Chapter VI

The International Community's Efforts to Prevent the Illegal and Illegitimate Way of Implementing Self-Determination within the Territory of Former Yugoslavia

1. The European Guidelines on Recognition of New States in the Soviet Union and Eastern Europe (December 16, 1991)

Even when the USA denounced Serbia as the aggressor in September of 1991, the accompanying message was that the USA, finding no strategic interest at the time, would not militarily intervene to stop the killing. At the same time, the then European Community (EC) was not prepared for military intervention. Encouraged by this, the Serbian leadership escalated attacks on civilians in Croatia. A few months later, with the change in geopolitical considerations (the break up of the Soviet Union), justifications for discouraging the democracy-and independence- seeking Yugoslav republics came to an end. This was also reinforced by Serbia's intransigence to accept nothing but a highly centralized (Yugoslav) federation, or, its idea of a Greater Serbia as the case may be. This stance of Serbia, in conjunction with the dissolution of the former Soviet Union, stand for the context within which the EC made public its so-called 'Guidelines on Recognition of New States in Eastern Europe and the Soviet Union' on December 16, 1991. Their drafting was an end result of the Austro-German pressure on the EC to recognize those republics desiring it, especially Slovenia and Croatia[460]. However, their impact was wider, covering the entire Soviet Union, Yugoslavia and Czechoslovakia. They were to serve not only the EC's recognition policy

[460] '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, pp. 431-432. For the analysis of this document,see, Rein Mullerson, *International Law, Rights and Politics. Developments in Eastern Europe and the CIS* (London: Routeledge, 1991) pp. 125-135; Predrag Simic, 'Dynamics of the Yugoslav Crisis'. *Security Dialogue* Vol. 26 No. 2 (June 1995) pp. 153-173.

towards the newly emerging states (to be discussed in the following), but would also serve as a crucial political platform on how to handle the crisis as well as the results of armed conflicts in the territory of former Communist federations. This is the reason why in this section we discuss the background for their drafting and their very impact on the shaping of the crisis in the former Yugoslavia.

On August 27, 1991, the EC and its member states assembled in Brussels in an extraordinary ministerial meeting, expressing dismay at the increasing violence in Croatia and reminding 'those responsible for violence' that the EC was determined 'never to recognize changes of frontiers which have not been brought about by peaceful means and by agreement'. The EC further deplored the Serbian irregulars' resort to military means and the support given to them by the JNA, calling at the same time on 'the Federal Presidency to put an immediate end to the illegal use of the forces under its command'[461]. Finally, on the same occasion, the EC stated that it could not 'stand idly by as the bloodshed in Croatia increases day by day', urging the parties to the conflict to accept a peace conference and an arbitration procedure. The Peace Conference (known variously as 'the European Peace Conference' (EPC), 'the Conference on Yugoslavia', or 'the Hague Conference') was to bring together, 'on the part of Yugoslavia', the Federal Presidency, the Federal Government and the Presidents of the Republic. At this time, the EC accepted at this time that Yugoslavia still existed as a state rather than a mere geographical description ('on the part of Yugoslavia'). The setting up of the arbitration procedure, known variously as the Badinter Committee or Commission, was much in line with the international practice as applied to similar cases. It was to give its decisions (in the form of legal and formally non-binding opinions) within two months.

[461] 'Declaration on Yugoslavia', adopted at EPC Extraordinary Ministerial Meeting, August 27, 1991. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 333-34.

The above peace conference met at the Hague on September 7, 1991, under the chairmanship of Lord Carrington. The Hague Peace Conference was convened as a result of a franko-german compromise, marking the outset of Europe's obvious disunity over the crisis in former Yugoslavia and the clear ramification of Serbia's war aims. As for its legal nature, the Conference was to serve as good offices only, acceptable by all sides in Yugoslavia by mid-1991 due to the fact that the then Conference on security in Europe (CSCE) soon reached the limits of its influence in the Yugoslav crisis so that the lading role in international mediation to the crisis was relinquished to the EC. The Conference was a compromise because at this stage it proved impossible for any discussion in favor of military intervention to stop the unfolding tragedy in Yugoslavia. This gave clear signals to Milosevic that he could safely pursue his war goals, treating the work of the Conference solely as good offices and as a simple mediation effort without any binding effect on the parties to the conflict. Although by the end of 1991, the Conference ended in failure, with the peacekeeping as a substitute for military intervention to stop the war[462], the documents and the guidelines it produced served as a solid ground for further work of the international community in its efforts to solve the Yugoslav crisis[463]. Among them,

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[462] For the peace-keeping in former Yugoslavia, its origins and the mandate, see, 'Concept for a United Nations Peace-Keeping Operation in Yugoslavia' (as discussed with the Yugoslav leaders by the Honorable Cyrus R. Vance, Personal Envoy of the Secretary General and Marrack Goulding, Under-Secretary General for Special Political Affairs), November/December 1991. *UN Doc. S/23280, Annex III.* Text provided by the Albanian Foreign Ministry, Tirana. Also reproduced in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 418-423. For scholarly work on this issue, see, Marts R. Berdal, 'Whither UN Peacekeeping?' *Adelphi Paper* No. 281 (London: International Institute for Strategic Studies, 1993); Shashi Tharoor,'United Nations and Peacekeeping in Europe' *Survival* Vol. 37 No (Summer 1995) pp. 121-134; Bertrand de Rossanet, *Peacemaking and Peacekeeping in Yugoslavia* (The Hague: Kluwer Law International, 1996).

