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THE RIGHT TO SELF-DETERMINATION
AND THE CASE OF YUGOSLAVIA*

INTRODUCTION

It is indeed difficult for someone observing the course of European unification to understand the rational behind the disintegration of Yugoslavia or the dissolution of the Soviet Union. They are events that seem to be running counter to the course of History.

Nonetheless, the secessionist and centrifugal forces operating in these countries (in conjunction with many other nationalistic or minority-related issues flaring up in Europe) and the recent unification of Germany have brought, once again, the issue of self-determination of nations and peoples into center stage, in a dynamic and direct manner¹.

In this essay, we shall primarily examine the modern meaning of the principle of self-determination as a legal issue (our main thesis), and, on that basis, evaluate the political problems Yugoslavia faces as a federal state, incorporating them into the theoretical context of self-determination (our secondary argument).

A. THE RIGHT TO SELF-DETERMINATION

1. THE ORIGINS AND NATURE OF THE RIGHT TO SELF-DETERMINATION

The right to self-determination originally began as a moral or revolutionary political principle, and was transformed into a binding principle of inter-

* This paper was delivered by its author during a two-day conference (December 9 & 10, 1991) held at the Democritus University of Thrace. The subject of the conference was "The rights of peoples and minorities: Aspects of an evolving question". Consequently, the paper covers events centered around the problem of Yugoslavia for the period prior to that date.

1. See also, J. Gow, "Deconstructing Yugoslavia", in *Survival*, vol. XXXIII, No 4, July-August 1991, IISS, pp. 291-311, in p. 308.

national law², endowed with a customary character³.

Approximately two hundred years ago, within the context of the American Declaration of Independence (1776), self-determination was a principle that expressed the moral right of the oppressed British colonies to stand up to the British Crown and overthrow foreign rule. It was assumed, because of a "long series of abuses and usurpations", that the government's subjects had both a right and an obligation to overthrow a government they had not consented to⁴.

Since then, on the basis of important historical events and numerous new formative ideas and practices, the right to self-determination not only matured into a dominant principle of international law, but is now also being recognized by many as a basic human right, on a personal or group basis⁵. Milestones in the development of the principle where the French Revolution (1789), the Bolshevik Revolution (1917), Lenin's Declaration on Self-Determination, the right to secede, as it appears in article 17 of the Soviet Constitution (1917), Wilson's 14 points (1918), the experience of the two World Wars, the Atlantic Charter (1941), the United Nations Charter (1945), the Universal Declaration of Human Rights (1948) and other U.N. documents, and more recently: the Final Act of Helsinki (1975) and the Charter of Paris for a New Europe of 1990⁶.

2. For the content and development of the principle of self-determination to a binding legal right, see, *inter alia*, A. Μπεδήμα, "Αυτοδιάθεση λαών και απόσχιση κράτους στα πλαίσια των Ηνωμένων Εθνών" [Self-determination of peoples and secession of states within the framework of the U.N.], in *Διεθνές Δίκαιο και Διεθνής Πολιτική* [International Law and International Politics], 12, 1987, 105-147, especially 105-112; A. M. Connelly, "The Right of Self-Determination and International Boundaries", in *Thesaurus Acroasium*, vol. XIV, Institute of Public International Law and International Relations of Thessaloniki, 1985, 546-549 ff.; J. Brownlie, *Principles of Public International Law*, 3rd ed. (1979), pp. 593-596; K. Κούφα, *Η δικαιοτική οργάνωση της διεθνούς κοινωνίας* [The legal structure of the international community], ed. Sakkoulas, Thessaloniki, 1988, p. 57 ff.; I. Kristan, "Self-determination as a human right", in *Review of International Affairs*, vol. XLII, 978, 5.4. 1991, Belgrade, 8-10.

3. See A. Cristescu, The right to self-determination, Historical and current development on the basis of U. N. instruments (Study prepared by the special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), United Nations, New York, 1981, p. 23. For more moderate estimates, see Connelly, *op. cit.*, 546-547 and Μπεδήμα, *op. cit.*, 111 ff., who believe that the customary law is still developing.

4. See Kristan, *op. cit.*, 8-9.

5. See Cristescu, *op. cit.*, pp. 8-9; Kristan, *op. cit.*, 9.

6. See Kristan, *op. cit.*, pp. 8-9; Μπεδήμα, *op. cit.*, p. 106 ff.; Connelly, *op. cit.*, p. 549 ff.

2. SELF-DETERMINATION WITHIN THE CONTEXT OF THE UNITED NATIONS

The U.N. Charter explicitly establishes the right to self-determination in article 1, par. 2 and in article 55.

Article 1, par. 2 states that one of the goals of the United Nations is to develop "friendly relations between nations, based on respect for the principle of equal rights and self-determination of peoples". According to various interpretations of this provision, by various U.N. committees, the equality of rights and the principle of self-determination are complementary principles and in essence two composite parts of the same rule, referring to states, nations and peoples⁷.

Similarly stated, with respect to the right of self-determination, is article 55⁸. Also, articles 73 and 76.b. indirectly establish the same principle in the U.N. Charter⁹.

Accounts of the principle and right of self-determination are numerous in important U.N. documents. Among the most important one must list:

- a. Declaration 1514 (XV) of 1960 (for granting independence to colonial countries and peoples) (a.2)¹⁰.
- b. Article No 1 of the two International Covenants for Human Rights of 1966 [Res. 2200 (XXI)], that is, the International Covenant for Economic, Social and Educational Rights and the International Covenant for Civil and Political Rights¹¹.
- c. Declaration 2625 (XXV) of 1970, on principles of International Law concerning friendly relations and cooperation among states in accordance with the Charter of the U.N.¹².

Related to the principle of self-determination are also numerous decisions and resolutions of the General Assembly, the Security Council, the International Court of the U.N.¹³, as well as of other international bodies. In

7. Cristescu, *op. cit.*, p. 2, pp. 11-12; Μπρεδήςμα, *op. cit.*, 109.

8. Cristescu, *op. cit.*, p. 3; Μπρεδήςμα, *op. cit.*, 109.

9. *Ibid.*

10. Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res. 1514 (1960). See also Μπρεδήςμα, *op. cit.*, 110-112; Kristan, *op. cit.*, 9; Cristescu, *op. cit.*, p. 6.

11. International Covenant on Economic, Social and Cultural Rights—International Covenant on Civil and Political Rights. GA Res. 2200 (XXI), December 16, 1966. See also, Μπρεδήςμα, *op. cit.*, 110; Cristescu, *op. cit.*, pp. 8-10.

12. Declaration on Principles of International Law concerning friendly relations and cooperation among states in accordance with the Charter of the U.N., GA Res. 2625 (1970). See also Μπρεδήςμα, *op. cit.*, 112; Cristescu, *op. cit.*, pp. 10-13.

13. For more, see Cristescu, *op. cit.*, pp. 13-16 and Μπρεδήςμα, *op. cit.*, 112.

them, the principle of self-determination is viewed essentially with respect to the struggle against colonialism, racial discrimination, apartheid and for the elimination of serious and systematic violations of human rights and fundamental freedoms¹⁴. At the same time, self-determination is linked to a nation's economic development¹⁵, social development¹⁶ and educational development¹⁷.

