> See, EC Declaration Concerning the Conditions for Recognition of New States, adopted at the Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska,

These two documents are dealt with here only as far as the issue of Yugoslav continuity is concerned and the impact of this issue on the later events on the ground.

The EC, as noted, was the first international body to concern itself with the Yugoslav crisis. Under its auspices, the Conference on Yugoslavia and the Arbitration Committee were set up (later renamed respectively as "the Arbitration Commission" and "the International Conference on Former Yugoslavia"). For the purposes of this section, apart from the above documents, the first opinion of the Arbitration Commission stating that the "Federal Republic of Yugoslavia is in the process of dissolution" is of greatest importance.<sup>325</sup> This opinion left no doubt as to Yugoslavia's further destiny in the period to come.

The EC Guidelines began by referring to the Helsinki Final Act and the Charter of Paris (1990), in particular the »principle of self-determination«. It then affirmed the readiness of the EC countries to recognize new states "subject to the normal standards of international practice and the political realities in each case". The Guidelines described the potential candidates for recognition as those new states which "have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiation". Lastly, the Guidelines further specified the conditions to be fulfilled by the new states if they were to receive international recognition. These conditions concerned the issue of democracy, the rule of law, respect for human and minority rights, the non-violability of borders, nuclear non-proliferation, peaceful settlements of disputes, etc.

The Guidelines concluded with an unusual warning, which said that the EC countries "will not recognize entities which are the result of aggression" and that they "would take account of the effects of recognition on neighbouring states". The first part, as we note later (see, *infra* page pp. 188-193), concerned the

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*Yugoslavia Through Documents. From Its Creation to Its Dissolution* (The Hague: Martinus Nijhoff Publishers, 1995) pp. 431-432.



Serbs entities in Croatia and Bosnia-Herzegovina<sup>326</sup>, while the second concerned the issue of Macedonia's statehood *vis-a-vis* Greece.

As for the still existing state of Yugoslavia as a whole, the EC introduced a test that was meant to put under close scrutiny the application of the Guidelines. The application was designed as a procedure requiring any Yugoslav republic to apply for recognition by 23 December 1991. Those interested in this had to state and answer whether:

- they wish to be recognized as independent states;
- they accept the commitments contained in the above-mentioned Guidelines;
- they accept the provisions laid down in the draft Convention under consideration by the Conference on Yugoslavia, especially those in Chapter II on human rights and rights of national or ethnic groups;
- they continue to support the efforts of the Security Council of the United Nations and the continuation of the Conference on Yugoslavia.

The written applications would then be submitted to the Arbitration Committee established in parallel with the Conference on Yugoslavia for advice (known also as the Badinter Commission, or the Arbitration Commission). A decision by this body would be taken and implemented by 15 January 1992. The invitation by the EC was thus extended to all six republics of the former Yugoslavia but there was to be no uniformity in the responses of the results. In this place we concern ourselves only with the cases of Serbia and Montenegro, leaving the rest for a later discussion. This is more so because the Serbian (and Montenegrin) answer revealed their approach towards the issue of state continuity with the former Yugoslav state and, consequently, their war aims against the others.

All six Yugoslav republics responded to the invitation extended by the EC's Declaration on Yugoslavia, but only four sought recognition.<sup>327</sup> Serbia (and

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<sup>325</sup> See, Opinion No. 1 of the Arbitration Commission of the Peace Conference on Yugoslavia. Paris, 29 November 1991. *International Legal Materials*, Vol. 31 (1992) p.1494. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 415-417.

<sup>326</sup> The same opinion as to the Serb entities is expressed by Saskia Hille, "Mutual Recognition of Croatia and Serbia (+ Montenegro)". *European Journal of International Law* Vol. 6 No. 4 (1995) pp. 598-612 at 600, 604 footnote 26 etc.

<sup>327</sup> See, Opinions Nos. 4-7 of the Badinter Commission. *International Legal Materials* Vol. 31 (1992) pp. 1501; 1503; 1507; and 1512. Also reprinted in Snezana Trifunovska, *Yugoslavia*

Montenegro) did not. In his reply to the EC on 23 December 1991, Serbia's Foreign Minister recalled that Serbia acquired "internationally recognized statehood" as early as the Berlin Congress of 1878 and on that basis had participated in the establishment of the Kingdom of Serbs, Croats and Slovenes in 1918, which became Yugoslavia. The Serbian minister concluded that Serbia was not interested in secession<sup>328</sup>. Much was the same for the then Serbian ally, Montenegro, announced by its Foreign Minister on 24 December 1991. The Montenegrin Foreign Minister also declined the EC's offer to recognize Montenegro on the grounds that his country retained a potential international personality. A Montenegrin official also recalled the contribution of his country in the formation of the state of Yugoslavia in 1918 so that "in case Yugoslavia disunited and ceased to exist as an entity, the independence and sovereignty of Montenegro continue their existence in their original form and substance".<sup>329</sup>

While the Serbian answer was more in line with the 1986 Memorandum relying on Serbian statehood as a basis for any redefinition of the common Yugoslav state,<sup>330</sup> the tiny republic of Montenegro only pleaded in favor of retaining its pre-1918 statehood in case Yugoslavia dissolved, having no pretensions as to the state continuity with the Yugoslav state being dissolved.

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*Through Documents*, pp. 486-500. See, also, the Statement by the then Presidency of the European Community on the Recognition of Yugoslav Republics. *EPC Press Release*, P.9/92 (Brussels, 15 January 1992).

<sup>328</sup> For the text of the Serbian position, see, *FOCUS*, Special Issue, Belgrade, 14 January 1992 p. 276.

<sup>329</sup> For the text of the Montenegrin position, see, *FOCUS*, Special Issue, Belgrade, 14 January 1992 p. 282. In fact, the initial position of Montenegro was to ask for recognition. Its officials accepted the proposals made by Lord Carrington, the Chairman of the Conference on Yugoslavia. Montenegro was about to ask the EC for recognition but such an attempt was thwarted by the then President Momir Bulatovic of Montenegro, an aide of Milosevic and the last Prime Minister of the FRY during Milosevic's rule until November 2000. The current president of Montenegro, Milo Djukanovic, recalls that this position was changed at the last moment due to Milosevic's pressure exerted on Montenegro's delegation at this conference. See, Milo Djukanovic, "Interview". *Radio Slobodna Evropa* (In South Slavic languages), 19 October 1999 (also available in internet: <http://www.rferl.org>). Similar view is expressed by other high officials of Montenegro who even compare the 1918 events (the annexation of Montenegro by Serbia) with the ones that occurred in 1991-1992. Miodrag Lickovic, "Interview". *Radio Slobodna Evropa* (In South Slavic languages) 05 June 2000 (also available in internet: <http://www.rferl.org>).

<sup>330</sup> This position was later elaborated in details by two booklets issued by the Ministry of Information of the Republic of Serbia. See, The Ministry of Information of the Republic of Serbia (ed.), *The Creation and Changes of the Internal Borders of Yugoslavia* (Beograd: Srbostampa,

This further showed that Montenegro did not intend to base its quest for self-determination either on ethnicity or history. Montenegro was especially not inclined to extend its quest for self-determination beyond its administrative borders. Montenegro's concern focused on its state continuity with the pre-1918 Kingdom of Montenegro, not with Yugoslavia as such. A similar attitude was adopted by the Baltic states upon their withdrawal from the Soviet Union.

These positions regarding state continuity, embraced by Serbia on one side, and the rest of the former Yugoslav republics on the other, demonstrate that Yugoslav self-determination requires more than a unified approach. This means that every analysis of the Yugoslav case should be context-oriented, especially as far as the position of the international community is concerned. The Yugoslav self-determination raised the acute issues unsettled since the beginning of the 20th century. A similar suggestion had been made by *George Kennan* upon the fall of the Berlin Wall in November 1989, when he had rightly seen the problems of Central and Eastern Europe as of great historical depth unsolved since the end of "the last war and even some arising from the break up of the Austro-Hungarian Empire"<sup>331</sup> One such unsolved issue was, as opposed to the Soviet Union, that concerning the state continuity of the pre-1992 Yugoslavia with the old, pre-1918 Kingdom of Serbia. This had been the main issue in the Serbian discourse during the Versailles Yugoslavia. It was raised again by Milosevic following Yugoslavia's dissolution in 1992, to be closed as an issue and taken off from the agenda of FRY foreign policy only after Milosevic's fall from power in September 2000. However, the Greater Serbian project after 1991-1992 was a new one focusing on the concept of state identity and continuity, as opposed to pre-1945 discourse, which did not need such a concept due to the role the Serbian elite played in the running of the Versailles Yugoslavia and the overall international climate *vis-a-vis* this state.

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1991); Miodrag Zecevic and Bogdan Lekic (eds.), *Frontiers and Internal Territorial Division in Yugoslavia* (Belgrade: Srbostampa, 1991).

<sup>331</sup> George Kennan, "An Irreversibly Changed Europe, Now to be Redesignated". *International Herald Tribune* 14 November 1989.

The issue of continuity has raised two questions following Yugoslavia's dissolution: first, was the former Yugoslavia a new state or a mere extension of the pre-1918 Kingdom of Serbia? The second and more important question was whether the Federal Republic of Yugoslavia (Serbia and Montenegro), formed on 27 April 1992, was a new state (like other Yugoslav republics who gained independence) or the sole successor to former Yugoslavia? The answer to these questions explains the aggressive behavior of the Belgrade regime after Yugoslavia's collapse in 1992. A proper answer to these issues depends on the full and exact finding of the facts leading to Yugoslavia's formation in 1918,<sup>332</sup> and its final dissolution in 1992. The latter are easily ascertainable for there exists a plethora of international authoritative rulings on this matter (rulings of the Badinter Commission and the attitude of the international community following the outbreak of hostilities in the Yugoslav territory). The former, though, present themselves in a slightly complicated form. The analysis aimed at their ascertainment can be based primarily on the practice of the Allied Powers following First World War, although the recognition practice of the individual states should not be neglected. Pursuing this approach, the Polish scholar, *Krystina Marek*, rightly noticed that the "history of events leading up to the formation of Yugoslavia (the Kingdom of Serbs, Croats and Slovenes) ... could not have failed to have an influence on the events",<sup>333</sup> with Serbs (officials<sup>334</sup> and

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<sup>332</sup> Krystina Marek, *Identity and Continuity of States in International Law* (Geneve : Library E. Droz, 1954) p. 237.

<sup>333</sup> Ibid. 237.

<sup>334</sup> Nikola Pasic, the Serb Prime Minister (1914-1918) and the most influential politician in the interwar period, had told the non-Serb proponents of Yugoslavia in 1917 that the King would always have to be Orthodox by religion. Pasic later denied the understanding of many of Serbia's wartime allies that victory had created a new state. Belgrade preferred to see the Serb-Croat-Slovene Kingdom as merely a natural extension of the Kingdom of Serbia, requiring no new foundation in international law of the time. This theory of "continuity" between Serbia and Yugoslavia was to bedevil the new Kingdom, since it raised and settled the acute issue of whether the non-Serbs were to be treated as equals with the Serbs or just as "little brothers". Moreover, in the case of Kosova and Macedonia, Pasic argued that they were annexed and integrated into the Kingdom before 1914 and therefore cannot be affected by the Paris Settlement on minority rights. This was again based on the Serb theory of state continuity with Yugoslavia. See, Mark Almond, *Europe's Backyard War. The War in the Balkans*, pp. 116-117; Dr. F. Muenzel, *What Does International Law Have to Say About Kosovar Independence?* (September 1998). (available in internet only: <http://www.rz.uni.hamburg-de/illyria/independence.htm>).

scholars<sup>335</sup> alike) seeing the new state of Yugoslavia as a mere extension of the old Serbian Kingdom, and the Croats and Slovenes<sup>336</sup> (and the rest of the international community<sup>337</sup>) denying the existence of the state continuity (identity)

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<sup>335</sup> Pre-war Serbian scholars made the distinction between internal (constitutional) and international aspects of continuity. Constitutionally, these scholars saw the Serbs-Croat-Slovene Kingdom (Yugoslavia) as a new state, while internationally as a mere extension of the pre-1918 Kingdom of Serbia. See, S. Jovanovic, *Ustavno Pravo Kraljevine Srba, Hrvata i Slovenaca* (Narodna Knjiga: Beograd 1914) pp. 12-21. More on this debate between the two wars, see also, Stevan Dordevic, *O Kontinuitetu Drazava s Posebnim Osvrtom na Medjunarodno-Pravni Kontinuitet Kraljevine Jugoslavije i FNRJ* (Beograd: Naucna Knjiga, 1967) pp. 162-163.

<sup>336</sup> The Croat and Slovene scholarly work and public opinion at large saw no extension of Serbia to the territory of the new state of Yugoslavia. Rather, they saw on it a union of the Croat-Slovene-Serb Kingdom, formed on 31 October 1918 on the ashes of Austro-Hungarian Empire, on the one hand, and the Kingdom of Serbia, on the other, both of which decided to form on 1 December 1918 the new Kingdom of the Serbs, Croats and Slovenes. See, O Robarz, "Da li je Nasa Kraljevina Nova ili Stara Drzava". *Arhiv za Pravne i Drustvene Nauke* Knjiga XXIII (Beograd: 1933) pp. 241-261.

<sup>337</sup> After First World War the international community, acting through the Paris Peace Conference, stood firmly against the Serbian official and scholarly positions. It not only recognized anew the Serb-Croat-Slovene Kingdom (entirely as a new state), but was all too cautious when drafting the Paris Peace Conference documents so that no room would be left for any misinterpretation as to the international status of the Serb-Croat-Slovene Kingdom. Thus, for the former Austro-Hungarian territories, the Conference used the term "territories" that entered the 1918 Union with the Kingdom of Serbia. The Conference in its documents made no reference to the Kingdom of Montenegro as a partner to this union between the Austro-Hungarian "territories" and the Kingdom of Serbia, because it was seen as a country annexed by Serbia before the unification day (1 December 1918). The Conference also did not refer in its documents to former Austro-Hungarian territories as a state because the Allies had not recognized the short-lived existence of the Croat-Slovene-Serb Kingdom (formed in Zagreb on 31 October 1918, lasting only until December 1, 1918). On the nature and the structure of the short-lived state of the South Slavs (mainly Habsburg Slavs), see, more in Joseph Frankel, "Yugoslav Federalism", pp. 416-430 at 417-418; Branka Prpa-Jovanovic, "The Making of Yugoslavia (1830-1945)". In *Yugoslavia's Ethnic Nightmare*, pp. 37-56 at 43; Bogdan Krizman, *Varjska Politika Jugoslovenske Drzave: 1918-1941* (Zagreb: Skolska Knjiga, 1975) pp.5-21. This state was ephemeral but state nevertheless, able to be a partner in an act of unification, and as such recognized by two other sovereign states: the Kingdom of Serbia itself and the Austro-Hungarian Empire. Similar ephemeral states have existed after Second World War (the Federation of Mali, the United Arab Emirates, etc.). For the attitude of the Paris Peace Conference toward the new state (the Serb-Croat-Slovene Kingdom), including the individual recognition of its international statehood, see, more, in a comprehensive study by Krystyna Marek, *Identity and Continuity of States in Public International Law*, pp. 237-262; For the ephemeral states after WW II, see, Habib Gherari, "Quelques Observations sur les Etats Ephemeres". *Annuaire Franais de Droit International*. XL, 1994 (Editions du CNRS, Paris), pp. 419-432. On the other hand, the scholarly work has slightly been divided as to the status of the ill-fated October 1918 Kingdom of the South Slavs (before the December 1, 1918 act of unification with the Kingdom of Serbia). See, Krystyna Marek, *Identity and Continuity of States in Public International Law*, pp. 241-258; Stevan Dordevic, *O Kontinuitetu Drazava s Posebnim Osvrtom na Medjunarodno-Pravni Kontinuitet Kraljevine Jugoslavije i FNRJ*, pp. 160-164; Giorgio Cansacchi, "Identite et Continuite des Sujets Internationaux". *Recueil de Cours. Academie de Droit International*. La Hague, 1970, (II) Tome 130 de la collection (1971), pp. 7-89 at 29-30.

of the Serb-Croat-Slovene Kingdom (later, after 1929, renamed as "the Kingdom of Yugoslavia") with the pre-1918 Kingdom of Serbia.

In the Communist Yugoslavia, the issue of state continuity (identity) did not draw any special attention of scholars, while the official state discourse viewed the Communist state as a continuation of the pre-1945 Kingdom of Yugoslavia, but only when it came to its international standing (position). However, from a constitutional perspective no such continuity (identity) with the pre-1914 Yugoslavia was assumed by the Communists.<sup>338</sup> The lack of debate on this issue is explained by the political climate prevailing in the Communist Yugoslavia, not allowing for any discussion having a nationalistic premise. Exceptions to this existed but the discourse was conducted in a highly cautious manner. Of this nature was the already mentioned book by *Stevan Dordevic* (in fact his Ph.D. dissertation) and *Milan Bartos's* book review about the already-mentioned *Krystyna Marek's* book on the issue of identity and continuity of states (also a Ph.D. dissertation). Although Dordevic's dissertation is a very comprehensive account of Communist Yugoslavia's international position compared to the pre-1945 Yugoslavia and the old Kingdom of Serbia, arguing conclusively in favor of state continuity between the two (pre and post-1945) Yugoslav states, there is no analysis as to the *raison d'etre* of the problem of state continuity in the Yugoslav discourse. The reasons for this discourse are given by one another author, *Milan Bartos*, a famous Yugoslav lawyer of the 1960s and 1970s. *Bartos* stresses in his already-mentioned book review that the idea of state continuity between the state of Yugoslavia (Communist and the Kingdom of) and the old Kingdom of Serbia is grounded on the Greater Serbian project.<sup>339</sup>

As noted, it is not a difficult task to ascertain the crucial facts concerning the issue of Yugoslav continuity (identity) for the period surrounding Yugoslavia's demise in 1992. This is so because there are scores of international

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<sup>338</sup> See, Stevan Dordevic, *O Kontinuitetu Drazava s Posebnim Osvrtom na Medjunarodno-Pravni Kontinuitet Kraljevine Jugoslavije i FNRJ*, pp.97-114.

authoritative documents, both regional and universal, recording the main discourse concerning the events that led to the dissolution of Yugoslavia and those after that. To this discourse we turn the next.

After having rejected the offer for international recognition, Serbia and Montenegro proceeded with their "continuity" or "identity" theory and declared a common state, " the Federal Republic of Yugoslavia" , on 27 April 1992.<sup>340</sup> This common state was to be, in their view, only a transformation of the former Yugoslavia (Communist and the Kingdom of). This ambitious claim was expressed by the Assembly of the Federal Republic of Yugoslavia (FRY) upon the promulgation of the new constitution of this state (27 April 1992). The Assembly stated that "the Socialist Federal Republic of Yugoslavia is transformed into the Federal Republic of Yugoslavia, a state composed of two constituent republics, Serbia and Montenegro ". It further stressed that the FRY strictly respected the continuity of the international personality of the former Yugoslavia and that it undertakes " to fulfill all rights conferred to and the obligations assumed by the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia". A further important claim for the purposes of this study is that the FRY accepted that other entities that emerged from the predecessor state, e.g., the former

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<sup>339</sup> Milan Bartos: Krystyna Marek, "Identity and Continuity of States in Public International Law" (Geneve 1954), book review, in *Jugoslovenska Revija za Medjunarodno Pravo* Broj 1 God. I (1954) Beograd pp. 290-293 at 292.

<sup>340</sup> This position was an official stance of the FRY (Serbia and Montenegro) well until November 2000. After Milosevic's defeat in the September 2000 presidential elections in FRY, the newly elected head of the Yugoslav state, Vojislav Kostunica, immediately applied for FRY's membership to the UN, thus renouncing Milosevic's idea on state continuity. The UN response to the newly elected FRY's president was positive and the State was admitted to the UN on 1 November 2000. This served as a precondition for FRY's further integration into the International Monetary Fund (IMF), World Bank (WB), Organization for Security and Cooperation in Europe (OSCE), the Council of Europe (CE), and other international structures and organisms. Cf. *Radio Slobodna Evropa* (In South Slavic languages), 02 November 2000, 10.00h p.m. CET; "Yugoslavia Admitted to UN". RFE/RL Newslines, 02 November 2000; Joylon Neagele, "Kostunica and Djukanovic Hold Talks in Podgorica". *RFE/RL Newslines*, 02 November 2000 (<http://www.rferl.org/newslines>). FRY's Prime Minister after Milosevic's fall, Zoran Zizic, in his opening address to the Yugoslav Parliament on 4 November 2000, unambiguously pledged his commitment to break with Milosevic's past concerning the issue of continuity (identity) and succession of former Yugoslavia. See, *Radio Slobodna Evropa* (In South Slavic languages), 04 November 2000, 10.00 p.m. CET.

Yugoslavia, may be successor states entitled to a "just distribution of the rights and responsibilities", regardless of the fact that the same letter stated below that "the diplomatic missions and consular posts and other offices of Yugoslavia will continue to operate and represent the interests of Federal Republic of Yugoslavia", thus excluding these assets from any "just distribution" in the future. The letter stating the official position of the Belgrade regime was then sent to the UN for a notification of the FRY's position on this matter.<sup>341</sup> This unilateral statement expressing the will to take over the rights and duties of the preceding state could not, in itself, determine the FRY's international standing (position). The state's own will and conviction may be admitted to a very limited extent as a controvertible piece of evidence of its identity and continuity, only if it represents a spontaneous conviction and is not intended to produce effects in the outside world. Even so, it will at best be very weak evidence which has to yield before more objective criteria. It does not, in itself, constitute a test.<sup>342</sup> This means that Belgrade's claim to continuity (identity) with the former Yugoslavia, having been intended first and foremost to the outside world, did not meet any objective criteria of state continuity (identity).<sup>343</sup>

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<sup>341</sup> See, *UN Document S/23877* of 5 May 1992.

<sup>342</sup> Krystyna Marek, *Identity and Continuity*, p. 129. See, also, Joeseff L. Kunz, "Identity of States under International Law". *American Journal of International Law* Vol. 49 Issue 1 (January 1955) pp. 68-76.

<sup>343</sup> In Serbian circles, both official and unofficial, has existed an opinion that compared the case of FRY with that of the Russian Federation following the Soviet Union's demise. This is not an appropriate comparison, both as far as the history of the two cases is concerned as well as the weight the Russian state has in international arena.

Being in the possession of largest part of former Yugoslav assets, the FRY thought it could emulate the Russian Federation. But, the situation is strikingly different. First, in the case of Russian Federation, both the successor states of the former Soviet Union and the international community agreed to recognize Russia's continuity with the predecessor. Second, Russia's nuclear power bargain was almost missing in the case of FRY. Cf. Vladimir Djuro Degan, Ove E. Bring and M. Kelly Mellone, "Correspondent's Agora: UN Membership of the Former Yugoslavia". *American Journal of International Law* Vol. 87 Issue 2 (April 1993) pp. 240-251; Roland Rich, "Recognition of States: The Collapse of Yugoslavia and the Soviet Union". *European Journal of International Law* Vol. 4 No. 1 (1993) pp. 36-65; Danilo Turk, "Recognition of States: A Comment". *European Journal of International Law* Vol. 4 No. 1 (1993) pp. 66-72; Michael Bothe et Christian Schmidt, "Sur Quelques Questions de Succession Posee par la Dissolution de l'URSS et celle de la Yugoslavie". *Revue Generale de Droit International Public* Tome XCVI (1992) pp. 812-842; For a complete opposition to this stance of the international lawyers, see, Yehuda Z. Bloom, "UN Membership of the 'New' Yugoslavia: Continuity or Break?" *American Journal of International Law* Volume 86 Issue (October 1992) pp. 830-833.



This FRY's unilateral statement reveals the real aims and the directions of the foreign policy of the Belgrade regime in the years following its adoption. They concerned three issues, having both internal and international implications. Internally, FRY's actions were designed in that way so that it takes no responsibility for the conflicts and wars to come, portraying Serbian territorial claims elsewhere as having nothing in common with the Belgrade regime. This was further meant to enable the Serbs outside Serbia to present their claims as serving the function of the preservation of Yugoslavia against (other) secessionist republics. According to this Belgrade's position, it goes without saying that Kosovo and Vojvodina belonged to FRY based on the respect for the *uti possidetis* principle protecting former republican administrative borders only. This is to say that these two autonomous provinces were to be treated as an internal affair of FRY, no matter what the final answer to FRY's claims over state continuity with former Yugoslavia was. Another (internal) implication of this Belgrade position concerning state continuity was related to the former Yugoslav assets: FRY believed that it could be the only actor to decide about the way these assets should be divided. Internationally, the Belgrade authorities did not even try to be a full member of the international community, knowing that if it were to apply for new membership in various international bodies, it would have to fulfill some conditions (as did other Yugoslav republics before becoming equal partners of the international society). Belgrade knew well about these conditions since they had been put forward in the already discussed EC document of December 1991 (the "Guidelines"). Their fulfillment was a very hard task for Belgrade because, as noted, they related, *inter alia*, to the rule of law, democracy, and the respect for human and minority rights. In all these matters FRY had a bad record during Milosevic's reign.

The FRY's efforts to externalize its domestic dynamics through unilateral actions have been met with strong resistance by the international community and its members. The rejection by the international community of the Serbian claims for state continuity with the former Yugoslavia followed exactly the same points as those outlined by the Belgrade regime upon the promulgation of FRY's

constitution (27 April 1992). This means that the rejection of the Serbian continuity claims was related to FRY's membership to international organizations, succession issues regarding assets, archives and international obligations of former Yugoslavia, and, finally, international criminal responsibility. This international rejection did not come at once. It ramified rather slowly, along with other developments in the territory of the former Yugoslavia. The first actor to tackle this matter, as far back as 1992, was the Badinter Commission, whose rulings were then followed by the rest of the international community.

On 18 May 1992, the Badinter Commission received a letter from Lord Carrington, the then chairman of the Conference for Peace in Yugoslavia, as to whether the process of Yugoslavia's dissolution, as noted in the Opinion No. 2 of 29 November 1991, could be considered complete. In its opinion no. 8 of 4 July 1992, Badinter noted that a referendum held in Bosnia-Herzegovina during February and March 1992, had produced a majority in favor of independence and that Serbia and Montenegro constituted a new state, the "Federal Republic of Yugoslavia", adopting a new constitution on 27 April 1992. In this opinion, it was further stressed that the "former national territory and population of the Socialist Federal Republic of Yugoslavia are now under the sovereign authority of the new states" and that "the common federal bodies on which all the Yugoslav republics were represented no longer exists". In addition, "Bosnia-Herzegovina, Croatia and Slovenia have been recognized by all the Member States of the European Community and by numerous states, and were admitted to membership of the United Nations on 22 May 1992". The Commission also took into account the UN Security Council Resolutions Nos. 752 and 757 of May 1992, containing a number of references to the "former SFR Yugoslavia". The Commission fully endorsed the UN Security Council Resolution No. 757 of 30 May 1992, which stated that "the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia (in the United Nations) has not been generally accepted". On the top of this, Badinter gave its final judgement saying that the "

process of dissolution of the SFRY referred to in Opinion No.1 of 29 November 1991 is now complete and that the SFR Yugoslavia no longer exists".<sup>344</sup>

This ruling of the Commission, along with others, was entirely integrated in the UN policy. Most of the UN members adopted this policy concerning the Yugoslav continuity (identity) issue. Of this nature is the UN Security Council Resolution No. 777 of 19 September 1992, noting that "the state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist" and that "the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations". It, therefore, recommended to the UN General Assembly that the Assembly decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations, and that it should not participate in the work of the General Assembly.<sup>345</sup> Having received this recommendation, the General Assembly adopted the Resolution No. 47/1 in which it noted that the "the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations" and "therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly".<sup>346</sup> This attitude was accepted by all UN organs and other pertinent structures, apart from the UN Legal Council.<sup>347</sup> However, the

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<sup>344</sup> See, footnote no. 325 of this dissertation. See, also, *Resolution 752 (1992)*, adopted by the Security Council of the UN at its 3075<sup>th</sup> meeting, 15 May 1992, and *Resolution 757 (1992)*, adopted by the Security Council of the UN at its 3082<sup>nd</sup> meeting, 30 May 1992. Texts provided by the Albanian Foreign Ministry, Tirana. Reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 575-577 and 593-599. (also available in internet: <http://www.un.org>).

<sup>345</sup> See, *Resolution 777 (1992)*, adopted by the Security Council of the UN at its 3116<sup>th</sup> meeting, 19 September 1992. Text provided by the Albanian Foreign Ministry, Tirana. Reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, p. 721. (also available in internet: <http://www.un.org>).

<sup>346</sup> *UN General Assembly Resolution No. 47/1*, 22 September 1992. (also available in internet: <http://www.un.org>).

<sup>347</sup> Since the continuity of membership in international organizations largely depends on their internal regulations (statutes), FRY has insisted most of the time on its right to state continuity (identity) with former Yugoslavia in an apparent hope to extract some concessions by a part of the international community (especially concerning FRY's membership to some international organizations). And, in fact, such concession were made by the Legal Council of the United Nations who, on 29 September 1992, issued an open legal opinion setting out the United

above rulings of the Security Council (and the General Assembly) have had a decisive impact on the further continuation of FRY's membership in the UN and, by definition, other international organizations (universal and regional).. Of the first group of organizations having the universal character, the most important ones were the IMF and the WB. Among the second group, FRY's membership in OSCE has during Milosevic's rule presented itself as crucially important. The former issue is discussed later when the problem of the so-called 'outer wall' of sanctions is taken up (see, *infra* pp. 240-248), while to the latter we turn in the following but only after we have entirely completed the above discussion on the FRY's membership in the United Nations and its pertinent structures.

The Badinter Commission reached a similar conclusion as the one, which was arrived at in the UN organs. Badinter reached this in its deliberations as to the general position of FRY according to the international law, international recognition being included as well. Thus, in its opinion no. 10 of 4 July 1992, the Commission answered directly to another question asked by Lord Carrington, who asked as to whether the Federal Republic of Yugoslavia (Serbia and Montenegro) was a "new State calling for recognition". The answer of the Commission was that "the FRY (Serbia and Montenegro) is a new State which cannot be considered the sole successor to the Socialist Federal Republic of Yugoslavia" and that "its recognition by Member States of the European Community would be subject to its compliance with the conditions laid down by general international law for such an act and the joint statement and Guidelines of 16 December 1991". In short, Badinter stated, "this means that the FRY

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Nation Secretariat's interpretation of the UN General Assembly Resolution No. 47/1 of 22 September 1992. This concession, made under the UN banner, was in favour of FRY's attitude that it could continue former Yugoslav membership in this organization and its pertinent bodies. This further meant that there was only a simple continuation of the previous membership of the former Yugoslavia, not a new admission of the new state, e.g.. FRY (Serbia and Montenegro). This position caused a confusion within the UN structures so that the General Assembly had to pass anew one more resolution. It did so on 29 December 1992. The operative paragraph of this new resolution "reaffirms its resolution 47/1 of 22 December 1992, and urges member states and the UN Secretariat in fulfilling the spirit of that resolution to end the *de facto* working status of Serbia and Montenegro". See, the *UN General Assembly Resolution No. 48/88*, 29 December 1992. (also available in internet: <http://www.un.org>).

(Serbia and Montenegro) does not *ipso facto* enjoy the recognition enjoyed by the SFRY under completely different circumstances", so that "it is for other states, where appropriate, to recognize the new state".<sup>348</sup>

The issue of FRY's membership in the OSCE presents itself in a more complicated form. This is the case because in the OSCE, since the beginning of the Yugoslav crisis in 1991, there existed strong tendencies for a simple reintegration of the FRY, rather than its admission as a new member (like it was the case with other former Yugoslav republics). The reason behind this, according to some OSCE officials, was that FRY's eventual membership would have made more easier for this organization to exert pressure on FRY to comply with OSCE's standards on various issues (human rights, democracy, the rule of law, respect for minority rights, etc.). At the same time, FRY's officials have on many occasions claimed that no cooperation was possible with an organization who denied FRY the status of a full-fledged member. Hence, according to Belgrade's position, FRY should have merely renewed or resumed its seat within the OSCE. This stance had constantly been repeated by FRY officials well until the end of the conflict in Kosova (June 1999), due also to the fact that the FRY's membership in OSCE was, *inter alia*, connected with the functioning of the *OSCE Mission for Kosovo, Sandjak and Vojvodina*. This claim was recently renounced by the new Belgrade authorities replacing Milosevic since September 2000. However, the history of Yugoslavia's suspension from the work of the OSCE is very important, as were the FRY's efforts until September 2000 to regain former Yugoslavia's membership in this organization.

The decision to prevent the FRY (Serbia and Montenegro) from further participation in the work of the OSCE was first taken by the Committee of Senior Officials on 8 July 1992, which referred to the assessments contained in the

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For the ruling of the UN Legal Council, see, *Opinion of the Legal Council of the United Nations*. Reprinted in "The Status of Yugoslavia in FAO" (Informal Briefing Note, September 1996). Text provided by the Albanian Foreign Ministry (Tirana).

<sup>348</sup> To the issue of recognition in the context of former Yugoslavia we turn in a more detailed way in Chapter VI. For the text of the Opinion No. 8 of the Arbitration Commission of the Peace Conference on Yugoslavia. Paris, 4 July 1992, see, *International Legal Materials*, Vol. 31 (1992) p. 1521. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 634-636.

declarations of 12 and 20 May of the same year. In these declarations, "the Belgrade authorities and the Yugoslav People's Army" were accused of "aggression on Bosnia-Herzegovina". The decision on suspension had been made for an initial period of three months and its withdrawal made conditional on the respect of main OSCE principles and cooperation with the Permanent Mission for Kosova, Sandjak and Vojvodina, whose establishment was indicated at this point. More importantly, the OSCE took the firm stand that when deciding the future position (of the former Yugoslavia), it would take into consideration the status of the FRY (Serbia and Montenegro) in the United Nations and its bodies and the official opinions of the EC Arbitration Commission (Badinter Commission).<sup>349</sup> The meeting of the OSCE Council of Senior Officials, held in Stocholm in December 1992, endorsed the previous decisions, arguing that the leaders of Serbia and Montenegro and the Serbian forces active in Bosnia-Herzegovina bear the greatest responsibility for the conflict in the territory of the former Yugoslavia. It furthermore informed the FRY leaders that "only radical changes of their policy toward the neighbours and their own people and real cooperation in the peace process will gradually return the country into international community".<sup>350</sup> The same messages were conveyed to the FRY's leaders next December at the OSCE Council meeting held in Rome. The Council urged the FRY authorities to accept the OSCE "principles, obligations and decisions". New conditions were attached to the eventual FRY's return to this organization. Namely, the OSCE advocated an "urgent and unconditional" return of the Permanent Mission for Kosovo, Sandjak and Vojvodina after its expulsion on 28 June 1993, and the resumption of negotiations about the future status of Kosova.<sup>351</sup> In its last summit, held before the Dayton Peace Agreements were reached, the OSCE failed to reach a consensus on FRY's membership in it.