[463] Despite its non-binding character, the mandate of the Conference had been refined by the EC, rather than by the parties to the conflict. The Conference, according to an EC ministerial declaration of September 3, 1991, was 'to ensure a peaceful accommodation of the conflicting aspirations of the Yugoslav peoples, on the basis of the following principles: no unilateral change of borders by force, protection for the rights of all in

the Statement of October 4, 1991 represented a framework for action setting the limits of self-determination and the rules of the game on behalf of the Yugoslav actors. This statement reflected the Franco-German rivalry over the issue of recognition and over the very concept of the Yugoslav self-determination, further cementing the previous EC's policy on the matter. This eventually led to the final clarification of the self-determination process to be pursued in the future by the Yugoslav actors. The Statement, along with the Guidelines on Recognition, definitely shaped Yugoslav self-determination, its form and content. The Yugoslav self-determination ever since has remained unchanged and has followed the basic premises foreseen by these two documents[464].

Yugoslavia, and full account to be taken of all legitimate concerns and aspirations'. Cf. 'EC Declaration on Yugoslavia', adopted at the EPC Extraordinary Ministerial Meeting, September 3, 1991, The Hague. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents,* pp. 342-343. For comments, see, James Gow, *Triumph of the Lack of the Will*, pp. 52-53. The Hague Peace Conference had been replaced by the London Conference on Former Yugoslavia (ICFY). The London Conference followed the two-days meetings in London on August 26-27, 1992. The main difference between these two institutions lies in their legal nature. The Hague Conference was a 'good offices' offered by the EC, whose decisions were non-binding for the parties to the conflict, a feature clearly missing in the second case. The London Conference was convened at the height of the conflict in former Yugoslavia. Due to its seriousness (Serbia's open involvement in the war in Bosnia-Herzegovina after latter's recognition in April 1992 by the EC and the US government), the international community convened this new conference, dealing with the by now defunct Yugoslav state, whose decisions were to be authoritatively binding for all parties to the conflict. Their implementation were to be done by the UN Security Council, which it did not in most part. See, a compilation of the basic documents of these two conferences, in Snezana Trifunovska, *Yugoslavia Through Documents;* B. G. Ramcharan, *The International Conference on the Former Yugoslavia. Official Papers.* Vols I and II (The Netherlands: Martinus Nijhoff Publishers, 1997). For further comments, see, Vladimir Djuro Degan, 'Jugoslavia u Raspadu. *Politicka Misao*. Vol. XXVIII No. 4 (Zagreb 1991).

[464] The work of the *Badinter Commission*, to be discussed throughout the following section of this chapter, did nothing but further made operational the basic premises of these two documents.

The Statement, issued after a meeting held at the Hague with the participation of the presidents of Croatia and Serbia and the Yugoslav Secretary for National Defense, Veljko Kadijevic, stressed the will of all participants who 'agreed that the involvement of all parties involved would be necessary to formulate political a solution on the basis of the prospective recognition of the independence of those republics wishing it, at the end of negotiating process conducted in good faith'. The recognition, said the statement, would be granted in the framework of a general settlement and have the following components:

a) a lose association or alliance of sovereign or independent republics;

b) adequate arrangements to be made for the protection of minorities, including human rights guarantees and possibly special status for certain areas;

c) no unilateral changes in borders[465].

This agreed upon statement for the first time formally admitted the possibility of secession but tied its international legitimacy, e.g., recognition of the prospective new states to the 'framework of a general settlement'. On the same day, the presidents of five of the six Yugoslav republics, expressed their general agreement, with certain qualification, to continue working on a draft paper prepared by Lord Carrington, entitled 'Arrangements of a General Settlement'. This document spelled out the details of the envisaged framework agreement concerning the process of self-determination. The process included the commitments by the Yugoslav republics to protect human rights as foreseen by the Universal Declaration on Human Rights, the International Human Rights Covenants, the OSCE documents on human dimension and other relevant instruments of the Council of Europe. Detailed provisions on human rights as 'particularly applied to national or ethnic groups' were set forth, and a special status (autonomy) was to be established for areas in which a national or ethnic group formed a majority. In addition to

[465] See, *UN Doc. S/23169, Annex II*. Text provided by the Albanian Foreign Ministry, Tirana.

these provisions, a provision was made for cooperation or consultation among the Yugoslav republics in trade, foreign affairs and security, and a customs union was envisaged[466].