3. THE CONTENT OF THE PRINCIPLE OF SELF-DETERMINATION

On the content of the principle of self-determination, as it has now developed, we observe the following:

1. All nations have the right to freely determine their political status and work for their economic, social and cultural development.

2. The free and genuine expression of the will of the people is an essential element of the principle of self-determination. The application of the principle might also be extended to a group of nationalities, if this is something they freely choose¹⁸.

For the U.N., the way to determine the will of the people is either by holding a plebiscite or by employing other means, if what the people want manifests itself unequivocally¹⁹. There have been, however, variations and contradictions to this theme: in one case (Togoland), the U.N. General Assembly decreed that the issue that was to be taken into consideration was the desire of the territory's people as a whole, that is the will of the majority²⁰, whereas in another (Cameroon), it was deemed proper that nationalities residing in distinct regions of one territory could exercise their right to self-determination regionally, having been singled out as different ethnic groups with more ethnic affinity to the neighboring countries than with themselves²¹. On the contrary, in the case of Cyprus, the General Assembly did not welcome, for purely political reasons, the possibility that the Cypriot popula-

14. For more, see Cristescu, *op. cit.*, p. 19 ff.

15. *Ibid.*, p. 13.

16. *Ibid.*, p. 15.

17. *Ibid.*

18. *Ibid.*, p. 2 & 38.

19. See Μπρεδήμα, *op. cit.*, 113 ff.; Cristescu, *op. cit.*, p. 46 & 39 ff.

20. Μπρεδήμα, *op. cit.*, 115.

21. *Ibid.*

tion might, as a whole, exercise its right to self-determination, despite the fact that a regional exercise of that right would in effect be impractical, due to the irregular distribution and presence of Turkish-Cypriot individuals amid a Greek-Cypriot population²².

3. Side by side with self-determination is a provision which states that national unity and territorial integrity cannot be impaired, either in part or in whole, as a result of methods not permitted under the U.N. Charter (i.e. in those cases secession is not allowed)²³.

The laying down of U.N. Committee rules with regard to the secession of one ethnic group from the state it currently inhabits was ultimately viewed as an act of intervention with respect to the nation's internal affairs, and one that could undermine its territorial integrity. It was also repeatedly emphasized that the right of self-determination should not be used as a pretext for legalizing attempts to secede²⁴. The principle of equal rights and self-determination should operate in such a way as to unite people on a voluntary and democratic basis, not dismember existing national entities. It is imperative that interpretations that stretch the principle to questionable limits be avoided and thereby prevented from reaching a point where they become applicable to national groups which are already part of an independent, sovereign state. Moves to the contrary would encourage secessionist movements in sovereign states²⁵.

4. In the case of ethnic minorities, their right for self-determination is expressed via the more general right of the peoples for self-determination, the rights established in article 27 of the International Covenant for Civil and Political Rights and the other rights and freedoms²⁶.

Related to the issue of minorities is a principle of great importance, included in Declaration 2625 (XXV): "Nothing in the aforementioned paragraphs [that form the principle of self-determination and equality of rights] should be interpreted in a way that could legalize or encourage actions that dismember or diminish, wholly or partly, the territorial integrity or political unity of sovereign and independent states that act in accordance with the

22. *Ibid.*, pp. 115-116.

23. See Μπρεδήμα, *op. cit.*, 120; Cristescu, *op. cit.*, p. 30.

24. See Cristescu, *op. cit.*, p. 30 & 39.

25. *Ibid.*

26. See Cristescu, *op. cit.*, p. 30 and the study by F. Capotorti, *Study of the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (U.N. Public Sales, No E. 78 XIV.1).

principles of equal rights and self-determination, as described above, and have governments that represent each and every citizen of the state, regardless of race, creed or color. All nations should refrain from acts aiming at the partial or complete dissolution of national unity and territorial integrity of any state or country”²⁷. Therefore, minorities may not exercise a right of self-determination when it involves secession from an existing state.

5. An interesting issue is the one that refers to the distinction made between the terms “self-determination” (articles 1 and 55 of the Chart) and “self-government” or “independence” (articles 73 b and 76 b). Some consider the two terms interchangeable, while others believe that the U.N. Charter makes a distinction between them.

It has been claimed that the right of self-determination is the right of a people to decide upon its own international status (immediate independence, union, secession, association, etc), while, on the other hand, self-government implies autonomy in the running of a country’s internal affairs²⁸. Besides those differences in wording, however, the right of self-determination and the right of a people for self-government or independence is essentially the same²⁹.

It has also been proposed that the content of self-determination should be defined as follows: it includes, for all peoples and nations, the right to “create an independent state”, and the right to “secede or unite with another people or nation, etc”. However, these proposals were rejected, because it was feared that whatever enumeration of the right’s composing elements would be incomplete. It was considered more appropriate that the right be reaffirmed in a more abstract manner³⁰.

6. Self-determination is a legitimate right when applied to the anti-colonial struggle or to a foreign occupation, while its implementation is doubtful when it poses a threat to the territorial integrity of sovereign entities³¹.

The content of self-determination is often expressed in a contradictory way. Some times, for example, it expresses the demands of a population’s oppressed majority (South Africa’s apartheid), and in other cases it is presented

27. See Cristescu, *op. cit.*, p. 41.

28. *Ibid.*, pp. 38 & 41.

29. *Ibid.*, p. 38.

30. *Ibid.*, p. 44.

31. *Ibid.*, pp. 39-40.

as a demand to the majority, assuming the form of claim to secede³².

It is argued that the abstract definition of the legal term "self-determination" can be endowed with a content when viewed under the light of specific historical events and the people's collective conscience, upon which the theory is implemented³³.

7. Self-determination can be seen, at the same time, as a focal point within the effort to redefine the relationship between the people and the decision-making centers. In theory, self-determination, within the context of a conceptual dichotomy, relates both to the issue of the formation of a nation and to its civil liberties³⁴.

Indeed, the two basic documents upon which the right to self-determination rests, i.e. the Declaration for the granting of Independence to Colonial Countries and Peoples and the International Covenant for Civil and Political Rights, point at the same time in two opposite directions. Each document is an answer to an essential question: whether the right of self-determination exists in a people, as part of the process of creating international legal entities, or whether this right is to be found in individuals, as part of the many ways in which the international legal entities (the states) are limited in their actions. From one side we have the theory of the state and the concept of decolonialization, while on the other we have a law of human rights and the concepts of personal freedom and equality in political participation. Consequently, the Declaration appears as a procedural rule, whereas the Agreement as a substantive rule.

It has been argued that it is impossible to reconcile the secessionist impact of self-determination with the assimilatory impact of self-determination within a pre-existing territorial entity. However, the basic dichotomy between procedural and substantive rule leads both to secession and to assimilation.

8. The right of self-determination and equal rights is a uniform universal rule that applies to countries, nations and peoples. Consequently, the countries are obliged to apply the principle of self-determination in their relationships, both with independent states and with nations that have not yet developed into independent states³⁵.

32. See Μπρεδήςμα, *op. cit.*, 124 ff., for an analysis of certain international precedences of self-determination.

33. See Cristescu, *op. cit.*, pp. 39-40.

34. *Ibid.*, pp. 12, 42 & 46.

35. See Cristescu, *op. cit.*, p. 39.

Despite the above, the application of the principle of self-determination to all should not be considered as an encouragement for secession or irredentism or be used to legitimize activities that take aim at a nation's system of government³⁶.