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<sup>349</sup> See, *Decision of the Committee of Senior Officials of the OSCE on the Exclusion of the Participation of Yugoslavia (Serbia and Montenegro) from the OSCE*, 8 July 1992. Text provided by the Albanian Foreign Ministry, Tirana.

<sup>350</sup> Points 2 and 3 of the *Document of the Final CSCE Council Meeting*, Chapter: Regional Issues. Text provided by the Albanian Foreign Ministry. Tirana.

<sup>351</sup> Points 1. 2 and 1.3 of the Chapter on Regional Problems of the "Document of the Fourth CSCE Council Meeting". Rome. December 1993. Text supplied by the Albanian Foreign Ministry, Tirana.

While the Western countries and most of the newly admitted members saw FRY's eventual membership in this organization as an admission of the new member, the Russian Federation, by contrast, defended the idea about FRY's mere reintegration and the resumption of the former Yugoslav seat in the OSCE.<sup>352</sup>

Following the Dayton Agreements (1995) some progress was made in FRY's relations with the OSCE. Next year, the OSCE structures made frequent visits to Belgrade. In the eyes of the Belgrade regime, rapprochement with the OSCE looked as if it was going to ensue some concessions in favor of FRY's admission to the OSCE. Similar interpretations were given by Serbian scholars.<sup>353</sup> However, the position of the parties, the FRY and the OSCE, remained unchanged ever since. The former still insisted on its claim to state continuity (identity) with the former Yugoslavia, while the latter opposed it constantly.<sup>354</sup>

FRY's authorities have tried hard after 1995 to gather support from former Yugoslav republics for the cause of state continuity as described thus far. They hoped that such an eventual support would be enough to obtain international sympathies, much like the Russian Federation did following the December 1991 Alma Atta Agreement. This would have been equal to FRY's fulfillment of some of the basic (objective) criteria as to the state continuity with former Yugoslavia and, in FRY's opinion, leave unaffected its alleged exclusive claims over the

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<sup>352</sup> See, "CSCE Budapest Conference 1994 – Towards a Genuine Partnership in a New Era". Text provided by the Albanian Foreign Ministry, Tirana. The details of the Russian position are known to this author due to his personal participation in this summit of the OSCE as a part of the Albanian Delegation.

<sup>353</sup> See, Branislav Milinkovic, "FRY and the OSCE. Inertia of Suspension". *Review of International Affairs* Vol. XLVIII No. 1056 (15 May 1977, Belgrade) pp. 14-18.

<sup>354</sup> The issue of the state continuity following the Dayton Accords was raised on the occasion of the resumption of the work of the expelled OSCE Mission for Kosovo, Sandjak and Vojvodina. The work of this mission did not resume, though. In its place, however, another mission, Kosovo Verification Mission (KVM), started to work following the agreement between U.S. special envoy Richard Holbrooke and Milosevic (October 1998). The work of this mission was different, having to check the implementations of the achieved ceasefires between the KLA (Kosovo Liberation Army) and the Serb forces fighting in Kosova during the armed conflict there (1998-1999). See, "OSCE - FRY - Kosovo Verification Mission Agreement", 16 October 1998 (*OSCE Document CIO.GAL/65/98*). For the latest report before the OSCE pulled from Kosova on the eve of NATO's air strikes against FRY, see, Report of the Secretary General of the UN Pursuant to Resolution 1160 (1998), 1199 (1998) and 1203 (1998) of the Security Council. *UN Doc. S/1998/1221*.

assets and other property rights of the former Yugoslavia. Other Yugoslav republics, however, viewed differently these efforts by the FRY government. They saw them as an attempt by the FRY to separate the issue of mutual recognition from the question of state continuity espoused by FRY only.

In the first article of the General Framework Agreement for Peace in Bosnia-Herzegovina, signed in Paris on 14 December 1995, it was said that the "partners shall particularly respect in full the sovereign equality of each of them, settle conflicts peacefully and refrain from any act, either by way of threat, use of force or in any other way, against territorial integrity and political independence of Bosnia-Herzegovina and other states".<sup>355</sup> In the last article, mutual recognition of FRY (Serbia and Montenegro) and Bosnia-Herzegovina as independent and sovereign states was foreseen. These provisions, along with the Dayton Accords, part of which they are, have been in accordance with the general stance concerning the subjects entitled to sovereign statehood within the former Yugoslav federation. They came after the Belgrade regime lost the wars in Bosnia-Herzegovina and Croatia respectively. However, the same regime did not give up the idea of gathering the support for its claims from other republics concerning the state continuity with former Yugoslavia, regardless of the provisions about mutual recognition. To this effect, FRY even concluded two agreements with Macedonia and Croatia respectively, and participated as a partner in the Joint Statement with Bosnia-Herzegovina.<sup>356</sup>

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<sup>355</sup> Full text of the Agreement is reprinted also in the 'Serbian Bulletin - Documents', Belgrade, and was circulated as an official document of the FRY's Embassy in Tirana, Albania (January 1996). Its official version, though, is reproduced in UN Doc. A/50/790 - S/ 1995, in the form initiated on November 21, 1995, in Dayton and appears as final version in 35 ILM 89 (1996) in the very form signed on December 19, 1995, in Paris, with all its annexes.

<sup>356</sup> See, *The Agreement on Normalisation of Relations and the Promotion of Cooperation Between Macedonia and the Federal Republic of Yugoslavia*, 8 April 1996. Full text reprinted in the Skopje-based Albanian newspaper "*Flaka e Villazërimit*", dated 9 April 1996. For the comments on it, see, the Albanian Embassy correspondence No. 892/96, dated 10 April 1996, wherein the full text is attached as well; *The Agreement on Normalisation of Relations Between the Federal Republic of Yugoslavia and the Republic of Croatia*, 23 August 1996. Full text reprinted in Review of International Affairs, Vol. XLVII NO. 1048/96 pp. 13-14; See, also, the Belgrade-based newspaper *Politika* (24 August 1996) commenting on the Agreement. Regarding Bosnia-Herzegovina, the *Joint Statement* was signed by *Alija Izetbegovic* (for the Bosnian side) and *Slobodan Milosevic* (for the Serbian, not Yugoslav, side) on 3 October 1996. Full text of the Declaration is supplied to this author by the Bosnian Embassy in Tirana (Albania). For the



Two important issues emerge from the documents concluded by FRY. They show unambiguously FRY's intent to make no distinction between mutual recognition and state continuity (identity) in order to garner the minimal international support needed for the state-continuity assumption. The first point is the title given to these documents, that is, "Agreements on Normalisation of Relations". This heading leaves an impression as if there were some ordinary frustrations in the normal communication between their signatories so that the signing serves only to put these relations back on track again. This was not the case, though. These documents have served as a legal framework for the establishment of diplomatic relations between the new states, for the first time in their own history. Their wider legal framework, from an international standpoint, was the Dayton Accords. As such they could not have any legal validity outside the Dayton Accords. In essence, they represent the implementation of the letter and the spirit of the Dayton Accords and could not serve as a test that proves FRY's state-continuity claims. The opposite was true instead. The same relates, *mutatis mutandis*, to the Joint Statement, signed upon the initiative of the then president Jacques Chirac of France. Its content and the diplomatic message it conveyed was the same as that contained in the above agreements. This is to say that all the documents under discussion represent political and diplomatic step undertaken along the way to implement an internationally binding agreement – the Dayton Accords. This document recognized all former Yugoslav republics as sovereign and independent states on an equal basis, thus settling conclusively any future controversy as to Yugoslavia's further continuity.

The second point, which also confirms in a decisive manner the political nature of the above documents signed by FRY and its partners, is more directly related to FRY's continuity claims. Articles 4 and 6 respectively (the above-mentioned agreements) and Article 4 ("the Joint Declaration") contain provisions affirming FRY's continuity claims (or, as they put it, "the parties accept or take cognisance of"). However, FRY also accepted and took cognisance of the same

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comments on the Declaration, see, Charles Truchart, "Bosnia-Yugoslavia to Swap Embassies". *Washington Post Foreign Service* October 4, 1996 (<http://www.washingtonpost.com/>).

continuity assumption concerning other signatories to these documents. This wording of these documents was seen in Belgrade not only as a matter of principle confirming Serbian views on the issue of state continuity with the former Yugoslavia, but as well as a necessary support needed for the substantiation of FRY's continuity claim *vis-a-vis* the international community at large.<sup>357</sup> However, this interpretation was vigorously challenged by other former Yugoslav republics and the rest of the international community. They made a clear distinction between the mutual recognition and the right to state continuity with the former Yugoslavia.<sup>358</sup> In fact, both the "Agreements" and the "Joint Statement" did not recognize nor accept FRY's continuity claims. They only note a historical fact, which states that Serbia and Montenegro existed as sovereign and independent states prior to 1918 so that, consequently, they had entered the Serb-Croat-Slovene Kingdom in that capacity (as sovereign and independent states). These documents also say that Bosnia, Croatia and Macedonia "register

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<sup>357</sup> See, "Statement by the Federal Minister of Foreign Affairs of the Federal Republic of Yugoslavia", Belgrade, 23 August 1996. Text reprinted in *Review of International Affairs*, Vol. XLVII No. 1048 (1996 Belgrade) pp. 14-15.

<sup>358</sup> Last time the issue was raised by former Yugoslav republics at the end of 1999. Then, they submitted a draft resolution calling for an equal treatment of all five successor states to former Yugoslavia on the international plane. See, *UN Doc. A/54/L 62* ; and UN Daily Press Briefing by Office of Spokesman for Secretary General (15 December 1999). For comments, see, *Radio Slobodna Evropa* (In South Slavic languages), 28 November 1999, 10.00h p.m. CET.

The issue was acute especially in the period between 1995-1997. After 1995, the Office of the High representative for Bosnia-Herzegovina set up a body to tackle the succession issues that emerged from the dissolution of former Yugoslavia. International mediator, Arthur Watts, held several meetings during 1995-1997 and was very active on the matter. He stopped his work at the beginning of 1999 when FRY authorities refused to accept a framework convention on the succession of former Yugoslavia drafted by him. The FRY Delegation insisted not on the equitable share, as did other former Yugoslav republics and Arthur Watts himself, but on taking the largest part of Yugoslavia's assets treating others as secessionists. So, FRY thought that it was the only successor to the former Yugoslavia and the other republics secessionists. See, *RFE/RL*, 18:00h CET, 01.06. 1997 (In South Slavic languages); *RFE/RL*, 18:00h CET, 18.10. 1997 (In South Slavic languages); *RFE/RL*, 18:00h CET, 09.12.1997 (In South Slavic languages); *RFE/RL*, 18:00h CET, 08.01. 1999 (In South Slavic languages) and *RFE/RL*, 18:00h CET, 03.06. 1997 (In South Slavic languages). (Internet version only: <http://www.rferl.org>); The international mediator on the succession of former Yugoslavia, Arthur Watts, postponed his work on the matter for uncertain period of time. The ensuing war in Kosova following year, as well has been one of the reasons for this postponement. After Milosevic's fall from power, as noted, the issue has been settled through an agreement between the parties since the new Yugoslav government did not raise the issue of continuity with former Yugoslavia. Last meeting on the succession issues before the Kosova conflict was held on 6-7 November 1997. See, *ODRAZ B92 VESTI*, 11 July 1997 (English); *B92 Open SERBIA*, Belgrade, 6-7 November 1997. Also available in internet: <http://www.Siicom.com>).

the mere fact of State continuity of the FRY", meaning the pre-1918 statehood of Serbia and Montenegro. However, this means a mutual recognition only and nothing more than this. It could not, as it did not in fact, have any impact on the stance of the rest of the international community. Above all, it did not have any positive impact in terms of improving FRY's position concerning its continuity claims with the former Yugoslavia. This mutual recognition was never accepted by the international community as a test that Serbia and Montenegro preserved their pre-1918 statehood either. This was FRY's unilateral will, endorsed in part by some other Yugoslav republics (only concerning the above effects of a mere declaratory nature) and dismissed entirely by the rest of the international community.

The preservation of international stability was yet another argument on which FRY based its efforts to garner international support in favor of its continuity claims. Belgrade, in this context, compared its position with that of the Russian Federation. However, the international stability could not be put under a serious threat by FRY's actions due to its lack of the nuclear bargaining power. In the case of FRY, furthermore, the international community made clear that there would be no rewards for the sort of unacceptable actions conducted by Belgrade authorities. These actions even led to the imposition of the mandatory sanctions against FRY and to its total isolation since the beginning of the war (s) in the territory of former Yugoslavia<sup>359</sup>. Apart from this, the support for Russia's continuity from other former Soviet Union republics was not of dubious nature but clearly expressed in an international agreement (Alma Ata, December 1991), stating unambiguously the wishes of the parties.<sup>360</sup> At the same time, unlike the Russian federation who accepted an equitable division of assets of the former Soviet Union through the agreement, FRY made no distinction between mutual recognition and continuity. FRY considered instead that it should succeed automatically not only to the former Yugoslav seat in international organizations but also to the rights over former Yugoslav assets and property (located both

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<sup>359</sup> Roland Rich, "The Collapse of Yugoslavia and the Soviet Union", pp. 36-66 at 57-59.

<sup>360</sup> Ibid. pp. 57-59.

inside and outside the territory of former Yugoslavia). This position held by FRY was made possible, as noted, due to the fact that by the time the war started it held in possession the major parts of the former Yugoslav assets.<sup>361</sup>

If it is not accepted as the continuation of former Yugoslavia, can FRY be held responsible for the war (s) and the conflict in the territory of the former Yugoslavia? This matter was raised in March 1993 by the government of Bosnia-Herzegovina who filed an application instituting the proceeding before the International Court of Justice.<sup>362</sup> The matter is still pending before the International Court of Justice, although the FRY authorities during Milosevic's time constantly asked Bosnia-Herzegovina to remove the application from the Court's files.<sup>363</sup> The final say of the ICJ would certainly answer in an authoritative manner the issue of state responsibility that FRY under Milosevic tried so ardently to escape in her efforts to portray the conflict and war(s) in former

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<sup>361</sup> Ibid. 48-49; Mathew Craven, "The Problem of State Succession and the Identity of States Under International Law". *European Journal of International Law* Vol. IX No. 1 (1998) pp. 142-163 at 142-144.

<sup>362</sup> See, "Case Concerning the Application of the Convention of Genocide (Bosnia-Herzegovina vs. Yugoslavia (Serbia and Montenegro))". *ICJ Reports* (1993); For comments, see, Christine Gray, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina vs. Yugoslavia (Serbia and Montenegro)). Orders of Provisional Measures of 8 April and 13 September 1993". *International and Comparative Law Quarterly*, Vol. 43 (July 1994) Part 3, pp. 704-714; Peter H.F. Bekker, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina vs. Yugoslavia (Serbia and Montenegro))". *American Journal of International Law* Vol. 92 Issue 3 (July 1998) pp. 508-511.

<sup>363</sup> *Radio Free Europe* (In South Slavic languages), 06 October 1999, 10:00h p.m. CET ; 02 August 1997, 10:00h p.m. CET; ODRAZ B92. OPEN YUGOSLAVIA. Belgrade Daily News. Service News by 14:00h CET 07 May 1998 (Also available in internet: <http://www.siicom.com>); "Milosevic Ponudio Izetbegovicu Uspostavu Diplomatskih Odnosa". In South Slavic Service (In South Slavic languages), *VJESTI*, 06 May 1998 (18:00h CET); Interview by Zoran Pajic and Ambassador Muhamed Sacirbey. In *South Slavic Service*, 08 October 1999; *South Slavic Service*, *Vjesti*, 30 December 1998 (18:00h CET); *South Slavic Service*, *Vjesti*, 06 October 1999 (18:00 CET); Mensur Camo, "Tuzba B i H Protiv SRJ za Agresiju i Genocid" *South Slavic Service*, 17 Mart 2000 (also available in internet: <http://www.referl.org>).

Milosevic used to condition the establishment of diplomatic relations with Bosnia-Herzegovina with latter's renouncement of the application before the ICJ concerning the aggression and the crime of genocide against the state of Bosnia-Herzegovina and its people. This, of course, has been repeatedly rejected by the officials and the state organs of Bosnia-Herzegovina. Apart from Bosnia-Herzegovina, the Republic of Croatia also instituted the proceedings against FRY in the mid-1999, based on the same legal and political understanding as Bosnia-Herzegovina. Francis Boyle, a legal representative of Bosnia-Herzegovina before the ICJ, said that Croatia has good chances to win the case because the ICJ based its ruling on its own competence to deal with the case on the same grounds as in the Bosnia-Herzegovina case.

Yugoslavia as events occurring within the other, for her secessionist republics. In both proceedings of April and September 1993 before the Court concerning the so-called provisional measures requested by Bosnia-Herzegovina with a view of putting an end to the conflict, FRY and its appointed *ad hoc* judge, Milenko Kreca, held the view that in Bosnia-Herzegovina an internal/civil war was under way and no acts of genocide were being committed by FRY or the people under its control.<sup>364</sup> Similar views were repeated during the 1996 preliminary objections raised by the FRY. This time, apart from the already noted allegations, the FRY representative to the Court even denied the very existence of the state of Bosnia-Herzegovina. Its existence, said the FRY representative, came into being only after the Dayton Accords (1995).<sup>365</sup>

Although criminal in its nature, as seen from above, this case has raised various issues concerning the nature of the FRY policy under Milosevic. Among these issues, that of state continuity and the succession to the former Yugoslavia again took a prominent place in the proceedings before the ICJ. The issue of state continuity was raised by the Court itself when it came to deciding about its own competence, that is, the right to be seized of the matter. The Court has in a very skillful manner avoided any judgement in advance as to the merits of both of these issues, rejecting at the same time FRY's pretensions that the Court had neither personal nor subject matter jurisdiction (the so-called *rationae personae* and *rationae materiae* jurisdictions, practically dealing with the issues of genocide and aggression against Bosnia-Herzegovina). On the other hand, when

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Cf. Francis A. Boyle, "Hrvatska Tuzba Protiv SRJ Ima Dobre Izglede". *South Slavic Service*, 06 July 2000 (<http://www.referl.org>).

<sup>364</sup> Cf. "Application of the Convention on the Prevention and Punishment of the Crime of genocide (Bosnia-Herzegovina vs. Yugoslavia (Serbia and Montenegro) ). Request for the Indication of Provisional Measures. Order of 8 April 1993". *ICJ Reports* (1993) 3, paras. 41-42, 44-45, 52; and "Application of the Convention on the Prevention and Punishment of the Crime of genocide (Bosnia-Herzegovina vs. Yugoslavia (Serbia and Montenegro) ). Further Requests for the Indication of Provisional Measures. Order of 13 September 1993". *ICJ Reports* (1993) 325, paras. 46-52, 57, 59.

<sup>365</sup> Cf. "Case Concerning the Application of the Convention on the Prevention of the Crime of Genocide (Bosnia-Herzegovina vs. Yugoslavia (Serbia and Montenegro) ). Judgement on Preliminary Objections ". *ICJ Reports* (1996). (also available in internet: <http://www.icj-icj.org>). For other allegations of the FRY representatives, see, Gavro Perazic and Sead Hodzic, "Tuzba Bosne-Hercegovine Protiv Jugoslavije i Protivtuzba Jugoslavije". *South Slavic Service* (In South Slavic languages only). February 1, 1998 (also available in internet:<http://www.refrl.org>).

it ordered the provisional measures the Court made a prejudgement as to FRY's responsibility over what was going on in Bosnia-Herzegovina at the time. In this regard, the Court ruled unanimously that FRY should take measures to prevent genocide and, by votes 13 to 1, that it was obliged to ensure that military and paramilitary forces under its control, direction or influence did not commit acts of genocide.<sup>366</sup> In this realm as well, FRY used its state continuity claims with former Yugoslavia to hide behind and shake off any responsibility for the war in Bosnia-Herzegovina.

The proceedings of the ICJ in this case, concerning state responsibility of FRY for the genocide and aggression against the state of Bosnia-Herzegovina, although not directly related to the issue of state continuity with the former Yugoslavia, together with FRY's continuity claims in the realm of property rights and other assets of the former Yugoslavia, constitute an important aspect demonstrating Serbia's intentions that she sought to realise through the insistence on its state continuity with the former Yugoslavia. In this regard, international law of the present time has demonstrated that it is ready to meet the challenges of its own time, thus contributing to the order and stability through a correct and proper application of its own rules and norms on state continuity and succession. The other way around would have meant an endorsement of Serbian aggressive policies, having far-reaching consequences for the order and stability in interstate relations, at least in this part of Europe.

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<sup>366</sup> Cf. April Order. Paras. 15, 18 - 20, 25, 27, 33, 41 - 42, 45 - 46, 52; September Order. Paras. 29, 33, 34, 40 - 46, 52, 57, 59.

## CHAPTER V:

### THE DISSOLUTION OF YUGOSLAVIA AND THE SEARCH FOR SELF-DETERMINATION

#### ***1. Northern Republics (Slovenia and Croatia) and Their “Western Type” Self-Determination***

In the development of self-determination within the former Yugoslavia, especially during its last years, there were crystallized two options. The first option was based on Western values and norms, stressing liberal ideas and values, while the second one based itself on non-liberal and anti-democratic values and norms, stressing non-liberal ideas and values. The former was embraced by the two Yugoslav northern republics, Slovenia and Croatia, and the latter by Serbia and its tiny ally Montenegro.<sup>367</sup> One caveat should be made here: the Republic of Croatia, after the coming to power of *Franjo Tudjman*, began to resemble more and more *Milosevic's* Serbia. We refer in this section to this type of self-determination in Croatia, only as far as the pre-*Tudjman* era is considered.<sup>368</sup> In between this type of self-determination, there was the one embraced by Bosnia-Herzegovina and Macedonia, to be discussed in the following section of this chapter. A common thread in all four cases, in contrast with Serbia and Montenegro, was that they were territorially-based quests for self-determination (notwithstanding the ethnic composition of all four republics).

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<sup>367</sup> See, more on this, in John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, pp.1-94; Susan Woodward, *Balkan Tragedy. Chaos and Dissolution after the Cold War*, pp. 199-272; Koen Koch, “Conflicting Visions of State and Society in Present-Day Yugoslavia”. *Yearbook of European Studies*, No. 5 (Amsterdam: 1995) pp. 187-202; Anton Zabkar, *Analysis of the Conflict in Former Yugoslavia* (Vienna: National Defense Academy 1999) pp. 3-19.

<sup>368</sup> See, more on this, in John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, pp.74-94; Susan Woodward, *Balkan Tragedy*, pp. 333-373.

The ramification of the above-mentioned quests for self-determination within the former Yugoslavia came as a result of two parallel developments during the 1980s: economic reforms and the crisis in Kosova that began in 1981. The latter, however, took precedence over the economic reforms of the 1980s and came to be a precedent for the future shape of the Yugoslav tragedy. As a reaction to the crisis in Kosova, after the 1981 riots there emerged the above quests for self-determination dominating the whole Yugoslav political scene.

Following *Tito's* death in 1980, Yugoslavia entered the deepest ever economic crisis. Its relations with the International Monetary Found (IMF) became strained and new economic reforms were needed, this time not based on the self-management and other postulates of Yugoslav Communism.<sup>369</sup> When Yugoslav Prime Minister, *Branko Mikulic*, took his office in 1986, he had to face a political environment not akin to reforms as requested by the IMF. During most of 1988, the proposed economic reform was based on administrative measures and the Socialist concept of self-management. This ran counter to the IMF's recommendations for free market and liberal economic policies. Yugoslavia was placed under the tougher controls for "stand by" credits. Apart from this, the IMF also asked for effective measures to combat the already prevailing inflation. To this, Belgrade politicians replied with the claims for constitutional reforms empowering the Yugoslav federation instead of its constituent units.<sup>370</sup> Centralist tendencies in Belgrade became obvious as soon as *Mikulic* tried sincerely to embark on economic reforms, shortly before his resignation on December 1988, as requested by IMF. Then, the pressure came not from Slovenia and Croatia but from Belgrade. Until then, two northern republics resisted *Mikulic's* reforms as

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<sup>369</sup> See, Susan Woodward, "Orthodoxy and Solidarity: Competing Claims and International Adjustment in Yugoslavia" *International Organization* Vol. 40 Issue 2 (Spring 1986) pp. 505 – 545 ; John R. Lampe, Yugoslavia as History. Twice There Was a Country, pp. 308-324; Ivo Bicanin, Fractured Economy. In Dennison Rusinov (ed.), Yugoslavia. A Fractured Federalism (Washington D.C.: the Wilson Center, 1989) pp. 120-142; John Burkett and Borislav Skegro, Are Economic Fractures Widening? In Dennison Rusinov (ed.), *Yugoslavia. A Fractured Federalism*, pp. 142-155; Bruce McFarlane, Yugoslavia. Politics, Economics and Society, pp. 131-148; Paris Kitsos, "A Glimpse of Yugoslavia's Economy". *The Yearbook of the Hellenic Foundation for Defense and Foreign Policy* (Athens: ELIAMEP, 1990) pp. 187-192.

<sup>370</sup> Viktor Meir, *Yugoslavia. A History of Its Demise* (Route ledge: London and New York, 1999) pp. 100-106.



being based upon administrative measures and old concepts of self-management. However, following *Mikulic's* resignation, *Milosevic* stood openly against private property and free market, focusing instead on constitutional changes of the political nature of the Yugoslav federation in an apparent hope to take over the control of the federal structures. *Milosevic's* move on the constitutional plane was directed first and foremost against two autonomous provinces of Kosova and Vojvodina, exactly as foreseen by the 1986 Memorandum. Thus, Belgrade's first priority became the unity of Serbia via the destruction of the autonomies of Kosova and Vojvodina, preparing the ground for a centralized and Serbian-dominated federal Yugoslavia.<sup>371</sup>

Despite his backing from the Yugoslav military, *Milosevic* could not succeed *Mikulic* as Prime Minister. *Mikulic* was succeeded by a liberal-minded *Ante Markovic*, a Croat and candidate of Slovenia and Croatia. *Milosevic* and the Yugoslav military were forced to support the candidacy of *Ante Markovic* because of the events in Vojvodina and Montenegro. This endorsement did not mean the support for reform; it was, rather, a political reaction to the coups in Montenegro and Vojvodina following the so-called "anti-bureaucratic" revolutions in these two countries that led to the replacement of their legally elected representatives. After he toppled down the rulers of these two entities and replaced them with his men, *Milosevic* realized that he needed to back off temporarily. Within a few months, *Milosevic* succeeded in destroying other constitutional balances, this time by abolishing the autonomous status of Kosova and Vojvodina (March 1989). The new Prime Minister, hoping to garner Serbia's support for his reforms, did not react to the declaration of the state of emergency in Kosova at the end of February 1989, which was made to extract the Kosovar Assembly's acceptance of the constitutional changes leading to the abolition of Kosova's autonomous status within Yugoslavia. The collective Federal

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<sup>371</sup> Ibid. pp.109-110; See, also, Sabrina P. Ramet, *Balkan Bebel* (Oxford: Westview Press, 1992) pp.21-37.

Presidency proved to be nothing more than *Milosevic's* executive assistant .<sup>372</sup>  
The only reaction came from Slovenia.

The Slovenian leaders, both in power and in opposition (the latter recently formed for the first time in the territory of former Yugoslavia), gathered in a meeting of solidarity for the plight of the Kosovar Albanians living under the state of emergency. This meeting, held at the end of February 1989, took place in Ljubljana and is known as *Cankarjev Dom Meeting*. It consisted of a genuine support for Kosova and its majority population on the eve of the destruction of Kosova's autonomous status.<sup>373</sup> Slovenes clearly denounced the state of emergency in Kosova and began their work in two other directions. One was the democratization and the next was institutionalization of Slovenia's position within the Yugoslav federation. The Slovenes were taken over by the wide support given to *Milosevic* within the Serbian and Yugoslav society for his actions in Kosova.<sup>374</sup>

The process of democratization in Slovenia began when the Slovenian Communists gradually allowed the voice of the various associations to be heard. In April 1989, they even elected their member of the Federal Presidency, *Janez Drnovsek*, in a direct balloting. This was an unprecedented step for a Communist country. Apart from this, the Slovene Communists fully endorsed the so-called "May Declaration", passed by the Slovene opposition. This declaration clearly hinted at Slovenia's independence with an intentional symbolic reference to that of 1918.<sup>375</sup> The next step in this process of Slovenian democratization was the June 1989 "Fundamental Charter of Slovenia" that paved the way for Slovenian constitutional reforms (September 1989). These reforms granted the Republic of Slovenia the right to protection from centralist tendencies of *Milosevic* and the

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<sup>372</sup> Victor Meir, *Yugoslavia. A History of Its Demise*, pp 106-107.

<sup>373</sup> Dragan Belic - Duro Bilbija, *Srbija i Slovenija. Od Cankarjevog Doma do "Jugoalata" i Gazimestana* (Beograd: "Tera", 1989) pp. 22-41.

<sup>374</sup> Croatia woke up only later, while Macedonia saw itself threatened by *Milosevic's* regime only in April 1989 when *Milosevic* tried to push in the Federal Parliament the so-called Law on Colonists allowing the Serbs to return to the regions annexed after the Balkan Wars of 1912-1913, that is, to Macedonia and Kosova. Cf. Victor Meier, *Yugoslavia. A History of Its Demise*, pp. 118.

<sup>375</sup> Victor Meier, *Yugoslavia. A History of Its Demise*, p. 113.

Yugoslav military. It is this charter and the later constitutional reforms that ensued that show the true liberal character of the Slovenian quest for self-determination. Thus, the “Fundamental Charter” in its first passage, announced that Slovenian leadership wanted to live in “a democratic state grounded on the sovereignty of the Slovenian people, human rights, and the liberties of citizens” and, further, that they “ will live only in such a Yugoslavia in which our sovereignty and our lasting and inalienable right to national self-determination are secured, together with the equality of all nationalities and minorities, in which the differences among peoples are protected and guaranteed, and in which the common tasks in the federal state are regulated on the basis of consensus”. The Charter also recognized an explicit right for political pluralism, including freedom of association and free voting.<sup>376</sup> These messages were not welcomed in the East of the country. *Milosevic* and his aides continued their quest for a tighter and centralized federation, leading to war and conflict with others.<sup>377</sup>

To preserve their rights, the Slovenes went further, shifting the political problem over Kosova into the terrain of constitutional rearrangement of the Yugoslav federation. In the Summer of 1989, the Slovene Parliament embarked upon a constitutional reform aimed at preserving the statehood of Slovenia, including the right to dissolve its association with Yugoslavia. Slovenia rejected the Serbian claims that its right to self-determination had been “consummated” through its accession to Yugoslavia in 1918. These Slovenian constitutional amendments dealt further with human rights, political freedoms, democratic procedures, economic freedom (including the right to own property), the use of Slovenian language in Slovenia (including on the part of federal organs), the financial obligations of Slovenia *vis-à-vis* the Federation, and the rights of the Federal Army. A state of emergency, according to the proposed constitutional amendments, could be proclaimed in Slovenia only with the consent of the

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<sup>376</sup> For the text, see, Dragan Belic - Duro Bilbija, *Srbija i Slovenija. Od Cankarijevog Doma do “Jugoalata” i Gazimestana*, Annex II; For comments, see, Victor Meier, *Yugoslavia. A History of Its Demise*, pp.113-114.

<sup>377</sup> See, also, a documentary evidence on this period in Dragan Belic - Duro Bilbija, *Srbija i Slovenija. Od Cankarijevog Doma do “Jugoalata” i Gazimestana*, pp.192-258.

republic's parliament.<sup>378</sup> These Slovenian moves were the first serious step towards the resistance of Serbian centralist tendencies. These tendencies were clearly expressed in a meeting of the Yugoslav Communists (the Communist League of Yugoslavia, or the LCY), held on afternoon of 20 December 1989. This meeting, convened at the behest of the Yugoslav military, was designed to put pressure on the Slovene Communists to give up their drive towards a loose federation. The Slovenes did not succumb to the pressure and on 27 September 1989 their parliament voted on the proposed amendments granting the Republic more protection and freedom of action vis-à-vis Serbia and the federal institutions.<sup>379</sup> The Slovenian constitutional amendments were a prelude to full democracy and independence, although the latter was coined in terms of “ an asymmetric federation”. The message was clear at the time: preventing the Serbian and the Yugoslav military's further tendencies towards centralization of the Yugoslav federation that had already started with Belgrade's moves against Vojvodina, Montenegro and Kosova (October 1988-July 1989).

The pressure against Slovenia did not end here, though. Milosevic and his Federal Presidency (the Army included) staged a rally for December 1, 1989, hoping to destabilize Slovenia in a similar fashion with the rallies held in Vojvodina, Montenegro and Kosova before they were stripped off their constitutional rights. The Slovenian authorities banned the rally so that the Milosevic group charged with the organisational issues had to back off. As a response to this, Serbia broke its economic relations with Slovenia on December 3, 1989.<sup>380</sup> This Serbian action did not trouble Slovenia that much but did trouble the reform-oriented Prime Minister of Yugoslavia, Ante Markovic, who presented his economic program to the Yugoslav Parliament on 18 December 1989, hoping to realize the unity of the Yugoslav market. This was hardly possible after the December 1989 economic war between Serbia and Slovenia. From this time onwards, Milosevic not only opposed Markovic's reforms but also did his utmost

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<sup>378</sup> Victor Meier, *Yugoslavia. A History of Its Demise*, pp. 116; Dusan Belic - Duro Bilbija, *Srbija i Slovenija. Od Cankarijevog Doma do "Jugoalata" i Gazimestana*, pp. 220-221.

<sup>379</sup> Victor Meier, *Yugoslavia. A History of Its Demise*, pp.117-119.