The President of Serbia considered this paper to be unsuitable for a detailed discussion[467]. Similar reservations were put foreword by the still existing Yugoslav Vice-President who, since October 3, 1991, had been presiding over the 'rump Yugoslav presidency' because, as he himself put it, the paper '...recognized the legality of unilateral secession'[468]. Notwithstanding these objections, a similar arrangement for the general settlement of the Yugoslav self-determination was further pursued by the EC. The new paper came out on October 25, 1991, but the President of Serbia again maintained his reservations with regard to the proposed solution. The EC, in response, gave the parties a deadline (until November 5, 1991) to indicate their acceptance or refusal of Carrington's outline agreement. The EC's draft sanctions were formally prepared by the end of October 1991, providing for the suspension of cooperation agreements with Yugoslavia and trade concessions. The EC's attitude was influenced by the events on the ground (the fighting in Croatia) and the behavior of the Yugoslav authorities. However, a special regime was to be applied *vis-à-vis* parties contributing to the peace process. Serbia again refused to accept the proposed paper and the sanctions were instituted. In addition to this, the EC asked the Security Council to impose an oil embargo and to adopt additional measures to enhance the effectiveness of its arms embargo[470].

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[466] 'Arrangements for General Settlement' (the so-called Carrington Draft-Convention), October 18, 1991 (the Hague). See, also, *UN Doc. S/2369, Annex VI*. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents, pp.* 357-365.

[467] *See, UN Doc. S/23169*. Text provided by the Albanian Foreign Ministry, Tirana.

[468] See, *UN Doc. S/23169.* Text provided by the Albanian Foreign Ministry, Tirana.

[470] Cf. 'EC Declaration on the Situation in Yugoslavia' (Brussells, October 28, 1991); 'EC Declaration on the Suspension of the Trade and Cooperation Agreement with Yugoslavia' (Rome, November 8, 1991). Texts provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through*

The EC's stance was that the recognition of the independence of those Yugoslav republics wishing it 'can only be envisaged in the framework of an overall settlement' and this was also supported by the UN Security Council. Thus, in its letter dated December 10, 1991, the Council openly opted for the policy of a general settlement as foreseen by the EC[471]. It as unlikely, however, that the general consent could be achieved, as long as recognition depended on the agreement of all parties and with Serbia using its veto over the issue of recognition, thus frustrating the talks at the Hague. To overcome this stalemate, the EC outlined the conditions for recognition in a common position known as the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' of December 16, 1991. This common position was in fact the Austro-German idea, dating as far back as early July 1991, when most of the German and Austrian political parties were convinced that the war in Slovenia had been a war of aggression committed by Serbia, and demanded that the crisis be stopped by a unilateral recognition of those republics wishing to separate from Yugoslavia, thus internationalizing the crisis. This, in the Austro-German view, would open the way for the international community to regard the crisis in accordance with the Chapter VII of the UN Charter. The fact that the other Yugoslav republics were not being recognized internationally was construed by the Serbs as a validation of their policy of conquest[472]. This attitude was opposed by some EC's member states, especially France[473]. However, the German stance prevailed, not only in the Guidelines on Recognition

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Documents, pp. 368-369 and 378-380. For further comments, see, James Gow, *Triumph of the Lack of the Will*, pp. 57-66.

[471] 'Letter from the Secretary General of the United Nations Addressed to the Minister for Foreign Affairs of the Netherlands'. December 10, 1991. *UN Doc. S/*23280, Annex IV. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 428-429.

[472] Mark Weller, 'The International Response to the Dissolution of the Socialist Federal republic of Yugoslavia ', pp. 386-387; James Gow, *Triumph of the Lack of the Will*, pp. 35-36.

[473] See, more on this, Peter Viggo Jacobsen, 'Myth-Making and Germany's Unilateral Recognition of Croatia and Slovenia'. *European Security.* Vol. 4 No. 3 (Autumn 1995) pp. 400-417.

but also then it came to the practical implementation of this new recognition policy: Germany forced its way out by a unilateral recognition of Slovenia and Croatia before the deadline set out in the Guidelines on Recognition.

The conditions for recognition as set out in this document, as opposed to previous ones, allowed for progress to b made even in the absence of unanimity among the Yugoslav republics, but would still safeguard the essence of the Carrington proposal, as the republics were required to embrace its provisions unilaterally and to continue working towards a collective agreement[474]. This two-pronged strategy of the EC served two purposes. First, it bridged the gap between the French and German

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[474] The conditions for recognition were:

- 'respect for the provisions of the Charter of the United Nations and the commitments enshrined in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;
- guaranties for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE;
- respect for the inviolability of all frontiers which can be changed only by peaceful means and by common agreement;
- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;
- commitment to settle by agreement, including when appropriate by recourse to arbitration, all questions concerning State succession and regional disputes'. Cf. *EC Declaration Concerning the Conditions for Recognition of New States*, adopted at the Extraordinary EPC Meeting, Brussels, December 16, 1991. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp.43-432. The EC confirmed again that it would not recognize entities that 'are the result of aggression' and further invited all Yugoslav republics to state by December 23, 1991, whether:

1) they desired to be recognized as independent states;
2) they agreed to the commitments in the guidelines above;
3) they accepted the provisions of the Carrington proposal, especially those on human rights and the rights of national or ethnic groups; and
4) they approved the involvement of the United Nations Secretary General and Security Council and continuation of the EC Conference on Yugoslavia.

foreign policies regarding Europe's common interests (Mastricht Summit of December 1991). Second, the Guidelines served as a yardstick preventing the validation of the factual situations that were against the basic norms of international conduct (genocide and the policy of ethnic cleansing already under way, aimed at the creation of the territorial base for the Serbs entities in Croatia and Bosnia-Herzegovina: the 'Republic of Srpska Krajina' and the 'Republika Srpska' respectively)[475].