No definition of the word "people" exists, nor is there a way to determine it with certainty. Many opinions have been expressed, but no single one has prevailed³⁷. In many cases, the great number of interpretations and the ensuing uncertainty can transform the right of self-determination into a weapon that may be used against a state's territorial integrity and political unity. Indeed, the people can in effect be manipulated by foreign interests, in ways contrary to their own true interests, and made to support hostile or undermining schemes³⁸. In any case, the concept of a "people" is wider than the concept of a nation (used primarily in the 19th century). However, not even for the concept of a "nation" has it been possible to reach a conclusive and universally accepted definition³⁹.

In certain cases, but not always, a people is easily identified by objective factors. Moreover, even if a people has a clear-cut identity, the historical circumstances may create a close link between two or more distinct communities. In such an event, the exercise of the right of self-determination by one of the communities, be it the majority or the minority, cannot easily take place without impairing the rights of the other⁴⁰.

The problem concerning the definition of the term "people" is of the utmost importance. Since no definition has been established, the United Nations has showed extreme caution in dealing with cases of political self-determination, despite its energetic intervention in abolishing colonialism⁴¹. However, the points that have arisen in various U.N. discussions cannot be ignored:

36. *Ibid.*

37. See analytical presentation of the subject, with detailed viewpoints in Cristescu, *op. cit.*, pp. 39-41 and K. Κούφα, *Η δικαιοσύνη οργάνωση της διεθνούς κοινωνίας*, pp. 62-64.

38. See Cristescu, *op. cit.*, p. 40.

39. *Ibid.*, and E. Myers (transl. K. Κούφα), *Αντοδιάθεσις των Αφρικανικών λαών και Αφρικανική Ενότης* [Self-determination of the African Peoples and African Unity], *Jus Gentium*, 10, p. 11 ff.

40. See Cristescu, *op. cit.*, p. 40.

41. *Ibid.*, pp. 40-41.

- a. The term "people" implies a social entity that has a definite identity and its own characteristics.
- b. It also implies a relationship with a specific region, even if the people concerned have been illegally driven off the land and replaced by another population.
- c. The term "people" should not be confused with the national, religious or linguistic minorities, whose right of existence and legal rights are recognized under article 27 of the International Covenant for Civil and Political Rights⁴².

9. As for the ways to implement self-determination on an international level, the following concepts were defined in the declaration of 1970: creation of a sovereign and independent state, free union or incorporation to an independent state or creation of any other political status that is freely determined by the people⁴³.

10. The principle of self-determination must be taken into consideration together with the other principles and regulations in the Charter. Because this principle is closely linked to the preservation of international peace and security, it is no longer considered a purely internal matter⁴⁴. It is also related, in practice, with the principles of territorial integrity and non-intervention in internal affairs (which must not, however, be used to cover violations of the principle of self-determination), of sovereign equality and the non-use of violence⁴⁵.

4. THE ESSENTIAL COMPONENTS OF THE PRINCIPLE OF SELF-DETERMINATION

Having examined above the content of the principle of self-determination and of the bodies entitled to it, we come up with the following general principles of application, which we will try to apply to the case of Yugoslavia:

1. The content of the principle of self-determination (that is, the right of the people to decide for themselves how to define their international and

42. *Ibid.*, p. 41.

43. *Ibid.*, p. 46.

44. *Ibid.*, p. 22.

45. *Ibid.*, p. 25 ff. for an analytical presentation of the relationship between the principles of the U.N. Charter and the principle of self-determination.

internal status) had a mainly anti-colonial/anti-racist character. In recent years however, the systematic and outright violations of human rights or the lack of representation in government of a part of a country's population, were deemed a cause for its application.

2. The effort not to link the principle of self-determination to efforts associated with secession from sovereign states is apparent (the principle of territorial integrity usually wins over).

3. Entitled to it are states, nations and people, the term "people" being used with the wider sense of the word.

4. Minorities are not entitled to the right, since their protection is dealt with within a different institutional framework.

5. The right can be exercised by creating a new state, uniting or establishing some sort of a link with another, seceding, etc.

6. International law does not recognize secessions accomplished by use of force.

7. A people's desire for self-determination should be expressed through a free and unbiased process, usually in the form of a referendum.

The Charter for the Organization of African Unity brings up some interesting points:

1. A distinction is made between self-determination as anti-colonial autonomy and self-determination as secessionist autonomy.
2. It is provided that the right be fully exercised within the context of specific circumstances in a nation's political history.
3. It is pointed out that in international theory the concept of self-determination does not appear firmly defined, but oscillates between the "procedural right", the "substantive right" and the "non right".

5. THE RELATION BETWEEN SELF-DETERMINATION AND SECESSION — RECENT DEVELOPMENTS

In principle, the exercise of the right of self-determination by way of secession, involving ethnic groups from existing states, is not acceptable (unless we are dealing with colonial or racist regimes)⁴⁶.

Despite the above, the matter is contested: it has been proposed that secession be permitted only in extraordinary cases of mass and continual

46. See Μπρεδήμα, *op. cit.*, 120 and Rapport des juristes sur l'affaire des îles Åland, League of Nations, Doc. B. 721/68.106 (1921), pp. 22-23.

violation of human rights affecting a specific population group, for reasons of religion, color or race (case of Bangladesh seceding from Pakistan in 1972). This results from a *a contrario* interpretation of a provision incorporated in Declaration 2625 of 1970⁴⁷. Also, according to the preparatory work done in the two Covenants of 1966, a right to secede from an already formed state seems to be acceptable under two conditions:

- a. when we are dealing with multiethnic states that are comprised of ethnic groups of similar size, but not in cases of a group forming the population's majority and another the population's minority (case of ethnic minorities).
- b. when an ethnic group has been recognized as a political entity in the constitution. Countries cited in the past (a case of prophetic utterance?) and which fit that description are the Soviet Union and Yugoslavia⁴⁸.

The changes that have taken place since 1989, following the dissolution of the former Soviet Union and the disintegration process under way in Yugoslavia seem to support the exception mentioned above, widening the scope where self-determination-by-secession is possible. Despite the fact that a general rule cannot yet be established, we may be close to the birth of a special clause in international law⁴⁹.

B. THE YUGOSLAV SECESSIONS

1. AN OUTLINE OF YUGOSLAV HISTORY

Yugoslavia, up to the crisis that led to its dissolution, was a federation of six republics (Bosnia-Herzegovina, Croatia, Slovenia, Montenegro, Serbia, "Macedonia") and two autonomous regions (Kosovo, Vojvodina). The autonomy granted to the above regions was rescinded *de facto* in 1988 and *de jure* in 1990⁵⁰.

Population data, according to the 1981 census, are as follows⁵¹: Total population: 22,424,711. Serbs 36%, Croats 20%, Muslims 9%, Slovenes

47. See Μπρεδήμα, *op. cit.*, 122.

48. *Ibid.*, *op. cit.*, 121.

49. See Μπρεδήμα, *op. cit.*, and Μπρεδήμα, "Γιουγκοσλαβικές αποσχίσεις και διεθνές δίκαιο" [Yugoslavian secessions and international law], *ANTI*, 476 (4.10.1991), 31.

50. See P. Lendvai, "Yugoslavia without Yugoslavs: the roots of the crisis", *International Affairs*, 67, 2 (1991), 251-255, 258.

