

## 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 19<sup>th</sup> 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>. 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.

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

<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.

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, Kosovo and Albania<sup>237</sup>. In slightly changed forms, this project of 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,

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<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.

<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 Yugoslavie en Europe. De la Faillite des Democraties au Processus de Paix*. (Paris: Edition l'Harmattan, 1997) pp. 19-29; Branka Prpa Jovanovic, 'The Making of

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-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 19<sup>th</sup> century and the beginning of the 20<sup>th</sup><sup>242</sup>. It is worth stressing, nevertheless, that the Croat 'Yugoslav idea',

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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. Draginic (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.

<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

in it 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 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

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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 i Jedinstvo* (Beograd: Narodna Prosveta, 1925) Chaps. VIII, IX and X.

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 aristocratic 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 19<sup>th</sup> 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 bourgeoisie (Czechs) or aristocratic (Poland, Croatia, Slovenia and Hungary), nor beurocratic (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.

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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.

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

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 Vijeće*). 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

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

respectively singled out in particular. The US 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-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

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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



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. 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 20<sup>th</sup> the Corfu Declaration was signed stating that the new Kingdom would be called 'the Serb-Croat-Slovene

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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.

<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.

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 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 October 6, the National Council of the Croats in Zagreb was formed. However, events took a

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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.

more dramatic direction. Thus, on October 29, 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 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 October 29, 1918, the National Council as its governing body hopes 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

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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.

order<sup>254</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 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 November 25, 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 November 26, 1918, with the Serbian army in full occupation of its cities<sup>255</sup>.

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<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.

<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. 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,

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 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

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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. 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.

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 *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

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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.

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 December 21, 1918<sup>260</sup>.

The formation of the Yugoslav state on December 1, 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 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

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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/>)

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, Muslims, Bosniacs, Macedonians and others<sup>264</sup>.

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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: November 1 – December 15, 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 Yugoslavia*, 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.



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 WW II<sup>265</sup>. The Serbian rulers of pre-WW II Yugoslavia were

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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 October 3, 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 August 23, 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.

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

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<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.228-237).

<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>).

### 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

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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.

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 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

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

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 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 'bourgeoise' 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

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

countries had themselves undergone a revolution and become part of the federation of the Balkan workers' and peasants' republics<sup>271</sup>.

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

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

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

conferences on the restoration of the sovereignty and independence of all states destroyed by the Axis Powers played a very important 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 November 26 and 27, 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 November 29 and 30, 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 assumption was that there was Serbian

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<sup>273</sup> Dusan Bilandzic, 'Interview'. *Radio Free Europe* (In South Slavic Languages), November 19, 1999 (<http://www.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 Kosovo organized a similar gathering in their bid to emulate the practice of AVNOJ. The gathering, known as the Bunjaj Conference, took place from



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.

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December 31, 1943 - January 12 and 20 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).

<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: Naucna Knjiga, 1967) pp. 90-91.

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

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 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, Kosovo 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.

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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.

#### 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 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. Entire this period can be divided into two phases: centralist/or totalitarian-rule period and the decentralised-beaurocratic 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 (November 29, 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

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<sup>279</sup> For the full text, see, *Prvo i Drugo Zasedanje Antifasistickog Veka Narodnog Oslobodjenja 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*, 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.

of new nations living within Yugoslav state. At the same time, the identity of other important historical and ethnic units, such as Vojvodina, Dalmatia, Kosovo 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 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 multinational Autonomous Province of Vojvodina and the predominantly Albanian Autonomous District of Kosovo. 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 January 31, 1946. Article one of this constitution

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<sup>282</sup> Apart from the cases of Kosovo, 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 February 24, 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>).

<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).

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>.

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

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<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 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 Newslines*, May 5, 2000 (<http://www.rferl.org>).

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: Kosovo 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 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

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<sup>287</sup> Apart from this, in literature has been noted that the autonomy of Kosovo 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.

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

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

<sup>291</sup> Ibid.

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 term. The Council of Nations from the 1946 Constitution was abolished since it had been considered useless<sup>293</sup>. The Fundamental Law

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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,



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 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

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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.

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 decentralisation of a beaurocratic 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.