The Guidelines, as it can be seen, did not dwell upon the basic criteria for international statehood as they exist in general international law (the possession of territory, a population and the government in control of this territory and the population). These criteria were taken for granted, whereas the conditions from the Guidelines on Recognition were designed to politically influence the events on the ground and to fit the EC's interests. Their main aim was to enable the establishment of diplomatic relations with those entities which fulfilled the conditions set forth in them and, at the same time, to punish those Yugoslav republics who did not want to comply with them. The perception of these conditions that were to be fulfilled was different on the side of the Yugoslav republics. They viewed them as the basic criteria and a reference point for the attainment of their international statehood. This means that the Yugoslav republics equalized the establishment of diplomatic relations with international statehood[476]. The applications submitted within the terms set forth in the Guidelines on Recognition and the positive response to them was by definition seen as a crucial stage in the process of attainment of full independence for former Yugoslav republics. This further meant that other applications submitted not by former Yugoslav republics but by other entities, who either did not have a clear territorial base at the time of application (the Serb entities in Croatia and Bosnia-Herzegovina) or did not effectively control their territory and population (the case of Kosovo) would not be

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[475] See, Rein Mullerson, *International Law, Rights and Politics. Developments in Eastern Europe and the CIS*, pp. 134-135; Mark Weller, 'The International Response', pp. 560-607; John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, pp. 138-139.

[476] Mark Weller, 'International Response', pp. 587-588.

taken into consideration. Only in these cases, cannot be argued that the establishment of diplomatic relations and international statehood fully coincided. By denying any international legitimacy and a position to other than Yugoslav republics, the EC opted for two forms of self-determination, one external (in favor of former Yugoslav republics), and the other internal (other entities not possessing a full republican status at the time of the Yugoslav dissolution). This process of Yugoslav self-determination, ramified during the early stages of Yugoslavia's dissolution (November 1991-July 1992), has municiously been elaborated by the Badinter Commission.

2. Work of the Badinter Commission and its Impact on the Crisis

The work of the Badinter Commission is nothing but a further operationalization of the Guidelines on Recognition[477]. No discussion of the Yugoslav self-determination, its forms and the content, is complete without an understanding of the work of this commission that further clarified the Guidelines on Recognition. It provided, above all, the framework for the EC, and the internationals at large, to settle the sovereignty and self-determination issues in Yugoslavia[478]. Nevertheless, the work of the Commission has in the scholarly world had different and, in some cases, controversial connotations.

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[477] During its mandate, the Commission has rendered thirteen opinions on the various aspects of the Yugoslav crisis, three of which shall be discussed in detail in the sections to follow. Apart from the first opinion, dated November 29, 1991, the Badinter Commission has rendered some others that were of crucial importance for the future ramification of the crisis in former Yugoslavia. The Commission was called upon to give its opinions from the various sides. Initially, it was called upon to give one opinion thee request of Lord Carrington, Chairman of the Hague Conference (Opinion No. 1, discussing the question as to whether the seceding republics could legally inherit former Yugoslavia and, if so, by virtue of which procedures). The Opinions 4 to 7 of January 11, 1992 were given also at the request of the EC's Council of Ministers and were concerned with the question of whether the Republic of Croatia, Macedonia and Slovenia, which had requested the recognition by the EC and its member states, satisfied the conditions laid down in the Guidelines on Recognition. The Opinions 7 to 10 of July 4, 1992, which specified conclusively that new states that emerged from former Yugoslavia, their rights and duties, and Opinions 11 to 13 of July 4, 1993, that dealt with the date when the succession to former Yugoslavia occurred, have also been asked by the EC authorities. The only case in which Badinter's procedure was put into motion upon the request of the conflicting parties is that regarding the Opinions Nos. 2 and 3 of January 11, 1992. In the second opinion, the Commission dwelt upon the question as to whether the Serb population in Croatia and Bosnia-Herzegovina had the right to self-determination, while the third one addressed the issue of whether the internal boundaries between the former Yugoslav republics could be regarded as international frontiers.

[478] See, also, James Gow, 'Serbian Nationalism and the Hisssing Sssssnake in International Order: Whose Sovereignty? Which Nation?' *The Slavonic and East European Review*. Vol. 72 No. 3 (July 1994) pp. 456-476.