51. *Ibid.*, 253. Similar statistical data, with slight differences, are provided by J. Gow, *op. cit.*, p. 293, footnote 1. According to more recent estimates (1990) the population of

8%, Albanians 8%, "Macedonians" 6%, Yugoslavs 5%, Montenegrins 3%, Hungarians 2%.

Detailed data per republic and region are: Serbia (not comprising Kosovo and Vojvodina): Serbs 85%. Croatia: Croats 75%, Serbs 12%. Bosnia-Herzegovina: Muslims 40%, Serbs 32%, Croats 18%. "Macedonia": "Macedonians" 67%, Albanians 20%, Turks 5%. Slovenia: Slovenes 91%. Montenegro: Montenegrins 69%, Muslims 13%, Albanians 6%. Vojvodina: Serbs 54%, Hungarians 19%. Kosovo: Albanians 77%, Serbs 13%.

The recent developments and the escalation of violence which surprised many observers, can only be explained if the historical background is taken into consideration⁵². We must begin with the fact that Yugoslavia is a country with no Yugoslavs. According to the 1981 census, only 1.2 million out of a population of 22.4 million described themselves as Yugoslavs⁵³. The rest preferred to indicate their ethnic origin.

a. Yugoslavia until Tito's death

Yugoslavia was born out of necessity and misunderstanding. Croats and Slovenians, too weak to form their own states, viewed her as a framework for national self-determination. The Serbs viewed her as a way to unite people akin to them, in a greater Serbia⁵⁴. The different approaches as to what Yugoslavia really was became a constant source of tension and nationalism in the country, already from the day of its conception.

The Kingdom of the Serbs, Croats and Slovenes, founded in 1918,

Yugoslavia is 24,110,000 (see A. Sellier-J. Sellier, *Atlas des peuples d'Europe Centrale*, ed. La Decouverte, Paris, 1991, pp. 146-154, in p. 164, where the numerical data are presented in detail. The main differences, compared to the 1981 data, are found in the increase of the ethnic Albanians in Kosovo, currently comprising 90% of the population (see Gow, *op. cit.*, p. 293), and in "Macedonia" where ethnic Albanians according to most estimates comprise more than 30% of the population (ethnic Albanian sources claim that in fact they comprise approximately 40%). The larger part of those describing themselves as Yugoslavs (that is the 5% of the population) should be considered ethnic Serbs (see A. Pisiotis, "Peace prospects for Yugoslavia", *The Fletcher Forum*, Summer 1992, 93-110, in 107).

52. Lendvai, *op. cit.*, 253.

53. *Ibid.* For more on the history and the political and state system of Yugoslavia, see Χρ. Γιαλλουρίδη-Στ. Αλειφαντή (ed.), *Τα Βαλκάνια στο σταυροδρόμι των εξελίξεων* [The Balkans on the crossroads of current developments], Athens, Ποές, p. 61 ff.; Gow, *op. cit.*, p. 292 ff.; Pisiotis, *op. cit.*, p. 94.

54. See Gow, *op. cit.*, p. 292.

did not have a solid base and the unification of southern Slavs did not materialize. Already from the period between the Wars, the other ethnic groups (except the Serbs) viewed the "Yugoslav" idea with skepticism and were convinced that the Serbs were in reality transforming Yugoslavia into a "Greater Serbia"⁵⁵.

Soon, Serbian nationalism came face to face with a rising Croatian nationalism. During World War II, the creation of a Croatian state, under the auspices of the German and Italian occupation forces, made Serbs more distrustful of Croats. The memory of hundreds of thousands of Serbs slain during that period has remained vivid and helped shape the internal political scene. After the war, the Serbs accused the Croats of collaboration. They, on their part, accused the Serbs of oppression, citing the heavy-handed role played by the Communist party and the Serbian minority in Croatia, who, despite their limited numbers with respect to the republic's total population (12%), participated in a much larger degree in its administration⁵⁶.

In the early 1960s a reform movement took root in Slovenia and Croatia, which aimed at a greater degree of decentralization and opposed the dominant role of Belgrade and the Serbian hold on federal authority. During the 1960s, part of Belgrade's authority gradually passed down to the federal republics. The fragmentation of authority became so extensive that in 1970 Yugoslavia seemed ready to fall apart. Tito however, supported by the army, enforced his personal authority and put a hold on the secessionist tendencies, mainly among the Croatian Community Party, where they were more pronounced. In any case, the constitutional reform of 1975 reaffirmed the more pronounced role the federal republics were about to play⁵⁷. The Constitution of 1974 created a federation of six republics and two autonomous regions. The autonomous regions were created in Kosovo and Vojvodina, thereby providing the regions, which have a large population percentage of non-Serbs (Albanians and Hungarians respectively), with a degree of self-government. At the same time, naturally, and in order to keep in line with Serbian sensitivities on the subject, Serbian authority was maintained on the provinces⁵⁸.

Yugoslavia remained under Communist Party control, but the role of the republics and provinces became more important; and all under Tito's

55. See Lendvai, *op. cit.*, p. 254.

56. *Ibid.*, pp. 255-256.

57. See Gow, *op. cit.*, p. 293.

58. *Ibid.*, p. 294.

watchful eye. Yugoslavia functioned on a nine-party system: the eight federal republic and autonomous region parties and the army's party, were all represented in the Central Committee of the League of Yugoslav Communists.

Outside the framework of the Central Committee, each of the nine parties acted independently. The federal army, supporting Tito, was the only real all-Yugoslav institution. The army was also responsible for maintaining the federation's territorial integrity⁵⁹.

At the same time, however, the system was based on the absolute centralized authority of the Communist Party, itself directed from Belgrade. The party apparatus functioned as a bond, holding the system together, mainly through Tito's personality and charismatic leadership, but also through the army and the secret police⁶⁰.

A collective, federal Presidency was put into place, comprised of one representative from each republic, the Minister of Defense (with no voting right) and Tito, who was appointed President for life. A constitutional regulation took care of the issue of Tito's successor, by creating a system according to which the title of the President would go, on a predetermined rotational basis, from one member of the collective Presidency to another⁶¹.

The internal conflicts between the federal decentralized structure on one part and the monopoly of power exercised by the party leadership on the other, remained concealed for several years, mainly because of external reasons⁶². Gradually however, the dynamics of the economic and administrative decentralization and the rivalry between the republics and Belgrade, as well as the conflict between the rich and the poor ethnic groups and regions, created a deep rift in the state mechanism⁶³. Never was the struggle in Yugoslavia one between "liberals" and "conservatives". The rivalry in all levels was one between centralization and decentralization⁶⁴. The argument over who was to distribute the federal pie (central budget) and how, gradually turned into the central theme of the internal political stage and became a source of ethnic discord⁶⁵.

59. *Ibid.*

60. See Lendvai, *op. cit.*, 255.

61. See Gow, *op. cit.*, 294.

62. See Lendvai, *op. cit.*, p. 255. Basically, it was fear for a Soviet intervention (such as in Hungary and Czechoslovakia) and the arrest of political development, dictated by the rational behind bipolarity.

63. *Ibid.*, 256.

64. *Ibid.*, 257.

65. *Ibid.*, 256.

b. Yugoslavia after Tito

The mechanisms of the Constitution of 1974 were functional while Tito was still alive and were rendered operative by his ability to impose his wishes and intervene in case of disputes.