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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.

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 Kosovo and Vojvodina. Although this bureaucratic decentralization allowed for the definition of the Yugoslav republics (not the autonomous provinces of Kosovo 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.

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

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 Kosovo 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 Kosovo'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 Kosovo to become a full federated-republic. To grant such a status was officially seen as being merely the first step towards the unification of Kosovo and other Albanian-inhabited regions, especially of Macedonia, with neighbouring Albania. The 1968 constitutional amendments granted the region of Kosovo, for the first time, a republican-type prerogative. This was confirmed by the 1974 Constitution. Positive trends in Kosovo were obvious: the institutional basis of Kosovo 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 – Kosovo's capital<sup>299</sup>. However, Tito did not grant a full republican status to

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<sup>298</sup> Cf. *Kushtetuta e RSFJ e vitit 1974* (Gazeta Zyrtare e RSFJ: Beograd 1974), Pjesa Hyrese (Constitution of the SFRY of 1974. The Preamble). 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.

Kosovo. He preferred very careful and gradual improvements in Kosovo so that by the end of 1970s, the highly controlled autonomy of Kosovo widened significantly. National aspirations of the Albanian population, Tito believed, would be satisfied through the economic integration of Kosovo 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 consummation 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 Kosovo and advancing it into a full republic<sup>301</sup>. With the 1974 Constitution, Kosovo 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, Kosovo 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

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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.

reply by the Serbian side, who demanded quite the opposite: the use of Cyrillic alphabet by the Serbs living in Croatia. Apart from the 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 Bosnians 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 December 1, 1971, Tito made a decision

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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.

to crush the nationalist movement in Croatia and not allow, as he 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

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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). April 4, 2000 (<http://www.rferl.org>).

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 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 Kosovo'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.

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<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.

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

<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), April 16, 2000 (<http://www.referl.org>).



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 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

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

was provided for Yugoslavia's two autonomous provinces of Kosovo 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 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 Kosovo and

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<sup>311</sup> See, Article 2 of the 1974 Yugoslav Constitution.

<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: 'Naučna 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.

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 nation living outside Serbia proper. Especially harsh was the attack on Kosovo'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

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

<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*. December 3, 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*. September 16 1999 (In South Slavic languages). Dizdarevic was head of the Yugoslav (collective) Presidency and one of Tito's closest aides; Nandor Major, 'Interview'. January 27, 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*. January 20, 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*. May 7 to 9, 2001. (In South Slavic Languages). These interviews are available in internet at <http://www.rferl.org>.

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 Kosovo Spring. Then, Kosovors 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 Kosovors were discriminatory, despite their numerical size (third population, after the Serbs and Croats). However, the status of a republic was not recognized for Kosovo. 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 Kosovo 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 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

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<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.

<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 cleaning campaign. See, 'Father Sava Talks to RFE/RL'. *RFE/RL Balkan Report* Vol. 3 No. 1., January 6, 1999. (<http://www.rferl.org/balkanreport>).

Serbian tragedy of Kosovo', '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, Kosovo 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 Serbs<sup>320</sup>. From this time forward, the Serbs would have to

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<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.

<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

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 related to the 1974 Constitution)<sup>321</sup>. Along with the collapse of

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(Vojvodina), 'Interview'. *South Slavic Service*. October 8, 1999 (In South Slavic languages); Stipe Suvar (Croatia), 'Interview'. *South Slavic Service*. December 3, 1999 (In South Slavic languages); Bogdan Bogdanovic (Serbia), 'Interview'. *South Slavic Service*. June 25, 1999 (In South Slavic languages); Josip Vrhovec (Croatia), 'Interview', *South Slavic Service*, April 5, 1999; Nijaz Durakovic (Bosnia-Herzegovina), 'Interview', *South Slavic Service* May 19, 2000. (all interviews are also available in internet at <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.

<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

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).

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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.

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

The last US 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>.

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

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<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.

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



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 December 16, 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). 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.

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<sup>324</sup> See, 'EC Declaration Concerning the Conditions for Recognition of New States', adopted at the *Extraordinary EPC Ministerial Meeting*, Brussels, December 16, 1991. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents. From its Creation to its Dissolution* (The Hague: Martinus Nijhoff Publishers, 1995) pp. 431-432.