As noted in Chapter II of this dissertation, the work of the Badinter Commission in terms of international legitimacy was less legitimate as compared with similar cases in Africa: neither Yugoslavia, nor its constituent republics, were members of the EC. In the case of Africa, though, the conflicting parties (Nigeria and Zaire/Congo) were full-fledged members of the Organization of African Unity (OAU). With a few exceptions, accepting the legitimacy of the Commission's work[479], this author included, the rest of the scholarly work for most of the part has rejected the pronouncements of this body. However, this rejection did not concern the legitimacy of the Commission's work *per se*, focusing instead on the very merits of the work itself. Some of scholars have argued that Badinter's work was the least legal, thus putting the

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[479] See, Vladimir Djuro Degan, 'Jugoslavija u Raspadu'. *Politicka Misao*. Vol. XXVIII No. 4 (Zagreb 1991); Alain Pellet, 'The Opinions of the Badinter Committee: A Second Breath for Self-Determination of Peoples'. *European Journal of International Law*. Vol. 3 No. 1 (1992) pp. 178-181; Alain Pellet, 'Note sur la Conference Europeenne pour la Paix en Yougoslavie'. *Annuaire Francais de Droit International.* Vol. XXXVIII (1992) pp. 223-238; Vladimir Djuro Degan, 'Samoopredeljenje Naroda i Territorijalna Celovitost Drzava u Uvjetima Raspada Jugoslavije'. *Nasa Zakonitost*. Vol. 46 No. 4 (Zagreb, April 1992) pp. 543-569; Vladimir Djuro Degan, 'UN Membership of Former Yugoslavia' *American Journal of International Law*, Vol. 87 No. 2 (April 1993) pp. 240-244; Ove E. Bring, 'UN Membership of Former Yugoslavia' *American Journal of International Law*, Vol. 87 No. 2 (April 1993), pp. 244-246; M. Kelly Malone, 'UN Membership of Former Yugoslavia'. *American Journal of International Law*, Vol. 87 No. 2 (April 1993), pp. 246-248; Antonio Cassese, 'Self-Determination of Peoples and the Recent Break-Up of USSR and Yugoslavia'. In Roland St. John Macdonald (ed.), *Essays in Honor of Wang Tieya* (The Hague: Martinus Nijhoff Publishers, 1994) pp. 131-144; George Karipsiadis, 'State Succession in the Balkans: Its Impact Upon International Boundaries' *The Southeast European Yearbook 1994-1995* (Athens: ELIAMEP, 1995) pp. 151-181; Milan Sahovic, 'Raspad SFRJ i Stvaranje Novih Drzava'. In Milan Sahovic (ed.), *Medunarodno Pravo i Jugoslavnska Kriza.* (Beograd: Institut za Medunarodnu Politiku i Privredu, 1996) pp.14-47; Konstantin Obradovic,'Problemi Vezani za Sukcesiju SFRJ'. In Milan Sahovic (ed.), *Medunrodno Pravo,* pp. 275-315; Vladimir Djuro Degan, 'L'Arbitrage Juridique Ignore: La Jurisprudence de la Commission Badinter'. In Marie Francois Allain et al. (eds.*), L'Ex Yougoslavie en Europe. De la Fallite des Democraties au Processus de Paix.* (Paris: Editions L' Harmattan, 1997) pp. 31-43;

Commission's entire efforts into the realm of pure politics[480]. Others, though, went thus far as to accuse Badinter of being a direct accomplice and a very cause of the Yugoslav dissolution and tragedy[481]. Still others have held the view that the Commission did misapply and misinterpret the internationally recognized criteria for international statehood and self-determination[482].

The first group of the authors who deny the legitimacy of Badinter's work focusing on its content (rulings of the Commission) are innacurate. Once the fighting was underway, the EC's goal was order and stability by containing the conflict and using a mixture of traditional principles and innovative ideas to produce a workable framework to find a political

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[480] See, for example, 'Martha Rady, Self-Determination and the Dissolution of Yugoslavia'. *Ethnic and Racial Studies* Vol. 19 No. 2 (1996) pp. 382-384; John Williams, *Legitimacy in International relations and the Rise and Fall of Yugoslavia,* pp. 130-131, 138, 140-141; Payam Akhavan, 'Self-Determination and the Disintegration of Yugoslavia: What Lessons for the International Community?' In Donald Clark and Robert Williamson (eds.), *Self-Determination. International Perspectives* (New York: St. Martin Press, 1996) pp. 227-228, 233-235 and 240-242.

[481] Thomas Raju, G.C., 'Nations, States and Secession: Lessons from the Former Yugoslavia'. *Mediterranean Quarterly* Vol. 5 No. 4 (Fall 1994) pp. 40-65; Peter Radan, 'The Badinter Arbitration Commission and the Partition of Yugoslavia' *Nationalities Papers.* 25 (1997) pp. 537-557; Reneo Lukic and Alan Lunch, *Europe from the Balkans to the Urals. The Disintegration of Yugoslavia and the Soviet Union,* pp. 275-281; Said Mohmoudi, 'Recognition of States: the Case of Former Yugoslav Republics'. In Ove Bring and Said Mahmoudi (eds.), *Current International Law Issues. Nordic Perspectives: Essays in Honor of Jerzy Sztucki* (CE Fritzers AB: Sweden 1994) pp. 135-159.