After his death in 1980 the weaknesses of the federal system gradually became apparent, as did its inherent contradictions. It became clear how little the concept of federalism had been assimilated by the various peoples of Yugoslavia⁶⁶.

Its main weakness lay in the fact that the Socialist Federal Republic of Yugoslavia had been created on purpose as a federation of six republics and two autonomous regions, with the expressed, albeit hypothetical, inherent constitutional possibility of secession, that is the departure of one or more of the federation's components⁶⁷.

Yugoslavia, even though it did not disintegrate at once, reached a point of crisis gradually. The lack of leadership, in the person of a political personality of some stature in central government, together with the economic problems that arose, made the internal tensions more pronounced⁶⁸.

The leaders of the republics and regions created isolated pockets of land, where nationalism took communism's place as a source of political legitimacy and, more importantly, by using the control mechanism forcibly put into place by the communist party. So, after Tito's death, the control of the communist party remained functional on the level of the republics, thereby increasing their power relative to the federal government⁶⁹.

The general dissatisfaction with the federal system of 1974, helped bring Slobodan Milošević, a nationalist, to power. His ascent to Serbia's presidency in 1987 was aimed at strengthening the republic's role, a move which was met with enthusiasm by the Serbs⁷⁰. In his first two years in power he also enjoyed the support of the U.S.⁷¹.

The nationalistic fervor first manifested itself in the autonomous region of Kosovo, when the ethnic Albanians demanded that their region be granted a *de jure* constitutional status of parity with the other six republics. Their

66. See Gow, *op. cit.*, p. 294.

67. See Lendvai, *op. cit.*, 255.

68. See Gow, *op. cit.*, p. 294.

69. *Ibid.*

70. *Ibid.*, p. 296; Lendvai, *op. cit.*, 258.

71. See Gow, *op. cit.*, p. 306.

main argument was that they comprised the absolute majority of the region's population (approximately 90%). The demand was met with much opposition by the Serbs, who resorted to a series of oppressive measures in an effort to impose their views. In the autumn of 1988 and in March 1990, Kosovo and Vojvodina were hit with a constitutional reform which deprived them of their autonomy status, leaving no room to the federal authorities to react⁷².

For the first half part of 1990 it seemed that the developing federal paralysis could be effectively checked. Prime Minister Ante Marković convinced the leaders of the republics to initiate a six-month program of economic recovery, which proved effective and brought the inflation down from 2,000% to 20%.

The Presidents of the Republics however did not wish to embark on a second economic program and drew up their own economic plans. Serbia and Montenegro tended towards state-controlled economy, Slovenia and Croatia favored the establishment of Western-type market mechanisms, while Bosnia-Herzegovina and "Macedonia" opted for a middle-ground solution⁷³.

2. THE CRISIS

a. Outline of Events

According to certain analyses⁷⁴, five main events occurred between 1989 and 1991 that were instrumental in the transferring of authority from the center to the republics:

- a. The constitutional amendments in the republics, brought about without the central government's consent.
- b. The end of communist party rule and the democratic elections held on a republic level.
- c. The inability to hold elections on a federal level.
- d. The failure in the discussions on constitutional reform, held between the Presidents of the Republics.
- e. The development of small, independent military units in some republics.

When the single party system was abandoned in 1990 and multi-party elections were held in all republics, some constitutional reform began. The

72. See Lendvai, *op. cit.*, 257-258; Gow, *op. cit.*, p. 294.

73. See Gow, *op. cit.*, p. 295.

74. See Gow, *op. cit.*, pp. 295-296.

federal authorities were in no position to react. In the multi-party elections held in Serbia and Montenegro the Communists emerged victorious (running on a nationalistic platform), while in the other four republics the winners were the centre-right parties (also running on nationalistic platforms). Often the members of such coalitions were former Communists as, for example, the President of Skopje, K. Gligorov⁷⁵.

The newly elected governments in the republics commenced a round of negotiations about the Constitution, in order to set up the framework for federal elections. The negotiations failed and the irreconcilable gap concerning the question of Yugoslavia's future became apparent⁷⁶.

The opposing views emanated from Croatia and Slovenia on the one side, and Serbia on the other. The first two pushed forward the idea of a confederated Yugoslavia (i.e. a loose union of independent and sovereign states), while Serbia proposed a new form of federation, whose goal would be to improve on the central federal control. Montenegro backed the Serbian plan, while Bosnia-Herzegovina and "Macedonia" supported some kind of middle solution, even though they seemed to lean towards confederation⁷⁷.

The negotiations that had started in early 1991 did not bear fruit for another reason; the governments of Serbia and Croatia had irreconcilable ideological differences⁷⁸.

The wave of secessions started with Slovenia. The referendum held in this republic on December 20, 1990 showed that 88% of its population favored independence from Yugoslavia. In February 1991 the Slovenian Parliament adopted a similar view with great majority⁷⁹. Meanwhile, the new Croatian Constitution also paved the way for independence and secession, a development that had the Serbian minority in Croatia declare the creation of an autonomous Serbian region in Krajina⁸⁰.

The beginning of the crisis in Yugoslavia is set at May 15, 1991, the date that the country found itself without a Head of State. Serbia blocked the automatic rotation procedure that determined the next in line for the Pre-

75. *Ibid.*, p. 296.

76. *Ibid.*, p. 297.

77. *Ibid.* For more on the two alternatives (confederation, improved federation) see R. Petkovic, "Yugoslavia versus Yugoslavia", *European Affairs*, vol. 1/91, Febr./March 1991, p. 72 ff., who supports (contrary to Gow) that Bosnia-Herzegovina and "Macedonia" had identical views with those of Serbia and Montenegro.

78. See Gow, *op. cit.*, p. 298.

79. See Lendvai, *op. cit.*, 260.

80. *Ibid.*

sidency of the Yugoslav Federation, thereby preventing the Croat Stipe Mesić from ascending to the Presidency. The Yugoslavian state did have a Prime Minister, Ante Marković (also a Croat), but he was unable to enforce his economic reform and restructuring program for the federal republics. Meanwhile, the republics went on with their legislative and constitutional efforts to achieve independence⁸¹.

At the same time, violent incidents started to break out throughout the country. When the nationalistic government of Croatia claimed its sovereignty, the Serbs in Croatia formed paramilitary units and effectively cut off the Serbian populated regions from the rest of Croatia. Serbia expressed its support for its compatriots in Croatia, while S. Milošević made things worse by declaring that the Serbian nation was first in rank and that all Serbs should live in one state. He implied that, if eventually the Yugoslav Federation broke up, an effort would be made to unite all Serbs within a greater Serbia⁸². In May 1991, violent incidents broke out in Croatia and Bosnia-Herzegovina, but Serbia refrained from recognizing the declaration of unity with Serbia, suggested by the Serbs living in Croatia. Serbia, in essence, tried to scare off the other republics from abandoning the federation. Despite these adverse developments, Slovenia and Croatia seem to have realized that the only solution left was to distance themselves from the Yugoslav Federation. They strengthened the local national guard units they had a right to maintain, and in reality transformed them into their republics' armed forces⁸³.

b. The Beginning of the Armed Conflict and the Position of Foreign Powers

On June 25, 1991, just four days after the visit of J. Baker, the U.S. Foreign Minister, to Belgrade, Slovenia and Croatia unilaterally declared independence from Yugoslavia⁸⁴. Until then, the policy of the West (the U.S. and the E.C., with the possible exception of Germany) towards Yugoslavia had been in favor of preserving the unity of the Yugoslav Federal Republic (in one form or another)⁸⁵.

