

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 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, has been enriched by this work only as far as the confirmation of the existing results are concerned. Our theoretical and legal elaborations are based on this confirmation. This is the main contribution of this study to the existing body of literature on self-determination, meaning that the Yugoslav case has added more 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 Åland 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 Kosovo 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, represent 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 the core concept 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 related mostly to the internal dynamics and nationalism within the Yugoslav society. Apart from this, this material frequently lacked 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 former the Yugoslavia, like the opinions of the Badinter Commission (1991-1993) and the documents of the two international conferences on Yugoslavia, have been utilized extensively.

The significance of this study lies in the fact that its results are equally applicable to other cases of self-determination. The existing literature on self-determination is enriched by this work only as far as the confirmation of the existing results is concerned. On this confirmation is based our theoretical and legal perspective, a contribution to the existing body of literature on self-determination made by this study. This means that the Yugoslav case will most probably strengthen further the

prevailing norm on self-determination and its implications when applied in practice.