[482] These authors claim that Badinter could have declared Bosnia-Herzegovina as being in the process of dissolution as of January 1992, as was former Yugoslavia few months earlier when the Commission rendered its first opinion (November 1991). Put another way, these authors say that Bosnia-Herzegovina lacked an effective control over its own territory and population by the time Badinter declared Bosnia-Herzegovina to be a state (provided that it held a referendum on independence). See, Robert M. Hgden, 'Bosnia's Internal War and the International Criminal Tribunal'. *The Fletcher Forum of World Affairs.* Vol. 22 No. 1 (Winter/Spring 1998) pp. 45-65 at 50-51.

solution to the Yugoslav crisis. It is these aims that Badinter followed in its work. Only in procedural terms can the work of the Commission be contested. However, the work in this respect should also be looked at contextually. This is the case because the EC was not even initially motivated simply by altruism or by fear about the consequences of a war on its borders. Many issues on the European agenda were to become entangled with the development of the policy towards Yugoslavia: the future of the EC's foreign policy role, the relationship between major EC powers, especially France and Germany, the relationship between EC, NATO and WEU, etc. The EC was entering uncharted waters in its efforts to lead international efforts to manage the crisis in Yugoslavia. Its previous diplomatic role focused on trade relations. Its role in more 'classical' foreign policy issues had been limited to coordination and prior discussion of positions in the European Political Cooperation (EPC) process. With the end of the Cold War came the end of the principal reason for US involvement in European security affairs, meaning US leadership was likely to be less decisive and the US government was seeking to reduce its role. Proponents of the Common Security and Foreign Policy (the EC CSFP) saw this as a gap which the EC should fill. Proposals were made for the revival of the WEU as the defense arm of the EC's new security role.

The EC was also taking the leading role in economic assistance to Eastern Europe and was the focus of attention of these states. Institutions such as PHARE program, the European Bank for Reconstruction and Development and Association Agreements came thick and fast. The EC was establishing itself as the leading institution in post-Communist Eastern Europe. Under the expanded rubric of security it was already fulfilling a security role and this fuelled momentum for it to take a larger role. With its lack of military capabilities, the EC inevitably emphasized the 'new' aspects of security. Within them, it also included the mission to extend democracy, market economies and cooperation as far to the East as possible and especially to the tottering Soviet Union to meet the unexpected changes of the collapse of a nuclear superpower. The international context of the collapse of Yugoslavia was therefore very complicated and rapidly changing. The fact that the former Yugoslavia was not its member counted little in the face of the new challenges the

EC was facing at the time. Apart from this, all actors of the Yugoslav drama accepted the work of the Badinter Commission as legitimate. Only Serbia denied its legitimacy, but only after Badinter's first opinion on November 29, 1991. Serbia denied the legitimacy of Badinter's work because she apparently seems to have hoped that the Commission would dogmatically apply the international criteria for statehood by recognizing unconditionally the right to territorial status quo on behalf of the Yugoslav federation (then controlled by Milosevic's regime in Belgrade). The opportunities and uncertainties arising from the end of the Cold War were followed also by an enthusiasm and a determination to do something about Yugoslavia's increasingly desperate position, but equally its power to set precedents could not be ignored by the EC officials.

However, Yugoslavia set no precedent. The work of the Badinter Commission, as noted, was a mixture of traditional and innovative approaches. In this context, the second group of authors who see the work of this body as politically motivated try in fact to deny the competent work the Commission did in essence. Being innovative and deciding politically are two different things. Badinter was innovative in a sense that it tried to achieve the goal of order and stability. To achieve these effects, it took as a reference point only former administrative borders of the Yugoslav republics. The same precedent was used elsewhere throughout history (Latin America, Africa and Asia, already discussed in the second chapter of this dissertation). This means that Badinter set up no precedent. It only applied the old rule into a new context and innovatively, not led by political considerations. The innovation consisted on the nature of new states that would succeed the former Yugoslavia: Should they be dictatorships as their predecessor? This dilemma was settled by the Commission through the suggestion given to the new successor states to take case of the rule of law, democracy, respect for human and minority rights. This further means that the legitimacy of the former Yugoslavia and that the EC efforts via the Badinter Commission were to be judged through new lenses: the goal of order and stability was linked by the Commission to the liberal ideas of rule of law, democracy, free market economy, respect for human and minority rights. Why?