<sup>380</sup> Ibid. p. 121.

to push Slovenia out of Yugoslavia and settle scores with the rest of the country. For Slovenia, the preservation of its independence and the reduction of the maneuvering room for anti-Slovene forces within Yugoslavia, remained the goals to be pursued in the future. The Fourteenth Congress of the CLY, held in January 1990, provided an opportunity to advance these goals. The Slovenes also found a reply to the Serbian economic boycott: on 26 February 1990, Slovenia discontinued remissions to the Federal fund for the underdeveloped regions, as Serbia and its regions benefited from that fund.<sup>381</sup>

After the failure of the LCY in its Fourteenth Congress, the Communist Party as well as the Yugoslav federation began splintering along republic lines. Slovenia and Croatia went further ahead with planned multiparty elections announced for the Spring 1990. The crucial issue emerged: who was sovereign? Peoples or republics? In the case of Slovenia, the national (ethnic) and republican boundaries were essentially the same so that the answer was simple: sovereignty for the republic. In the rest of Yugoslavia, the situation was all too complicated. However, the first multiparty elections were held in all Yugoslav republics. Slovenia was leading in this process. After the April 1990 elections, the Slovenes went further in their quest for self-determination, holding a successful plebiscite on independence in December that year, and in late February 1991 promulgated crucial federal laws in preparation for “disassociation” from Yugoslavia in June 1991. Croat leaders began saying that Croatia, too, would break away if Slovenia did. Both republics were working on new constitutions modeled upon western democracies.<sup>382</sup> The following Spring and Summer saw the two northern republics declaring their full independence, with Serbia and Montenegro trying to take control over the Federal Presidency and Macedonia and Bosnia-Herzegovina holding a compromise stance between the Slovene and

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<sup>381</sup> Ibid, pp. 121-122; John R. Lampe, *Yugoslavia as History. Twice There Was a Country*, pp. 282, 286, 346; Sabrina P. Ramet, *Nationalism and Federalism in Yugoslavia: 1962-1991*, pp. 150-161.

<sup>382</sup> See, more, on these preparations in Sabrina P. Ramet, *Balkan Bebel*, pp. 37-56; Misha Glenny, *The Fall of Yugoslavia . The Third Balkan War* (London: Penguin Books 1992) pp. 62-97; John R. Lampe, *Yugoslavia as History. Twice There Was a Country*, pp. 344-356.

Croat positions and that of Serbia.<sup>383</sup> For most of 1991, the Federal Presidency was blocked in its work.<sup>384</sup> The rotation of the Yugoslav presidents, which was due on May 15, was blocked by the Serbs. The President at this time was Borisav Jovic, a Serb and close collaborator of Milosevic; the next line for the office was Stipe Mesic, a Croat.<sup>385</sup> Jovic refused to be replaced by Mesic. This was in effect a Serbian coup d'etat. Jovic was backed by Serbia's allies on the Yugoslav presidency: Montenegro, Vojvodina and Kosova (the last two controlled

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<sup>383</sup> Borisav Jovic, *Poslednji Dani SFRJ. Izvodi iz Dnevnika* (Beograd: Politika 1995) pp. 328-339. Jovic had been the Serbian member and the Head of the Yugoslav Presidency at that time.

<sup>384</sup> In fact, the paralysis in the functioning of the state of Yugoslavia were present throughout 1990 and 1991. To overcome this stalemate, there were put forward various proposals, first by Slovenia and Croatia, and later by others. Thus, in October 1990, the Slovene and Croat governments submitted to the Yugoslav state presidency an official proposal for the restructuring of Yugoslavia entitled "A Model of Confederation". According to this proposal, the existing republics should constitute themselves as independent and sovereign states, based on the right of self-determination, and, then, as independent states enter into a confederal agreement with other republics or federations which would be based on international law concerning relations among independent states. See, the full text in Serbo-Croatian, "Model Konfederacije", *Vjesnik*, Zagreb, 6 October 1990. The counterproposal submitted by the Serbian-controlled state presidency few weeks later had the opposite meaning in terms of self-determination. This paper, entitled as "A Concept for the Federal Organization of Yugoslavia" would have established "the Federal Republic of Yugoslavia" on the basis of the sovereignty of its individual citizens (sic!). No special rights were attributed to nations as collective entities, except for the declaration that the nations as well as federal units were in the new federal republic deemed to be equal. See, the full text in Serbo-Croatian, entitled "Koncept Federativnog Uredjenja Jugoslavije", *Borba*, Beograd, 18 October 1990. For the comments on both proposals (Croat and Slovene and the Federal one), see, Vladimir Djuro Degan, "Konfederalizam". *Politicka Misao*. Vol. XXVII No. 2 (Zagreb 1991) pp. 3-46.

According to the Slovene and Croat proposal, former federal units would become independent states while the Yugoslav state presidency (counter) proposal - almost identical to the Serbian and Montenegrin proposal submitted in February 1991 - regarded the federal units as separate but equal units in a single state administration. This means that the latter proposal aimed at centralizing the existing federation as opposed to the former which was not only based on the territorial self-determination but also on liberal ideas (political and economic), including the respect for human and minority rights and the rule of law. The following year was also very dynamic in terms of negotiations aimed at breaking the impasse in the relations between the Yugoslav republics. This time, however, Bosnia-Herzegovina and Macedonia would play a more active role. Their joint proposal shall be discussed in the secession to follow (apart from the Brioni Agreement, already discussed). In this place, it is also worth noting the time when Croatia shifted into the authoritarian direction, thus abandoning the western concepts in the search for self-determination within Yugoslavia. Croatia's ethnically-based self-determination became obvious after 25 March 1991, when Franjo Tudjman, after having taken the office of the President of Croatia, met in Tito's old haunting lounge of Karadjordjevo with Milosevic ostensibly to discuss the constitutional impasse. But, they principally agreed to partition Bosnia-Herzegovina along ethnic lines (between the Serbs and Croats living in this republic). This line became Croatia's foreign policy well until the Dayton Accords and after until the liberals took over the power in Croatia (fall 1999).

by Milosevic after the 1989 constitutional changes). In this situation, the Croats, after the Slovenes did so in December 1990, declared their wish for independence on 19 May 1991. The full secession of the two northern republics was prevented by the U.S. Secretary of State, James Baker, who met with Prime Minister Markovic and with each of the republic presidents on June 21, 1991, urging them to keep Yugoslavia together. Markovic also spoke to the Croat and Slovene assemblies, urging them not to secede. The two northern republics refused to turn back. On June 25, 1991, Slovenia and Croatia announced their full independence.<sup>386</sup> The immediate result was war in Slovenia, which lasted ten days. With the Brioni Agreement of July 7, signed by the EC representatives and the heads of Yugoslavia's republics, Slovenia gained the right to be independent by October 8, 1991.<sup>387</sup> In Croatia there was no truce. Hostilities there were only just beginning in July 1991, and matters would go very badly for Croatia because Yugoslav government authorities (Markovic as Prime Minister and Mesic as the head of the Yugoslav presidency following the Brioni Agreement) had lost control over the Yugoslav military. By late 1991, Tito's Yugoslavia was coming to an end. In December that year, Mesic resigned as president of the Yugoslav presidency and Markovic resigned as well. The two northern republics gained their

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<sup>385</sup> For an account of the Serbian resistance to the election of Mesic as the head of the Yugoslav rotating presidency, see, Borisav Jovic, *Poslednji Dani SFRJ*, pp. 328-339.

<sup>386</sup> However, there is a difference between these two republics. The Slovenian parliament declared Slovenian independent state which was no longer a part of the Yugoslav federation, while Croatian parliament declared Croatia an independent state which was beginning the process of "disassociation" from Yugoslavia and of gaining the international recognition. For the documents concerning the independence of these two republics, see, Republic of Slovenia Assembly Declaration of Independence, Ljubljana 25 June 1991; Republic of Slovenia Assembly Basic Constitutional Charter, Ljubljana, 25 June 1991; Republic of Slovenia Assembly Constitutional Law on the Enforcement of the Basic Constitutional Charter on the Autonomy and Independence of the Republic of Slovenia, Ljubljana, 25 June 1991; Constitutional Decision on the Sovereignty and Independent Republic of Croatia, Zagreb, 25 June 1991; Declaration on the Establishment of the Sovereign and Independent Republic of Croatia, Zagreb, 25 June 1991. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 286-305. For comments, see, Aleksander Pavkovic, *The Fragmentation of Yugoslavia. Nationalism in a Multinational State* (London: Macmillan Press Ltd., 1997) pp. 124-125.

<sup>387</sup> For the full text, see, "Joint Declaration of the EC Troika and the Parties Directly Concerned with the Yugoslav Crisis", Brioni (Croatia), 7 July 1991. Text provided by the Albanian Foreign Ministry, Tirana. For comments, see, Susan L. Woodward, *Balkan Tragedy*, pp. 168-179, 193-200, 202, 276-285.

international recognition, while the international community began to see Yugoslavia as a state being in the process of gradual dissolution.

## **2. Bosnia-Herzegovina and Former Yugoslav Republic of Macedonia (FYROM): the Victims of the Balance of Power Within Yugoslavia**

The history of these two Yugoslav republics very much reflects the balance of power existing within the Yugoslav federation during all periods of its development. Their formation after the Second World War, as noted, was a result of the internal balance of forces. The very aim of their formation was to check and balance Serbian southwards expansion (FYROM) and to prevent the Serb-Croat conflict over Bosnia-Herzegovina.<sup>388</sup> The independence of these two countries was, to use Meier's words, unwanted.<sup>389</sup> Nevertheless, their path to full independence and the concrete reasons for it differ in each case. This is not to say that the basic premises of the balance of power that caused their birth decades ago do not remain the same.

The anti-Serbian course in the Macedonian politics began with the November 1989 Congress of the League of Communists of Macedonia (LCM). In this congress, the old dogmatic and pro-Serbian party leadership was voted out of the office. However, the first signs of rift between Milosevic's Serbia and

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<sup>388</sup> Dusan Bilandic, a notorious Croatian historian, notes that Tito himself had told him that he had been in favor of keeping these two republics as separate and independent as possible from Serbian and Croatian influence. See, Dusan Bilandjic, "Interview". *Radio Free Europe* (In South Slavic Languages).

The same balance of power logic repeated itself on the eve of Yugoslavia's dissolution, when both republics tried to mediate between the Serb solution of Yugoslavism and that advocated by two northern republics. Whilst the confederated proposal was initially a Slovenian idea consciously modeled on the European Union (then Community), Bosnia-Herzegovina, backed by Macedonia, became its prime supporter during tense and often confrontational negotiations among the Yugoslav republics in 1990 and 1991. This was done, as we shall see in this section, in an apparent hope to avoid the conflict and war with Serbia and Croatia. See, John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, pp. 82-83; See, also, the accounts of the then president Kiro Gligorov of Macedonia and the current president Stipe Mesic of Croatia. Kiro Gligorov, "Interview". *Radio Slobodna Evropa* (In South Slavic languages), 4-7 July 2000; Stipe Mesic, "Interview". *Radio Slobodna Evropa* (In South Slavic Languages), 7-9 May 2001. (these interviews are part of the Radio's heading "Kako se Raspala Jugoslavija", concerned with the dissolution of Yugoslavia). (also available in internet: [http:// www.rferl.org/](http://www.rferl.org/)).

<sup>389</sup> Victor Meier, *Yugoslavia. A History of Its Demise*, pp. 181-214.



Macedonia appeared when the new law on colonists was put forward to the Yugoslav parliament (as discussed already). This was seen in Macedonia as a sign of the potential threat coming from Serbia. These Serbian intentions were made even clearer with Milosevic's famous speech on 28 June 1989 on the Field of the Blackbirds in Kosova, when he referred to certain aspects of the Serbian medieval history covering Macedonia as well. Upon the Macedonian insistence for explanation, Milosevic visited Skopje, the Macedonian capital, but his behavior was highly arrogant, ignoring the Macedonian claims over the Monastery of Prohor Pcinjski, which is important for modern Macedonian national consciousness but which, as a result of an earlier decision taken by Tito's Communists after the war, when the inter-republican borders were being drawn, had been assigned to Serbia. It was clear to Macedonian officials that Milosevic's gesture was a sign of his desire to include Macedonia, which the Serbs had called "South Serbia" in the interwar period, among "Serbian territories".<sup>390</sup> In fact, this was one of the aims of the 1986 Memorandum.

After the Slovenes and Croats, new Macedonian Communists that emerged from the above congress, too, had to get ready for their independence, thus giving a sign to Milosevic that this republic did not endorse nor support Belgrade's course as opposed to previous pro-Serbian officials. However, the September 1991 referendum on Macedonian independence was even softer than its Croatian counterpart, leaving open the issue of further coexistence within a reformed Yugoslav federation. This was in fact the very aim of the Macedonian officials who, jointly with Bosnia-Herzegovina, presented their compromise

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<sup>390</sup> Ibid. pp. 180-181; Macedonian position was very precarious when it came to the external environment (its relations with Bulgaria). Apart from this, Macedonia was heavily dependent on the rest of Yugoslavia, especially Serbia, in economic terms. These two factors count for Macedonian initial hope that only the Yugoslav federation was capable of representing Macedonia's interests in relation with its unfriendly neighbours, especially Bulgaria. This state did not recognize the existence of the Macedonian nation, but only its state. This Bulgarian attitude and the ramification of the Serbian expansionist claims as described above count for the Macedonian cautious course taken at the beginning of the Yugoslav crisis. Apart from this, the appreciation on the part of the Macedonians of their strong economic dependence on the rest of Yugoslavia, above all on Serbia, should also be taken into account when judging Macedonia's attitude towards self-determination and full independence. See, Victor Meier, *Yugoslavia. A History of Its Demise*, pp. 191-192; Tim Judah, *The Serbs*, pp. 86, 137-138, 247, 272-273; Mark Almond, *Europe's Backyard War*, pp. 80-82, 113, 207-208, 254, 209, 338.

proposal for a new arrangement in Yugoslavia early in June 1991. It was a counter-proposal to the Slovenian-Croatian confederative plan and a response to Serbian centralist tendencies, albeit much closer to the former. The Bosnian-Macedonian proposal represented an attempt to preserve some sort of Yugoslavia and, if this would prove impossible, to realize the right to self-determination in a democratic and civilized manner.<sup>391</sup> The Bosnian-Macedonian proposal foresaw that the new Yugoslav association, its members included, would be a legal subject - the latter naturally dependent on external recognition. It foresaw as well that Yugoslavia should be a unified economic, custom and currency zone and that its foreign policy should be common, though the member states would enjoy the right to take independent initiatives in foreign policy<sup>392</sup>. This plan was rejected because it offered the Serbs too little, while it went too far for the Slovenes and Croats.<sup>393</sup>

Following the failure of their joint proposal, both Macedonia and Bosnia-Herzegovina submitted their applications for international recognition as requested by the EC Hague Conference on Yugoslavia. In the meantime, Gligorov conducted successful negotiations with the Yugoslav military with regard to its withdrawal from Macedonia, in a time when the same military was concentrating in and around Bosnia-Herzegovina (February-March 1992). The Yugoslav military withdrew from Macedonia in an apparent hope that this republic would not be able to safeguard its stability.<sup>394</sup> However, Macedonia managed to preserve its fragile peace, first by gaining the support of the Albanian

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<sup>391</sup> The Yugoslav Prime Minister Markovic endorsed this proposal on 21 June 1991 in his expose before the Yugoslav parliament of the still existing Yugoslavia. Then he spoke about the "new Yugoslavia", which he now wanted to see as a community of sovereign states for the sake of pursuing his own (ambitious) economic reforms which enjoyed the support of the Western countries. Markovic in particular stressed the need for "the realization of the constitutional right to self-determination" not in "one-sided way" but through a "democratic process". See, the Belgrade-based daily newspaper "Borba", 22-23 June 1991. Full title of the joint Bosnian-Macedonian proposal was "The Platform Concerning the Future of the Yugoslav State". See, Belgrade-based daily newspaper *Borba*, 4 June 1991. Partial translation into English is found in *Focus* (Belgrade, 1992), Special Issue, pp. 82-87.

<sup>392</sup> For the text of the Bosnian-Macedonian proposal, see, Belgrade-based daily newspaper *Borba*, 7 June 1991.

<sup>393</sup> Kiro Gligorov admits that this proposal was too little too late for both side, the Serbs and the north of Yugoslavia. See, Kiro Gligorov, "Interview". *Radio Free Europe* (In South Slavic Languages).

population living there who voted in favor of its independence and, second, by redefining its own constitution declaring Macedonia as a “citizens state” rather than as the “national state” of the Macedonian people<sup>395</sup>. The rest of the fight that Macedonia had to conduct over consolidation of its international statehood was about its name. For example, the Greeks objected to its name which, in their eyes, implied territorial claims against Greece.<sup>396</sup> To counteract this move, Macedonia declared through a constitutional amendment, adopted at the insistence of the West European states, that it did not intend to engage in any “interference” in the sovereign rights of the states affected or in their internal affairs. In a similar spirit, a further amendment affirmed that Macedonia did not nurture any territorial claims against its neighbors.<sup>397</sup> With the Yugoslav army out of Macedonia and the guarantees given to its neighbors, the new state of Macedonia was more or less secured in its way towards full independence.<sup>398</sup> This means that the Macedonian quest for (territorial) self-determination, apart

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<sup>394</sup> Victor Meier, *Yugoslavia. A History of Its Demise*, p. 193.

<sup>395</sup> For an excellent analysis of these Macedonian moves leading to the consolidation of the Macedonian state in its initial stages, see, Dean Katsiyannis, “Hyper-Nationalism and Irredentism in Macedonian Region. Implications for US Policy”, Part I., *European Security*, Vol. 5 No. 2 (Summer 1996) pp. 324-360; Dean Katsiyannis, “Hyper-Nationalism and Irredentism in Macedonian Region. Implications for US Policy”, Part II., *European Security*, Vol. 5 No. 3 (Autumn 1996) pp. 470-512; Sophia Clement, “La Prevention de Conflicts dans les Balkans : Le Kosovo et l’ARY de Macedoine”. *Cahiers de Chaillot*. Numero 30 (Paris: Institut des Etudes de Securite. Union de l’ Europe Occidentale, Decembre 1997) pp.13-21.

<sup>396</sup> In its opinions nos. 6 and 7 of 11 January 1992, the *Badinter Commission* announced that Macedonia and Slovenia fulfilled all the conditions for international recognition as independent and sovereign states as foreseen by the December 1991 Guidelines. However, Macedonia was not recognized as a sovereign and independent state due to these objections put forward by Greece regarding Macedonia’s name. For an overview of the Greek position and the reaction of the rest of the international community, see, Dean Katsiyannis, “Hyper-Nationalism and Irredentism in Macedonian Region. Implications for US Policy”, pp. 324-360; , Dean Katsiyannis, “Hyper-Nationalism and Irredentism in Macedonian Region. Implications for US Policy”, pp. 470-512-360; Keith Highet, George Kahole III, Ane Peters, “Commission of the European Commission v. Hellenic Republic”. *American Journal of International Law* Vol. 89 Issue 2 (April 1995) pp. 376-385.

<sup>397</sup> It should be noted, though, that Macedonia was on Milosvic’s partition agenda but it did not work. After Yugoslav military withdrew, Milosevic contacted Greek Prime Minister Mitsotakis with a proposal to divide Macedonia between Serbia and Greece. This proposal was rejected by Greece. See, Vctor Meier, *Yugoslavia. A History of Its Demise*, p.193.

<sup>398</sup> One of the crucial factors making for Macedonian stability has also been the presence of a small number of U. S. peacekeepers in its territory. Cf. Victor Meier, *Yugoslavia. A History of Its Demise*, pp. 194-195. See, also, Sophia Clement, “La Prevention de Conflicts dans les Balkans : Le Kosovo et l’ARY de Macedoine”, pp. 21-32.

from some difficulties as described here, was fully realized. This was not the case with Bosnia-Herzegovina.

The decision along ethnic lines among the members of the Central Committee of the League of Communists of Yugoslavia became initially obvious in 1988 in the case of Bosnia-Herzegovina when the Communists from this republic sided with Slovenes and Croats.<sup>399</sup> This was an ominous sign for the ethnic realities of Bosnia-Herzegovina where barely few municipalities were ethnically pure.<sup>400</sup> The process of democratization in this republic, which started too late, had to reckon on this ethnic reality. In January 1990, the parliament of this republic decided on a new constitution and introduced, in principle, a multi-party system. But, the parliament had to take care of ethnic reality and, in its efforts to not exacerbate ethnic tensions, passed a law in April 1990, forbidding the establishment of parties under national names.<sup>401</sup> Despite these legal constraints, in the first free elections, held on 18 November 1990, national parties won an overwhelming majority.<sup>402</sup>

Following the elections, Radovan Karadjic, the leader of the Serbian Democratic Party and the future war criminal, declared a day after elections that the “conditions had now been established for the three national parties (Muslims, Serbs and Croats), as legitimate representatives of their peoples, to reach an agreement as to the future of Bosnia-Herzegovina”.<sup>403</sup> The Serbs clearly stood for national (ethnic) self-determination, a line pursued throughout 1990 to 1995. Only after the Dayton Accords (1995) did territorial self-determination enter the scene in this republic. In fact, the Dayton Accords shattered down the Serbian (and Croatian) illusions about ethnic self-determination within Bosnia-

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<sup>399</sup> Victor Meier, *Yugoslavia. A History of Its Demise*, op. cit. 198.

<sup>400</sup> For the ethnic composition of Bosnia-Herzegovina before the war, see, Dr.Smail Cekic, *The Agression on Bosnia and Herzegovina and Genocide Against Bosniacs: 1991-1995* (Sarajevo: Institute for the Research of Crimes Against Humanity and International Law, 1995) pp. 9-40.

<sup>401</sup> The Republic's Constitutional Court overruled the prohibition imposed by the law of April 1990. See, Aleksander Pavlovic, *The Fragmentation of Yugoslavia.Nationalism in a Multinational State*, p. 113.

<sup>402</sup> Victor Meier, *Yugoslavia. A History of Its Demise*, p. 199.

<sup>403</sup> Ibid. p. 199.

Herzegovina.<sup>404</sup> This ethnically-based self-determination was pursued by the Bosnian Serbs since the beginning of 1991 and in connection with the constitutional changes was already under way in this republic. As time passed on, the Serbs abandoned the constitutional system of Bosnia-Herzegovina and asked for the creation of separate state structures of their own.

During 1991, the organs of Bosnia-Herzegovina started to work on the new constitution of this republic. The draft-constitution of Bosnia-Herzegovina was ready in November 1991. The issue at stake was the type of self-determination to be applied in this republic. The constitutional commission of Bosnia-Herzegovina entrusted with the above work on the new constitution faced the same dilemmas and difficulties regarding the type of self-determination, the dilemmas already being aired in the public opinion at large. These dilemmas centered on two issues: the status of Bosnia-Herzegovina as a state within the Yugoslav federation and, second, the status of its component nations in the future redefinition of the internal structure of Bosnia-Herzegovina. The Serbian Democratic Party (SDS) was firmly in favor of keeping Bosnia-Herzegovina within Milosevic's Yugoslavia. As for the second issue, Bosnian Serbs also held the view that the sovereigns of Bosnia-Herzegovina were its three ethnic communities (Muslims, Serbs and Croats), not the state of Bosnia-Herzegovina as a whole. In the final draft of the constitution (November 1991), the Muslim-Croat view on (territorially-based) self-determination prevailed, defining Bosnia-Herzegovina as "a common state of three equal ethnic communities, Serbs, Muslims and Croats, with the right to full independence in a case Yugoslavia dissolved".<sup>405</sup> This was the stance of the majority of the people of Bosnia-Herzegovina and of its organs, which was made public not only vis-à-vis other Yugoslav republics (via the already discussed Macedonian-Bosnian peace plan of June 1991, first proposed in May 1991) but also towards the international community. Based on this, the state of Bosnia-Herzegovina applied for

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<sup>404</sup> Kasim Begic, *Bosna-Hercegovina: Od Vanceove Misije do Daytonskog Sporazuma*. (Sarajevo: Bosanska Knjiga, 1997) pp. 235-302.

<sup>405</sup> Ibid. pp.45-53. See, also, Belgrade-based newspaper *FOCUS*, Special Issue (1992) pp. 182-183.

international recognition of its international statehood in December 1991 together with other Yugoslav republics, held its own referendum on independence on March 1, 1992 and, finally, gained its international recognition on April 6 and 7, 1992<sup>406</sup>. The actions of the state organs of Bosnia-Herzegovina after war broke out were also based on territorial self-determination of the state of Bosnia-Herzegovina as a whole, a stance clearly expressed in the so-called “Platform for Action of the Bosnian Presidency During War Times”, dated 26 June 1992.

By this document, the state of Bosnia-Herzegovina pledged itself, through the state organs, not to accept any division or regionalization of the country along ethnic lines or based on ethnic criteria especially not if that division is achieved by force.<sup>407</sup> The latter related to the parallel power structures set up by the Serbs in the course of war in Bosnia-Herzegovina, first in the form of the so-called autonomies and then leveled to the status of full republics. These Serb entities lacked a clear territorial base by the time they were formed. Their territorial base was achieved only through the brutal war leading to ethnic cleansing of the non-Serbs and the destruction of other cultures.

### **3. Serbia's War Aims and the Failure of the Greater Serbian Project**

As noted (see, *infra* page 26-27, footnote no. 57), the term “ethnic cleansing” was used by Serb nationalists to denote a clear policy of territorial expansion through the destruction of non-Serbs and their cultures. This term was two decades following the drafting of the first Serbian national program by *Ilija Garasanin* in 1844 (the so-called *Nacertanije*, or the “Outline”).<sup>408</sup> *Garasanin's* “*Nacertanije*”, though, was the first to clearly specify the goals of the future Serbian policies that would dominate Belgrade's discourse until its failure

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<sup>406</sup> Aleksander Pavkovic, *The Fragmentation of Yugoslavia. Nationalism in a Multinational State*, pp. 156-157.

<sup>407</sup> *Ibid.* 51-52.

<sup>408</sup> See, also, Albert Wohlstetter, “Creating a Greater Serbia”. *New Republic*. Vol. 211, Issue 5 (08/01/94), pp. 22-28 at 23. (internet version: <http://www.gw5.epnet.com>). In a slightly different manner, the term was also used in the *1986 Memorandum of the Serbian Academy of Arts and Sciences* (Memorandum SANU), depicting the Serbs as victims of others (mainly Albanians and Croats). See, “Memorandum Srpske Akademije Nauka i Umetnosti”, pp. 154-155.

following the defeat of the Serbs in Croatia (1994) and the Dayton Accords (1995).<sup>409</sup> Serbian war aims have accordingly been subordinated to the realization of this project of Greater Serbia, throughout the 19th and 20th centuries.<sup>410</sup>

The institutionalization of the Serbian hegemony that started in 1918, with the beginning of the democratic processes in Europe in the mid-1980s, found itself in a weak position. This state of affairs seemed to have forced Milosevic to renew the old national program for Greater Serbia drafted earlier by Garasanin. This revival was considered as a necessary step because, according to Milosevic's team of advisers, the new political reality both within and outside Yugoslavia posed a threat to Serbian national interests as they were defined until then.<sup>411</sup> Notwithstanding these changes, the 1986 Memorandum did not foresee the role the changing international environment might play in the implementation of the Serbian national goals. Rather, it focused in the internal balance of forces within the Yugoslav federation, where Serbs were the dominant nation and controlled almost entirely federal structures of the old (former) Yugoslavia.<sup>412</sup> This sanctioning of the current state of affairs, without regard to the changing

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<sup>409</sup> The case of Kosova is still problematic in terms of the Greater Serbian project, as we shall see in the last section of this chapter.

<sup>410</sup> One caveat should be made here: the Serbian war aims have varied in the recent wars of Yugoslav dissolution (1991-1999). The aims have been either (a) to keep the old (former) Yugoslav federation together as a centralized federation under Belgrade's tight control, or (b) to carve out a Greater Serbia, including large chunks of Croatia and Bosnia-Herzegovina (Macedonia, Montenegro and Kosova have not, at the outset, been seen as a war target of the Serbian regime, meaning that the priority was given to the areas in the north of Yugoslavia, as outlined by the 1986 Memorandum), and/or (c) to inherit the international personality (assets, rights and duties) of the old (former) Yugoslavia. Milosvic failed on all accounts. Yugoslavia came to bits; Greater Serbia lost not only Serb-occupied bits of Croatia but also Macedonia, while the "Republica Srpska" in Bosnia-Herzegovina was not internationally recognized neither as a state nor as a part of the new Yugoslavia. Lastly, as we saw earlier, the world did not recognize this new Yugoslavia (composed of Serbia and Montenegro) as a continuity of the old (former) Yugoslavia. Cf. "Memorandum SANU", pp. 128-163.

<sup>411</sup> Following the end of the Cold War, Yugoslavia lost its strategic importance as a buffer zone between East and West, while the Non-Aligned Movement went into the shadows of history, a movement found by Tito to boost Yugoslavia's international position. See, James Gow, *Triumph of the Lack of the Will*, pp.12; 20-31; Zoran Pajic, "The Former Yugoslavia". In Hugh Miall (ed.), *Minority Rights in Europe: The Scope for a Transitional Regime* (London:Royal Institute of International Affairs, 1994) pp.56-66.

<sup>412</sup> For an overview of the Serbian dominance over Yugoslavia, see, more, in Reneo Lukic and Alen Lynch, *Europe from the Balkans to the Urals. The Disintegration of Yugoslavia*

international environment, is evident not only throughout the 1986 Memorandum<sup>413</sup>, but from the Serbian scholarly work undertaken at the behest and under the auspices of the Belgrade regime as well. The latter represents in fact an operationalization of the vague parts of the 1986 Memorandum, thus giving the latter all features of a national program aimed at territorial expansion to the detriment of non-Serbs and their cultures. The scholarly work in essence deals only with the territorial issues within the former Yugoslav federation, elaborating in detail the 1986 Memorandum's premise "all Serbs in one State". This elaboration was based on various grounds. Thus, insofar as the 1986 Memorandum remained clear for the territories of Kosova and Croatia, this was not the case for the rest of Yugoslavia, especially Bosnia-Herzegovina. This task of the 1986 Memorandum clarified the details in the Serb academic discourse by the end of the 1980s and the beginning of 1990s, so that the later Yugoslav wars spread precisely along the territories discussed in this Serbian academic discourse, first in Croatia then in Bosnia-Herzegovina and elsewhere.<sup>414</sup>

At first sight, the 1986 Memorandum seems as if promoted a democratic goals ("one man, one vote"). But with the passing of time, it became obvious that it did promote the opposite goals, that is, the preservation of the Serbian hegemony and dominance over the central state structures of the old (former) Yugoslavia. When Milosevic failed in the task of preservation of the former Yugoslav federation in its centralized form, via the control of its federal organs, he resorted to the second part of his plan for a Greater Serbia, precisely as foreseen by the 1986 Memorandum. This process started in Kosova in 1987,

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*and the Soviet Union* (London: SIPRI, 1996) pp. 57-97; Philip J. Cohen, *Serbia's Secret War. Propaganda and the Deceit of History*, pp. 3-24.

<sup>413</sup> It is evident from the 1986 Memorandum that no connection was made between the position of the Serbs living in Yugoslavia and their surrounding. Rather, the 1986 Memorandum spoke of popular sovereignty an ethnically-based self-determination taking into account that the Serbs were the largest nation in Yugoslavia. The quest for democracy, according to this document, was based on the premise "one man, one vote", fitting only Serbian interests. See, Memorandum SANU, pp. 145-147.

<sup>414</sup> There was no difference between the academic discourse and Belgrade's official position. Cf. Midrag Zecevic - Bogdan Lekic, *Drzavne Granice i Unutrasnja Territorijalna Podela Jugoslavije* (Beograd: Gradjevinska Knjiga, 1991) pp. 38-44; The Ministry of Information of the Republic of Serbia (ed.), *The Creation and Changes of the Internal Borders of Yugoslavia* (Beograd: Srbostampa, 1991).



continued throughout 1991-1992, to culminate in an apparent failure during 1995. He and his staff made careful preparations to achieve Serbia's war aims, that is, the project of Greater Serbia as described so far.<sup>415</sup> These war preparations by Serbia started somewhere at the beginning of the 1980s and ended up around 1990, comprising all aspects needed for war preparations: psychological, institutional, economic, propagandistic and military.

Serb intellectuals, during the mid-1980s, created a critical mass of prejudice against non-Serbs, the warmongering and ethnocentrism within the Serbian society. These steps made it possible for Milosevic to easily come to power and direct the public opinion in Serbia against Slovenes, Albanians, Croats and Muslims. An anti-Albanian pamphlet, published by Serb intellectuals in *Praxis* (Belgrade-based journal), represents the most influential paper after the 1986 Memorandum. The paper spoke of Albanians in a very biased way, describing them as a primitive and savage population, worthy of nothing but suppression. The aim of this paper was to prove the discrimination against Serbs, a fact never proved in reality throughout Yugoslavia's existence. For the Belgrade regime, nevertheless, it did suffice that there existed a support from the public opinion, both in Serbia and in the major part of Yugoslavia, showing the alleged discrimination against, and the suffering of, the Serbs living in Kosova.<sup>416</sup> The first test of this psychological preparation for war (s) and conflict was made on 25 April 1987 in Kosova. During his visit to Kosova, in the Field of Blackbirds (In Albanian: Fushw Kosovw; In Serbian : Kosovo Polje), Milosevic held a speech

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<sup>415</sup> In scholarly work, though, there have been various interpretations of Serbia's war aims, claiming that the wars in the territory of former Yugoslavia were civil wars and not wars conducted for Serbia's territorial expansion to the detriment of other non-Serbs living in Yugoslavia. See, more, David Owen, *Balkan Odyssey* (London: Indigo, 1996) pp. 374-403; Susan L. Woodward, *Balkan Tragedy*, pp. 333-374; Miroslav Pecujlic i Radmila Nakarada, "Slom Jugoslavije i Konstituisanje Novog Svetskog Poretka". In Radmila Nakarada (ed.), *Evropa i Raspad Jugoslavije* (Beograd: Institut za Evropske Studije, 1995) pp. 41-60; Radmila Nakarada i Obrad Racic, *Raspad Jugoslviije – Izazov Evropskoj Bezbednosti*. (Beograd: Projekat 'Evropska Kolektivna Bezbednost Nakon Mastrihta', 1998) pp. 19-28. There is no doubt, nevertheless, that the conflict and the wars in Yugoslavia (1991-1998) were not of an internal nature (civil wars) but rather a conflict and the wars for territorial expansion, prepared carefully and over a long period of time by the Serb elite. Unfortunately, international reaction to this has not been appropriate one, leaving enough maneuvering room for Serbia to dictate the pace of events on the ground for quite a long time.