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

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

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<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.

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 December 23, 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 January 15, 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 Montenegro) did not. In his reply to the EC on December 23, 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 December 24, 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>.

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<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 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, January 15, 1992).

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

<sup>329</sup> For the text of the Montenegrin position, see, *FOCUS*, Special Issue, Belgrade, January 14, 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), October 19, 1999 (also available in internet at <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

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. 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 scholarly 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 20<sup>th</sup> century. A similar suggestion was made by *George Kennan* upon the fall of the Berlin Wall in November 1989, when he rightly saw the ongoing 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

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ones that occurred in 1991-1992. Miodrag Lickovic, 'Interview'. *Radio Slobodna Evropa* (In South Slavic languages) June 5, 2000 (also available in internet at <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, 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 Redesigned'. *International Herald Tribune* November 14, 1989.

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.

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 April 27, 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, Belgrade's war aims included. 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

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

events<sup>333</sup>, with Serbs (officials<sup>334</sup> and 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

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<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 Kosovo 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 only in internet at <http://www.rz.uni.hamburg-de/illyria/independence.htm>).

<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: Naučna 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 October 31, 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 December 1, 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.

community<sup>337</sup>) denying the existence of the state continuity (identity) of the Serb-Croat-Slovene Kingdom (later, after 1929, renamed as 'the Kingdom of Yugoslavia') with the pre-1918 Kingdom of Serbia.

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<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 (December 1, 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 October 31, 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, *Vanjska Politika Jugoslovenske Drzave: 1918-1941* (Zagreb: Skoljska 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 Français 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 FNRI*, pp. 160-



In the Communist Yugoslavia, the above 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 and served for purely scholarly purposes. Of such a 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>.

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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.

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

<sup>339</sup> Milan Bartos, 'Krystyna Marek: Identity and Continuity of States in Public International Law (Geneve 1954)'. Book review, published in *Jugoslovenska Revija za Medjunarodno Pravo* No. 1 Year I (Belgrade: 1954) pp. 290-293 at 292.

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 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 April 27, 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 (April 27, 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

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<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 November 1, 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), November 2, 2000, 10.00h p.m. CET; 'Yugoslavia Admitted to UN'. RFE/RL Newslines, November 2, 2000; Joylon Neagele, 'Kostunica and Djukanovic Hold Talks in Podgorica'. *RFE/RL Newslines*, November 2, 2000 (<http://www.rferl.org/newsline>). FRY's Prime Minister after Milosevic's fall, Zoran Djindjic, in his opening address to the Yugoslav Parliament on November 4, 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), November 4, 2000, 10.00 p.m. CET.

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 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 preceeding 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 May 5, 1992.

<sup>342</sup> Krystyna Marek, *Identity and Continuity*, p. 129. See, also, Joesef 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

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

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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.

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 fulfilment 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 (April 27, 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 May 18, 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 November 29, 1991, could be considered complete. In its opinion no. 8 of July 4, 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 April 27, 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 May 22, 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 May 30, 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 November 29, 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 September 19, 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

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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, May 15, 1992, and 'Resolution 757 (1992)', adopted by the *Security Council of the UN* at its 3082<sup>nd</sup> meeting, May 30, 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>).

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 above rulings of the Security

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

<sup>346</sup> 'UN General Assembly Resolution No. 47/1', September 22, 1992. (also available in internet at <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 September 29, 1992, issued an open legal opinion setting out the United Nations Secretariat's interpretation of the UN General Assembly Resolution No. 47/1 of September 22, 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 December 29, 1992. The operative paragraph of this new resolution 'reaffirms its resolution 47/1 of December 22, 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', December 29, 1992. (also available in internet: <http://www.un.org>). 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

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 above one, arrived at by 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 July 4, 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 December 16, 1991'. In short, stated Badinter, 'this means that the FRY (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>.

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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, July 4, 1992, see, *International Legal Materials*, Vol. 31 (1992) p. 1521. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 634-636.