This linkage was owed to the fact that the EC and its Badinter Commission had no military force to back up the issued rulings. This seems to have forced the EC to turn more towards liberal political ideas and liberal economics. This by no means reduced the long-run effects on the Yugoslav crisis of the Commission's rulings. We shall see this when we discuss the EC's policy on recognition and its sanctions regime in the penultimate section of this chapter. This initial response of the EC through its organ, the Badinter Commission, only shows that the EC before December 1991, and some time after it, has mostly relied on realpolitik considerations translated into concrete liberal values as described above, not the opposite. Such an approach was conditioned by the EC's lack of a credible military force, such as NATO. The role of the liberal values was prominent. Hopes for establishing democracy, free market economies, protecting human rights and the encouragement of other standard features of the liberal states were high on the agenda of the newly emerging states and, therefore, an important motivating factor in Badinter's work throughout. In post-Cold War Europe, traditional power and security politics were considerably redefined and replaced by the new emphasis on political integration and economic interdependence.

The Badinter Commission is nothing new in yet another respect, that is, in the sense of the concepts it further crystallized (the criteria for international statehood) and which form one other aspect of criticism leveled against it by the third group of the authors under discussion. As we shall see in the following section, the Commission did not negate or misapply the traditional criteria for statehood. It instead took them for granted once the Yugoslav wars of succession started. True, it downplayed the principle of governmental effective control as a precondition for international statehood. But, this was a logical attitude because had it accepted this classical criteria as valid, then it would have meant that the EC would have been taking the aggressor's side, that is, Milosevic's Serbia. This was not new for the Yugoslav case alone. As noted earlier (see, infra p. 15), the institution of the so-called premature recognition existed in Africa during the decolonization process and was aimed at preventing the colonial states in order to further keep colonies under their control. What is new in the Yugoslav case, however, is that

Badinter linked the application of these traditional criteria to some liberal values, a case clearly missing during the decolonization process. Even if these were to be pure political conditions, which was not the case, again this would be nothing new because in the past there have been cases of recognition of states under political conditions. The drafting of the Guidelines on Recognition, applied by Badinter throughout, stating that the EC and other members of the international community should take into account, upon their decision to grant recognition, 'political realities in each case', must be read as implying that some parts of former Yugoslavia were no longer under effective control of the Federal government in Belgrade by the time this document was issued by the EC. By the end of 1991, apart from Serbia, Montenegro, Kosovo and Vojvodina, the rest of Yugoslavia was more or less under the control of new authorities. True, the international community could not deny that some part of Croatia and Bosnia-Herzegovina were under Serbian control, but not their capitals. It is an established international practice that emerged from the decolonization period saying that no recognition should be granted to the authorities in control of other parts of the country, not the capital city. Had the Badinter Commission pursued the old rule of total effectiveness than it would have meant support for the Serbs who already had an upper hand and a permission to further speed up their policy of ethnic cleansing through military means, which in fact they did later in an apparent hope that their policy of *fait accompli* shall be recognized.

The Badinter Commission did nothing in fact but elaborate into details more than ever in the past on the practical side of self-determination, concerning one case only - former Yugoslavia. This is obvious from the first ruling of the Commission stating that Yugoslavia was in the process of dissolution since 1991, the dates of succession of other republics to Yugoslavia being also elaborated later in the 1993 rulings. Other aspects of the Yugoslav self-determination, such as succession, the issue of independence referendums, protection of human and minority rights and other liberal values, the respect for former republican administrative borders, etc., represent without any doubt an integral part of the Yugoslav crisis, its conflict and war(s) over how to implement self-determination and to what extent its implementation becomes a

destabilizing factor in international relations. Badinter's rulings should therefore be seen as having had a wider appeal than in the Yugoslavian context, not because of their legally binding force but rather due to the moral credibility of the EC on whose name Badinter acted throughout and the competence and professionalism of the Commission itself. It is true that the rulings did not contain any justification. No reasons were given to them upon which to judge as to the possible motives that might have been a driving force for Badinter's decision. This is, in fact, unusual for an international arbitration. However, this does not diminish the real value of the Commission's work and its contribution given in the filed of self-determination.

The segments of the Yugoslav self-determination that we have chosen as prior for discussion and elaboration in the sub-sections to follow are not less important than the other issues raised in this case. They are equally important and as such represent another facet of the same Yugoslav self-determination story. However, the three selected topic below reflect the best the very essence of the case under study. There are several reasons for this choice. One is that the type of the Yugoslav self-determination is better understood through the selection we make here: self-determination does not mean only independence. It has other forms of manifestation short of independence (internal self-determination) and should as such be equally treated, especially when it comes to the practical implementation of self-determination. The next reason is that the limits and the subjects entitled to self-determination are better comprehended through such an institution such as *uti possidetis juris*. Finally, the topic concerning the democracy, rule of law, respect for human and minority rights serves for a better understanding of the liberal side of self-determination that the EC gradually imposed on the Yugoslav actors. Through the imposition of these liberal sides, the EC delegitimized at the same time other non-liberal concepts pursued by some of the Yugoslav actors (Serbia and Montenegro). The understanding of this topic, in essence, represents a *condictio sine qua non* of Yugoslav self-determination and its almost universal appeal at the present.