The analyses carried out by Western governments and observers at that stage stressed the need to preserve Yugoslavia's unity and to commonly work

81. See Gow, *op. cit.*, p. 291.

82. *Ibid.*, p. 298.

83. *Ibid.* For more on the development of military forces in the federal republics, as well as on the structure of the federal army, see Gow, *op. cit.*, pp. 298-303.

84. *Ibid.*, p. 308.

85. *Ibid.*, pp. 303-308.

out a system of a looser federation or confederation. The alternative was to allow the secession of the two northern republics and preserve the unity of the other four, structured upon a new constitution and inevitably under Serbian influence. The only other solution would be the destructive scenario of civil conflict⁸⁶.

The first sign of change in the West's position appeared after the Baker visit, when the U.S. Foreign Minister stated that his country would not recognize "unilateral acts", a statement that seemed to imply that the international community might in fact recognize the independence of the federal republics, but only if they were a product of consent⁸⁷. Despite the above, and immediately after the visit, Slovenia and Croatia unilaterally declared their independence from Yugoslavia. The international community, as expected, did not rush to recognize the two republics (except for Austria, which—in essence—moved to a *de facto* recognition on June 26)⁸⁸.

The next period was marked by the intervention of the federal army in Slovenia. The intervention was limited in scope and mainly targeted border outposts and road arteries. The federal army in Slovenia acted on its own initiative, the Milošević government not having ordered such activities (even though seemingly favoring it)⁸⁹.

Gradually, because of the action taken by the federal army and the fear of having the armed conflict spread, the position of the West became more sympathetic of the two newly independent republics. Leading this change of attitude were Germany, the U.S., Italy and Austria⁹⁰.

A series of interventions attempted by the E.C. "troika"⁹¹ did not bear fruit. Despite the fact that the presidential crisis was resolved and the Croat Stipe Mesić was able to assume his role as President (the Serbs no longer opposing his appointment), the battles raged on and the agreed cease-fires were not observed. The federal army apparently acted without political authorization. Later, the federal army withdrew from Slovenia, an act which

86. See, for example, similar view expressed in Lendvai, *op. cit.*, 261. For more on the position of the West and of the other states towards the Yugoslav crisis and on their influence, see Gow, *op. cit.*, pp. 303-310; Pisiotis, *op. cit.*, 96-104.

87. See Gow, *op. cit.*, p. 308.

88. *Ibid.*

89. *Ibid.*, pp. 308-309.

90. For more see: Pisiotis, *op. cit.*, 96-104 and Gow, *op. cit.*, pp. 308-309.

91. The "troika" was comprised by Foreign Ministers Gianni de Michelis (Italy), Hans van den Broek (The Netherlands) and Jacques Poos (Luxembourg). See also Gow, *op. cit.*, p. 309.

essentially cleared the way for the international recognition of the newly independent republics⁹². In Croatia, the armed conflict turned into a large scale military confrontation between the Serbian minority of Croatia and the federal army on the one side and the Croats on the other, a bloody development bearing destructive consequences for Yugoslavia and threatening peace in the Balkans⁹³.

The escalation of military operations, powered mainly by the Serbs, the Croat and Slovene relentless drive for secession and the support shown (and indirect interventions attempted) by certain, mostly Western, countries to that effect, speeded up the process of Yugoslavia's disintegration⁹⁴.

3. UNDERLYING REASONS OF THE YUGOSLAV CRISIS

Speaking at the Slovene Academy of Sciences in 1948, Tito declared that the problem of nationalities in Yugoslavia had been resolved. His

92. See Gow, *op. cit.*, p. 309.

93. For more on the developments not covered by this paper (i.e. after 10.12.1991), see Pisiotis, *op. cit.*, 96 ff.

94. For more on an account of the history and reasons behind the Yugoslav Crisis see: Στ. Αλειφαντή, "Η Γιουγκοσλαβία στην κόψη του ξυραφιού", *Τετράδια πολιτικού διαλόγου, έρευνας και κριτικής* [Yugoslavia on a razor's edge, Cahiers of political dialogue, research and critique], 28, 1991, 7-15; K. Danforth, "Yugoslavia: A bitter Heritage", *Europe*, March 1992, 22-29; A. Den Doollaard, "Nationality but no nation", *European Affairs*, 5, 1991, 10-13; Ελληνικό Ίδρυμα Αμυντικής και Εξωτερικής Πολιτικής, *Η Σημερινή Γιουγκοσλαβία. Προβλήματα και Προοπτικές*. Σειρά: *Ειδικά Σεμινάρια* [Greek Foundation on Defense and Foreign Policy. Present-day Yugoslavia. Problems and Perspectives. Series: Special Seminars], 7, Athens, 1990; V. P. Gagnon, Jr., "Yugoslavia: prospects for stability", *Foreign Affairs*, Summer 1991, 17-35; G. Harvalias, "Yugoslavia: The tragedy continues", *Athena Magazine*, 53, Jan. 1992; K. Iordanidis, "Political vacuum in the Balkans", *Athena Magazine*, 45, May 1991; P. Lendvai, "The Balkan Bind", *European Affairs*, V, 3, June-July 1991, 34-36; K. Manolopoulou-Varvitsioti, "The Balkans: the mosaic of tension", *Athena Magazine*, 45, May 1991; N. Marakis, "The Balkans: A changing international environment", *Athena Magazine*, 53, Jan. 1992; Χρ. Ροζάκη, "Η Γιουγκοσλαβία και οι μαθητές του Προκρούστη: Η Ευρωπαϊκή Κοινότητα σε αναζήτηση ενωτικών ισορροπιών" [Yugoslavia and the disciples of Procrustes: The European Community in search of unity and balance], *ANTI* 476, 4.10.1991, p. 28; R. Schifter, "Human Rights in Yugoslavia", *Dispatch*, U.S. Department of State, II, 9, 4.3.1991, pp. 152-153; P. Simić, "Yugoslavia: Origins of the Crisis", *The Southern European Yearbook*, 1991, ELIAMEP, Athens, 1991, pp. 107-124; K. Danforth, "Yugoslavia: A house much divided", *National Geographic*, Aug. 1990, 93 ff.

optimism was tragically ill-founded, as proved by the civil war now raging in our neighboring country⁹⁵.

The individual awareness of belonging to an ethnic group did not become less pronounced in 45 years of socialist rule. The merging of nations, anticipated by Lenin and originally supported by Kardelj, the Slovenian associate of Tito, did not materialize. Yugoslavia faced problems similar to those of other multiethnic countries. The two pillars of official policy with regard to the issue of ethnicities were, in the past, a unified party and a series of effective mechanisms of coercion. The way things developed served as proof to how ethnic consciousness remained alive and how the supranational Yugoslav model failed to make people identify with it⁹⁶.

The ethnic problems of Yugoslavia were centered around the essential conflict between the central authority and the federal republics, which were suspicious of the larger (Serbian) nation's ambition to dominate the smaller nations and minorities. The rivalry, which was inherited from the period between the Wars and which grew more intense during the years of Tito's rule, reached a point of rupture with the failure of the so-called "self-management socialism", the coming about of the economic crisis and the division experienced within the country between North and South⁹⁷.