<sup>416</sup> Muhamedin Kullashi, *Ese Filozofiko-Politike* (Peje : Dukagjini, 1995) pp. 152-171.

promising the Serbs that no one would beat them anymore. His support for the Serbs from Kosova enabled him to further play the Serbian nationalist game and strengthen his hold to power in Belgrade. The first sign of this was the purge from the Communist ranks in Serbia of the moderates like Dragisa Pavlovic and Petar Stambolic (Milosevic's former protégés).<sup>417</sup> The final phase in these psychological preparations for war (s) and conflict occurred by the end of 1989 when the Serbian Orthodox Church organized, under the auspices of the Belgrade authorities, the reburial of the bones of the Tsar Lazar (Serbian Medieval King, who lost his life in the Battle of Kosova against the Ottomans in 1389). This reburial was a typical parody of a medieval cult, serving to ignite the nationalist feelings of the ordinary Serbs and was done in the name of the "real souls of the Serbdom"<sup>418</sup>

Institutional preparations for war (s) and conflict were made around 1998-1990, when Milosevic destroyed in an unconstitutional and unilateral way the autonomies of Kosova and Vojvodina and continued with the usurpation of the federal state organs paralyzing the normal functioning of the vital parts of the Yugoslav state (the Central Committee of the League of Communists of Yugoslavia, the Federal Presidency of Yugoslavia, Yugoslav diplomatic and consular missions, Yugoslav Informative Agency "TANJUG", and the Central Bank of Yugoslavia). The Croat Stipe Mesic, who was to be the rotating head of

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<sup>417</sup> Darko Hudelist, *Kosovo: Bitka Bez Iluzija* (Zagreb: Centar za Informacije i Publicitet, 1989) pp. 34-37; 42; 155-157; 165-167; 173-77; 188-199; John Zametica, "The Yugoslav Conflict". *Adelphi Paper* No. 270 (London: the International Institute for Strategic Studies, 1992) pp. 25-26. Darko Hudelist has been all the time in company with the leaders leading the so-called anti-beaurocratic revolutions in Kosova, Montenegro and Vojvodina. These popular rallies against the legally elected governments of these three regions of Yugoslavia made possible for Milosevic to settle scores with his political rivals who eventually resisted the policies of the 1986 Memorandum, already under implementation by Milosevic and his team.

<sup>418</sup> Mark Almond, *Europe's Backyard War. The War in the Balkans*, p. 5. In fact, the campaign with the dead was not Milosevic's invention. This phenomenon had been used in Serbia as far back as 1928. On the eve of Radic's assassination in the Yugoslav parliament (*Stjepan Radic* was an influential Croat leader who strove for Croatian separate state within the Serb-Croat-Slovene Kingdom), the then Prime Minister of Yugoslavia, *Pribicevic*, proposed to the King that the bones of *St. Sava* (the founder of the Serbian Church) be ceremoniously walked all over Croatia in order to boost the nationalist feelings of the Serbs living there. This was meant to secure the votes of the Serbs in the oncoming elections for the Yugoslav parliament. But, the elections were not held because the Croat leader, *Stjepan Radic*, was in the meantime assassinated and the royal dictatorship imposed in January of 1929. See, more, in Tim Judah, *The Serbs*, pp. 109-110.

the Yugoslav presidency from Croatia, was blocked by Serbia and its satellites (Montenegro, Kosova and Vojvodina, who were the supporters of Milosevic after the coups of 1988-89 following the “anti-beaurocratic revolutions” in these regions). This occurred in May 1991 and marks the end of Yugoslavia’s institutional destruction and the institutional preparation for war (s) and conflict,<sup>419</sup> which started with Serbia’s unilateral alteration of the constitutional position of Montenegro, Kosova and Vojvodina. These events radically changed the balance of forces within Yugoslavia, giving Serbia an apparent advantage against the others when it came to the decision-making at the federal level.

Military preparations (political, strategic and operational) for war (s) and conflict started immediately after Tito’s death in 1980. The Yugoslav People’s Army (the YPA, or JNA in Serbo-Croatian) intensified its war preparations along Serbia’s national aims, especially in the period between 1986-1990.<sup>420</sup> It was not the communist ideology, as argued by some scholars, the forced the Yugoslav Peoples Army (YPA) to side with Milosevic but the Greater Serbian national program. This fact is seen by the mere fact that since Tito’s death, all Serb-inhabited areas of Yugoslavia were put under direct control of the Belgrade Army. At the time, this fact was not so obvious. It became apparent only in 1990 when all the weaponry belonging to the Territorial Defense (a military structure belonging to the federal units of Yugoslavia, e.g., republics and autonomous provinces of Kosova and Vojvodina) of Slovenia, Croatia and Bosnia-Herzegovina were confiscated by the YPA. A similar event had occurred in Kosova after the 1981 riots.<sup>421</sup> When the war started in Croatia (September

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<sup>419</sup> Eduard Riccuti, *War in Yugoslavia. The Break Up of a Nation*. (Connecticut: The Millbrook Press, 1993) pp. 26-27.

<sup>420</sup> Anton Bebler, *The Yugoslav Crisis and the “Yugoslav People’s Army”* (Zurich: ETH Zentrum, 1992) pp. 15-16; Reneo Lukich and Alen Lynch, *Europe from the Balkans to the Urals. The Disintegration of Yugoslavia and the Soviet Union*, pp. 194-185. Long before the war started, the YPA had prepared plans for war along the 1986 Memorandum lines. This fact has been admitted by Yugoslavia’s last defense minister, the Serb Veljko Kadijevic. Cf. Reneo Lukich and Alen Lynch, *Europe from the Balkans to the Urals. The Disintegration of Yugoslavia and the Soviet Union*, p.195; See, also, Philip J. Cohen, “The Complicity of Serbian Intellectuals in Genocide in the 1990s”. In Thomas Cushman and Stjepan G. Mshetrovic (eds.), *This Time We Knew*, p.54.

<sup>421</sup> New administrative divisions, made by the YPA, had been explained in a military terms, no matter how obvious were the political motives for these divisions. Neither the Federal

1991) and Bosnia-Herzegovina (March-April 1992), the YPA did not hide its intentions, siding openly with Milosevic in their common endeavor to create either a centralized Yugoslav federation or a Greater Serbia.<sup>422</sup>

Economic preparations for war(s) and conflict have been conducted in Serbia very skillfully. Namely, they started during the mandate of the reform-oriented prime minister of Yugoslavia, the Croat Ante Markovic. His reforms made it possible for the Belgrade regime to collect huge amount of hard currency at the hands of the Central Bank of Yugoslavia. The Serbian banks, at the same time, withdrew most of their cash and transferred it into foreign accounts, in Cyprus above all, but as well in the rest of Europe and the United States.<sup>423</sup> The final act of these economic preparations occurred in December 1990, when Milosevic transferred, in his march to war, from the Central Bank of Yugoslavia more than \$ 2 billion. Later, this money served to finance Serbia's war campaign in Croatia and Bosnia-Herzegovina.<sup>424</sup>

The most interesting part of Milosevic's efforts to create a Greater Serbia, be it in the form of a centralist federation or an ethnically pure Serbian state, had been those concerning the international community. Milosevic's diplomatic maneuvering has been based on a simple logic: the inertia and an apologetic

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parliament nor the public at large were being informed about the YPA undertakings. Those who criticized these new administrative divisions following Tito's death have noticed that there had been a considerable coincidence between these divisions and the territorial claims laid down by the Serbs and their Memorandum of 1986. See, Anton Bebler, *The Yugoslav Crisis*, pp. 9-10.

<sup>422</sup> Istvan Deak, "The One and the Many. October 7, 1991". In Nader Mousavizadeh (ed.), *The Black Book of Bosnia. The Consequences of Appeasement*. (New York: New Republic Inc., 1996) pp. 18-19; Fouad Ajam, In Europe's Shadows. November 21, 1994. In Nader Mousavizadeh (ed.), *The Black Book of Bosnia*, pp. 52-53; James Gow, *Legitimacy and the Military*, pp. 139-152 at 142; Anton Bebler, *The Yugoslav Crisis*, pp. 6-7; Warren Zimmermann, "The Last Ambassador. A Memoir of the Collapse of Yugoslavia". *Foreign Affairs*, March-April 1995 p. 13; John Zametica, *The Yugoslav Conflict*, pp. 42-43. The latter author, Zametica, seems to contradict himself. Namely, he believes that that there were no war aims guiding the YPA in its war campaign. See, John Zametica, "The Yugoslav Conflict" op. cit. p. 44.

<sup>423</sup> W. Raymond Duncan and G. Paul Holman, Jr. (eds.), *Ethnic Nationalism and Regional Conflict. The Former Soviet Union and Yugoslavia* (San Francisco: Westview Press, Inc., 1994) p. 205.

<sup>424</sup> Mark Almond, *Europe's Backyard War. The War in the Balkans*, p. 15; Warren Zimmermann, the last Yugoslav ambassador to Yugoslavia, admits that there had been an illegal transfer of money from the Central Bank of Yugoslavia by Milosevic, but that the money itself went for Milosevic's election campaign in December 1990 and not to finance his war efforts. Cf. Warren Zimmermann, *Origins of a Catastrophe. Yugoslavia and Its Destroyers: America's Last Ambassador Tells What Happened and Why* (Albanian translation by BESA: Tirane 1996) p. 92.

stance of the international community in the first years of the war enabled him to play off one international factor against the other. In this context, he knew well that the old (former) Yugoslavia had played an important role during the Cold War so that this factor would be enough for him to make sure that the same international community needed time to adjust to the new face of Milosevic's Yugoslavia. Tito's Yugoslavia and its role secured Serbia that the international community would be passive for some time until the real aims of Serbia became obvious to foreigners.<sup>425</sup> Furthermore, the domination of the diplomatic and consular staff by the Serbs and Montenegrins rendered the manipulation of the international community on behalf of Milosevic's war aims all more easily. Milosevic's foreign policy strategy was based, apart from the above premise concerning the nature of the international system following the Cold War's end, on all sorts of alliances, be they real, historic or based on myths. They were real as far as they were based on ethnicity (Russia), historic when it came to "traditional friendships" (France) and, lastly, based on myths (Israel) when it came to the manipulation of the Holocaust, portraying the Muslims and Croats as Nazis. Apart from this, in his foreign strategy, Milosevic used the alliances that were based on political interests of those countries fighting secession and the disintegration processes (Great Britain). But, with the passing of time, the events in Yugoslavia showed that Serbian actions in Croatia and Bosnia-Herzegovina mirrored more closely the Nazis rather than the opposite.<sup>426</sup>

The above preparations for war and ethnic aggression against the non-Serbs and their culture, aimed at the creation of Greater Serbia, have most conspicuously been reflected in the cases of Croatia and Bosnia-Herzegovina. The Belgrade regime orchestrated a Greater Serbia policy there by instructing the Serbian leaders living there to declare various Serb entities by ethnically cleansing the non-Serbs from the territories meant for such declared Serb

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<sup>425</sup> Raymond Duncan and Paul Holman, Jr. (eds.), *Ethnic Nationalism and Regional Conflict. The Former Soviet Union and Yugoslavia*, pp. 19-53; Edward Riccuti, *War in Yugoslavia. The Break Up of a Nation*, pp. 26-28, 30; Christopher Cviic, "Perceptions of Former Yugoslavia: An Interpretative Reflection". *International Affairs* Vol. 71 No. 4 (October 1995) p. 821.

<sup>426</sup> For a detailed account of the anti-Semitism and fascism in Serbia, WW II included, see, more, in Philip J. Cohen, *Serbia's Secret War. Propaganda and the Deceit of History*, 199.

entities. The initial form of these self-styled Serb entities was called “political and territorial autonomy” ( a pure Communist concept regarding the internal form of self-determination), to end up in a “sovereign and independent republic”, both named after the Serbs living in Croatia and Bosnia-Herzegovina respectively<sup>427</sup>.

It is this route concerning the failure of the Greater Serbian project to which we turn in the next section. The analysis of the Serbian interpretation of the international statehood shall take a prominent place. From this analysis, it can be seen that the Serbs living in these two republics have apparently misinterpreted the very concept of the international statehood and the way to realize the right to self-determination.<sup>428</sup>

#### ***4. Serbian Transformation of the “Autonomous Entities” Into “Sovereign and Independent Republics”: An Arbitrary Interpretation of the International Statehood***

The creation and the transformation of the Serb entities in Bosnia-Herzegovina has been a coordinated process that comprised of not only the territory of this republic but also of the large parts of nonbearing Croatia. Initially, the formation of these Serb entities was connected to the new constitutional changes under way in Bosnia-Herzegovina during 1990. These changes were undertaken for the purpose of regionalization of this republic in order to enable it

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<sup>427</sup> It is worth noting here that these self-styled “sovereign and independent republics” of the Serbian people living in Croatia and Bosnia-Herzegovina were not recognized by none of the sovereign and independent members of the present international community. The “Republika Srpska Krajina” in Croatia, destroyed by the Croat forces in 1995, was recognized by Transdniestria, which itself is a part of the Russian Federation. See, Zoran Kusovac, “Zgjedhjet ne Kine Trazojne Kinen Tjeter”. *Koha Ditore* (Prishtine), 04 April 2000, p.10. They were not recognized by FRY either because the Dayton Accords, despite a common public perception at the time of their writing, did not legitimize the “Republika Srpska”. They have instead marked the first serious blow to the Greater Serbian project, denying any international standing on behalf of the “Republika Srpska”. First article of the Accords recognized only the statehood and the sovereignty of the state of Bosnia-Herzegovina.

<sup>428</sup> The Croats living in Bosnia-Herzegovina also carved up their own “independent and sovereign republic”. There is a difference with the Serbs, though. It stems from the fact that the former did this only as a reaction to the Serbian actions. It became an orchestrated policy only after the Karadjordjevo Meeting between Tudjman and Milosevic (discussed earlier). For an opposite view, see, Kasim Begic, *Bosna i Hercegovina*, pp. 55-69.

to become a modern, reform-oriented, state of Europe.<sup>429</sup> As it is usual elsewhere in this field, the process of regionalization in Bosnia-Herzegovina was to be based on economic and social criteria, enhancing the effectiveness of the whole state of Bosnia-Herzegovina.<sup>430</sup> Long before the war started, it was becoming clear that the Serbs had no intention to base their concept of regionalization on economic or social criteria but rather exclusively on the principle of ethnicity. Their insistence upon the ethnic principle coincided entirely with their overall manipulation and misinterpretation of the prevailing economic trends in some parts of Bosnia-Herzegovina that were Serb-inhabited (no matter their numbers). This strategy was meant to show the alleged Serb economic discrimination and their economic backwardness in this republic. The strategy covered not only those areas where the Serbs were in majority but other parts where they lived in community with others in a very small numbers as well. The first manifestation of this strategy aimed at the dismemberment of the state of Bosnia-Herzegovina and took the form of an association, named “the Community of Municipalities of Bosanska Krajina”, composed of nine to thirty municipalities of Bosnia-Herzegovina.<sup>431</sup> This form was based on an alleged agreement between the municipalities, named as “the Agreement on the Establishment of the Association of Municipalities” (In Serbian: *Dogovor o Udruživanju u Zajednicu Općina*). This association had a legal and separate personality from the organs and the state structures of Bosnia-Herzegovina. This means that it did have the right to exercise all powers otherwise falling within the jurisdiction of the Republic of Bosnia-Herzegovina. On 16 December 1991, this “autonomous” region was transformed into the “Srpska Autonomna Oblast” (“the Serbian Autonomous Area”).<sup>432</sup> The Declaration of the (first) “Serbian

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<sup>429</sup> Ibid. pp. 55-56.

<sup>430</sup> See, for example, the Preamble of the European Charter on Self-Government ( Rome 1984), which speaks of the same values to be promoted by the local self-governments and the decentralization of powers. For comments, see, Guy Hollis and Karin Plokker, *Towards Democratic Decentralization : Transforming Regional and Local Government in the New Europe* (Brussels : Atkins DGI, European Commission, 1995).

<sup>431</sup> There were few proposed versions of this document so that the exact number of municipalities remains unknown to date. Cf. Kasim Begic, *Bosna i Hercegovina*, p.57.

<sup>432</sup> Both its creation and the transformation into an autonomous area were initially justified on pure economic and social terms, although in practice it was obvious that the ethnic criteria was

Autonomous Area” was followed by the similar declarations in other parts of Bosnia-Herzegovina (November - December e 1991 and January 1992). These actions covered almost eighty per cent of the Bosnian territory.<sup>433</sup> The new entities exercised the jurisdiction not only of the organs of Bosnia-Herzegovina but also the jurisdiction pertaining to the federal Yugoslavia, regarding the defense and the related issues. In parallel with the creation of the Serb autonomies, there was under way a process of setting up the “Assembly of the Serbian People in Bosnia-Herzegovina.”. This assembly was constituted on 24 October 1991. It took a decision stating that the Serbs had decided to live in a common state of Yugoslavia (together with Serbia, Montenegro and other self-styled Serb entities in Croatia). This will of the Serbs shall be demonstrated, said the above decision of the Assembly, on 9 and 10 November 1991. In justifying these actions, the Serb leaders openly put forward ethnic rather than economic and social reasons. It was called a “plebiscite”, although its very aim was the dismemberment of the state of Bosnia-Herzegovina. This plebiscite was indeed held on the above dates, making more explicit the idea of a Greater Serbia. In a unique manner, the Serbs printed their voting lists in a blue color, leaving for the non-Serbs yellow ones. This difference in color was followed by different questions as well. Namely, the non-Serbs had to answer the question as to whether Bosnia-Herzegovina shall remain an equal republic, while the Serbs had to answer the opposite, that is, whether they should remain within Bosnia-Herzegovina.<sup>434</sup>

The next step following the November 1991 “plebiscite” was to make use of the utmost the results of the “plebiscite”, both domestically and on the international plane. The latter consisted of the efforts made by Serbs to represent themselves in relation to the legal organs of Bosnia-Herzegovina as a “separate

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a driving force behind. This became clear as the time went on, especially following the discovery of a Serb plan designed for the total dismemberment of Bosnia-Herzegovina along ethnic lines. This plan had been drafted in September 1991, in the name of “science” and “profession”, clearly opting for ethnic principle as the main pillar in the regionalisation of Bosnia-Herzegovina. Economic and social factors were manipulated and misinterpreted to serve the ethnic principle. Cf. Kasim Begic, *Bosna i Hercegovina*, p.58.

<sup>433</sup> Ibid. p. 59.

<sup>434</sup> Ibid. pp. 60-61.



party” and to make representations on their behalf before the representatives of the EC Conference on Yugoslavia already under way in the Hague. Domestically, the Serb leaders were using the results of the “plebiscite” to foster the final proclamation of the “Republic of the Serbian People of Bosnia-Herzegovina” , which in fact they did proclaim on 9 January 1992. This transformation of the previous autonomous entities into a single “republic” was done in a hope that it would be internationally recognized as a federal unit within the still existing Yugoslav federation and, in case that failed, as an independent and sovereign state.<sup>435</sup>

Well until the outbreak of the open war in Bosnia-Herzegovina, the Serb leaders there relied on their rhetoric on the option of “remaining within Yugoslavia”. This was in essence nothing but a cover up for the realization of the Greater Serbian project. In fact, as noted, Yugoslavia, for the Serbs, meant nothing but a centralized and Serb-controlled federation. If that failed, next to it came the open and brutal realization of the Greater Serbian project. None of the ways were to be excluded from the process of realization of the Greater Serbian project, which became clear following an earlier statement by Dobrica Cosic (the most influential intellectual among the Serbs in Yugoslavia and one of the drafters of the 1986 Memorandum) , who stated that the project would be realized either peacefully or manu militari.<sup>436</sup> Taking into account the ethnic mixture in Croatia and Bosnia-Herzegovina respectively, it is logical indeed to assume that the project of Greater Serbia could not have been realized by peaceful means.<sup>437</sup>

The Badinter Commission for the former Yugoslavia in its Opinion of January 1992 opted in favor of the recognition of Slovenia and Macedonia. For Bosnia and Croatia, the Commission set out some conditions that these two Yugoslav

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<sup>435</sup> This “republic” recognized its counterpart in Croatia. Ibid. pp. 63-64. This shows that the Serbs believed that only entities of the type of a republic would be recognized internationally. This view relied upon the November 1991 legal opinion of the *Badinter Commission* for former Yugoslavia.

<sup>436</sup> See, more on this, Philip Cohen, “The Complicity of Serbian Intellectuals in Genocide in the 1990s”, pp. 39-64.

<sup>437</sup> Father Sava, one of the most influential Serb religious leaders, once stated that the project had a chance to be realized through peaceful means. See, “Father Sava Talks to RFE/RL”

republics were to fulfill before any international recognition shall be extended to them. For Bosnia-Herzegovina, the Commission asked that a referendum be held in this republic and that the minority rights be respected in Croatia.<sup>438</sup> This was used by Serb leaders as a pretext to boycott the referendum, held on 29 February and 1 March 1992. Following this, Serb leaders openly threatened that they would declare their own independence in case Bosnia-Herzegovina was recognized as a sovereign and independent state. In this way the Serbs justified in advance their military actions undertaken in the months to come with the sole purpose of creating the Greater Serbia by ethnically cleansing from their entities all non-Serbs and their cultures. The Serb interpretation of the international statehood was an arbitrary one. They believed that only the republic-type entities would be recognized internationally, notwithstanding the manner in which they were created. In line with this, Serbs declared their own “independent republic”, following the recognition of Bosnia-Herzegovina (6 and 7 April 1992). This time,

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<sup>438</sup> “3. The Arbitration Commission considers that:

I. The Constitutional Act of 4 December 1991 does not fully incorporate all the provisions of the draft Convention of 4 November 1991, notably those contained in Chapter II Article 2 (c), under the heading “Special Status”;

II. The authorities of the Republic of Croatia should therefore supplement the Constitutional Act in such a way as to satisfy those provisions; and

III. Subject to this reservation, the Republic of Croatia meets necessary conditions for its recognition by the Member States of the European Community based on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, adopted by the Council of the European Communities on 16 December 1991”. *Opinion no. 5 on the Recognition of the Republic of Croatia by the European Community and Its Member States*. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 489-490.

“5. The Arbitration Commission consequently takes the view :

- that the Republic of Macedonia satisfies the tests in the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia adopted by the Council of the European Communities on 16 December 1991;

- that the Republic of Macedonia has, moreover, renounced all territorial claims of any kind in unambiguous statements binding in international law;

- that the use of the name ‘Macedonia’ cannot therefore imply any territorial claim against another states; and

- that the Republic of Macedonia has given a formal undertaking in accordance with international law to refrain, both in general and pursuant to Article 49 of its Constitution in particular, from any hostile propaganda against any other State; this follows from a statement which the Minister of Foreign Affairs of the Republic made to the Commission’s request for clarification of Constitutional Amendment No. II of 6 January 1992”. *Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by European Community and Its Member States*. Paris, 11 January 1992. Text provided by the Albanian Foreign Ministry. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 491-495.

however, the Serbs put aside the idea of “remaining within Yugoslavia”. In a matter of months following the declaration of this “independent republic”, the Serbs managed to ethnically cleanse almost 70 *per cent* of the territory of Bosnia- Herzegovina, thus securing the territorial base for their new “state”. Hoping to gain international recognition for their *fait accompli*, the Serbs left behind the old idea of Yugoslavism and focused instead on the Greater Serbian project based on the policy of ethnic cleansing of the non-Serbs and the destruction of other cultures. The first reactions of the international community, mainly the EU, went along with the Serbian argumentation of the international statehood. This meant open support for ethnic division of Bosnia-Herzegovina. Only the Dayton Peace Accords (1995), reached under the US leadership, managed to defeat this ethnic principle. Other peace plans, such as Cutillero Plan, Vance-Owen and Owen-Stoltenberg plans, were drafted along ethnic principle.<sup>439</sup> This does not mean that the EU foresaw ethnic principle as a basis for self-determination within the territory of former Yugoslavia (in both forms, internal and external self-determination). In its documents, the EU relied instead on the principle of territoriality, taking the Yugoslav republics as a reference point. The rule of law, democracy, respect for human and minority rights were put foreword as a precondition to be fulfilled by the new states in the process of consolidation of their international statehood. The problems arose in practice when these conditions, or corrective mechanisms (criteria), had to be applied alongside the self-determination based on territory. Then, the policy prevailed over law favoring (or at least tolerating) the Serb policy of ethnic cleansing. These and other related issues shall be discussed again in the VI chapter of this work, when the matter of international recognition is taken up. The Kosova issue is also connected with the Greater Serbian project. This issue deals with Kosova. The discussion of this issue is needed for the sake of ascertaining whether the Greater Serbian project has failed in the Kosova case or not.

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<sup>439</sup> For a detailed account of the five proposals on the peace in Bosnia-Herzegovina, especially those based on ethnic criteria (all but the Dayton Accords) over the years 1992-1995, see, Kasim Begic, *Bosna I Hercegovina*, pp. 100-197; Aleksander Pavkovic, *The Fragmentation of Yugoslavia*, pp. 155-193.

## ***5. The Dayton Model for Kosova***

When the Dayton Accords were reached in November 1995, very few people, both in academic and the public in general, believed that there might ensue an equal treatment in terms of the final status of the “Republika Srpska” in Bosnia-Herzegovina and Kosova. Very few saw that both entities would in the future be treated as parts of two sovereign states, Bosnia-Herzegovina and FRY respectively. It did not matter that the former was a result of a policy of ethnic cleansing and genocidal acts against an entire nation, while the latter possessed its clear territorial base and a population who were constantly an object of the same Serbian policy of ethnic cleansing. These efforts to ethnically cleanse Kosova from its non-Serbian population were prevented by NATO’s military action undertaken during March-June 1999. However, Kosova remained since then a part of FRY, which renders dubious the fact as to whether the project of Greater Serbia has been defeated in Kosova. Or, it might well be the case, the Belgrade regime has been successful in the preservation of the formal sovereignty over a vast areas not inhabited in majority by Serbs, thus leaving the international community with no choice but to take on the role of a care-taker of the Greater Serbian project, the brutal and violent realization of which is postponed for a later date when the international balance of forces changes in favor of Serbia. In order to try to answer this precarious situation, the sections to follow are divided into two parts, one dealing with the Kosovar Albanians’ way pursued in their search for self-determination before the conflict and war in Kosova began (1998), while the other section is concerned with the results that followed after the March-June 1999 events.

### ***5.1. The Kosovar Albanian Way Pursued for the Achievement of Self-Determination***

Compared with other territorial entities in former Yugoslavia (federal republics and the autonomous province of Vojvodina), Kosova did not control its own territory and population because Kosova's organs and institutions that were set up on the eve of Yugoslavia's dissolution had been paralyzed in this regard. Although acting under the provisions of the 1974 Yugoslav constitution, these organs were stripped of any real power by the Belgrade regime long before the process of Yugoslav dissolution started. The so-called Territorial Defense Force of Kosova and the Police Force in Kosova had been disarmed and put under Belgrade's tight control as far back as the mid-1980s. Furthermore, this process of the disarming of Kosova's legal organs and institutions accelerated in 1987, while the Serbs and Montenegrins living in Kosova were being armed. When the Yugoslav dissolution began in 1990, Kosovar Albanians chose a peaceful way as a reaction to the abolition of their autonomous status by Serbia (1989), despite the fact that Milosevic's repressive policies were well under way. This was, for Yugoslav conditions, a very specific manner to challenge Serbian rule and sovereignty over Kosova. By boycotting entirely the Serbian installed system in Kosova since 1989, the Kosovar Albanians managed to put Serbia in a position of the occupying power, noticeable to foreign visitors at first sight<sup>440</sup>. This challenge to the Serbian rule and sovereignty over Kosova was very successful and effective throughout the first years of the Yugoslav wars of dissolution, and well beyond that until Milosevic's repressive policies reached unbearable proportions for the local population.

As a means to channel their peaceful policy (1990-1997), Kosovar Albanians used the policy of parallel institutions *vis-à-vis* those installed by the Belgrade regime. This policy of parallel institutions started in Kosova ever since Kosovar autonomy was abolished by Serbia in 1989. The first step in this direction had been undertaken on July 2, 1990, when the Assembly of Kosova, a lawful organ according to the 1974 Yugoslav constitution, declared Kosova as an equal and independent unit within the still existing Yugoslav federation. The

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<sup>440</sup> Mark Balla et al. (eds), *Mediterranean Europe on a Shoestring* (London: Lundy Planet, 1993) p.1093.

Belgrade regime's reaction was brutal. It closed down the Kosova Assembly, which went into hiding and continued its work without Serb and Montenegrin deputies. The Assembly went a step further by declaring Kosova a federal republic within Yugoslavia and, following this, announced an independence referendum, to be held from 26 to 30 September 1990. In this referendum, 87 *per cent* of the population of Kosova took part (Serbs and Montenegrins boycotted), of whom 99.87 *per cent* voted for Kosova's independence.<sup>441</sup>

In trying to keep up with the pace of events occurring elsewhere in the Yugoslav territories, the self-styled Government of Kosova in exile handed over to the European Peace Conference on Yugoslavia the application for an international recognition of Kosova's independent statehood (December 1991).<sup>442</sup> The application for international recognition of Kosova's full independence did not meet with a positive response from the international community despite the fact that it had, as it does at the present, its own territorial base and the population. This was due to the fact that parallel organs and institutions (the self-styled Government of Kosova and the equally self-styled President of Kosova) were not able to effectively control their own territory and population living within Kosova's borders. This further meant that the above organs and institutions had no coercive powers and authority with which to impose their own will upon the others: the Kosovar government living in exile had neither army nor police to assert themselves both internally and on the international plane. Their powers and authority, if any, rested on moral rather than political grounds and considerations.<sup>443</sup> The first such military force of the Kosovar Albanians was set

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<sup>441</sup> Fatmir Sejdiu, "Baza Juridiko-Politke e Republikes se Kosoves". In *Instituti i Historise se Kosoves dhe Shqiperise* (eds.), *Çështja e Kosoves - Një Problem Historik dhe Aktual* (BESA: Tirane 1996) pp.371-379.

<sup>442</sup> For the full text of this application, see, The Academy of Arts and Sciences of the Republic of Albania (ed.), *The Truth on Kosova* (Tirana: Encyclopedia Publishing House, 1993) pp. 341-343.

<sup>443</sup> Michael Salla, "Kosovo, Non-Violence and the Break Up of Yugoslavia". *Security Dialogue*. Vol. 26 No. 4 (December 1995) pp. 434-435; A. V. Lowe - C. Warbrick, "Current Developments in Public International Law". *International and Comparative Law Quarterly* Vol. 41 Part 2, 1992, pp. 478-480; Compare also the reasons for positive answer to the former Yugoslav republics presented in the following papers: Martha Rady, "Self-Determination and the Dissolution of Yugoslavia". *Ethnic and Racial Studies*. Vol. 19 No. 2 (1996) pp. 382-384; Payam Akhavan, "Self-Determination and the Disintegration: What Lessons for the International Community?" In

up only during 1998-1999, under the name “Kosova Libration Army” (KLA) or (in Albanian) “Ushtria Clirimtare e Kosoves” (UCK). The process of its formation has been a long one and was connected to two factors, one internal (the repressive policies of the Belgrade regime) and other external (the reluctance of the international community to take concrete steps to reward the peaceful way pursued by the Kosovar Albanian leadership until then, including the geostrategic shifts that followed after the Dayton Accords).<sup>444</sup> The next section is devoted to these issues.

### ***5.2. The End of a Sad Chapter: NATO Intervenes to Impose (an Internal-Type of) Self-Determination for Kosova (March-June 1999)***

In the aftermath of the Dayton Accords (1995), Dragoljub Micunovic, one of the most influential Serbian opposition leaders, told the media that Serbia felt relaxed because the international community recognized its frontiers as international borders, the territory of Kosova included within them<sup>445</sup>. The same opinion prevailed within the Serb regime circles and has ever since been very frequently reiterated in public.<sup>446</sup> This state of affairs, coinciding almost entirely with the international community’s stance over the issue of the potential internationally recognized borders, as opposed to the Kosovar Albanian view on the same issue, reveals two things that are crucial for an understanding of

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Donald Clark and Robert Williamson (eds.), *Self-Determination. International Perspectives* (New York: St. Martin Press, 1996) pp. 227-28; 233-35; 240-42; Malcolm Shaw, “State Succession Revisited”. *Finnish Yearbook of International Law* Vol. V (1994) pp. 36-37.

<sup>444</sup> See, more, on this, the eloquent analysis by Jansuz Bugajski, “Close to Edge in Kosovo”. *The Washington Quarterly*. Vol. 21 No. 3 (Summer 1998) pp. 19-23.

<sup>445</sup> Five years later, however, Micunovic was not sure about this. Criticizing plans to secede by June 2001 (the deadline set out for holding a referendum for the independence of this republic), Micunovic said that Montenegro’s secession from FRY (Serbia and Montenegro) would make highly probable the secession of Kosova as well, thus putting into danger the very survival of the FRY. Cf. *Radio Slobodna Evropa*, 04/01/2001. 10.00h CET (In South Slavic Languages).

<sup>446</sup> In referring to the so-called Kumanovo Agreement which made possible for NATO troops to enter Kosova in June 1999 and the promulgation of the 1244 UN Security Council Resolution on Kosova (12 June 1999), the Chief of the General Staff of the Yugoslav Army, Nebojsa Pavkovic, told the press in Belgrade that they (the Serbs) held the deeds over Kosova because both of the above documents recognized and guaranteed the integrity and sovereignty of the Federal Republic of Yugoslavia. Cf. *Radio Slobodna Evropa* (In South Slavic languages), 17 Decembr 1999, 10:00h p.m. CET.

NATO's actions against FRY (March-June 1999) and possible ramifications of the future developments in and over Kosova, its final status included. The first issue is related to the international community itself, while the second is related to Kosova and its possibility for the achievement of statehood, separate from that belonging to FRY and Serbia itself.

The above attitude of the Serbian circles, including the opposition, indicates a certain political profile prevalent within the Serbian society at large. This profile takes the state, not the citizenship or the ordinary individuals, as a reference point. Regarding the issue of borders and self-determination in general, this has well coincided with the approach taken by the international community following the end of the Cold War. This by no way means that the international community *per se* has created this Serbian political profile. The current profile stems rather from the very nature of Serbian nationalism (already discussed in Chapter III). The international community's stance over the (inviolability) of the former administrative borders has further cemented the Serbian myths over Kosova and their *a priori* right to unquestionably rule its majority population.<sup>447</sup> Why the Belgrade regime was given these assurances as to the (unconditional) inviolability of Serbia's borders? Was it a matter of principle or a pure *realpolitik* that took into account other geopolitical/geostrategic factors?