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 Kosovo (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 July 8, 1992, which referred to the assessments contained in the declarations of May 12 and 20 of the same year. In these declarations, 'the Belgrade authorities and the Yugoslav People's Army' were accused of 'agression 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 Kosovo, 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 Stockholm 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 June 28, 1993, and the resumption of negotiations about the future status of Kosovo<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. 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>.

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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', July 8, 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.

<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.

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 assets and other property rights of the former Yugoslavia. Other Yugoslav republics, however, viewed differently these efforts by the FRY government. They

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<sup>353</sup> See, Branislav Milinkovic, 'FRY and the OSCE. Inertia of Suspension'. *Review of International Affairs* Vol. XLVIII No. 1056 (May 15, 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 US 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 Kosovo during the armed conflict there (1998-1999). See, 'OSCE - FRY - Kosovo Verification Mission Agreement', October 16, 1998 (*OSCE Document CIO.GAL/65/98*). For the latest report before the OSCE pulled from Kosovo 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*.

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 December 14, 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 above 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', April 8, 1996. Full text reprinted in the Skopje-based Albanian newspaper *Flaka e Vllazërimit*, dated April 9, 1996. For the comments on it, see, the Albanian Embassy correspondence No. 892/96, dated April 10, 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', August 23, 1996. Full text reprinted at the *Review of International Affairs*, Vol. XLVII NO. 1048/96 pp. 13-14; See, also, the Belgrade-based newspaper *Politika*

Two important issues emerge from the above documents concluded by FRY, showing 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

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(August 24, 1996) commenting on the Agreement. Regarding Bosnia-Herzegovina, a 'Joint Statement' was signed by *Alija Izetbegovic* (for the Bosnian side) and *Slobodan Milosevic* (for the Serbian, not Yugoslav, side) on October 3, 1996. Full text of the Statement is supplied to this author by the Bosnian Embassy in Tirana (Albania). For the comments on the Statement, see, Charles Truchart, 'Bosnia-Yugoslavia to Swap Embassies'. *Washington Post Foreign Service* October 4, 1996 (<http://www.washingtonpost.com/>).

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 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

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<sup>357</sup> See, 'Statement by the Federal Minister of Foreign Affairs of the Federal Republic of Yugoslavia', Belgrade, August, 23 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* (December 15, 1999). For comments, see, *Radio Slobodna Evropa* (In South Slavic languages), November 28, 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 meeting 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,

'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 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 aspect on which FRY counted in its efforts to garner international support in favor of its continuity claims with the former Yugoslavia. 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

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available at <http://www.rfrel.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 Kosovo 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 Kosovo conflict was held on November 6-7, 1997. See, *ODRAZ B92 VESTI*, July 11, 1997 (English); *B92 Open SERBIA*, Belgrade, November 6-7, 1997. Also available in internet: <http://www.Siicom.com>).

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 Atta, 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 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

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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.

<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 April 8 and September 13, 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



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 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

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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), October 6, 1999, 10:00h p.m. CET ; August 2, 1997, 10:00h p.m. CET; *ODRAZ B92. OPEN YUGOSLAVIA*. Belgrade Daily News. Service News by 14:00h CET May 7, 1998 (Also available in internet: <http://www.Siicom.com>); 'Milosevic Ponudio Izetbegovicu Uspostavu Diplomatskih Odnosa'. In South Slavic Service (In South Slavic languages), *VJESTI*, May 6, 1998 (18:00h CET); Interviews of Zoran Pajic and Ambassador Muhamed Sacirbey for *South Slavic Service*, October 8, 1999; *South Slavic Service*, *Vjesti*, December 30, 1998 (18:00h CET); *South Slavic Service*, *Vjesti*, October 6, 1999 (18:00 CET); Mensur Camo, 'Tuzba B i H Protiv SRJ za Agresiju i Genocid' *South Slavic Service*, March 17, 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. Cf. Francis A. Boyle, 'Hrvatska Tuzba Protiv SRJ Ima Dobre Izglede'. *South Slavic Service*, July 6, 2000 (<http://www.referl.org>).

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 the above discussion, 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 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

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<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 April 8, 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 September 13, 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 at <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 at <http://www.refl.org>).

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.