The role of the Great Powers was a factor of restraint with respect to the tendencies favoring fragmentation, especially within the context of the Cold War. The collapse of the Soviet Union and the end of the Cold War increased tensions in Yugoslavia, the element of a possible Soviet intervention or a military engagement between the two blocks having been rendered less significant⁹⁸.

Post-War Yugoslavia failed, because the efforts to correct the mistakes of the pre-War Yugoslavia (dominated by the Serbian ruling class) satisfied no one. The federal structure, modeled after the Soviet Union's, which attempted to defuse the ethnic problems which plagued pre-War Yugoslavia, became the framework for the creation of a number of embryonic nation-states, conceived by certain ethnic groups. This, in turn, became an institu-

95. See also, N. Stavrou, "Ethnicity in Yugoslavia: Roots and Impact", in A. Said, L. Simmons (eds.), *Ethnicity in an International Context*, Transaction Books, New Brunswick, NJ, 1976, p. 134 ff.

96. *Ibid.*; see also Lendvai, *op. cit.*, 258.

97. See Lendvai, *op. cit.*, 253.

98. *Ibid.*, 255-256 and Gow, *op. cit.*, p. 292.

tional source of tension between the republic and federal authorities, a sore impossible to cure⁹⁹.

The notion of two sovereign states uniting, which—in an earlier stage of the crisis—would have been a commonly reached, realistic solution to the Yugoslav problem, was undermined by the unfolding of events in late June 1991. Both Yugoslav and other interested foreign parties were to blame¹⁰⁰.

Unfortunately, the more pessimistic predictions were proven accurate, and armed violence took the place of cooperation and consent. Foreign intervention and influence also contributed to that, having finally opted for the irreversible breaking-up of Yugoslavia. The efforts made by the E.C., the CSCE and the U.N. did little to avert the confrontation.

The dissolution of Yugoslavia into small sovereign states cannot be the permanent solution to the country's ethnic problems; the complex ethnic distribution in Yugoslavia does not conform to the existing borders between republics. Bosnia-Herzegovina and Croatia, for example, have large Serbian minorities and the Albanian majority in Kosovo will continue to be a potential destabilizing factor. Without serious guarantees for minority rights, many of the Yugoslav republics will not be strong enough to deal with nationalistic tensions¹⁰¹.

C. THE APPLICATION OF THE RIGHT OF SELF-DETERMINATION AND THE YUGOSLAV SECESSIONS

In order to examine the legality of the right to call for self-determination in the case of the Yugoslav secessions, we must take the following facts into consideration:

1. The founding of Yugoslavia was brought about by consent.
2. The Federal Yugoslav Constitution includes a provision which gives a republic the right to secede.

99. See Gow, *op. cit.*, pp. 292-293; Lendvai, *op. cit.*, 256.

100. See also Gow, *op. cit.*, p. 310, who blames the West for lacking determination and being slow in intervening and recognizing the independence of the Yugoslav republics. According to his opinion the outbreak of violence was a sign of the fact that the preservation of Yugoslavia's unity was no longer possible. He considers unfortunate that the crisis erupted in a period when the European institutions such as the E.C. and the CSCE were not yet ready to deal with serious crises such as the one in Yugoslavia. Pisiotis (*op. cit.*, 100), on the other hand, largely blames Germany for the crisis.

101. See also Gow, *op. cit.*, p. 292. Pisiotis, on the other hand, believes that the existing borders between the republics must be modified on an ethnic basis.

3. Referenda were held in at least three republics (Slovenia, Croatia, "Macedonia"), resulting in an overwhelming support for independence. In the first two republics the referendum result was ratified by Parliament and independence was pronounced shortly thereafter. Such a development is yet to occur in the so-called Republic of "Macedonia".

4. In the case of Slovenia, the federal army's departure from its territory, is viewed as a *de facto* recognition of independence.

5. In the case of Slovenia and Croatia, we are dealing with distinct nations (Slovenes and Croats respectively), which are also largely ethnically homogeneous (91% and 75% respectively). Therefore, the exercise of the right of self-determination is legally justifiable. This does not apply to "Macedonia" and Bosnia-Herzegovina, home to many ethnic groups. In this case self-determination might be evoked by the "people", if a concept of a common identity does exist among them and can be established by the expressed will of the region's population.

6. Due to the multi-ethnic composition and distribution of the ethnic groups in the Yugoslav republics (mainly of Bosnia-Herzegovina, Croatia and "Macedonia"), it is very difficult in practice to obtain independence by redefining the borders of the federal republics along ethnic lines; that is, the inclusion of the minority regions into their ethnically related neighboring republics (i.e. the inclusion of Serbs currently living in Bosnia or Croatia into Serbia or the inclusion of the Croats currently living in Bosnia into Croatia). This would require changing the internal borders of the federal republics (something acceptable under international law only when agreed to by all interested parties, clearly not the case in Yugoslavia) or moving entire populations across borders, exchanging populations and indemnifying for property loss, etc. The only viable solution seems to be the creation of "cantons" (on an ethnic basis), which together would constitute the founding components of the new independent states and which would possibly take the place of the former federal Yugoslav republics. Consequently those new states will be internally endowed with a federal structure. A prerequisite would be to arrive at a consensus among all interested parties. At the same time, concrete guarantees should be given with respect to minority rights, and similar cases in all republics should be judged on the same basis.

Despite the fact that in the case of Yugoslavia the more traditional requirements cited for the exercise of the right of self-determination by secession are lacking (i.e. colonialism-racism-non representation in government-systematic violation of human rights), it seems that the more recent international developments are bringing changes to the established state of

law. This supports the previously discussed viewpoint¹⁰² and we might eventually arrive at a point where the secessionist application of the right of self-determination would legally apply to the case of Yugoslavia too.

It appears that little by little the international community (or a large part of it) is more willing to recognize the secession of republics which make up a federal state entity, especially when distinct ethnic groups exist within the larger state, or when the population considers itself as one people¹⁰³. This development started with the secession of the former Soviet republics. And despite the fact that the international recognition of the independence of the Baltic republics was based on the fact that their original inclusion into the Soviet Union was an act of illegal exercise of force, it does not hold true for the rest of the Soviet republics.

So, the effort by the two northern Yugoslav republics to secede found fertile ground in which to develop, as witnessed by the expressed intention of several states to recognize their independence. Determining factors seem to be:

- a. that in the case of Slovenia and Croatia we are dealing with different nations,
- b. that a state entity is already in place, albeit with incomplete sovereignty (limited by the federal authority),
- c. that the federal constitution provides for the possibility of member states abandoning the federation,
- d. that the desire of the people for secession has been freely expressed.

From this point on the issue is essentially political. The Croats, of course, could cite other reasons, such as: lack of sufficient representation in the federal Presidency, where Mesić was not allowed to serve, or even (in the case of Croats and Slovenes) economic exploitation by other ethnic groups. These reasons, however, cannot be substantiated easily. In any case, the claim for self-determination was mainly based on the expressed desire of the peoples of Slovenia and Croatia to be independent.