Two dilemmas emerge when discussing the NATO intervention against FRY (March-June 1999). The first, the *realpolitik* dilemma based on geopolitical/geostrategic considerations, means that the inviolability of (former republican) borders was not an aim in itself but a side effect of NATO's concern over peace and stability in the Balkans and wider. Next to this comes the dilemma based on humanitarian considerations, publicly stated aim of NATO officials both before

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<sup>447</sup> For identical views, see, Noel Malcolm, *Kosovo. A Short History*; Tim Judah, *Kosovo. War and Revenge* (New Haven and London: Yale University Press, 2000); Steven Schwartz, *Kosovo. Background to a War* (London: Anthem Press, 2000); Julie A. Mertus, *Kosovo. How Myths and Truths Started a War* (California: University of California Press, 1999); Greg Campbell, *The Road to Kosovo*. (Boulder and Oxford: Westview Press, 1999); Warren Zimmermann, "The Demons of Kosovo". *The National Interest* No. 52 (Spring 1998) pp. 3-13 at 5-6; Aleksa Djilas, "Imagining Kosovo". *Foreign Affairs* Vol. 77 No. 3 (September/October 1998) pp. 124-131; Shlomo Avineri, "The Future of Kosovo" *East European Constitutional Review* Vol. 8 No. 3 (Summer 1999) pp. 1-4 (internet version only: <http://www.law.nyu>).



and after the intervention against FRY.<sup>448</sup> The NATO Secretary General, Javier Solana, also put foreword humanitarian considerations on the last day before the air strikes began on 24 March 1999.<sup>449</sup> In fact, concerning the use of the air

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<sup>448</sup> This aim was expressly stated by NATO's Council in its special statement on Kosova on 8 December 1998, arguing that "NATO's aim has been to contribute to the international efforts for stopping the humanitarian crisis in Kosovo, to put an end to the violence there and to assure a permanent solution to the crisis in Kosovo". Full text in "Kosova Information Center", *Daily Report* No. 2264 B (Prishtina), 8 December 1998 (Albanian version only).

On the other hand, scholars have been disunited over this. The most influential ones, such as Thomas Franck or Antonio Cassese, have favored humanitarian considerations. See, Antonio Cassese, "Ex Injuria Ius Oritur: Are We Moving Towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community?". Comment on Bruno Sima, "NATO, the UN and the Use of Force: Legal Aspects" *European Journal of International Law* Vol. 10 No. 1 (1999) pp. 23-31; Louis Henkin, "Kosovo and the Law of 'Humanitarian Intervention'" *American Journal of International Law* Vol. 93 No. 4 (October 1999) pp. 824-828; Ruth Wedgwood, "NATO's Campaign in Yugoslavia" *American Journal of International Law* Vol. 93 No. 4 (October 1999) pp. 828-834; Richard Falk, "Kosovo, World Order and the Future of International Law" *American Journal of International Law* Vol. 93 No. 4 (October 1999) pp. 847-857; Thomas M. Frank, "Lessons of Kosovo" *American Journal of International Law* Vol. 93 No. 4 (October 1999) pp. 857-860.

Others have as well supported NATO actions against FRY on humanitarian grounds but with some reservations put foreword. These authors have argued that Kosova case should not set a precedent for the future but should instead be taken as an exception due to the regional considerations (Kosova, they say, belongs to Europe where gross human rights violations cannot be tolerated). Cf. W. Michael Reisman, "Kosovo's Antinomies" *American Journal of International Law* Vol. 43 No. 4 (October 1999) pp. 860-863; In fact, majority of the authors take more or less the stance that Kosova's location within Europe has played important role in NATO's calculations to strike against FRY (Serbia and Montenegro).

The last group of authors, quoted below, do not support NATO actions in Yugoslavia, stressing the sovereignty rule and the principle of non-intervention in internal affairs of sovereign and independent states. Cf. Bruno Sima, "NATO, the UN and the Use of Force: Legal Aspects". *European Journal of International Law* Vol. 10 No. 1 (1999) pp. 1-23; Jonathan I. Charney, "Anticipatory Humanitarian Intervention in Kosovo" *American Journal of International Law* Vol. 93 No. 4 (October 1999) pp. 834-841; Christine M. Chinkin, "Kosovo: A 'Good' or 'Bad' War?" *American Journal of International Law* Vol. 93 No. 4 (October 1999) pp. 841-847; Mary Ellen O'Connell, "The UN, NATO, and International Law After Kosovo" *Human Rights Quarterly*. Vol. 22 No. 1 (February, 2000) pp. 57-89.

As for NATO itself, its officials have been explicit that the decision to go into Kosova did not set any precedent for its future actions elsewhere, despite what some Russians fear and what some East Europeans clearly hope when Russia is in question. See, Paul Goble, "Another Precedent From Kosovo?" *RFE/RL Newslines*. November 9, 2000 (also available in internet: <http://www.rferl.org>).

<sup>449</sup> See, Statement by the Secretary General, date 23 March 1999. (also available in internet: <http://www.nato.com>). When the air campaign started, NATO leaders referred more explicitly to humanitarian considerations as a basis for their actions against FRY. See, Bill Clinton, *Ne Luften, Ju Paqen. Masazhe, Artikuj, Konferenca Shtypi, Intervista dhe Fajlime per Kosoven*. (Tirane: Gazeta "Albania", 2000).

In terms of success or failure of the air campaign against FRY, an important thing is to understand the previous goals set by the Alliance. These goals have varied during the air campaign. Thus, at the outset, the Clinton administration circulated three goals of the bombing campaign against FRY: a) to "demonstrate the seriousness of NATO's opposing to aggression"; b) to deter Milosevic's "continuing and escalating attacks in Kosovo"; and c) to "damage Serbia's

strikes against FRY, NATO officials referred almost exclusively to the humanitarian considerations. This was not the case, as we shall see below, during the early stages of the Kosova conflict (February-March 1998 and after). Be as it may be, the case remains that the end result of NATO air strikes was the preservation of FRY' territorial integrity and, by consequence, the imposition on Kosova in a long run of a certain internal-type self-determination. This is supported unambiguously by the provisions of the UN Security Council Resolution No. 1244 (12 June 1999).

The question we put forward, standing at the same time for our second dilemma, cannot be answered solely through a reliance on humanitarian considerations as a basis for the NATO air campaign against FRY. Our argument is based on the events preceding the air campaign and after that (January - June 1999). The commitments NATO made through its public announcements on the crisis in Kosova unambiguously referred to the full endorsement by NATO of the UN Security Council resolutions on the Kosova issue. This means that humanitarian considerations in these UN documents do not take precedence over other issues, such as borders and related issues (most notably the preservation of the international peace and stability and the solution of the final status of Kosova). This attitude of NATO is best reflected in two documents of this period: The Rambouillet Peace Accords (February - March 1999) and the UN Security Council Resolution on Kosova No. 1244 (12 June 1999). The latter document serves at present as the only legal foundation on which the current international administration over Kosova is based (both civilian and its military components).

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capacity to wage war in the future". Cf. R.W. Apple, Jr., "A Fresh Set of U.S. Goals". *New York Times* (March 25, 1999) p. A1.; See. also, Barton Gellman, "Allies Facing the Limits of Air Power". *Washington Post*. March 28, 1999, p. A1. The same goals were reflected throughout in the NATO statements over the crisis in Kosova. The statements required that Milosevic ended repression in Kosova, withdrew his forces from the province, agree to an international military presence there, as well as to the safe return of refugees and displaced persons, and provide assurances of his willingness to work toward a political framework along the lines of the Rambouillet Accords. Cf. Statement issued at *the Extraordinary Ministerial Meeting of the North Atlantic Council*, NATO Headquarters, Bruselles, April 12, 1999, and *Statement on Kosovo*, issued by the Heads of States and Governments Participating in the Ministerial Meeting of the North Atlantic Council in Washington, D.C. April 23-24, 1999. (also available in internet: <http://www.nato.com>).

When the Contact Group on the former Yugoslavia issued a statement on 19 January 1999, agreeing to summon representatives from FRY and Serbian governments and representatives of the Kosova Albanians to Rambouillet (Southwest of Paris, France), it connected the humanitarian situation in Kosova to the issues of peace and stability and the territorial integrity of FRY and the neighboring states, as the only viable solution to the crisis in Kosova.<sup>450</sup> This statement was fully endorsed by NATO on 30 January 1999.<sup>451</sup> In both cases, the previous UN Security resolutions on the matter were taken into full account, reinforcing in this way even further the international community's commitment to FRY's territorial integrity and to the preservation of regional and wider peace and stability.<sup>452</sup>

The above stance of the international community permeated the whole negotiating process held at Rambouillet from 6 to 23 February 1999.<sup>453</sup> The so-called non-negotiable principles put foreword for signature before any discussion on the Rabouillet Accords stressed the inviolability of the FRY's borders, implying that any solution had to be found within FRY's sovereignty and territorial integrity. In terms of self-determination, this practically meant that Kosova and its majority population would have to remain satisfied with the internal right to self-determination. This was nothing new for Kosovar Albanians. Such a right to internal self-determination had earlier been labeled by the international community as "a substantial autonomy for Kosova".<sup>454</sup> However, apart from the

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<sup>450</sup> "Big Powers Demand a Deal on Kosovo Within Weeks". *Kosova Information Center*. Daily Report No. 1677, Prishtina, 19 January 1999; "Contact Group Sets Deadline for Kosovo Agreement". *Radio Free Europe/RL Newsline*. Vol. 3 No. 31 Part II, 15 February 1999.

<sup>451</sup> See, "NATO Statement on Kosovo". January 30, 1999. *Kosova Information Center*. Daily Report No. 1679. January 31, 1999.

<sup>452</sup> For the previous UN Security Council resolutions, see, Resolution No. 1160 (31 March 1998); Resolution No. 1199 (23 September 1998); and Resolution No. 1203 (24 October 1998). (also available in internet: <http://www.un.org>).

<sup>453</sup> The *Rambouillet Peace Process* ended with the signing of the *Rambouillet Peace Accords* in Paris on 19 March 1999.

<sup>454</sup> In essence, regarding the autonomy of Kosova there were put foreword various models in the past, albeit not specified. The models were proposed by the international community as well as by the parties themselves. They have usually followed the lines taken by the international community. Cf. Dimitros Triantophollou, "Kosovo Today: Is There No Wat Out of the Deadlock?" *European Security* Vol. 5 No. 2 (Summer 1996) pp. 291-292; Zoran Lutovac, "Options for the Solution of the Problem of Kosovo" *International Affairs* No. 1056. Belgrade, 15 May 1007 pp. 10-14.

vague comparison with other existing autonomies, no precise document had been produced showing its full content, at last not before the Rambouillet Accords. It was this paper that for the first time specified the content of Kosova's "substantial autonomy", albeit for an interim period of three years.<sup>455</sup> This document provided for a democratic self-government, peace and security for everyone living in Kosova. Democratic self-government included all matters of daily importance to people in Kosova, including education, health care, and economic development. Kosova would have a President, an Assembly, its own courts, strong local government, and national community institutions with the authority needed to protect each community's identity. Security was meant to be guaranteed by international troops deployed on the ground throughout Kosova. Local police, representative of all national communities in Kosova, was foreseen to provide routine law enforcement. Federal and Republic security forces would have to leave Kosova, except for a limited border protection presence. The final

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The first model consisted on granting Kosova the 1974-type of autonomy. This was proposed most frequently by the international community's circles. For the first time, its version was made public by the Special Group on Kosovo (acting within the Working Group on Ethnic and National Minorities of the International Conference on Former Yugoslavia) and remained in option well until the conflict in Kosova began in February 1998. This model, drafted by the chairperson of the Special Group on Kosovo, German ambassador Gerht Ahrens, foresaw an autonomy solution for Kosova based on the 1974 Yugoslav Constitution and the experiences of South Tyrol, Spain, Aaland Islands, Bosnia-Herzegovina and Croatia (the so-called "Plan Z4" drafted on behalf of the Serbs living in Croatia). Cf. Hugh Poulton, "The Rest of the Balkans". In Hugh Miall (ed.), *Minority Rights in Europe. The Scope for a Transitional Regime* (London: Royal Institute of International Affairs, 1994) pp. 71-72.

The second model dealt with the re-federalization of the FRY (Serbia and Montenegro). It meant a supplemental or new federalization of FRY, making Kosova, in addition to Serbia and Montenegro, a separate federal unit, that is, a third republic. This was exactly what the Kosovar Albanians demanded in the 1981 riots. Since the dissolution of Yugoslavia, however, this solution had been considered as an obsolete solution. On the Serbian side, this proposal was supported by the so-called Serbian Resistance Movement leader, Momcilo Trajkovic. Cf. Carl Bildt, "Kosovo Should Have the Same Status as Montenegro" *Kosova Information Center*. Daily Report No. 1736 (3 June 1997), Prishtina (Albanian version only). M. Trajkovic has in several occasions asked for Kosova to be a third republic within FRY. In one case, Trajkovic has even threatened that if Kosovars do not accept this, it should be followed by a military campaign against Kosova. Cf. *Kosova Information Center*. Daily Report No. 1945 (20 January 1997), Prishtina. (Albanian version only).

<sup>455</sup> The Rambouillet Peace Accords contained also the so-called non-negotiable principles (already mentioned), in which the issue of FRY's territorial integrity and sovereignty takes precedence. See, *Interim Agreement for Peace and Self-Government in Kosovo*. Text reprinted in Thanos M. Veremis and Dimitros Traintaphyllou (eds.), *Kosovo and the Albanian Dimension in Southeastern Europe: Thee Need For Regional Security and Conflict Prevention* (Athens: ELIAMEP, 1999) pp. 261-330.

issue was that concerning the mechanisms for the final settlement. In this regard, the Rambouillet Accords foresaw an international meeting to be convened after 3 years to determine a mechanism for a final settlement for Kosova. The will of the people was conceived as an important factor to be taken into account at that international meeting.

Despite the guaranties given to the FRY's territorial integrity and sovereignty, Belgrade authorities refused to sign the document. Milosevic's regime, instead of negotiating the peace terms of Rambouillet, continued its war campaign throughout Kosova expelling hundreds and thousands of Albanians out of their homes. The humanitarian situation in Kosova by the time the Rambouillet Conference ended was becoming a real threat to regional peace and stability so that NATO had no choice but to act in the way it stated in its statement of 30th January 1999. However, by the time the air strikes began on 24 March 1999, the language of NATO leaders changed. The stress was now put on the humanitarian reasons rather than on other considerations connected to regional peace and stability.<sup>456</sup> This was not, however, the language of the UN Security Resolution No. 1244 of 12 June 1999. The order of issues ranked according to their importance differs in this document as compared with the above ones. In this resolution, as in other previous ones concerning the crisis in Kosova, the preservation of regional peace and security and the FRY's territorial integrity and sovereignty took prominence. Next to these come the humanitarian issues (the return of refugees and the displaced persons) and the final settlement of the status of Kosova, the implementation of a temporary regime of self-government being included as well.<sup>457</sup> In practical terms this meant that NATO air strikes, in

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<sup>456</sup> In fact, apart from FRY's territorial integrity, regional stability and security, and the humanitarian situation in Kosova, there had been only one case where NATO expressly referred to a political aim if it intervened in Kosova. Namely, the then NATO Secretary General, Javier Solana, said on 22 January 1999 that NATO's political aim was to restore Kosova's autonomous status it enjoyed according to the 1974 Constitution of Yugoslavia. This practically meant that military intervention would have as a result, if not a direct aim, the imposition on Kosova a status of autonomy (internal self-determination), it enjoyed previously during Tito's times. Cf. *Kosova Information Center*. Daily Report No. 2308 B (Prishtina), 22 January 1999.

<sup>457</sup> Two international mediators, one on behalf of the EU (Martti Ahtisari) and the other on behalf of the Russian Federation (Victor Chernmerdin) have later revealed that Milosevic had accepted NATO's conditions for surrender when he was given by them assurances that the

terms of self-determination, have resulted in the preservation of the regional peace and stability, FRY's territorial integrity and sovereignty, the protection of the Kosovar Albanian population, and, finally, they set the stage for a political solution of the Kosova issue *via* granting a "substantial autonomy" for the region.<sup>458</sup>

The 1244 Resolution recalls and fully endorses the previous UN Security Council resolutions on the crisis in Kosova. These resolutions, as well as the present one, call for the preservation of the FRY's territorial integrity and the integrity of the neighboring states to FRY. The 1244 Resolution further codifies the G-8 formula for the political solution of the Kosova conflict, adopted on 6 May 1999.<sup>459</sup> The formula is more or less the one expressed in the 1244 Resolution which says that it "reaffirms the call in previous resolutions for a substantial autonomy for Kosovo". Among the responsibilities of the international civil presence in Kosova is to "facilitate a political process designed to determine Kosovo a future status, taking into account the Rambouillet Accords". The end

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international mission in Kosova would be under the UN auspices and, above all, that the same community guaranteed FRY's territorial integrity and sovereignty over Kosova. Cf. *The UN Document: S/1999/699* (dated 2 June 1999). For the comments of both international mediators, see, Victor Cheromerdin, "Nismo Izdali Srbiju". (Interview). Belgrade-based weekly *NIN* (Belgrade), 14 October 1999; Martti Ahtisari, "Nuk e Kam Kercnuar Milosevicin". Prishtina-based daily newspaper *Kosova Sot.* 26 July 2000, p. 8.

<sup>458</sup> Apart from NATO's pronouncements on political issues, such as that regarding the status of the 1974 autonomy enjoyed by Kosova during Tito's times, some Western officials have at an earlier stage of the conflict in Kosova made statements regarding the Western commitments to FRY's territorial integrity. Thus, in his visit to Prishtina in early March 1998, the US Special Envoy for Kosova, Robert Gelbart, unwittingly underscored the validity of the peace option by revealing American and others' support (mainly NATO countries) for "Yugoslav integrity". This, in turn, gave Milosevic free hands to expel almost entire population of Kosova, kill innocent civilians and apply the policy of scorched earth. See, for the critics of this Western stance, in Miles Pomper, NATO Readies Strike Plans Against Serbia. *CO Weekly.* 07/25/98, Vol. 56 Issue 30, p. 203; James Brady, "History Proves Again Balkans Bite Is Worse Than Its Bark". *Advertising Age.* 07/13/1999, Vol. 69 Issue 28 p. 25; Roland Steel, "Hijacked". *New Republic.* 07/13/1998, Vol. 219 Issue 2, p.10; Johnatan Landay, "NATO's Drums Beat Louder Over Kosovo". *Christian Science Monitor.* 09/25/98, Vol. 90 Issue 212, p.1; Justin Brown, "Living Cross Hairs of NATO". *Christian Science Monitor.* 10/07/98, Vol. 90 Issue 230, p.1; Mark Dennis, "Locked and Loaded". *Newsweek.* 10/09/98. Vol. 132 Issue16, p. 50; Michael Hirsch et al., "Holbrookee's Nery Game of Chicken". *Newsweek.* 10/26/98, Vol. 132 Issue 17, p. 50; Richard Newman, "NATO's Patience is Wearing Thin". *US News and World Report.* 10/09/98. Vol. 125 Issue 15, p. 40; Justin Brown, "Uncomfortable Peace in Kosovo". *Christian Science Monitor.* 10/14/98 Vol. 90 Issue 224, p.1; Jansuz Bugajski, "Act Now in Kosovo or Regret Later". *Christian Science Monitor.* 03/11/98. Vol. 90 Issue 72, p. 19 (these article are available in internet: <http://www.gwz.epnet.com>).

<sup>459</sup> See, *the UN Document S/1999/516.* (also available in internet: <http://www.un.org>).

result of this is that, at least in its formal sense, the policy of Greater Serbia has not been defeated in Kosova, at least not as long as the international community treats it as an integral part of the Serb-dominated FRY. In this formal sense, again, there is a striking similarity between the position of Kosova and the “Republika Srpska” in Bosnia-Herzegovina.

## **CHAPTER VI:**

### **THE INTERNATIONAL COMMUNITY’S EFFORTS TO PREVENT THE ILLEGAL AND ILLEGITIMATE IMPLEMENTATION OF SELF-DETERMINATION WITHIN THE TERRITORY OF FORMER YUGOSLAVIA**

#### ***1. The European Guidelines on Recognition of New States in the Soviet Union and Eastern Europe (16 December 1991)***

Even when the United States denounced Serbia as the aggressor in September of 1991, the accompanying message was that the US, finding no strategic interest at the time, would not militarily intervene to stop the killing. At the same time, the European Community (EC) was not prepared for military intervention. Encouraged by this, the Serbian leadership escalated attacks on civilians in Croatia. A few months later, with the change in geopolitical considerations (the break up of the Soviet Union), justifications for discouraging the democracy-and independence- seeking Yugoslav republics came to an end. This trend was also reinforced by Serbia’s intransigence to accept nothing but a highly centralized (Yugoslav) federation, leading to a Greater Serbia. This stance of Serbia, in conjunction with the dissolution of the former Soviet Union, constituted the context within which the EC made public its so-called “Guidelines on Recognition of New States in Eastern Europe and the Soviet Union” on 16 December 1991. Their drafting was the end result of the Austro-German pressure on the EC to recognize those republics desiring it, especially Slovenia

and Croatia.<sup>460</sup> However, their impact was wider, covering the entire Soviet Union, Yugoslavia and Czechoslovakia. They were to serve not only the EC's recognition policy towards the newly emerging states, but would also serve as a crucial political platform on how to handle the crisis as well as the results of armed conflicts in the territory of former Communist federations. This is the reason why in this section we discuss the background for their drafting and their very impact on the shaping of the crisis in the former Yugoslavia.

On August 27, 1991, the EC and its member states assembled in Brussels in an extraordinary ministerial meeting, expressing dismay at the increasing violence in Croatia and reminding "those responsible for violence" that the EC was determined "never to recognize changes of frontiers which have not been brought about by peaceful means and by agreement". The EC further deplored the Serbian irregulars' resort to military means and the support given to them by the JNA, calling at the same time on "the Federal Presidency to put an immediate end to the illegal use of the forces under its command".<sup>461</sup> Finally, on the same occasion, the EC stated that it could not "stand idly by as the bloodshed in Croatia increases day by day", urging the parties to the conflict to accept a peace conference and an arbitration procedure. The Peace Conference (known variously as "the European Peace Conference" (EPC), "the Conference on Yugoslavia", or "the Hague Conference") was to bring together, "on the part of Yugoslavia", the Federal Presidency, the Federal Government and the Presidents of the Republic. At this time, the EC accepted at this time that Yugoslavia still existed as a state rather than a mere geographical description ("on the part of Yugoslavia"). The setting up of the arbitration procedure, known variously as the Badinter Committee or Commission, was much in line with the

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<sup>460</sup> "EC Declaration Concerning the Conditions for Recognition of New States", adopted at the Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, pp. 431-432. For the analysis of this document, see, Rein Mullerson, *International Law, Rights and Politics. Developments in Eastern Europe and the CIS* (London: Routledge, 1991) pp. 125-135; Predrag Simic, "Dynamics of the Yugoslav Crisis". *Security Dialogue* Vol. 26 No. 2 (June 1995) pp. 153-173.

<sup>461</sup> "Declaration on Yugoslavia", adopted at EPC Extraordinary Ministerial Meeting, 27 August 1991. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 333-34.



international practice as applied to similar cases. It was to give its decisions (in the form of legal and formally non-binding opinions) within two months.

The Peace Conference met at the Hague on September 7, 1991, under the chairmanship of Lord Carrington. The Hague Peace Conference was convened as a result of a franco-german compromise, marking the outset of Europe's obvious disunity over the crisis in former Yugoslavia and the clear ramification of Serbia's war aims. As for its legal nature, the Conference was to serve as good offices only, acceptable by all sides in Yugoslavia by mid-1991 due to the fact that the Conference on Security in Europe (CSCE) soon reached the limits of its influence in the Yugoslav crisis so that the leading role in international mediation to the crisis was relinquished to the EC. The Conference was a compromise because at this stage it proved impossible for any discussion in favor of military intervention to stop the unfolding tragedy in Yugoslavia. This gave clear signals to Milosevic that he could safely pursue his war goals, treating the work of the Conference solely as good offices and as a simple mediation effort without any binding effect on the parties to the conflict. Although by the end of 1991, the Conference ended in failure, with the peacekeeping as a substitute for military intervention to stop the war<sup>462</sup>, the documents and the guidelines it produced served as a solid ground for further work of the international community in its efforts to solve the Yugoslav crisis.<sup>463</sup> Among them, the Statement of 4

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<sup>462</sup> For the peace-keeping in former Yugoslavia, its origins and the mandate, see, "Concept for a United Nations Peace-Keeping Operation in Yugoslavia" (as discussed with the Yugoslav leaders by the Honorable Cyrus R. Vance, Personal Envoy of the Secretary General and Marrack Goulding, Under-Secretary General for Special Political Affairs), November/December 1991. *UN Doc. S/23280, Annex III*. Text provided by the Albanian Foreign Ministry, Tirana. Also reproduced in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 418-423. For scholarly work on this issue, see, Marts R. Berdal, "Whither UN Peacekeeping?" *Adelphi Paper* No. 281 (London: International Institute for Strategic Studies, 1993); Shashi Tharoor, "United Nations and Peacekeeping in Europe" *Survival* Vol. 37 No (Summer 1995) pp. 121-134; Bertrand de Rossanet, *Peacemaking and Peacekeeping in Yugoslavia* (The Hague: Kluwer Law International, 1996).

<sup>463</sup> Despite its non-binding character, the mandate of the Conference had been refined by the EC, rather than by the parties to the conflict. The Conference, according to an EC ministerial declaration of September 3, 1991, was "to ensure a peaceful accommodation of the conflicting aspirations of the Yugoslav peoples, on the basis of the following principles: no unilateral change of borders by force, protection for the rights of all in Yugoslavia, and full account to be taken of all legitimate concerns and aspirations". Cf. "EC Declaration on Yugoslavia", adopted at the EPC Extraordinary Ministerial Meeting, 3 September 1991, The Hague. Text provided by the Albanian

October 1991 represented a framework for action setting the limits of self-determination and the rules of the game on behalf of the Yugoslav actors. This statement reflected the Franco-German rivalry over the issue of recognition and over the very concept of the Yugoslav self-determination, further cementing the previous EC's policy on the matter. This eventually led to the final clarification of the self-determination process to be pursued in the future by the Yugoslav actors. The Statement, along with the Guidelines on Recognition, definitely shaped Yugoslav self-determination, its form and content. The Yugoslav self-determination ever since has remained unchanged and has followed the basic premises foreseen by these two documents.<sup>464</sup>

The Statement, issued after a meeting held at the Hague with the participation of the presidents of Croatia and Serbia and the Yugoslav Secretary for National Defense, Veljko Kadijevic, stressed the will of all participants who "agreed that the involvement of all parties concerned would be necessary to formulate a political solution on the basis of the prospective recognition of the independence of those republics wishing it, at the end of negotiating process conducted in good faith". The recognition, said the statement, would be granted in the framework of a general settlement and have the following components:

- a) a loose association or alliance of sovereign or independent republics;

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Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 342-343. For comments, see, James Gow, *Triumph of the Lack of the Will*, pp. 52-53.

The Hague Peace Conference had been replaced by the London Conference on Former Yugoslavia (ICFY). The London Conference followed the two-days meetings in London on 26-27 August 1992. The main difference between these two institutions lies in their legal nature. The Hague Conference was a "good offices" offered by the EC, whose decisions were non-binding for the parties to the conflict, a feature clearly missing in the second case. The London Conference was convened at the height of the conflict in former Yugoslavia. Due to its seriousness (Serbia's open involvement in the war in Bosnia-Herzegovina after latter's recognition in April 1992 by the EC and the US government), the international community convened this new conference, dealing with the by now defunct Yugoslav state, whose decisions were to be authoritatively binding for all parties to the conflict. Their implementation were to be done by the UN Security Council, which it did not in most part. See, a compilation of the basic documents of these two conferences, in Snezana Trifunovska, *Yugoslavia Through Documents*; B. G. Ramcharan, *The International Conference on the Former Yugoslavia. Official Papers*. Vols I and II (The Netherlands: Martinus Nijhoff Publishers, 1997). For further comments, see, Vladimir Djuro Degan, "Yugoslavia u Raspadu. *Politicka Misao*. Vol. XXVIII No. 4 ( Zagreb 1991).

<sup>464</sup> The work of the Badinter Commission, to be discussed throughout the following section of this chapter, did nothing but further made operational the basic premises of these two documents.

- b) adequate arrangements to be made for the protection of minorities, including human rights guarantees and possibly special status for certain areas;
- c) no unilateral changes in borders.<sup>465</sup>

This Statement for the first time formally admitted the possibility of secession but tied its international legitimacy, e.g., recognition of the prospective new states to the “framework of a general settlement”. On the same day, the presidents of five of the six Yugoslav republics, expressed their general agreement, with certain qualification, to continue working on a draft paper prepared by Lord Carrington, entitled “Arrangements of a General Settlement”. This document spelled out the details of the envisaged framework agreement concerning the process of self-determination. The process included the commitments by the Yugoslav republics to protect human rights as foreseen by the Universal Declaration on Human Rights, the International Human Rights Covenants, the OSCE documents on human dimension and other relevant instruments of the Council of Europe. Detailed provisions on human rights as “particularly applied to national or ethnic groups” were set forth, and a special status (autonomy) was to be established for areas in which a national or ethnic group formed a majority. In addition to these provisions, a provision was made for cooperation or consultation among the Yugoslav republics in trade, foreign affairs and security, and a customs union was envisaged.<sup>466</sup>

The President of Serbia considered this paper to be unsuitable for a detailed discussion.<sup>467</sup> Similar reservations were put forward by the still existing Yugoslav Vice-President who, since October 3, 1991, had been presiding over the “rump Yugoslav presidency” because, as he himself put it, the paper “... recognized the legality of unilateral secession”.<sup>468</sup> Notwithstanding these objections, a similar arrangement for the general settlement of the Yugoslav self-

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<sup>465</sup> See, *UN Doc. S/23169, Annex II*. Text provided by the Albanian Foreign Ministry, Tirana.

<sup>466</sup> “Arrangements for General Settlement” (the so-called Carrington Draft-Convention), October 18, 1991 (the Hague). See, also, *UN Doc. S/2369, Annex VI*. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 357-365.

<sup>467</sup> See, *UN Doc. S/23169*. Text provided by the Albanian Foreign Ministry, Tirana.

<sup>468</sup> See, *UN Doc. S/23169*. Text provided by the Albanian Foreign Ministry, Tirana.

determination was further pursued by the EC. The new paper came out on 25 October 1991, but the President of Serbia again maintained his reservations with regard to the proposed solution.<sup>469</sup> The EC, in response, gave the parties a deadline (until November 5, 1991) to indicate their acceptance or refusal of Carrington's outline agreement. The EC's draft sanctions were formally prepared by the end of October 1991, providing for the suspension of cooperation agreements with Yugoslavia and trade concessions. The EC's attitude was influenced by the events on the ground (the fighting in Croatia) and the behavior of the Yugoslav authorities. However, a special regime was to be applied vis-à-vis parties contributing to the peace process. Serbia again refused to accept the proposed paper and the sanctions were instituted. In addition to this, the EC asked the Security Council to impose an oil embargo and to adopt additional measures to enhance the effectiveness of its arms embargo.<sup>470</sup>

The EC's stance was that the recognition of the independence of those Yugoslav republics wishing it "can only be envisaged in the framework of an overall settlement" and this was also supported by the UN Security Council. Thus, in its letter dated December 10, 1991, the Council openly opted for the policy of a general settlement as foreseen by the EC.<sup>471</sup> It is unlikely, however, that the general consent could be achieved, as long as recognition depended on the agreement of all parties and with Serbia using its veto over the issue of recognition, thus frustrating the talks at the Hague. To overcome this stalemate, the EC outlined the conditions for recognition in a common position known as the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" of 16 December 1991. This common position was in fact the Austro-German idea, dating as far back as early July 1991, when most of the

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<sup>470</sup> Cf. "EC Declaration on the Situation in Yugoslavia" (Brussels, 28 October 1991); "EC Declaration on the Suspension of the Trade and Cooperation Agreement with Yugoslavia" (Rome, 8 November 1991). Texts provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 368-369 and 378-380. For further comments, see, James Gow, *Triumph of the Lack of the Will*, pp. 57-66.

<sup>471</sup> "Letter from the Secretary General of the United Nations Addressed to the Minister for Foreign Affairs of the Netherlands". 10 December 1991. *UN Doc. S/23280*, Annex IV. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 428-429.

German and Austrian political parties were convinced that the war in Slovenia had been a war of aggression committed by Serbia, and demanded that the crisis be stopped by a unilateral recognition of those republics wishing to separate from Yugoslavia, thus internationalizing the crisis. This, in the Austro-German view, would open the way for the international community to regard the crisis in accordance with the Chapter VII of the UN Charter. The fact that the other Yugoslav republics were not being recognized internationally was construed by the Serbs as a validation of their policy of conquest<sup>472</sup> This attitude was opposed by some EC's member states, especially France.<sup>473</sup> However, the German stance prevailed, not only in the Guidelines on Recognition but also when it came to the practical implementation of this new recognition policy: Germany forced its way out by a unilateral recognition of Slovenia and Croatia before the deadline set out in the Guidelines on Recognition.

The conditions for recognition as set out in this document, as opposed to previous ones, allowed for progress to be made even in the absence of unanimity among the Yugoslav republics, but would still safeguard the essence of the Carrington proposal, as the republics were required to embrace its provisions unilaterally and to continue working towards a collective agreement.<sup>474</sup> This two-

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<sup>472</sup> Mark Weller, "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia", pp. 386-387; James Gow, *Triumph of the Lack of the Will*, pp. 35-36.

<sup>473</sup> See, more on this, Peter Viggo Jacobsen, "Myth-Making and Germany's Unilateral Recognition of Croatia and Slovenia". *European Security*. Vol. 4 No. 3 (Autumn 1995) pp. 400-417.

<sup>474</sup> The conditions for recognition were:

" - respect for the provisions of the Charter of the United Nations and the commitments enshrined in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;

- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE;

- respect for the inviolability of all frontiers which can be changed only by peaceful means and by common agreement;

- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;

- commitment to settle by agreement, including when appropriate by recourse to arbitration, all questions concerning State succession and regional disputes". Cf. *EC Declaration Concerning the Conditions for Recognition of New States*, adopted at the Extraordinary EPC Meeting, Brussels, 16 December 1991. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp.43-432.

The EC confirmed again that it would not recognize entities that "are the result of aggression" and further invited all Yugoslav republics to state by December 23, 1991, whether:

pronged strategy of the EC served two purposes. First, it bridged the gap between the French and German foreign policies regarding Europe's common interests (Maastricht Summit of December 1991). Second, the Guidelines served as a yardstick preventing the validation of the factual situations that were against the basic norms of international conduct (genocide and the policy of ethnic cleansing already under way, aimed at the creation of the territorial base for the Serbs entities in Croatia and Bosnia-Herzegovina: the "Republic of Srpska Krajina" and the "Republika Srpska" respectively).<sup>475</sup>

The Guidelines, as it can be seen, did not dwell upon the basic criteria for international statehood as they exist in general international law (the possession of territory, a population and the government in control of this territory and the population). These criteria were taken for granted, whereas the conditions from the Guidelines on Recognition were designed to politically influence the events on the ground and to fit the EC's interests. Their main aim was to enable the establishment of diplomatic relations with those entities which fulfilled the conditions set forth and, at the same time, to punish those Yugoslav republics who did not want to comply with them. The perception of these conditions that were to be fulfilled was different on the side of the Yugoslav republics. They viewed them as the basic criteria and a reference point for the attainment of their international statehood. This means that the Yugoslav republics equalized the establishment of diplomatic relations with international statehood.<sup>476</sup> The applications submitted within the terms set forth in the Guidelines on Recognition and the positive response to them was by definition seen as a crucial stage in the process of attainment of full independence for former Yugoslav republics. This further meant that other applications submitted not by former Yugoslav republics

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- 1) they desired to be recognized as independent states;
  - 2) they agreed to the commitments in the guidelines above;
  - 3) they accepted the provisions of the Carrington proposal, especially those on human rights and the rights of national or ethnic groups; and
  - 4) they approved the involvement of the United Nations Secretary General and Security Council and continuation of the EC Conference on Yugoslavia.

<sup>475</sup> See, Rein Mullerson, *International Law, Rights and Politics. Developments in Eastern Europe and the CIS*, pp. 134-135; Mark Weller, "The International Response", pp. 560-607; John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, pp. 138-139.

<sup>476</sup> Mark Weller, "International Response", pp. 587-588.

but by other entities, who either did not have a clear territorial base at the time of application ( the Serb entities in Croatia and Bosnia-Herzegovina) or did not effectively control their territory and population (the case of Kosova) would not be taken into consideration. Only in these cases, cannot be argued that the establishment of diplomatic relations and international statehood fully coincided. By denying any international legitimacy and a position to other than Yugoslav republics, the EC opted for two forms of self-determination, one external (in favor of former Yugoslav republics), and the other internal (other entities not possessing a full republican status at the time of the Yugoslav dissolution). This process of Yugoslav self-determination, ramified during the early stages of Yugoslavia's dissolution (November 1991-July 1992), has been elaborated by the Badinter Commission.

## ***2. Work of the Badinter Commission and Its Impact on the Crisis***

The work of the Badinter Commission is nothing but a further operationalization of the Guidelines on Recognition<sup>477</sup>. No discussion of the Yugoslav self-determination is complete without an understanding of the work of this commission that further clarified the Guidelines on Recognition. It provided,

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<sup>477</sup> During its mandate, the Commission has rendered thirteen opinions on the various aspects of the Yugoslav crisis, three of which shall be discussed in detail in the sections to follow. Apart from the first opinion, dated 29 November 1991, the Badinter Commission has rendered some others that were of crucial importance for the future ramification of the crisis in former Yugoslavia.

The Commission was called upon to give its opinions from the various sides. Initially, it was called upon to give one opinion the request of Lord Carrington, Chairman of the Hague Conference (Opinion No. 1, discussing the question as to whether the seceding republics could legally inherit former Yugoslavia and, if so, by virtue of which procedures). The Opinions 4 to 7 of January 11, 1992 were given also at the request of the EC's Council of Ministers and were concerned with the question of whether the Republic of Croatia, Macedonia and Slovenia, which had requested the recognition by the EC and its member states, satisfied the conditions laid down in the Guidelines on Recognition. The Opinions 7 to 10 of July 4, 1992, which specified conclusively that new states that emerged from former Yugoslavia, their rights and duties, and Opinions 11 to 13 of July 4, 1993, that dealt with the date when the succession to former Yugoslavia occurred, have also been asked by the EC authorities. The only case in which Badinter's procedure was put into motion upon the request of the conflicting parties is that regarding the Opinions Nos. 2 and 3 of January 11, 1992. In the second opinion, the Commission dwelt upon the question as to whether the Serb population in Croatia and Bosnia-Herzegovina

above all, the framework for the EC, and the international community at large, to settle the sovereignty and self-determination issues in Yugoslavia.<sup>478</sup> Nevertheless, the work of the Commission has in the scholarly world had, in some cases, controversial interpretations.

As noted in Chapter II of this dissertation, the work of the Badinter Commission in terms of international legitimacy was less legitimate as compared with similar cases in Africa: neither Yugoslavia, nor its constituent republics, were members of the EC. In the case of Africa, though, the conflicting parties (Nigeria and Zaire/Congo) were full-fledged members of the Organization of African Unity (OAU). With a few exceptions, accepting the legitimacy of the Commission's work<sup>479</sup>, this author included, the rest of the scholarly work for most of the part has rejected the pronouncements of this body. However, this rejection did not concern the legitimacy of the Commission's work *per se*, focusing instead on the merits of the work itself. Some of the scholars have argued that Badinter's work was the least legal, thus putting the Commission's entire efforts into the realm of

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had the right to self-determination, while the third one addressed the issue of whether the internal boundaries between the former Yugoslav republics could be regarded as international frontiers.

<sup>478</sup> See, also, James Gow, "Serbian Nationalism and the Hissing Ssssnake in International Order: Whose Sovereignty? Which Nation?" *The Slavonic and East European Review*. Vol. 72 No. 3 (July 1994) pp. 456-476.

<sup>479</sup> See, Vladimir Djuro Degan, "Jugoslavija u Raspadu". *Politicka Misao*. Vol. XXVIII No. 4 (Zagreb 1991); Alain Pellet, "The Opinions of the Badinter Committee: A Second Breath for Self-Determination of Peoples". *European Journal of International Law*. Vol. 3 No. 1 (1992) pp. 178-181; Alain Pellet, "Note sur la Conference Europeenne pour la Paix en Yougoslavie". *Annuaire Francais de Droit International*. Vol. XXXVIII (1992) pp. 223-238; Vladimir Djuro Degan, "Samoopredeljenje Naroda i Territorijalna Celovitost Drzava u Uvjetima Raspada Jugoslavije". *Nasa Zakonitost*. Vol. 46 No. 4 (Zagreb, April 1992) pp. 543-569; Vladimir Djuro Degan, "UN Membership of Former Yugoslavia". *American Journal of International Law*, Vol. 87 No. 2 (April 1993) pp. 240-244; Ove E. Bring, "UN Membership of Former Yugoslavia". *American Journal of International Law*, Vol. 87 No. 2 (April 1993), pp. 244-246; M. Kelly Malone, "UN Membership of Former Yugoslavia". *American Journal of International Law*, Vol. 87 No. 2 (April 1993), pp. 246-248; Antonio Cassese, "Self-Determination of Peoples and the Recent Break-Up of USSR and Yugoslavia". In Roland St. John Macdonald (ed.), *Essays in Honor of Wang Tieya* (The Hague: Martinus Nijhoff Publishers, 1994) pp. 131-144; George Karipsiadis, "State Succession in the Balkans: Its Impact Upon International Boundaries". *The Southeast European Yearbook 1994-1995* (Athens: ELIAMEP, 1995) pp. 151-181; Milan Sahovic, "Raspad SFRJ i Stvaranje Novih Drzava". In Milan Sahovic (ed.), *Medunarodno Pravo i Jugoslavnska Kriza*. (Beograd: Institut za Medunarodnu Politiku i Privredu, 1996) pp.14-47; Konstantin Obradovic, "Problemi Vezani za Sukcesiju SFRJ". In Milan Sahovic (ed.), *Medunrodno Pravo*, pp. 275-315; Vladimir Djuro Degan, "L'Arbitrage Juridique Ignore: La Jurisprudence de la Commission Badinter". In Marie Francois Allain et al. (eds.), *L'Ex Yougoslavie en Europe. De la Fallite des Democraties au Processus de Paix*. (Paris: Editions L' Harmattan, 1997) pp. 31-43;



pure politics.<sup>480</sup> Others, though, went thus far as to accuse Badinter of being a direct accomplice and a very cause of the Yugoslav dissolution and tragedy.<sup>481</sup> Still others have held the view that the Commission did misapply and misinterpret the internationally recognized criteria for international statehood and self-determination.<sup>482</sup>

The first group of authors who deny the legitimacy of Badinter's work by focusing on its content, that is, the rulings of the Commission, are not right. Once the fighting was underway, the EC's goal was order and stability. It tried to contain the conflict by using a mixture of traditional principles and innovative ideas to produce a workable framework for a political solution to the Yugoslav crisis. It is these aims that Badinter followed in its work. Only in procedural terms can the work and the legitimacy of the Commission be contested. However, the work in this respect should also be looked at contextually. This is so due to the fact that the EC was not even initially motivated simply by altruism or by fear about the consequences of a war on its borders. Many issues on the European agenda were to become entangled with the development of the policy towards Yugoslavia: the future of the EC's foreign policy role, the relationship between major EC powers, especially France and Germany, the relationship between EC,

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<sup>480</sup> See, for example, "Martha Rady, Self-Determination and the Dissolution of Yugoslavia". *Ethnic and Racial Studies* Vol. 19 No. 2 (1996) pp. 382-384; John Williams, *Legitimacy in International relations and the Rise and Fall of Yugoslavia*, pp. 130-131, 138, 140-141; Payam Akhavan, "Self-Determination and the Disintegration of Yugoslavia: What Lessons for the International Community?" In Donald Clark and Robert Williamson (eds.), *Self-Determination. International Perspectives* (New York: St. Martin Press, 1996) pp. 227-228, 233-235 and 240-242.

<sup>481</sup> Thomas Raju, G.C., "Nations, States and Secession : Lessons from the Former Yugoslavia". *Mediterranean Quarterly* Vol. 5 No. 4 (Fall 1994) pp. 40-65; Peter Radan, "The Badinter Arbitration Commission and the Partition of Yugoslavia" *Nationalities Papers*. 25 (1997) pp. 537-557; Reneo Lukic and Alan Lurch, *Europe from the Balkans to the Urals. The Disintegration of Yugoslavia and the Soviet Union*, pp. 275-281; Said Mohmoudi, "Recognition of States: the Case of Former Yugoslav Republics". In Ove Bring and Said Mahmoudi (eds.), *Current International Law Issues. Nordic Perspectives: Essays in Honor of Jerzy Sztucki* (CE Fritzers AB: Sweden 1994) pp. 135-159.

<sup>482</sup> These authors claim that Badinter could have declared Bosnia-Herzegovina as being in the process of dissolution as of January 1992, as was former Yugoslavia few months earlier when the Commission rendered its first opinion (November 1991). Put another way, these authors say that Bosnia-Herzegovina lacked an effective control over its own territory and population by the time Badinter declared Bosnia-Herzegovina to be a state (provided that it held a referendum on independence). See, Robert M. Hgden, "Bosnia's Internal War and the

NATO and WEU, etc. The EC was entering uncharted waters in its efforts to lead international efforts to manage the crisis in Yugoslavia. Its previous diplomatic role focused on trade relations. Its role in more “classical” foreign policy issues had been limited to coordination and prior discussion of positions in the European Political Cooperation (EPC) process. With the end of the Cold War came the end of the principal reason for US involvement in European security affairs, meaning U.S. leadership was likely to be less decisive and the US government was seeking to reduce its role. Proponents of the Common Security and Foreign Policy (the EC CSFP) saw this as a gap which the EC should fill. Proposals were made for the revival of the WEU as the defense arm of the EC’s new security role.

The EC was also taking the leading role in economic assistance to Eastern Europe and was the focus of attention of these states. Institutions such as PHARE program, the European Bank for Reconstruction and Development and Association Agreements came thick and fast. The EC was establishing itself as the leading institution in post-Communist Eastern Europe. Under the expanded rubric of security it was already fulfilling a security role and this fuelled momentum for it to take a larger role. With its lack of military capabilities, the EC inevitably emphasized the “new” aspects of security. Within them, it also included the mission to extend democracy, market economies and cooperation as far to the East as possible and especially to the tottering Soviet Union to meet the unexpected changes of the collapse of a nuclear superpower. The international context of the collapse of Yugoslavia was therefore very complicated and rapidly changing . The fact that the former Yugoslavia was not its member counted little in the face of the new challenges the EC was facing at the time. Apart from this, all actors of the Yugoslav drama accepted the work of the Badinter Commission as legitimate. Only Serbia denied its legitimacy, but only after Badinter’s first opinion on 29 November 1991. Serbia denied the legitimacy of Badinter’s work because she apparently seems to have hoped that the Commission would

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International Criminal Tribunal”. *The Fletcher Forum of World Affairs*. Vol. 22 No. 1 (Winter/Spring 1998) pp. 45-65 at 50-51.

dogmatically apply the international criteria for statehood by recognizing unconditionally the right to territorial status quo on behalf of the Yugoslav federation (then controlled by Milosevic's regime in Belgrade). The opportunities and uncertainties arising from the end of the Cold War were followed also by an enthusiasm and a determination to do something about Yugoslavia's increasingly desperate position, but equally its power to set precedents could not be ignored by the EC officials.

However, Yugoslavia set no precedent. The work of the Badinter Commission, as noted, was a mixture of traditional and innovative approaches. In this context, the second group of authors who see the work of this body as politically motivated try in fact to deny the competent work the Commission did in essence. Being innovative and deciding politically are two different things. Badinter was innovative in a sense that it tried to achieve the goal of order and stability. To achieve these effects, it took as a reference point only former administrative borders of the Yugoslav republics. The same precedent was used elsewhere throughout history (Latin America, Africa and Asia, already discussed in the second chapter of this dissertation). This means that Badinter set up no precedent. It only applied the old rule into a new context and innovatively, not led by political considerations. The innovation consisted on the nature of new states that would succeed the former Yugoslavia: Should they be dictatorships as their predecessor? This dilemma was settled by the Commission through the suggestion given to the new successor states to take care of the rule of law, democracy, respect for human and minority rights. This further means that the legitimacy of the former Yugoslavia and that the EC efforts via the Badinter Commission were to be judged through new lenses: the goal of order and stability was linked by the Commission to the liberal ideas of rule of law, democracy, free market economy, respect for human and minority rights.

This linkage was due to the fact that the EC and its Badinter Commission had no military force to back up the issued rulings. This seems to have forced the EC to turn more towards liberal political ideas and liberal economics. This by no means reduced the long-run effects on the Yugoslav crisis of the Commission's

rulings. We shall see this when we discuss the EC's policy on recognition and its sanctions regime in the penultimate section of this chapter. This initial response of the EC through its organ, the Badinter Commission, only shows that the EC before December 1991, and some time after it, has mostly relied on *realpolitik* considerations translated into concrete liberal values as described above, not the opposite. Such an approach was conditioned by the EC's lack of a credible military force, such as NATO. The role of the liberal values was prominent. Hopes for establishing democracy, free market economies, protecting human rights and the encouragement of other standard features of the liberal states were high on the agenda of the newly emerging states and, therefore, an important motivating factor in Badinter's work throughout. In post-Cold War Europe, traditional power and security politics were considerably redefined and replaced by the new emphasis on political integration and economic interdependence.

The Badinter Commission did nothing new in yet another respect, that is, in the sense of the concepts it further crystallized (the criteria for international statehood) and which form another aspect of criticism leveled against it by the third group of the authors under discussion. As we shall see in the following section, the Commission did not negate or misapply the traditional criteria for statehood. It instead took them for granted once the Yugoslav wars of succession started. True, it downplayed the principle of governmental effective control as a precondition for international statehood. This, however, was a logical attitude because had it accepted this classical criteria as valid, then it would have meant that the EC would have been taking the aggressor's side, that is, Milosevic's Serbia. This was not new for the Yugoslav case alone. As noted earlier (see, *infra* p. 14), the institution of the so-called premature recognition existed in Africa during the decolonization process and was aimed at preventing the colonial states in order to further keep colonies under their control. What is new in the Yugoslav case, however, is that Badinter linked the application of these traditional criteria to some liberal values, a case clearly missing during the decolonization process. Even if these were to be pure political conditions, which

was not the case, again this would be nothing new because in the past there have been cases of recognition of states under political conditions. The drafting of the Guidelines on Recognition, applied by Badinter throughout, stating that the EC and other members of the international community should take into account, upon their decision to grant recognition, “political realities in each case”, must be read as implying that some parts of former Yugoslavia were no longer under effective control of the Federal government in Belgrade by the time this document was issued by the EC. By the end of 1991, apart from Serbia, Montenegro, Kosova and Vojvodina, the rest of Yugoslavia was more or less under the control of new authorities. True, the international community could not deny that some part of Croatia and Bosnia-Herzegovina were under Serbian control, but not their capitals. It is an established international practice that emerged from the decolonization period saying that no recognition should be granted to the authorities in control of other parts of the country, not the capital city. Had the Badinter Commission pursued the old rule of total effectiveness than it would have meant support for the Serbs who already had an upper hand and a permission to further speed up their policy of ethnic cleansing through military means, which in fact they did later in an apparent hope that their policy of *fait accompli* shall be recognized.

The Badinter Commission did nothing in fact but elaborated more than ever in the past on the practical side of self-determination, concerning one case only - former Yugoslavia. This is obvious from the first ruling of the Commission stating that Yugoslavia was in the process of dissolution since 1991, the dates of succession of other republics to Yugoslavia being also elaborated later in the 1993 rulings. Other aspects of the Yugoslav self-determination, such as succession, the issue of independence referendums, protection of human and minority rights and other liberal values, the respect for former republican administrative borders, etc., represent without any doubt an integral part of the Yugoslav crisis, its conflict and war (s) over how to implement self-determination and to what extent its implementation becomes a destabilizing factor in international relations. Badinter’s rulings should therefore be seen as having had

a wider appeal than in the Yugoslavian context, not because of their legally binding force but rather due to the moral credibility of the EC on whose name Badinter acted throughout and the competence and professionalism of the Commission itself. It is true that the rulings did not contain any justification. No reasons were given to them upon which to judge as to the possible motives that might have been a driving force for Badinter's decision. This is, in fact, unusual for an international arbitration. However, this does not diminish the real value of the Commission's work and its contribution given to the development of self-determination.

The aspects of the Yugoslav self-determination chosen as prime for elaboration in the sub-sections to follow are not less important compared to other issues that this case raised. Both are equally important and represent another facet of the Yugoslav self-determination. However, the three selected topics below best reflect the essence of the case under study. There are several reasons for this choice. One is that the type of the Yugoslav self-determination is better understood through the selection we make here: self-determination does not mean only independence. It has other forms of manifestation short of independence (internal self-determination) and should as such be equally treated, especially when it comes to the practical implementation of self-determination. The next reason is that the limits and the subjects entitled to self-determination are better comprehended through such an institution as *uti possidetis juris*. Finally, the topic concerning the democracy, rule of law, respect for human and minority rights serves for a better understanding of the liberal side of self-determination that the EC gradually imposed on the Yugoslav actors. Through the imposition of these liberal sides, the EC delegitimized at the same time other non-liberal concepts pursued by some of the Yugoslav actors (Serbia and Montenegro). The understanding of this topic, in essence, represents a *condictio sine qua non* of Yugoslav self-determination and its almost universal appeal at the present.

### **2.1. Self-Determination**

The issue of self-determination was dealt with by the Commission in two aspects. One concerned the former Yugoslavia itself and its international legitimacy by the time the crisis in the country began to be seen as an issue of international concern resulting from the changes in the internal dynamics of the Yugoslav state. The other related to the self-determination of the Yugoslav republics (external form of self-determination) and other forms of self-determination short of independence (internal self-determination). In both cases, the Commission's response was based on liberal views regarding self-determination.

Throughout the second half of 1991 there were negotiations going on among the Yugoslav republics with the view of reforming the common state. In these negotiations, Serbia held the view that Yugoslavia should be an even tighter federation and that its claims were legitimate because they were the only ones favoring the preservation of an internationally recognized independent and sovereign state - the Yugoslav state. The Serbs seem to have perceived the international law and the norm on territorial integrity as favoring their views. This became obvious from their reaction to the attempted secession of Slovenia in June 1991.<sup>483</sup> The Badinter Commission ruled against the Serb interpretation of

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<sup>483</sup> The international support for the territorial integrity of the Yugoslav federation voiced strongly before and some months after Slovenian and Croatian declarations of independence (June 1991) by the representatives of influential states and organizations, including the United States, the EC and the CSCE, undoubtedly strengthened Milosevic in his perception that flexibility was not required in negotiations about the future of Yugoslavia. This position of the international community was transmitted to the Serbian leadership by the US officials. On June 21, 1991, the US Secretary of State, *James Baker*, while visiting Belgrade, strongly endorsed a declaration adopted two days earlier at the Berlin Meeting of the CSCE, which expressed support for democratic developments and the territorial integrity of Yugoslavia. This meant no international support for secessionist republics of Slovenia and Croatia. Since this was the case, the Serbian leadership had the central army, the Yugoslav People's Army (the YPA or, in Serbo-Croatian: JNA) declare martial law against Slovenia. Cf. *The Berlin Statement on the Situation in Yugoslavia*, adopted at the 1st meeting of the Council of Foreign Ministers of the CSCE, held from 19-20 June 1991. Text provided by the Albanian Foreign Ministry, Tirana. See, also, the *Reference Manual of the Conference on Security and Cooperation in Europe. CSCE Decisions - Part V.: Chronological Review and Final Word*. (Vienna 1994), pp. 272-291. For the comments on this, see, James Gow, *Triumph of the Lack of the Will*, pp. 166-167, 240-241.

The US and international position as expressed above has later been justified on the ground that Western world had feared that Yugoslavia's dissolution might have had a negative impact on the ongoing events in the Soviet Union. This view was expressed also by Baker

international law regarding the issue of territorial integrity and self-determination of an existing state. The Commission was at the same time the first international institution to flatly deny the legitimacy of Yugoslavia, based on the liberal tradition, that is, on the fact that the very legitimacy of any government must rest upon the consent of the governed who have an inalienable right to withdraw the consent whenever they wish.<sup>484</sup> Throughout 1991 and long after it, the Serbs claimed that the right to self-determination had been consummated by the mere fact of Yugoslavia's formation whose further existence was strongly protected by the norms of positive international law.<sup>485</sup> By the time of the first ruling of the Commission, Serbia had altered the internal balance of forces within Yugoslavia (military, economic and political). The internal balance militating entirely in favor of Serbia rendered obsolete and arcane any further international support for the territorial integrity and self-determination of the Yugoslav state as a whole. Its existence put other Yugoslav republics into a colonial position vis-à-vis Serbia<sup>486</sup>.

Apart from the internal dynamics of the Yugoslav society, the external changes in the internal environment have also played an important role in the process of delegitimization of Yugoslavia. With the end of the Cold War, the consensus on the issue of territorial integrity of the existing states was weakened

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himself. See, David Gompert, "How to Defeat Serbia" *Foreign Affairs*. Vol. 73 No. 4 (July/August 1994) p. 33. For Baker's view, as quoted, see in Damir Grubisa, "Diplomatija na Kraju Povjesti". *Erazmus* 18 (Zagreb 1996), p. 91. This position of the Western countries was rightly compared by an author with the position of the Holy Alliance over the same border issue, and was kept unaltered well until the first ruling of the Badinter Commission (November 1991). See, Mark Almond, *Europe's Backyard War*, p.35.

<sup>484</sup> See, Michael Freeman, "The Right to Self-Determination in International Politics: Six Theories in Search of a Policy". *Review of International Studies*. 25 (1999), pp. 335-370.

<sup>485</sup> For an excellent overview of the Serb position on the so-called consummated right to self-determination within the Yugoslav context, see, Vladimir Ibler, "Pravo Naroda na Samoopredeljenje i Zloupotreba tog Prava" *Politicka Misao* Vol. XXIX No. 2 (Zagreb, 1992) pp. 53-78 at 67-73. This theory of the consumed right to self-determination, in essence, is a Soviet product that emerged during Stalin's times with a views to justify the Communist dictatorship and the imposed rule over non-Russians. See, Blerim Reka, *E Drejta e Vetevendosjes: Dimensioni Nderkombetar i Problemit te Kosoves*. *Studim Komparativ* (Shkup: Interdiscont, 1996) pp. 57-58

<sup>486</sup> This liberal view focusing on the very nature of a government, as opposed to the unconditional self-determination preserving an existing state, is expressed by *Gross Espell*, the UN Special Rapporteur of the 1970s, in his paper entitled "The Right to Self-Determination. Implementation of United Nations Resolutions". See, *UN Doc. E/CN.4/Sub.2/405/Rev.1/1980*, para. 90. For an excellent account of the liberal views on the Yugoslav dissolution, see, also, John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, pp. 74-162.



and shifted into the realm of good governance, at least concerning former Communist federations, Yugoslavia included. Hedley Bull's assumption, saying that international law as an institution is very important only if its further application does not have as a consequence the break down of the international order, seems very insightful when judging the legitimacy of Yugoslavia from the standpoint of international law.<sup>487</sup> Had the international community upheld the position it did at the beginning of the crisis and thereafter until November 1991, than it would have definitely contributed to the disorder in international relations since the further existence of the Serb-dominated Yugoslavia was becoming an obvious destabilizing factor. As soon as the Soviet threat disappeared, Yugoslavia was not able to any more have adverse effects elsewhere; its international legitimacy diminished and eventual "breach" of the international law as conceived of during Cold War years had, in fact, only the stabilizing function in international relations. Order was the goal of the EC and of the rest of the international community throughout 1991, first by trying to promote Yugoslavia's peaceful transformation into a democratic and decentralized state and, when this failed, through containing the conflict within Yugoslavia's borders.

Following the failure of Yugoslavia's transformation, the Commission made public the EC's views on the very content of self-determination to be pursued in the Yugoslav case. Concerning the policy of containment of the conflict and the mitigation of its consequences, the Commission had no choice but to resort to the old rule of *uti possidetis juris*. On the top of these matters came the Commission's task regarding the further status of the Yugoslav state, thus shifting the right to self-determination, in both forms of its manifestation, from the central government agencies in Belgrade onto the Yugoslav republics. By resorting to the self-determination based on the administrative territories of former Yugoslav republics, Badinter implied that the right to secede varies with, and is dependent upon, the degree of autonomy recognized (or obtained) from the central government (no matter the manner, violent or peaceful, through which this degree of autonomy is realized). By the same token, concerning the fate of

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<sup>487</sup> Cf. Hedley Bull, *Anarchical Society*, pp. 127-161.

the Yugoslav state, the Commission had to observe that the “existence of the State implies that federal organs represent the components of the Federation and wield effective power”. Since the composition and functioning of the essential organs of the Yugoslav federation by November 1991 no longer satisfied the “requirements of participation and representativeness inherent in a federal state”, the Commission came to the conclusion that “the Socialist Federal Republic of Yugoslavia is engaged in a process of dissolution”.<sup>488</sup> It is obvious that the possession of a government in the effective control of its territory and population (the classical criteria for an international statehood) have in full been taken into account by the Commission during the process of evaluation of the legitimacy of the Yugoslav state. This became more apparent when Badinter further declared that “the process of dissolution of the SFRY referred to in Opinion No. 1 of 29 November 1991 is now complete and that the SFRY no longer exists”, because “the existence of a federal state, which is made up of a number of separate entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population, constitute themselves as sovereign and independent states with the result that federal authority may no longer be effectively exercised”.<sup>489</sup> When it came to the evaluation of the existence of the independent statehood of the Yugoslav republics, no such measurement criteria were used. The Yugoslav republics had to demonstrate not positive or empirical statehood, as did have to the Yugoslav federation, but rather a negative or juridical one in the way described in the Chapters II and III of this dissertation. This attitude over the statehood of the Yugoslav republics definitely crystallized when the Commission faced the choice between the territorially based self-determination and that based on ethnicity. The issue was raised by Serbia, asking the Commission to answer the question as to who were the subjects entitled to self-determination within Yugoslavia: republics or nations?

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<sup>488</sup> *Opinion No. 1 of the Arbitration Commission of the Peace Conference on Yugoslavia*. Paris, 29 November 1991.

<sup>489</sup> *Opinion No. 8 of the Arbitration Commission of the Peace Conference on Yugoslavia*. Paris, 4 July 1992.

Serbia's foreign minister, in a letter addressed to the Commission using the Hague Conference as intermediary, made public the Serbian views on (ethnically-based) self-determination. The Commission had on 20 November 1991 received this letter from Lord Carrington, Chairman of the Conference. The letter requested from the Commission an opinion on the following question put forth by the Republic of Serbia:

“Does the Serbian population in Croatia and Bosnia-Herzegovina, as one of the constituent peoples of Yugoslavia, have the right to self-determination?”<sup>490</sup>

The Commission had in general addressed the issue of self-determination in its first opinion concerning Yugoslavia as a whole. This time, however, the Commission had to render more concrete its own previous ruling, especially those parts speaking as to who were to be the subjects entitled to self-determination. Or, to use Badinter's own wording, the Commission had to answer who were within the Yugoslav context “the communities that possess a degree of autonomy and, moreover, participate in the exercise of political power within the framework of institutions common to the Federation”.<sup>491</sup> To effectuate this, the Commission drew a distinction between minorities and the already established and territorially defined administrative units of a federal nature, that is, the Yugoslav republics, whose population was as a whole entitled to full independence if certain procedures were followed, including the holding of a fair and internationally supervised referendum in which all communities could participate on an equal footing.<sup>492</sup> On the other hand, to temper the possible consequences for a minority finding itself suddenly within a new state, the Commission ascribed a second level of content to the right to self-determination within the Yugoslav context. It confirmed that all members of minorities were entitled to benefit from the internationally recognized human and minority rights

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<sup>490</sup> *Opinion No. 2 of the Arbitration Commission of the Peace Conference on Yugoslavia*. Paris, 11 January 1992. Para. 1.

<sup>491</sup> *Opinion No. 1, Para. 1.d.*

<sup>492</sup> See, *Para. 2 (1-4) of the Opinion No.4 on International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and Its Member States*. Paris, 11 January 1992.

standards, the right to choose their nationality being included. The commission, therefore, answered the above question asked by Serbia declaring:

“ (i) that the Serbian population in Bosnia-Herzegovina and Croatia is entitled to all rights concerned to minorities and ethnic groups under international law and under the provisions of the draft Convention of the Conference on Yugoslavia of 4 November 1991, to which the Republic of Bosnia-Herzegovina and Croatia have undertaken to give effect; and

(ii) that the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including where appropriate, the right to chose their nationality”<sup>493</sup>

Although the Commission referred to the international standards on human and minority rights as the basis of the internal right to self-determination of the Serbs living in these two republics, it did not further specify the overall extent of this right (the issue of nationality being an exception to this). This extent was defined later in the Commission’s Opinion no. 4, dealing with the application for international recognition submitted by Bosnia-Herzegovina. On that occasion, Badinter again repeated the Commission’s commitment to the protection of human and minority rights of all living in former Yugoslavia. This time, though, the right of minorities and ethnic groups to equally participate in government took prominence, thus further filling the content of the Yugoslav self-determination. Since no referendum on independence had taken place that would have given a voice to these minorities and groups, the Commission found that the popular will for independent statehood of Bosnia-Herzegovina had not been “clearly established”.<sup>494</sup> In this way, the Commission juxtaposed both forms of self-determination against each other, making the validity of one form conditional upon the other. In this regard, the Commission indicated that the above conclusion on the popular will, a precondition for the realization of both forms of self-determination, could be changed if an internationally supervised referendum,

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<sup>493</sup> *Opinion No. 2 of the Arbitration Commission, Para 4.*

open to all citizens of Bosnia-Herzegovina without discrimination, were held. This referendum, as discussed, took place on March 1, 1992, without the participation of the Serbs who boycotted it. They opted therefore for a full-scale ethnic self-determination, as planned, whose implementation was done through violence and war. This was against all the prescriptions of the international community.

## **2.2. *Uti Possidetis***

The application of *uti possidetis juris* beyond the colonial context has occurred only when former Communist federations (Soviet Union, Czechoslovakia and Yugoslavia) dissolved following the Cold War. While Czechoslovakia dissolved peacefully and the Soviet Union did not face deep and violent dissolution, both being the result of an agreement between the interested parties, the case of Yugoslavia brought to the forefront the essence of the nature of Yugoslav wars and the positive function of *uti possidetis* principle. They were, in essence, wars over territory and the application of *uti possidetis juris* was exactly applied in an effort to mitigate and control these wars.

One side in these wars, the Serbs, denied the legitimacy of Yugoslavia's internal frontiers, while the rest of the Yugoslav republics accepted their validity and legitimacy. Or, to put it another way, some actors of the Yugoslav self-determination were against the territorial *status quo* existing at the time of Yugoslavia's collapse and others were against this change in the territorial *status quo*. The ruling of the Badinter Commission went along the lines of this latter group of the Yugoslav actors, declaring firmly that "whatever the circumstances, except where the states concerned agree otherwise, the right to self-determination must not involve changes to existing frontiers existing at the time of independence (*uti possidetis juris*)",<sup>495</sup> so that, stressed the Commission in its third opinion answering the question asked by Serbia, "except where otherwise

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<sup>494</sup> *Opinion No. 4 on the International Recognition of the Socialist Republic of Bosnia-Herzegovina, Para. 4.*

agreed, former borders (here it makes a specific reference to the internal borders between Serbia and Croatia and between Serbia and Bosnia-Herzegovina) become international frontiers protected by international law” This stance was based on the respect for territorial *status quo* ( the “photograph of territory” in the African case) and the principle of *uti possidetis* itself, which, according to the Commission, is connected with the phenomenon of independence. It was, said the Commission, the precedent of the International Court of Justice in the *Burkina Faso v. Republic of Mali case*. Behind this reasoning lies, like in Africa, the prevention of conflicts over borders among newly independent states that emerged from former Yugoslavia, maintained the Commission.<sup>496</sup>

To further strengthen this position, the Commission expressly noted that only through an international recognition of former administrative borders as international ones, protected by Article 2 (4) of the UN Charter, could the conflicts and wars over territories be prevented.<sup>497</sup> This view also represented a political aim of the European leaders since June 1991. This European stance had been transmitted to the Belgrade authorities by British officials and meant that only the federal republics of Yugoslavia would be invested with the right to self-

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<sup>495</sup> *Opinion No. 2 of the Arbitration Commission, Para. 2.1.*

<sup>496</sup> *Opinion No. 3 of the Arbitration Commission on the Peace Conference on Yugoslavia, Para. 2.2.* This fear about eventual conflicts over borders, Badinter himself shared with Steven Ratner in an interview on 29 June 1994. See, Steven Ratner, “Drawing a Better Line: Uti Possidetis and the Borders of New States” *American Journal of International Law* Vol. 90 No. 4 (October 1996) pp. 590-624, at 614, footnote 192.