102. See above for the view that supports the recognition of the right for self-determination-by-secession in cases of multi-ethnic states that are comprised by ethnic groups of a similar size and which are constitutionally recognized as distinct entities (i.e. Yugoslavia, Soviet Union). See Μπρεδήμα, *op. cit.*, 121 and A. Cassese, "The self-determination of peoples", in L. Henkin (ed.), *The International Bill of Rights*, 1981, p. 95.

103. See also A. Μπρεδήμα, "Γιουγκοσλαβικές αποσχίσεις και διεθνές δίκαιο" [Yugoslav secessions and international law], *ANTI* 476, 4.10.1991, 30 ff.

In the case of "Macedonia", uncertainties abound about whether a "people" exists at all, with the legal sense of the term (i.e. a population which collectively considers itself one people). Moreover, the proportion of the different ethnic groups has not been determined. For example, the ethnic Albanians inhabiting "Macedonia" officially comprise 20% of the republic's population, while minority sources claim a 40% share. The opposition of the Albanian minority to many of the decisions taken by Skopje is well known, as is its demand to be one of the founding ethnic components of the state now in the making. Dubious remain the data furnished for the other minorities comprising "Macedonia" as well. In any case, this is not one homogeneous nation neither does it have a past state history. We are dealing with the familiar non-existent "Macedonian" nation and state structure Tito fabricated as recent as 1944.

That same kind of uncertainty, of a dubious connection between the people and their national identity exists in Bosnia-Herzegovina too. This republic, with its equal distribution of the two main ethnic groups (Muslims 40%, Serbs 32%) and the substantial Croatian presence (18%), is in effect a microcosm of the problems Yugoslavia faces as a whole, a real enigma as to how the minority-majority relationship applies.

The Issue of Minorities

As already mentioned, the right of self-determination does not apply to minorities. The right of territorial integrity clearly takes precedence over the right of self-determination, which falls under the more general area of protection of human rights (except in the cases previously noted) for the population of a country as a whole¹⁰⁴. Within the CSCE context, it has been interpreted as encompassing the inviolability of both the external and internal borders of countries¹⁰⁵. Therefore, for example, the regions of Slavonia and Krajina in Croatia, inhabited mainly by the Serbian minority cannot legally secede from Croatia (this of course, has already been achieved by force). The same applies to Kosovo and Vojvodina in Serbia inhabited mainly by an Albanian and a Hungarian minority respectively. In all these cases, we are not dealing simply with distinct ethnic groups, but with minorities of neigh-

104. See, P. Thornberry, "Self-determination, Minorities, Human Rights: A Review of International Instruments", *International and Comparative Law Quarterly*, 38, Oct. 1989, pp. 867-889, in p. 884 & 887 ff.; Cristescu, *op. cit.*, p. 30.

105. See Gow, *op. cit.*, p. 308.

boring nations (Serbs, Albanians and Hungarians) that are already formed into a state entity¹⁰⁶.

The situation in Bosnia is even more difficult, where an amalgam of nationalities exists, without any one group having an overwhelming majority over the others (Muslims 40%, Serbs 32%, Croats 18%).

For Kosovo, to be sure, the large proportion of Albanian-speaking individuals, makes secession easier in practice. However, the only legal reason for such a move would be widespread and outright violations of human rights (which does not seem to be the case here, as was for example in Bangladesh¹⁰⁷, despite the known problems). In any case, the *de facto* abolition of autonomy for the region by the Serbs, despite the serious problem of constitutional legitimacy it creates, does not seem to justify secession (since Kosovo never was a federal republic).

Conclusion

The traditional interpretation of the right of self-determination (based, at least, on state practice) does not lend legitimacy to the unilateral acts of secession in Yugoslavia, since they do not fall under the provisions of the international law. Such legitimacy seems to be substantiated under the Covenants of 1966¹⁰⁸.

The recent revival of the right of self-determination in cases such as Germany or, more importantly, the Soviet Union, and the tendency observed lately by certain states to recognize the Yugoslav states that have seceded, is indicative perhaps of the development of a new particular customary law, which would allow for the right of self-determination to be applied (by secession from an existing state) to cases involving federal states (if they meet the above requirements, that is). Even in those cases, though, it should not apply to minorities, but to nations and peoples, and should be the product of an agreement among the interested parties, not something achieved by force¹⁰⁹. Exception should be made of cases where violence is the last resort for achieving independence, because of a federal or other central authority's armed reaction.

106. See also Μπρεδήμα, *op. cit.*, 31, footnote 103.

107. For the case of Bangladesh, see Μπρεδήμα, *op. cit.*, 131 ff., footnote 2.

108. See Μπρεδήμα, *op. cit.*, 121, footnote 2.

109. See also Μπρεδήμα, *op. cit.*, 31, footnote 103. For the case of minorities, see Cristescu, *op. cit.*, p. 30 and Thornberry, *op. cit.*, p. 874 ff.

We should, however, exercise extreme caution, or even not attempt to apply the above at all, in cases of non-federal states or to non-multiethnic states.

AN ASSESSMENT

The analysis just completed shows the relative fluidity of the rules of international law with respect to the right of self-determination by secession¹¹⁰. It also demonstrates how greatly dependent law is on politics (i.e. on the balance of power between all implicated factors, internal and external) in case of secession of peoples or nations from existing states.

A crucial question arises as to which is the optimum size of state structure, that is the optimum size of the body evoking the right of self-determination. Our answer to this fundamental question can be summarized in the following:

The direction in which the world is expected to evolve will not be one where a continual fragmentation leads to a multitude of smaller communities, neither one where all the small communities are dissolved into one enormous entity, but one where the existence and well-being of such small communities will be linked to the world order, and in fact constitute the base upon which the world will be structured¹¹¹.

We live in an age of reawakened national awareness and in a time where nations, long subjected to international laws over which they had no control, can flourish in all their glory.

The re-definition of the body that can evoke the right of self-determination (that is the concept of a "people") cannot be arrested, as one cannot put political history on hold. Both phenomena are integral parts of the same unfolding process. Any fundamental change affecting the first must somehow fit into the varied moves of the second¹¹².

Consequently, the political mobility and self-awareness of the people is something inevitable, but the ethnic or racial secession is an act of historical regression¹¹³. The path towards a federated Europe is one's most solid proof. On the contrary, the case of Yugoslavia's disintegration (and possibly that of the Soviet Union) must be dealt with and explained under the light of cir-

110. *Ibid.*

111. See Cristescu, *op. cit.*, p. 42.

112. *Ibid.*, and p. 39 ff.; see the issues raised by Connelly, *op. cit.*, p. 547 ff.

113. For a similar line of thought see Myers, *op. cit.*, p. 15 ff.; Cristescu, *op. cit.*, p. 42 ff.; Connelly, *op. cit.*, p. 571 ff.

cumstances, and be viewed as transitory. The repressive and authoritative communist model of government in Yugoslavia did not resolve the ethnic problems; rather, it temporarily obscured them, and in the end intensified them. Through the current political and economic state of democratic rule, it is possible (if the armed conflict can be prevented from spinning out of control) that the conditions will ripen. In the future, the nations comprising Yugoslavia, endowed perhaps with a different, more appropriate structure (for example, confederation), might possibly, once again, move together towards a new, united, multiethnic Europe; with ethnic and cultural pluralism (as a result of self-determination) and within the context of an evolving political and economic unification process, the sole answer to the pressing needs of today and the challenges we are bound to face in the future.

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