<sup>497</sup> *Ibid.* pp. 614. Those authors who have criticized the application of *uti possidetis juris* in the Yugoslav case, usually focus their attention on the appropriateness of such an application, claiming that the goal of preventing the conflict and war had not been achieved. These authors should however admit that the goal was achieved, certainly not as the Commission would like to, in a long run by the mere fact that its application set out the fixed territorial limits for a legitimate exercise of self-determination. Its application has certainly yielded the results. The conflict over borders was not caused by the application of *uti possidetis juris*, but because the issue of borders had been high on the political agenda of the Yugoslav leaders, long before the process of dissolution of Yugoslavia started. The issue of Yugoslav internal borders was also a hot spot during the January-June 1991 negotiation on the restructuring of the Yugoslav state. The ruling of the Commission was therefore nothing but a response to this political agenda of the Yugoslav leaders, showing the limits of the legitimate exercise of self-determination. See, Steven Ratner, “Drawing a Better Line: Uti Possidetis and the Borders of New States”, pp. 596-691, 613-614, 616, 623-624; Gerry J. Simpson, “The Diffusion of Sovereignty. Self-Determination in the Post-Colonial Age”. In Robert M. Corquodale (ed.), *Self-Determination in International Law*. (Dartmouth: Ashgate 2000) pp. 585-616 at 587; Peter Radan, “Yugoslavia’s Internal Borders as International Borders. A Question of Appropriateness”, p.137. 19p.

determination, meaning full independence.<sup>498</sup> The problems in practice arose not from the utilization of the African precedent to indicate the entities fulfilling the standard conditions for international statehood but from the resistance put by some of the Yugoslav actors to the application of *uti possidetis juris* in the Yugoslav context.<sup>499</sup>

It should be admitted, however, that the Yugoslav case has historically been different from that of the Soviets. In the former case, as opposed to the latter, only three territorial rearrangements took place. This means that Yugoslavia's internal borders were more stable than elsewhere in the Communist

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<sup>498</sup> It is sure, though, that the Badinter Commission based its rulings on the elementary assumption of international law and politics, which says that states are considered only those entities who, *inter alia*, fulfill the essential criteria for international statehood (territory, population, and a government in control of this territory and population). In this regard, it had to say the following:

"1. In its opinion No. 1 of 29 November 1991, the Arbitration Commission found that:  
-a state's existence or non-existence had to be established on the basis of universally acknowledged principles of international law concerning the constitutive elements of the state;

- ...  
-the composition and the functioning of essential bodies of the Federation no longer satisfied the intrinsic requirements of a federal state regarding participation and representativeness;

-recourse to force in different parts of the Federation had demonstrated the Federation's impotence;

...  
-the existence or disappearance of a state was, in any case, a matter of fact.  
-2. The dissolution of a state means that it no longer has legal personality, something which has major repercussions in international law. It therefore calls for the greatest caution.

The Commission finds that the existence of a federal state, which is made up on a number of separate entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population, constitute themselves as sovereign states with the result that federal authority may no longer be effectively exercised.

By the same token, while recognition of a state by other states has only declarative value, such recognition, along with membership of international organizations, bears witness to these states' convictions that the political entity so recognized is a reality and confers on it certain rights and obligations under international law". Para 3 of the *Opinion No. 8 of the Arbitration Commission of the Peace Conference on Yugoslavia*. Paris, 4 July 1992.

<sup>499</sup> This precedent, by analogy, was extended to the former Soviet Union and Czechoslovakia, an attitude firmly endorsed by the Guidelines on recognition. The new states of former Soviet Union accepted *uti possidetis juris* in 1993 as a principle that would be a valid answer in their mutual relationships over territorial issues. This was stated expressly in Article 3 of the Charter of the Commonwealth of Independent States (June 22, 1993), which affirms the "inviolability of states' borders, recognition of existing borders and rejection of unlawful territorial acquisition". At the same time, the *Alma Atta Agreement Establishing the Commonwealth of Independent States* (December 1991) includes similar provisions. Texts reprinted in *European Journal of International Law* Vol. 4 No. 3 (1993), Annex: "Decision of the Council of Heads of States of the Commonwealth of Independent States", pp. 418-430. For the comments, see,

world, especially more stable than in the Soviet Union. Although some of the issues to be discussed below are already discussed in Chapter IV, it is worth restating them in clearer form for a better comprehension of the manner in which the African precedent was applied in the Yugoslav case.

Two of the above-mentioned territorial arrangements belong to the pre-WW II period, while the last one has to do with Communist Yugoslavia. From 1921 to 1929-31, the Yugoslav state was divided into 33 regions, or so-called *oblasti* that were effectuated mainly in disregard of ethnic and historical considerations. Bosnia-Herzegovina, for its support given to the 1921 Constitution, was left in its 1878 (Congress of Berlin) borders, although divided into four *oblasti*. Another exception was Serbia, who retained its pre-1918 borders due to its privileged position in the new Kingdom. After 1929-31, King Alexander of Yugoslavia introduced the system of provinces, known as *banovine*. The *banovine* system abolished entirely the concessions made to Bosnia-Herzegovina. The *banovine* names were given after the main Yugoslav rivers and waterways. There were nine *banovine*. The last one was formed in 1939, granting to Croatia a special federated status within the Kingdom of Yugoslavia. The *Croat Banovina* enjoyed semi-federal status. The *Sporazum* (the "Agreement") establishing the *Croat Banovina* set out in essence a federal arrangement between Croatia and the rest of Yugoslavia. The rest of the country fell under the provisions of the 1929-31 laws enjoying no distinct territorial identities based either on history or ethnicity.

Following WW II, Tito and Communist-led Partisans made a decision to divide the country into six republics and two Autonomous Provinces. The latter was named "oblast" and the former "province", with very little difference regarding the legal position in terms of self-determination as foreseen by the 1946 Constitution of Yugoslavia (only republics had a formal right to secession). The borders of the Republics were considered inviolable, as opposed to the Autonomous Provinces which reached that stage only after the promulgation of

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Sergei A. Voitovich, "The Commonwealth of Independent States: An Emerging Institutional Model" *European Journal of International Law* Vol, 4 No. 3 (1993) pp. 418-430.



the 1974 Constitution. These internal borders were designed to increase political, social and economic cohesion of Yugoslavia. This practically means that these borders were considered in function of strengthening the brotherhood and unity among Yugoslavs, a new Yugoslav identity based on Communist values. This was stated on several occasions by the highest Communist officials of Yugoslavia, Tito himself included. No serious problems over these borders arose for most of the time of Yugoslavia's existence. This shows that they were widely accepted as a basis of new identities and internal loyalties.<sup>500</sup>

The Badinter Commission and the international community as a whole, Europeans particularly, respected the same premises in the Yugoslav case as those applied in Africa: since Yugoslavia was a multiethnic federation, the only solution was to take the African *uti possidetis juris* as a reference point in the process of the territorial delimitation of the new sovereign states and their quests for self-determination. In practical terms, this meant that *uti possidetis juris* was to refer only to the Yugoslav republics, not the Autonomous Provinces. The Republics were the only ones constitutionally defined as states in all former Communist federations. The difference with Africa, however, lied in that in this case some corrective criteria were put foreword by the international community, whose fulfillment was a precondition for full independence. The rule of law, democracy, respect for human and minority rights were now to be considered as a basis for the international legitimating of the independent statehood of new states emerging from the collapsed (Communist) federations. By the same token, former Yugoslav republics were by now to give guaranties as to the above issues if they were to be internationally accepted as new members of the international community. However, no effective mechanism for the implementation of these guaranties existed in practice: economic sanctions proved unsuccessful over the short period of time, while the use of military means resulted in a long waiting period due to the lack of consensus among the drafters of this new model of *uti*

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<sup>500</sup> See, more on this, in Peter Radan, "Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness" p.137. 19p.

*possidetis juris*.<sup>501</sup> Only when it was seen that the Serbs of Croatia and Bosnia-Herzegovina were bent on the wrong interpretation of (or the resistance to) Badinter's self-determination (the Serbs thought apparently that only republics would have the right to full independence, notwithstanding the way they were created), did the international community intervene militarily to protect the territorial integrity of Bosnia-Herzegovina. By the same token, the further dismemberment of Croatia was prevented by allowing it to destroy the illegal Serb entities there (known as "Republika Srpska Krajina"). Croat military actions against the Serb entities in Croatia were seen in the West as a useful substitute for Western action against the Serbs, which in turn more than justified covert military assistance to Tudjman.<sup>502</sup> In the Bosnian case, however, the international

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<sup>501</sup> Lord Owen, one of the most influential of internationals in the Yugoslav drama (1992-1995), and former President Francois Mitterrand of France were the ones who have ardently advocated the opposite attitude to the boundary issues in former Yugoslavia. It did not matter that the Yugoslav *uti possidetis* had been a brain child of their respective countries. Both favored the approach that would make the right to secession conditional upon the previous settlement of the issues of borders among the Yugoslavs. See, Petar Radan, "Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness", p.137, 19p., pp.7-9 out of 14. However the two failed to notice the difference between *uti possidetis juris* and the right to secede, latter's recognition included. The issue of borders is different, having a separate function from the recognized right to secede. In the first case, the issue at stake is the succession to previous administrative borders for the sake of order and stability in interstate relations. In the second, though, one has to do with a political act of the recognizing state (or states) confirming the existence (or non - existence) of a given factual situation calling for secession of a given entity.

The above approach of the two internationals was different as well from the then ongoing plans in Europe over the same issue. Such was the case with the 1993 plan put forward by the then French Prime Minister *Edward Balladour*, who proposed *Pacte sur la Stabilité en Europe*. The Pact was accompanied by a number of bilateral agreements concerning individual boundary disputes and minorities problems following the recognition as independent states of former Yugoslav republics. The Pact was designed to provide a way to temper the side-effects of the EC's recognition policy since it foresaw economic incentives and technical assistance for a durable settlement of the conflicts in Central and Eastern Europe. These lofty goals, nevertheless, were not pursued further so that the Pact was never implemented in practice. See, more on this, Martti Koskenniemi, "National Self-Determination Today: Problems of Legal Theory and Practice". In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 555-583 at 583; Kemal Sehadi, "Ethnic Self-Determination and the Break Up of States", pp. 75-85; Stephanos Stathatos, "Pact on Stability in Europe" *The Southeast European Yearbook: 1994-95* (Athens: ELIAMEP, 1995) pp. 99-105.

<sup>502</sup> See, Jane M.O. Sharp, *Honest Broker or Perfidious Albion? British Policy in Former Yugoslavia*. (London: Institute for Public Policy Research, 1997) p.50. The gradual military defeat of Croatia's Serbs during 1995, culminating with the Summer 1995 total defeat at the hands of Croat forces, is closely connected with the so-called *Z-4 plan* for the special status of the Serb-held regions in Croatia.

The then cochairmen of the International Conference on Former Yugoslavia, Owen and Stoltenberg, and the ambassadors of the US and Russia (*the Zagreb Four: Z-4*) began in late January 1995 to seek a lasting solution to the Krajina issue. The goal was to give the Krajina

military intervention came too late, after a fait accompli and a genocidal acts against the Bosniac Muslims. When the time came again to forcefully apply, and impose the respect for, *uti possidetis* in its complete form (covering the above-mentioned corrective criteria), a paradoxical situation emerged: Kosova was equated with the illegal Serb entities in Bosnia-Herzegovina and Croatia respectively as far as the international legal framework for the solution of its final status is concerned.

The lack of a real political and administrative organization in post-colonial Africa, inherited from the Berlin Conference (1844-45), did not make necessary the need for an attachment of any corrective criteria to the implementation of *uti possidetis juris*: the rule of law, democracy, and the respect for human and minority rights did not represent an important factor for the level of political and administrative organization existing in Africa (an area without state administration for most of the time of its existence). Apart from this, the African leaders knew long before independence what the territorial limits of their (colonial) self-determination would be so that they had to concentrate only upon the struggle against colonialism without taking into consideration the real interests of various ethnic groups living within the (former) colonies. In this state of affairs, the Cold War atmosphere exercised a great impact on East-West relations concerning

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Serbs a broad measure of self-rule while maintaining the formal unity of Croatia and permitting the refugees to return home. On 30 January 1995, the Z4 Ambassadors presented a Draft Agreement on the Krajina, Slavonija, Southern Baranja and Western Srem, but both sides rejected it. Zagreb rejected the package because it created a "state within a state" and thus violated the Croatian constitution. The Croatian Serbs also rejected the plan arguing that Krajina Serbs could not accept a return to Croatian sovereignty and Milosevic apparently did not want to recognize Croatian frontiers, thereby relinquishing his long-standing project for a Greater Serbia.

*Z-4 Plan* was seeking a compromise by emphasizing Croatia's territorial integrity, while seeking to assure the Serbian minority of its rights. It offered the rebel Serbs a broad measure of autonomy into parts of the territory where they formed a majority. Serbs living in other parts of the self-declared "Republika Srpska Krajina" would be expected to reintegrate into Croatia and the government in Zagreb would be forced to observe strict human rights legislation to protect the Serbian minority. In the autonomous Serbian region, the Serbs would have control over taxation, police, education, tourism, housing and public services and Zagreb would act for foreign affairs, defense, trade, transport and communications. Krajina would be demilitarized and the border with Bosnia-Herzegovina monitored. See, "Reuters", February 1, 1995 and February 9, 1995; Partick Moore, "The Winds of War Return" *Transition* Vol. 1 No. 5 (14 April 1995) pp. 32-37 at 36.

self-determination. In the Yugoslav case as well, the actors had some previous knowledge as to the limits of self-determination (as noted, since June 1991).<sup>503</sup>

There has existed a wide consensus on the issue, in an apparent belief that the African precedent would prevent further bloodshed in Yugoslavia and gradually put its process of dissolution under control. For internal self-determination as well (the rule of law, democracy, and the respect for human and minority rights), there was a wide consensus. The latter's implementation had to be guaranteed by the states emerging from former Yugoslavia. However, as noted, there were no mechanisms for the implementation of such guarantees. This, in practice, resulted in applying the principle of *uti possidetis juris* as in Africa, at least between 1991 and 1995. It is against this background of the corrective criteria concerning internal self-determination that the reasons for NATO military intervention against the Serbs should be examined (both in Bosnia-Herzegovina and FRY). This means that the military intervention has had, in both cases, as its purpose to impose, besides the respect for territorial integrity, the rules on internal self-determination (the rule of law, democracy, and the respect for human and minority rights).<sup>504</sup>

Why have the Yugoslav republics existing at the time when the process of Yugoslav dissolution started have been chosen as a reference point for the application of *uti possidetis juris*? As noted, apart from Serbia, the majority of the Yugoslav republics accepted the territorial *status quo* existing at the time of Yugoslavia's dissolution. This further meant that these republics were to be the would-be repositories of power by the time Yugoslavia dissolved. Serbian

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<sup>503</sup> British Foreign Secretary, *Douglas Hurd*, on a few occasions had urged the Yugoslav leaders to accept the African precedent when the OAU came into existence based on the respect for the previous administrative colonial borders. See, James Miall, "Sovereignty and Self-Determination in the New Europe". In Hugh Miall (ed.), *Minority Right in Europe : The Scope for a Transitional Regime* (London: Royal Institute of International Affairs, 1994) pp. 10-11; See, also, the speech of the Undersecretary of the Foreign and Commonwealth Office of Great Britain, held before the Parliament on January 1992. In that speech, the official British position was outlined with respect to Croatia's borders. But, at the same time, it was stated that the respect for former administrative borders of Croatia is a common stance of the European Community."United Kingdom Materials on International Law" (UKMIL), *63 British Yearbook of International Law* (1992) p. 719.

<sup>504</sup> For a similar view, see, also Martti Koskenniemi, "National Self-Determination Today: Problems of Legal Theory and Practice", pp. 555-583 at 580.

resistance to *uti possidetis juris* was grounded on the alleged artificiality of the internal borders of Yugoslavia.<sup>505</sup> In practice, though, this rejection of *uti possidetis* by the Serbs was a cost-benefit calculation in a hope to achieve territorial gains. In other words, the Serb argument coined in terms of the alleged artificiality of the Yugoslav internal borders, was nothing but a *realpolitik* approach, as it was that of other Yugoslav republics who were aware of the implications of this Serbian stance well before June 1991 while the negotiations on the redefinition of Yugoslavia were under way. No wonder then that the goal of *uti possidetis* in Yugoslavia was the same as that in Africa, that is, preventing the conflicts and bloodshed over borders. At the root of these conflicts rests the cost-benefit calculation of the parties as to the advantages of the territorial *status quo*. It took time, pressure from the outside world and, above all, human lives until the Serbs realized that they also have to accept the principle of *uti possidetis juris*. In order to depict this trajectory of the Serb attitude towards the internal borders of Yugoslavia, we shall make use of a full quotation from an author, Jeffrey Herbst, expressed in the African context but that clearly reflects the crux of the issue in the Yugoslav case of *uti possidetis juris*:

“The borders in Africa are often characterized as artificial and arbitrary on the basis of the fact that they do not respond to what people believe to be rational demographic, ethnographic, and topographic boundaries. However, borders are always artificial because states are not natural creatures. Therefore,

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<sup>505</sup> The then Serb-dominated “rump” federal presidency denied the validity of Badinter’s rulings, that is, the Presidency rejected the applicability of *uti possidetis juris* to internal borders of Yugoslavia since, it assented, they had been drawn up to meet policy considerations after WW II at the instigation of the Yugoslav Communist Party and without regard to ethnic consideration. Therefore, the Presidency considered them to be artificial creatures of Tito. See, “Position of SFR Yugoslavia on the Question of Internal Borders of Yugoslavia”. Belgrade, 30 December 1991. Text reprinted in *Review of International Affairs* Vol. XLIII, February 5, 1992 (Belgrade) p. 23. The issue of the artificiality of the Yugoslav internal borders has in fact been a Serbian discourse long before the case was on the agenda of the international community. Not only the 1986 Memorandum, but later on the eve of Yugoslavia’s break up the Serbian public was very active in the discussions on the “artificiality of Yugoslavia’s internal borders”. Thus, the Belgrade-based daily newspaper *Ilustrovana Politika* published a map on 12 February 1991 showing the future shape of Serbia. According to this map, Serbia would have the right to incorporate the bulk of Bosnia-Herzegovina and large parts of Croatia. Kosova as a whole was taken for granted, e.g., as a territory that without no doubt were to belong to Serbia.

it is important to judge boundaries - political creations - on the basis of their usefulness to those who created them. Based on this criterion, the current African boundaries are not arbitrary. The boundary system developed in 1885, represented a rational response by the colonialists because it served their political needs. The vast majority of borders have remained virtually untouched since that time because the system for the most part continues to serve the political needs of the colonialists and present-day African leaders. There is a chance that in the future African elites may find preservation of existing borders to be more costly than other alternatives, but a large number of political calculations will have to change first. Until then, Africa's 'rational' borders will be preserved".<sup>506</sup>

Will the political calculations in the former Yugoslav territory change in the near future? It is very hard to predict. For the time being, it seems unlikely that these calculations will change, at least for the foreseeable future matching the African case.

### ***3. Rule of Law, Democracy and the Respect for Human and Minority Rights***

As it could be seen from the above sections of this chapter, the issues of the rule of law, democracy and the respect for human and minority rights have been high on the top of the agenda of the Western countries in dealing with the Yugoslav self-determination. These liberal values dealt with the issues of self-determination itself, territorial limits for its implementation, as well as the international recognition of self-determination as such. Although at first sight these values looked as if they were of a procedural nature, in reality they were meant to fill the content of the Yugoslav self-determination. For the first time they

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<sup>506</sup> Jeffrey Herbst, "The Creation and Maintenance of National Boundaries in Africa", p. 692.

appeared in the rulings of the Badinter Commission and other documents related to the International Conference on Former Yugoslavia (ICFY), but were later on repeated throughout documents and other endeavors undertaken by the international community during the Yugoslav wars of self-determination.<sup>507</sup> The essence of the human rights approach to self-determination was to avoid the Westphalian concept of territorial exclusivity by focusing instead on manageable set of criteria for international statehood in the conditions of an increasingly interdependent world. This was done, to put it differently, to mitigate the territorially-based self-determination and its consequences. In line with this, self-determination in the rulings of the Commission that were followed by the international community at large was not perceived as an end in itself reflecting the preference for a homogenous, independent and small "nations states".<sup>508</sup> To be able to have a universal application without massive discrepancy, the Commission viewed self-determination from the opposite perspective. In its

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<sup>507</sup> Democracy, the rule of law and respect for human and minority rights were the basic values the West offered to those Yugoslav republics wishing to become independent states. Apart from the opinions of the Badinter Commission, respect for these values had been strongly expressed in the Guidelines on Recognition. These values were then inserted in the constitutions of the Yugoslav republics wishing to become independent and sovereign states, a practice followed almost without exception by all former Communist countries. See, Vladlen S. Vereshchetin, "New Constitutions and the Old Problem of the Relationship Between International and National Law" *European Journal of International Law* Vol. 7 (1996) No. 1 pp. 29-42; Aeyal M. Gross, "Reinforcing the New Democracies: the European Convention on Human Rights and the Former Communist Countries – A Study of Case Law" *European Journal of International Law* Vol. 7 (1996) No. 1 pp. 89 -103; Menno T. Kamminaga, "State Succession in Respect of Human Rights Treaties" *European Journal of International Law* Vol. 7 (1996) No. 4. pp. 469-485.

<sup>508</sup> As noted earlier in this chapter (see the *uti possidetis* issue), the Serbian government posed two questions to the Commission, one concerning the borders and the other concerning the issue of self-determination. On the issue of self-determination, the Serbian government asked the Commission as to whether "the Serbian populations in Croatia and Bosnia-Herzegovina were entitled to benefit from the right to self-determination". The Commission had already addressed the problem of self-determination in abstract when rendering the second opinion. In this case, however, the Commission concluded that "the Serbian populations of Bosnia–Herzegovina and Croatia have the right to benefit from all the rights recognized as belonging to minorities and ethnic groups by international law and by provisions of the Draft Convention of the Conference on Peace in Yugoslavia" and, further, "that the republics ought to grant to the members of these minorities and ethnic groups the totality of human rights and fundamental freedoms recognized by international law, including as the case may be the rights to choose their nationality". This type of self-determination granted to the Serbian people, that is, the right to internal self-determination was more apparent when it came to the discussion of the application for international recognition of Bosnia-Herzegovina. In this regard, the Commission based its ruling on the right of minorities and ethnic groups to equal participation in government. Cf. Paras. 3 - 4 of *the Opinion No. 2 and Para. 4 of the Opinion No. 4 of the Commission*.

views, self-determination was a means to an end, the end being order and stability through the promotion of a democratic, participatory political and economic system in which the rights of individuals and the identity of minority communities shall be protected.<sup>509</sup> In this sense, the Yugoslav self-determination did not mean only independent statehood, but the exercise of what is termed "functional sovereignty". This functional sovereignty assigned to sub-state groups the powers necessary to control political and economic matters of direct relevance to them, while bearing in mind the legitimate concerns of other segments of the population and the state itself.<sup>510</sup> This meant that the Commission was against further partitioning along ethnic lines of former Yugoslav republics. In this regard, it fully endorsed the Judgment of the International Court of Justice of 22 December 1986 in the already - mentioned case between Burkina Faso and Mali, stating that the obvious purpose of the principle of non-violability of the previous administrative borders was "to prevent the independence and stability of new states being endangered by fratricidal struggles".<sup>511</sup>

In some respects, this functional sovereignty reflects the "principle of subsidiarity" developed within the EU and the old injunction that "government

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<sup>509</sup> The Commission did not in fact use the same terms as we do here. In addressing the above question of Serbia concerning the rights to self-determination of the Serbian peoples living in Bosnia-Herzegovina and Croatia, the Commission drew a distinction between minorities and entities that were a territorially defined administrative units of a federal nature by the time the former Yugoslav state dissolved, that is, the federated republics of former Yugoslavia. The latter were entitled to a full external-type of self-determination, while the latter not. The Commission tempered the bad consequences for a minority suddenly finding itself within a new state by ascribing a second level of content to their right of self-determination. This level was connected to the preservation of minorities' identity and culture. Cf. Paras. 3 to 4 of the Opinion No. 2 and Para. 4 of the *Opinion No. 4 of the Commission*.

<sup>510</sup> In fact, the Commission clearly referred to the so-called Carrington Proposal (its chapter II on human rights). Cf. Para. 2. 2. of the Opinion No. 2 of the Arbitration Commission. Chapter II of the Carrington Proposal, on the other hand, specified to the details the rights and duties of the minorities and ethnic groups. This chapter, in fact, was named as "Human Rights and Rights of National or Ethnic Groups". See, *Treaty Provisions for the Convention*, The Hague, 1 November 1991. *UN Doc. S/23169, Annex VII*. (This is amended and supplemented draft arrangement for general settlement of the Yugoslav crisis of 18 October 1991). Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 370-378.

<sup>511</sup> Para. 2. 2. of the *Opinion No. 3 of the Arbitration Commission of the Peace Conference on Yugoslavia*. Paris, 11 January 1992. Text provided by the Albanian Foreign



governs best which governs least ".<sup>512</sup> Those republics who did not conform to this rule were denied international legitimacy. However, those who refused this had gradually been forced to obey the common liberal values of international behavior. To achieve this, the international community has had at its disposal various means.

#### **4. Means at the Disposal of the International Community to Achieve Its Goals Concerning Yugoslav Self-Determination**

In its dealing with the Yugoslav self-determination, the international community has used various means at its disposal. The aim was to channel possible consequences stemming from the realization of self-determination within the Yugoslav territory. That is to say, the means used by the international community were meant to check and balance the implementation of self-determination in this specific case, a self-determination that was a mixture of territory and ethnicity.

The means the international community used can be divided into two categories. First category has had a coercive nature and the other did. There are many types of coercive pressure (sanctions, military actions, diplomatic isolation, etc.). However, here we focus only on two such measures: military actions and economic sanctions.<sup>513</sup> Both of them have had a multilateral character and were

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Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 479-480.

<sup>512</sup> Hannum Hurst, *Autonomy, Sovereignty and Self-Determination* (Philadelphia: University of Pennsylvania Press, 1990) p. 260. See, also, Alain Pellet, "The Opinions of the Badinter Committee", pp. 178-181.

<sup>513</sup> Coercion is the use of threat and force, including the limited use of actual force to back up the threat, to induce an adversary to behave differently than it otherwise would. We use this particular definition to emphasize that coercion relies on the threat of future military force to influence adversary decision making, but that limited uses of force sway adversaries not only because of their effects on an adversary's perception of future force and the adversary's vulnerability to it.

Coercion is not destruction. Although partially destroying an adversary's means of resistance may be necessary to increase the effects and credibility of coercive threats, coercion succeeds when the adversary gives in while it still has the power to resist. Coercion can be understood in opposition to what Shelling termed "brute force": "Brute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage, or of more damage to come, that can make someone yield or comply". Thomas C.

undertaken by the international community as a whole. This is the reason why we did not list in this category the so-called " outer wall of sanctions ", undertaken by one state only - the US. In line with this, we took out of the list the category of the diplomatic isolation, putting it into the second category instead. Diplomatic isolation is dealt with in the context of non-coercive means and should be seen as a part of the policy of non-recognition used by the international community in the process of solving the Yugoslav case of self-determination. This means that the diplomatic isolation is a variant of non-recognition in international relations and that it shall be treated as such in this work. Along with the " outer wall of sanctions ", the policy of non-recognition forms the core of the non-coercive means used by the international community in the Yugoslav case of self-determination.

When the international community decided to use these means, it did not specifically say that their use was meant to implement a certain type of self-determination *per se*. This community has rather used the above means in a very selective manner and against those Yugoslav actors acting against the Western and liberal conceptions of self-determination. This conception had as its premise the territory, not ethnicity, and the international order and stability. These values were to be kept only via the respect for liberal principles, norms and values, such as human rights, democracy, the rule of law and the respect for human and minority rights. At the beginning of the Yugoslav crisis, the international community explicitly used these means to influence the type of self-determination it wanted to implement. Later, it used these means to protect the independence and sovereignty of former Yugoslav republics and the human rights of their citizens without a distinction of any kind.

The first category we chose to discuss here, the sanctions (mainly of economic nature as foreseen by the Article 41 of the UN Charter), have been widely used in the Yugoslav case. The target country has been the FRY (Serbia

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Shelling, *Arms and Influence* (New Heaven, Conn.: Yale University Press, 1996) p. 3. Coercion may be thought of, then, as getting the adversary to act a certain way via anything short of brute force; those who coerce must have the capacity for organized violence but choose not to

and Montenegro). This country was seen as the most responsible actor for the conflict in Bosnia-Herzegovina and, later, in Kosova (1992-1999). However, there is a difference between the regime of sanctions instituted against the FRY during the Bosnian war and in the conflict in Kosova. In the first case, the FRY was held responsible for the direct involvement in the ongoing conflict in Bosnia-Herzegovina, while in the second " threats to the peace " came as a result of the FRY's actions within its own territory.

The imposition of sanctions in connection with the war in Bosnia-Herzegovina has been a long process. The UN Security Council first decided with its resolution no. 713 (1991) to impose an arms embargo against the then Yugoslavia. The use of sanctions as a means to impose on the Yugoslav actors the Western-type of self-determination was first encouraged by Europeans. In this regard, the European Union during the first stages of the Yugoslav crisis (June – December 1991), within the mechanisms of the Hague Conference, proposed the sanctions regime (mainly on oil embargo and trade embargo) against those Yugoslav republics who obstructed the work of the EU and its efforts to peacefully settle the Yugoslav crisis.<sup>514</sup>

Following the above, the UN Security Council with its resolution no. 752 of 12 May 1992 demanded that " all parties and others concerned in Bosnia-Herzegovina stop fighting", while third parties ceased "all forms of interference from outside Bosnia-Herzegovina, including by units of the Yugoslav People's

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exercise. See, Robert A. Pape, *Bombing to Win* (Ithaca, N. Y.: Cornell University Press, 1996) p. 13.

<sup>514</sup> EC Declaration on the Situation in Yugoslavia. Brussels, 28 October 1991; EC Declaration on the Suspension of the Trade and Cooperation Agreement with Yugoslavia. Rome, 8 November 1991. Texts provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trufunovska, pp. 368-69; 378-380. For a complete scholarly analysis of the relations between the EU and the FRY, see, Blagoje Babic and Gordana Ilic (eds.), *Jugoslavija i Evropska Unija* (IMPP and Beobanka: Beograd 1999). The contributors to this volume, however, do not make any difference between former Yugoslavia and the FRY (Serbia and Montenegro), referring to " Yugoslavia" for both cases. See, also, Peter Bruckner, *The European Community and the United Nations*. " *European Journal of International Law*" Vol. 1 (1990) No.1/2, pp. 174-193; Rachel Frid, *The European Community – A Member of a Specialized Agency of the United Nations*. " *European Journal of International Law*" Vol. 4 (1993) No. 2, pp. 239-265; Sebastian Bohr, *Sanctions by the United Nations Security Council and the European Community*. " *European Journal of International Law*" Vol. 4 (1993) No. 2, pp. 256-269.

Army (JNA) and Croatian Army".<sup>515</sup> Fifteen days later, the UN Security Council adopted the resolution no. 757 (1992) deploring the "failure of the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro), including the Yugoslav People's Army (JNA), to take effective measures to fulfill the requirements of resolution 752 (1992)". The Council further asked that all "states adopt the measures foreseen in Art. 41 of the United Nations Charter, including a wide range of sanctions in trade, finance, communications, international cooperation, as well as the reduction of the level of staff at diplomatic missions and consular posts of the Federal Republic of Yugoslavia (Serbia and Montenegro)".<sup>516</sup> The sanctions regime imposed on FRY was reinforced by two other resolutions of the UN Security Council, nos. 787 (1992) and 820 (1993), which had widened the scope of the existing sanctions. The sanctions now covered not only FRY's territory but also the territory under the control of the Serbs in Bosnia-Herzegovina.<sup>517</sup> The first group of sanctions lasted only until the Dayton Accords were reached<sup>518</sup>. To reward Milosevic's behavior for the signing of the Dayton Accords, the UN Security Council first suspended and later totally lifted trade and other sanctions against FRY (Serbia and Montenegro) with its resolution nos. 1022 of 20 November 1995 and 1047 of 1 October 1996 respectively<sup>519</sup>.

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<sup>515</sup> UN Security Council Resolution No. 752 (1992). Adopted at the 3075<sup>th</sup> Meeting of the Security Council (15 May 1992). Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 575-577.

<sup>516</sup> UN Security Council Resolution No. 757 (1992). Adopted at the 3082<sup>th</sup> Meeting of the Security Council (30 May 1992). Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, pp. 593-599.

<sup>517</sup> Texts provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, pp. 757-762; 909-915.

<sup>518</sup> It should be noted, however, that after the acceptance of the Contact Group Plan by the FRY (July 1994), the UN Security Council partially suspended these sanctions (mainly those concerning culture, sport and communication) and for a limited period of time depending on FRY's behavior vis-à-vis Bosnia-Herzegovina and Croatia. See, the following resolution in connection, The UN Security Council Resolution No. 713 of 25 September 1991; The UN Security Council Resolution No. 752 of 25 May 1992; The UN Security Council Resolution No. 787 of 16 November 1992; The UN Security Council Resolution No. 820 of 17 April 1993; and The UN Security Council Resolution No. 943 of 30 July 1993. Texts provided by the Albanian Foreign Ministry, Tirana.

<sup>519</sup> See, Resolution No. 1022. Security Council – Suspension of Sanctions Against Federal Republic of Yugoslavia. Date: 22 November 1995. Meeting: 3595; Resolution No. 1047.

The regime of sanctions against the FRY was re-imposed again after the outbreak of hostilities in Kosova in March 1998. This time, however, the *raison d'etre* of the new sanctions regime was the behavior of the FRY authorities within its own territory, a behavior that gradually posed a threat to the peace and stability of the region and wider. The UN this time guaranteed the FRY's territorial integrity but asked the Belgrade authorities to respect the rights of its citizens living in Kosova and to find a peaceful accommodation for their rights.<sup>520</sup>

The second group of means, military ones, have been used twice by the international community, in Bosnia-Herzegovina and Kosova. Compared with the already-mentioned case of Kosova (see, *infra* pp. 194-201), where the military actions were used to prevent the unraveling human tragedy that gradually became a threat to international peace and security. The use of these means in Bosnia-Herzegovina has had a different nature. In the case of Kosova the use of military force was designed to prevent a human tragedy threatening international peace and security. This ended in the imposition upon Kosova a fixed territorial limits for the exercise of the internal-type of self-determination. In the second case, though, the use of military means was designed to prevent the consecutive breaches of the cease-fire agreements by the Bosnian Serbs, as well as the breaches of the other provisions of the international humanitarian law<sup>521</sup>. In both cases, however, the mandate of the UN for military action under Chapter VII of the UN Charter had been received only after the use of the military action on the ground. In terms of self-determination, these military actions resulted in the

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Security Council – Lifting Sanctions Against Federal Republic of Yugoslavia. Date: 1 October 1996. Meeting: 3700. Texts provided by the Albanian Foreign Ministry, Tirana.

<sup>520</sup> See, UN Security Council Resolution No. 1160 (1998) of 31 March 1998; UN Security Council Resolution No. 1199 (1998) of 23 September 1998; UN Security Council Resolution No. 1203 (1998) of 24 October 1998; UN Security Council Resolution No.1239 (1998) of 14 May 1999; and UN Security Council Resolution No. 1244 (1999) of 12 June 1999. Also available in internet: <http://www.un.org/>

<sup>521</sup> See, Gabriel Manuera, *Preventing Armed Conflict in Europe: Lessons from Recent Experience*. " Chaillot Paper " No. 15/16 (the Institute for Security Studies of the Western European Union : Paris June 1994), especially the chapter "Bosnia-Herzegovina"; Nicole Gnessoto, *Lessons of Yugoslavia*. " Chaillot Paper " No.14 (the Institute for Security Studies of the Western European Union : Paris June 1994). Filippo Andreatta, *The Bosnian War and the New World Order*. " Chaillot Paper" No. 1 (the Institute for Security Studies of the Western European Union : Paris October 1997), especially the chapter " the Causes of Peace". All papers available in internet: : <http://www.weu.int/institute/>

preservation of the administrative borders of the former Yugoslav republics. Within them, the international community asked for the respect for democracy, rule of law, human and minority rights.

Among the non-coercive means used by the international community to effectuate the types of self-determination described thus far, the policy of non-recognition takes prominence.<sup>522</sup> It appears in all documents concerning the Yugoslav crisis, from the Badinter Commission to the Dayton Peace Accords, the relevant UN documents dealing with the Kosova issue are included. Non-recognition, as an established rule in international law that aims at invalidating the illegal uses of force employed to achieve territorial gains, proved very effective and a strong rule in the case of Serbs living in Bosnia-Herzegovina and Croatia. In addition to this, the policy of non-recognition was used as a threat to former Yugoslav republics with the view of imposing on them a given system of democratic values.<sup>523</sup>

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<sup>522</sup> For the policy of non-recognition in international law and relations, used as a means to invalidate the illegal and illegitimate situations and positions, see, in general, James Crawford, *The Creation of States in International Law* (Clarendon Press: Oxford 1979), pp. 31-77; Ian Brownlie, *Principles of International Law* (Clarendon Press: Oxford 1990) pp. 87-106 at 98 ; Helen Ruy Fabri, *Etat (Creation, Succession, Competences). Geneze et Disparition de l'Etat a l'Epoque Contemporaine*. "Annuaire Francias de Droit International". Vol. XXXVIII (1992). Editions du CNRS, Paris, pp. 153-178.

<sup>523</sup> The case of the FRY authorities regarding Kosova and that of Croatia concerning its own Serbs. It should be noted, however, that other Yugoslav republics as well had to obey the same liberal values but these two cases were the most conspicuous ones that took most of the attention of the international community. This distinction concerning the policy of non-recognition is reflected throughout the following documents of the international community:

- the EC Statement on Yugoslavia (Brussels, 8 June 1991);
- Documents adopted by the Committee of Senior Officials in the framework of the CSCE Mechanisms (Prague, 3-4 July 1991);
- the EC Declaration on Yugoslavia (the Hague, 5 July 1991);
- Joint Declaration of the EC Troika and the Parties Directly Concerned with the Yugoslav Crisis, the so-called " Brioni Accords" (Brioni, Croatia, 7 July 1991);
- the EC Declaration on Yugoslavia (Brussels, 27 August 1991);
- the EC Declaration on Yugoslavia (the Hague, 3 September 1991);
- the UN Security Council Resolution No. 713 (1991) of 25 September 1991;
- the Arrangements for General Settlement of the International Conference on Yugoslavia, the so-called " Carrington Draft Convention " (the Hague, 18 October 1991);
- Treaty Provisions for the Convention of the Peace Conference on Yugoslavia (the Hague, 1 November 1991);
- Statement issued by the Heads of State and Governments Participating in the Meeting of the North Atlantic Council (Rome, 8 November 1991);
- the UN Security Council Resolution No. 721 (1991) of 27 November 1991;

Within non-coercive measures fall the so-called " outer wall of sanctions ". This measure was imposed by one state only, the US. It has a long history that lasted until the Dayton Peace was reached. Then, in a statement issued by the US State Department on 23 November 1995 (distributed by the US Informative Agency), it was made public, for the first time, the " outer wall of sanctions " concept.<sup>524</sup> This in practical terms meant that following the Dayton Accords, president Slobodan Milosevic of Serbia was being recognized as a new

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- the EC Declaration Concerning the Conditions for Recognition of New States (Brussels, 16 December 1991);
  - Opinion No. 2 of the Arbitration Commission of the Peace Conference on Yugoslavia (Paris, 11 January 1992);
  - Opinion No. 3 of the Arbitration Commission of the Peace Conference on Yugoslavia (Paris, 11 January 1992);
  - Opinion No. 4 of the Arbitration Commission of the Peace Conference on Yugoslavia Concerning the Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States (Paris, 11 January 1992);
  - Opinion No. 5 of the Arbitration Commission of the Peace Conference on Yugoslavia Concerning the Recognition of the Republic of Croatia by the European Community and its Member States (Paris, 11 January 1992);
  - Opinion No. 6 of the Arbitration Commission of the Peace Conference on Yugoslavia Concerning the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States (Paris, 11 January 1992);
  - Statement by the Presidency of the European Community on the Recognition of Yugoslav Republics (Brussels, 15 January 1992);
  - the UN Security Council Resolution No. 752 (1992) of 15 May 1992;
  - the EC Statement on Yugoslavia (London and Brussels, 6 August 1992);
  - the UN Security Council Resolution No. 769 (1992) of 7 August 1992;
  - International Conference on the former Yugoslavia – Statement on Principles (London, 26-28 August 1992);
  - the UN Security Council Resolution No. 776 (1992) of 14 September 1992;
  - the UN Security Council Resolution No. 777 (1992) of 19 September 1992;
  - Decisions of the Council of CSCE on Former Yugoslavia (Stockholm, 14 and 15 December 1992);
  - The Dayton Peace Accords (November 1995);
  - The Rambouillet Peace Agreement (February-March 1999);
  - The UN Security Council Resolution No. 1244 (1999) of 12 June 1999;

The above list is not exhaustive. It has been compiled selectively in a belief that these documents reflect the spirit of the international community's stance over the issue of liberal values, that is, democracy, the rule of law, and the respect for human and minority rights.

<sup>524</sup> See, USIA Wireless File, November 23, 1995, pp. 38-39. Text provided by the Albanian Foreign Ministry, Tirana. The very concept of the "outer wall of sanctions" is closely related to the previous sanctions imposed on FRY,. This can be seen from the Statement of 23 November 1995 that contained the following message:

" A resolution will be introduced in the UN Security Council to lift the arms embargo against all of the states of former Yugoslavia. Trade sanctions against Serbia will be suspended, but may be re-imposed if Serbia or any other Serb authorities fail significantly to meet their obligations under the Dayton Agreement. An "outer wall" of sanctions will remain in place until Serbia addresses a number of other areas of concern, including Kosovo and cooperation with the War Crimes Tribunal".

peacemaker ending the war in Bosnia-Herzegovina. The UN Security Council, accordingly, first suspended and later totally lifted trade and other sanctions against the Federal Republic of Yugoslavia as described above. Apart from the Dayton Accords' obligations, especially those concerning the cooperation with War Crimes Tribunal, the rest remained identical to those fulfilled by other Yugoslav republics on the occasion of their admission to the membership of the international community. They specifically concerned the respect for liberal values on the part of the FRY authorities vis-à-vis the majority Albanian population in Kosova.

Not only in the opinions of the Badinter Commission and the Guidelines on Recognition, but also in other international documents, the Western democratic values took a very prominent place. This fact is noted already in the penultimate section of this dissertation and in this section we are about to complete. The Kosova issue was not an exception to this: the FRY authorities had to comply to the same liberal values as did other Yugoslav republics when they were admitted as full-fledged members of the international community. This position did not change until the conflict in Kosova took dramatic dimensions, threatening international peace and security.<sup>525</sup>

Although unilaterally imposed by one state, the US, the "outer wall of sanctions" was by no means a category of a purely political nature. As already noted in the previous section of this chapter and the Chapter VI, the concept has had a strong international legal basis starting from the opinions of the Badinter Commission up to the stipulations of the Dayton Accords (the issue of

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<sup>525</sup> In this regard, the first pronouncement of the international community via the so-called Contact Group on Former Yugoslavia (formed in April 1994 to tackle the Bosnian crisis) spoke about the respect for these liberal values and the internal type of self-determination on behalf of Kosova and its majority population. See, Statement on Kosovo. London Contact Group Meeting (9 March 1998); Statement on Kosovo. London Contact Group Meeting (15 and 25 March 1998); Bonn Statements by the Contact Group (29 April and 9 May 1998); Statement on Kosovo. London Contact Group Meeting (12 June 1998); Statement on Kosovo. Bonn Contact Group Meeting (8 July 1998). The first UN Security Council Resolution, issued after the outbreak of hostilities in Kosova, adopted the same language. See, UN Security Council Resolution No. 1169 (1998) of 31 March 1998. This resolution imposed for the second time the sanctions regime on the FRY authorities. They concerned mainly arms and trade embargoes.



cooperation with the War Crimes Tribunal).<sup>526</sup> The issues forming the core of the concept had to do with the following: FRY's membership of international organizations; financial and other assistance by the International Monetary Fund (IMF) and World Bank (WB); and normalization of relations between the US Government and FRY. All these issues were mutually connected. As noted (*infra*, pp. 140-164), the Belgrade regime was denied the claim to state continuity with the former Yugoslavia. This meant that it had to apply for the UN membership as foreseen in the UN Security Council Resolution No. 777 (1992) of 19 September 1992 and the UN General Assembly Resolution No. 47/1 (1992). By definition, this further meant that FRY would not inherit former Yugoslav seat in other international organizations and bodies (the OSCE, the Council of Europe and other regional organizations). The implications of this US stance regarding the FRY stretched over to international financial institutions, such as the IMF and WB. These two very important financial institutions fully endorsed this international position in December 1992 and February 1993.<sup>527</sup> The latter decision were a logical consequence of the previous ones, that is, the consequence of the fact that a non-member state of the UN cannot enjoy the membership of the International Monetary Fund (IMF) and World Bank (WB).

The "outer wall of sanctions" has had marginal effects only. It triggered some two-track diplomacy and the signing of the Education Agreement by the then President Milosevic of Serbia and the Kosovar Albanian leader of the time, Ibrahim Rugova. The two-track diplomacy consisted of informal talks held

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<sup>526</sup> Following the fall of Milosevic in October 2000, the US Government showed its readiness to lift the "outer wall of sanctions", an event that happened gradually until January 2001. In January 2001, however, the new US administration of President George W. Bush withdrew the previous Bill Clinton's consent to lift the "outer wall of sanction". This move was based on the fact that the newly elected President of the FRY, Vojislav Kostunica, was showing no readiness to cooperate with the Hague Tribunal concerning the handover of Milosevic to the Hague authorities. See, Ylber Hysa, *Problemi i Presheves Zgjidhet ne Mitroivce*. Prishtina-based daily newspaper "Koha Ditore" (31 January 2001), p. 10.

<sup>527</sup> On December 15, 1992, the IMF found that "Yugoslavia has ceased to exist and has therefore ceased to be a member of the IMF". The same position was taken by the WB on February 25, 1993. See, the IMF Press Release No. 92/92 of 23 December 1992 and the Decision of the Executive Directors of the World Bank, 25 February 1993. For comments, see, Malcolm Shaw, *State Succession Revisited*. "The Finnish Yearbook of International Law" Vol. V (1994), pp. 52-54; Paul R. Williams, *State Succession and the International Financial Institutions*:

between the Serb opposition and the Kosovar Albanians during March and June of 1996 in New York (USA) and Ulcin (Montenegro) respectively<sup>528</sup>. However, these measures proved ineffective to impose any sustainable form of self-determination over Kosova and its majority population. Only military actions, undertaken by NATO in March – June 1999, managed to serve the liberal values of the West and consequently, preserved peace and international stability.

## **CHAPTER VII:**

### ***CONCLUSION***

Among the concepts closely associated to self-determination in general, that of *uti possidetis* takes prominence. In essence, the message of this principle provides for respect for former administrative borders, both within and outside the colonial context.

Another concept which is closely related to self-determination is that of “international stability”. Its classical definition remains connected with the state-as-actor acting in an essentially anarchical environment. This classical definition, however, says very little about its own relationships with the concept of

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Political Criteria vs. Protection of Outstanding Financial Obligations. " International and Comparative Law Quarterly " Vol. 43 (October 1994), Part 4 , pp. 776-808.

<sup>528</sup> For the meeting of New York, see, Daily Report (In Albanian) of the Kosova Information Center, Nos.1687 (7 April 1997), pp. 1-2, 1689 ( 9 April 1997), pp.1-2, 1690a (10 April 1997), pp. 1-2. For Ulcin meeting, see, Daily Report (In Albanian) of the Kosova Information Center, Nos. 1754 (24 June 1997), pp. 1-3, 1756 (26 June 1997) pp. 1-3, and 1757 (27 June 1997) pp. 1-2. Also available in internet: <http://www.Albanian.com>

self-determination. These two concepts are related only when the former is conceptualized from a different perspective, focusing on the sources of international (in) stability. This refers to the issue of the internal dynamics of the so-called weak (collapsed/or failed ) states. The externalization of the internal dynamics of these states has in recent years proved to be a huge source of international instability because these dynamics were usually associated with ethnic or nationalist conflicts occurring within them. The very survival and further development of these states rests with the rules, norms, and institutions and principles of the current international regime. In International Relations literature the statehood of these states is labeled as a “juridical statehood” as opposed to a “real” or “normal” one that relies on the balance of power logic. The end of the Cold War, in essence, proved the fallacy of the old balance-of-power concept as a basis for explanation of international (in) stability. The end of the Cold War was followed by instability stemming from inside the weak (failed/or collapsed) states and not from the international system.

There are two sets of questions in every case related to self-determination. One is the would-be unit of self-determination and the other is the potential body entrusted with the right to decide about potential self-determination units. Both of these questions are closely connected. The answer to them settles the crucial dilemma as to whether today's self-determination is territorially or ethnically based. The would-be units of self-determination have changed over time. During the Cold War the colonial territories were considered as units having the right to self-determination. A later addition to this list has been the category of the federated states, that is, the federal units of certain federations. In none of the above cases has ethnicity been a decisive factor in the implementation of self-determination. It still the case that territory serves as the basis for the determination of the would-be units of self-determination, despite the fact that self-determination claims have usually been triggered by ethnic factors.

Various regional organizations have been the bodies entrusted with the mandate to decide about the units of self-determination on behalf of the international community. In the case of Africa, it was the OAU that took up this responsibility, while in Europe after the Cold War this task belonged to the European Community (now European Union). Moreover, the units of self-determination have been considered territories under military occupation and territories where the majority colored population were victims of institutionalized apartheid at the hands of Europeans. In these cases, however, self-determination did not entail the creation of new states. It was rather attached to the very position of the inhabitants of certain territories that, at the same time, enjoyed some limited international status.

The Peace of Westphalia marks the beginning of the state system as we know it today. In terms of self-determination, the period that followed the Peace of Westphalia is known as the time of dynastic legitimacy. This meant that the rulers were considered the only sovereigns on earth, ignoring the will of the population. They ruled according to the divine right without any regard as to the wishes of the populations concerned. This order of things was challenged by various thinkers, including Locke and Rousseau. This scholarly challenge of the divine right was later followed by concrete actions on the ground, such as the American and French Revolutions. These events restored the popular sovereignty and legitimacy denied until then by the Westphalian concept of state-centered and dynastic legitimacy. Napoleon's war campaign, however, pushed popular legitimacy to the extreme so that after his defeat in 1815, Europe again returned to the old principle of dynastic legitimacy. Only this time the concept of dynastic legitimacy had a different nature and content. It intended to serve as a cover up for the balance of power system set up in the Congress of Vienna in 1815. The period following this congress until 1918, was characterized by a struggle between the nationality principle and the dynastic legitimacy. Depending on the power politics exigencies, one of the above principles prevailed. The successful revolutions in Greece and Belgium and the unifications of Italy and Germany respectively, represent the use of power politics. The same

applies to the ruthless suppression of the 1848 revolutions in Europe, which reflected sheer power politics. This means that neither the dynastic legitimacy nor the nationality principle can alone explain the concept of self-determination in this period. Both were the principal manifestations of the balance of power concept. It was, in fact, the logic of balance of power that paved the way for the nationality principle which became a guiding rule in the international affairs after WW I.

When WW I ended there was no clear concept of self-determination. There existed a vacuum in this regard. In fact, from this time onward began the modern development of self-determination as it stands today. Two statesmen and one significant event deserve credit for this development: Lenin and Wilson and the notorious case of the Aaland Islands in Finland. While Lenin took up the issue of self-determination as a sign of weakness of his regime following the 1917 Revolution, President Wilson believed that the previous system of power management was the main cause of the Great War. This is the reasoning behind his Fourteen Points. He argued for a more manageable system of international relations based on a consensus, not pure power politics. He named this new system the League of Nations. The consent of the governed, as he termed it, was one of the main pillars of this new power management system, something similar to the logic of the “democratic peace” theory. His counterpart, Lenin, based his concept of self-determination on the interests of the working class and Socialism (Communism), not on the consent of governed. In international relations, Lenin preached for full self-determination for oppressed nationalities of the Tsarist Russia, but only for a short period of time. As soon as he consolidated his power, Lenin started to take back former territories that he gave up in the 1918 Brest Litovsk peace arrangements. One of the core concepts of Lenin’s self-determination was that of a “Communist Federation”. In fact, the Soviet (or Communist) Federation was nothing but a tool in the hands of Lenin to gradually retake former Russian territories. Of a similar nature had been the

concept of so-called “territorial and political autonomies”, designed to deny the status of nationhood to non-Russians.

The practice that developed in the Aland Islands case is entirely different from Lenin’s concept of self-determination. It approximates Wilsonian views and, in essence, together form the very concept of modern self-determination as it stands today. In this case, the Islanders asked for a union with Sweden following Finland’s successful secession from Russia in 1917. This move was resisted by Finnish authorities and, as a result, the issue had been brought before the League of Nations. The League Commission’s view concerning the *carence de souverainete* and the internal aspects of self-determination were especially significant. In fact, the Commission’s understanding of self-determination, together with the Latin American precedent concerning the *uti possidetis* principle, has been the very foundation of the self-determination in the Cold War and after. However, none of the precedents just discussed managed to level the issue of self-determination into a legal entitlement. This task became possible only during the process of decolonization.

After the Second World War, the UN Charter followed the premises of the Atlantic Charter and other documents issued during the war. No legality or legitimacy had been accorded to the territorial changes effectuated by the Axis Powers. This does not mean that such changes did not occur (Stalin’s territorial gains exceeding by far the borders of the Tsarist Russia). It simply means that no new political entities were set up as a result of the Second World War. The partition of Germany was considered an illegal occupation under international law, only temporary in character. By the same token, the annexation of three Baltic republics in 1939 was considered illegal in the West so that their accession to independence after the Cold War was deemed as a restoration of lost sovereignty rather than as the creation of new states. At least, this was the stance taken by the then European Community (now European Union), a position fully endorsed by the rest of the international community.

The process of decolonization first raised the issue concerning the legal character of self-determination. The UN Charter failed to address this issue.

Following the events on the ground, the UN took the lead in the process of decolonization, granting to it the status of a full legal right. The Colonial Declaration and the Friendly Relations Declaration represent the UN documents that unambiguously leveled the status of self-determination into a legal entitlement even providing a procedure for the realization of this right.

The crux of colonial self-determination is that it was based on territory, leaving aside the issue of the internal organization of the newly independent states (former colonies). Despite the fact that its help was crucial in the channeling the process of decolonization, the UN did not include the issues such as the rule of law, democracy, and the respect for human and minority rights in its political agenda. This position was also endorsed by the international jurisprudence in the famous *Burkina Faso vs. Republic of Mali Case* (1986). In the pronouncements of this case, the International Court of Justice clearly gave advantage to order and stability, as opposed to other liberal values, such as democracy, the rule of law and respect for human and minority rights. These issues were tackled for the first time after the Cold War. Only this time the concept of self-determination took on a different content, taking into account both the liberal values and the value of order and international stability.

The newly independent states enjoyed full international protection equal to that foreseen for the other sovereign and independent states. This implied that the territory of former colonies was inviolable under international law and fully protected by the international regime of the time. This concept of territorial integrity for former colonies served as a reference point in determining the scope of colonial self-determination, and also served as a stabilizing factor in interstate relations. Furthermore, the period following the process of decolonization proved this to be the case. The rest of the international community resisted and prevented other sub-state entities or ethnic groups striving to secede from former colonies after the latter's accession to independence. The cases that illustrate are respectively, the provinces of Katanga in Congo/Zaire and Biafra in Nigeria. The case of Bangladesh (1970/71), however, was an exception to this rule. The successful secession of this country can be explained by the fact that the

preservation of the territorial integrity of a former colony (Pakistan) would have been conducive to instability and disorder in the international system.

The common state of the South Slavs, the Yugoslav state, formed on 1 December 1918, was initially named the Serb-Croat-Slovene Kingdom. Its power structures were entirely Serb-dominated. In fact, it represented nothing but the realization of the dream of Greater Serbia. In the international environment between the two wars there was no way to change the internal balance of forces existing within this state because the new state had been given a role of a “cordone sanitaire”, first against the Soviet influence and later against the further penetration of the German factor to the East (*Drang Nach Osten*). The Serbian military and political elite used this opportunity to realize its hegemonic ambitions. In the 1930s, it even imposed a royal dictatorship led by the Serbian King from the Karadjordje dynasty. The only political force that tried at this time to come up with a real pan-Yugoslav idea was the Communist Party of Yugoslavia. Among the Yugoslav communists, however, there had been a stream acting in favor of the dismemberment of the Yugoslav state. At the end, though, the unitary wing of the Yugoslav communists took the upper hand. It fought for a single Yugoslav state but organized on the basis of different principles from those of the interwar period. With some variations in this period, the Yugoslav communists took up the Soviet idea about the “Communist Federation”.

This idea was implemented immediately after Second World War. In the Yugoslav context, nevertheless, the issue of borders proved to be less troublesome as compared with the Soviet case. Once the new federal units had been set up in 1946, no serious border changes occurred until Yugoslavia’s final dissolution in 1992. When it dissolved, however, the issue of borders and their succession became the main cause leading to brutal wars and conflicts. Only at this time was raised the significant issue concerning the type of self-determination that would be pursued: Shall self-determination be based on territory or on ethnicity? The latter was espoused by Serbs while the former was supported by the former Yugoslav republics and endorsed by the rest of the international community. After the dissolution of Yugoslavia in 1992, there was a



close connection with the mentioned types of self-determination regarding state continuity. In this regard, the Serbs insisted on being the sole successors to the common Yugoslav state, an action flatly denied by others. The above Serbian stance on state continuity has been an intrinsic part of the Serbian understanding of self-determination. This was outlined as far back as 1986, when the Memorandum of the Serbian Academy of Arts and Sciences had been drafted. The Serbs argued that it was unnecessary for Serbia to apply for new international statehood after Yugoslavia's dissolution since Serbia had been the very founder of that state, and, further, that the pre-1918 Kingdom of Serbia formed the core of the Yugoslav state.

Another important argument put forward by the Serbian elite was that other Yugoslav republics were secessionists, meaning that their departure from Yugoslavia left untouched the international subjectivity of the Yugoslav state. This position, of course, was rejected by all former Yugoslav republics and the rest of the international community. They both considered Yugoslavia's disintegration in 1992 and that from this process there already emerged five new states: Bosnia-Herzegovina, Croatia, Former Yugoslav Republic of Macedonia (FYROM), Slovenia and the Federal Republic of Yugoslavia (Serbia and Montenegro). The tiny republic of Montenegro supported Serbian claims on state continuity with the former Yugoslavia for quite some time, although from different perspective. Montenegro did not demonstrate any expansionist tendencies and its quest for self-determination was based on the fact that the pre-1918 Kingdom of Montenegro had also been one of the two founders of the common state of Yugoslavia in 1918. In none of the public pronouncements did the Montenegrin authorities claim the right to self-determination extending beyond the borders of this republic. Serbia was different in this regard. Its claims for state continuity with the former Yugoslavia and self-determination, although justified on historical and quasi-legal grounds, were in fact a plea for ethnic self-determination following the spirit and the letter of the 1986 Memorandum of the Serbian Academy of Arts and Sciences. This Serb claim had been further elaborated in Serbian scholarly work, with Serbian military backing throughout 1992-1999.

As we have noted throughout this dissertation, the main conflict within the former Yugoslavia has been concerning the nature of self-determination. In the north of Yugoslavia (Slovenia and Croatia) there existed a concept of self-determination based on territory. In the south of the country, Serbia opted for an ethnic self-determination. Bosnia-Herzegovina and Macedonia were caught in between. While Croatia during Tudjman's era greatly resembled Milosevic's Serbia, it could not fight outside its own borders for long due to military weakness. The tiny republic of Montenegro followed Serbia's path for some years following Yugoslavia's collapse until 1995. It gradually opted for the path chosen by other Yugoslav republics at the beginning. However, Montenegrin territorial self-determination did not mean full independence. For a long time, mainly during Milosevic's reign, Montenegrin self-determination meant equal status for this republic with that of Serbia. Only during the last years of Milosevic's rule and thereafter did the Montenegrin government assert its plea for full independence.

The mere fact that all Yugoslav republics, apart from Serbia, have opted for territorial self-determination does not mean that the content of self-determination remains the same for all cases. In Yugoslavia's north, self-determination was not only a territorial in nature but also based on liberal values regarding democracy, the rule of law and respect for human and minority rights. In the south and the center of Yugoslavia (Bosnia-Herzegovina and Macedonia), the type of self-determination was forced upon them. The choice by these two former Yugoslav republics was made in haste and had been a result of the internal balance of forces. This disadvantage in the balance of forces has had an enormous impact on the content of self-determination within Bosnia-Herzegovina and FYROM. The difference between these two Yugoslav republics with the north consists in the fact that in former case the Yugoslav option was not entirely excluded in the ongoing arrangements concerning the future of Yugoslavia. Apart from this difference, the rest of self-determination remained much the same and focused on democracy, the rule of law and the respect for human and minority rights.

Analyzing the behavior of the Serbs living outside Serbia, the author of this dissertation has found a causal relationship between this behavior and the Serb conception of (ethnically-based) self-determination. Although it had been clear from the outset of the Yugoslav tragedy that the international community would not tolerate any forceful changes in the previous administrative borders of the Yugoslav republics, the Serbs nevertheless pursued their ethnically-based self-determination claim. This has led to the ethnic cleansing of non-Serbs because it was entirely impossible to realize any ethnic self-determination within the Yugoslav context due to its highly heterogeneous ethnic composition. The decision-makers in Belgrade seemed to have believed that their quest for (ethnic) self-determination could be realized by force and with impunity if some territorial units resembling former Yugoslav republics were created. These units had been created violently, first in Croatia and then in Bosnia-Herzegovina. This was nothing but a wrong interpretation of the international statehood, having far-reaching implications.

The Belgrade's policy of Greater Serbia was defeated in Dayton (1995). The Kosova issue, however, remained unsettled and the international community resorted to the application of the same criteria for international statehood in the rest of Yugoslavia. The basic premise was that only former Yugoslav republics should be encouraged to pursue external self-determination. Those entities not having the status of a republic at the time of Yugoslavia's dissolution were to enjoy the internal self-determination only. Among them was Kosova as well. By the time the conflict in this region began in early March of 1998, the international community was caught by its own rulings so that NATO's military intervention to stop the killings in Kosova resulted in the preservation of territorial integrity and stability of the Federal Republic of Yugoslavia (Serbia and Montenegro), much in the same way as it resulted in Bosnia-Herzegovina before the Dayton Accords were reached.

The conclusion of this study is that the Yugoslav case of self-determination should not be singled out from other similar cases of its time. This covers not only the period following the end of the Cold War, but also the period

prior to the South Slav unification of 1918 and thereafter. In all cases, the Yugoslav case reflects the features of self-determination as they appeared at the times under discussion. Evidence of this is best seen from the last period of the Yugoslav self-determination after the Cold War. In this period, Yugoslav self-determination was nothing but a part of the wider picture of self-determination covering all former Communist Federations (Soviet Union and Czechoslovakia). The relevance of the Yugoslav case for the future rests in the fact that it has further crystallized and strengthened one of the significant aspects of self-determination, namely the principle of *uti possidetis*. The Yugoslav case shows that the fixed territorial borders, as a rule of international law, limits the territorial scope of self-determination. Another contribution of the Yugoslav case is that the international community used measures to effectuate a certain type of self-determination. These measures applied according to the gravity of the situation on the ground and the type of breach committed by the Yugoslav actors.

The first sign as to the principle of self-determination to be applied in the Yugoslav context was given by the British officials as far back as the Summer of 1991. The British Foreign Secretary of that time, Douglas Hurd, told the Belgrade leaders that the West would not accept any forceful changes in the internal borders of Yugoslavia. At this time, it was not quite clear as to what were to be considered "internal borders" within the Yugoslav context. This became clear in November 1991 when the Badinter Commission left no doubt over this stating that only former Yugoslav republics shall be internationally entitled to a full protection of their administrative borders. This stance was later endorsed by the major part of the international community. In addition to this, the international community via the Badinter Commission, tackled the problem of the very content of Yugoslav self-determination. In this regard, the international community recognized two types of self-determination, one internal and the other external. This position was later reflected in the EU Guidelines on the Recognition of New States in the Soviet Union and Eastern Europe (16 December 1991). External self-determination belonged to former Yugoslav republics alone, while the internal one was left for other entities, which did not have the status of a

federated republic at the time of Yugoslavia's dissolution. The same rule applied, *mutatis mutandis*, to the Soviet Union and Czechoslovakia. This was, in fact, nothing but an extension of the application of the colonial self-determination to the existing sovereign states that would eventually collapse.

As opposed to the colonial self-determination, in the Yugoslav case and in the case of other former Communist Federations, there existed some corrective criteria in connection with the realization of self-determination. They were democracy, rule of law, and the respect for human and minority rights. These criteria aimed to guide the would-be states as to their acceptable behavior. Those entities claiming the international statehood had to act according to these corrective criteria. Otherwise, the legitimacy of their international statehood was not considered as valid under international law. This denial of the international legitimacy of the newly independent states was effectuated by the international community (alone or through its various organs and organizations). This was done in various ways. The most common method was the policy of non-recognition by the international community. Next to this came the imposition of the sanctions regime on the disobedient states claiming fully-fledged international status. In some cases, such as Bosnia-Herzegovina and Kosova, even military means were used to check and balance the Yugoslav self-determination. There is a difference, however, between these two situations. The corrective criteria concerning democracy, the rule of law and the respect for human and minority rights meant different things for both cases. In general, corrective criteria were designed to prevent the development of dictatorship tendencies within the newly established states of the former Communist world. In this regard, these criteria were equal to the realization of self-determination because they presented themselves as a precondition for the integration of these new states into the community of sovereign and independent nations. On the other hand, the same criteria formed the very core of the internal self-determination because they offered a solid ground for the development of other forms of self-determination falling short of full independence. The problems emerged only when it came to the implementation in general lines of this vision. Then, the preservation of the

territorial integrity of Bosnia-Herzegovina, as one of the manifestations of self-determination of the sovereign and independent states, had as a consequence the treatment of the Kosova issue on par with other entities that did not have the status of a federated republic. It did not matter that Kosova (within the FRY) and “Republika Srpska” (within Bosnia-Herzegovina) had entirely different background. While Kosova existed as an autonomous entity for a long time, the “Republika Srpska” was set up by violent means leading to the commission of genocidal acts. It might be that this was not the intention of those who used the military power against the Serbs in Bosnia-Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro). However, intentionally or unintentionally, the treatment of the Yugoslav case yielded this paradoxical result.

Has the international community become a catalyst in helping to make a reality of a pre-existing principle, self-determination, that could not be realised under the sovereign model of the former Yugoslavia? The intrusion of the international community in the political events altered the modality of governance and thereby made possible the realisation of the long accepted principle of self-determination. The international community via the mandate it gave to the international organizations, such as UN, OSCE, NATO and the EC/EU, allowed for the implementation of mechanisms for the realisation of the potential of self-determination of the people of the former Communist federations. The international community in its call for democracy, the rule of law and the respect for human and minority rights allowed for process to begin for the actual realisation of self-determination within the accepted norms of international law relating to self-determination. Clearly, self-determination as a principle has not been altered. What existed prior to the 1990 events that caused international intrusion, existed after the events. The difference is that the crises and the international response to these crises made the principle a potential reality but not necessarily a universal norm. Comparing this experience with that of colonialism and the self-determination process associated with its end provides substantial differences. While in colonialism there was no insistence on

preconditions, e.g., democracy, the rule of law, and the respect for human and minority rights, in this instance they became a *condictio sine qua non* for the realisation of any self-determination regime, be it internal or external. It can be concluded that no single binding principle of self-determination monopolises the contemporary international law. The recent experience after the Cold War provided only a model for actualisation of the principle. Self-determination, as a right and a principle, whose structure and meaning continues to evolve with case examples, presents challenges for international law and politics. The liberal values concerning democracy, the rule of law and the respect for human and minority rights will certainly be enhanced with a more developed understanding of the actual meaning of self-determination. Unquestionably, based on recent experience, human rights which is now seen as tied to democracy and the rule of law can be better realised in territories which have not benefited by self-rule. This means, in turn, that the human rights agenda may be greatly enriched with the appropriate realization of self-determination.

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