2.1. Self-Determination

The issue of self-determination was dealt with by the Commission in two aspects. One concerned the former Yugoslavia itself and its international legitimacy by the time the crisis in the country began to be seen as an issue of international concern resulting from the changes in the internal dynamics of the Yugoslav state. The other related to the self-determination of the Yugoslav republics (external form of self-determination) and other forms of self-determination short of independence (internal self-determination). In both cases, the Commission's response was based on liberal views regarding self-determination.

Throughout the second half of 1991 there were negotiations going on among the Yugoslav republics with the view of reforming the common state. In these negotiations, Serbia held the view that Yugoslavia should be an even tighter federation and that its claims were legitimate because they were the only ones favoring the preservation of an internationally recognized independent and sovereign state - the Yugoslav state. The Serbs seems to have perceived the international law and the norm on territorial integrity as favoring thier views. This became obvious from their reaction to the attempted secession of Slovenia in June 1991[483]. The

[483] The international support for the territorial integrity of the Yugoslav federation voiced strongly before and some months after Slovenian and Croatian declarations of independence (June 1991) by the representatives of influential states and organizations, including the United States, the EC and the CSCE, undoubtedly strengthened Milosevic in his perception that flexibility was not required in negotiations about the future of Yugoslavia. This position of the international community was transmitted to the Serbian leadership by the US officials. On June 21, 1991, the US Secretary of State, *James Baker*, while visiting Belgrade, strongly endorsed a declaration adopted two days earlier at the Berlin Meeting of the CSCE, which expressed support for democratic developments and the territorial integrity of Yugoslavia. This meant no international support for secessionist republics of Slovenia and Croatia. Since this was the case, the Serbian leadership had the central army, the Yugoslav People's Army (the YPA or, in Serbo-Croatian: JNA) declare martial law against Slovenia. Cf. *The Berlin Statement on the Situation in Yugoslavia,* adopted at the 1st meeting of the Council of Foreign

Badinter Commission was the first to rule against the Serb interpretation of international law regarding the issue of territorial integrity and self-determination of an existing state The Commission was at the same time the first international institution to flatly deny the legitimacy of Yugoslavia, based on the liberal traditions, that is, on the fact that the very legitimacy of any government must rest upon the consent of the governed who have an inalienable right to withdraw the consent whenever they wish[484]. Throughout 1991 and long after it, the Serbs claimed that the right to self-determination had been consummated by the mere fact of Yugoslavia's formation whose further existence was strongly protected by the norms of positive international law[485]. By the time of the first ruling of the Commission, Serbia had altered the internal

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Ministers of the CSCE, held from June 19-20, 1991. Text provided by the Albanian Foreign Ministry, Tirana. See, also, the *Reference Manual of the Conference on Security and Cooperation in Europe. CSCE Decisions - Part V.: Chronological Review and Final Word.* (Vienna 1994), pp. 272-291. For the comments on this, see, James Gow, *Triumph of the Lack of the Will*, pp. 166-167, 240-241. The US and international position as expressed above has later been justified on the ground that Western world had feared that Yugoslavia's dissolution might have had a negative impact on the ongoing events in the Soviet Union. This view was expressed also by Baker himself. See, David Gompert, 'How to Defeat Serbia' *Foreign Affairs.* Vol. 73 No. 4 (July/August 1994) p. 33. For Baker's view, as quoted, see in Damir Grubisa, 'Diplomatija na Kraju Povjesti'. *Erazmus* 18 (Zagreb 1996), p. 91. This position of the Western countries was rightly compared by an author with the position of the Holly Alliance over the same border issue, and was kept unaltered well until the first ruling of the Badinter Commission (November 1991). See, Mark Almond, *Europe's Backyard War*, p.35.

[484] See, Michael Freeman, 'The Right to Self-Determination in International Politics: Six Theories in Search of a Policy'. *Review of International Studies.* 25 (1999), pp. 335-370.

[485] For an excellent overview of the Serb position on the so-called consummated right to self-determination within the Yugoslav context, see, Vladimir Ibler, 'Pravo Naroda na Samoopredeljenje i Zloupotreba tog Prava' *Politicka Misao* Vol. XXIX No. 2 (Zagreb, 1992) pp. 53-78 at 67-73. This theory of the consumed right to self-determination, in essence, is a Soviet product that emerged during Stalin's times with a views to justify the Communist dictatorship and the imposed rule over non-Russians. See, Blerim Reka, *E Drejta e Vetevendosjes: Dimensioni Nderkombetar i Problemit te Kosoves. Studim Komparativ* (Shkup: Interdiscont, 1996) pp. 57-58

balance of forces within Yugoslavia (military, economic and political). This internal balance militating entirely in favor of Serbia rendered obsolete and arcane any further international support for the territorial integrity and self-determination of the Yugoslav state as a whole. Its existence put other Yugoslav republics into a colonial position *vis-à-vis* Serbia[486]. Apart from the internal dynamics of the Yugoslav society, the external changes in the internal environment have also played an important role in the process of delegitimization of Yugoslavia. With the end of the Cold War, the consensus on the issue of territorial integrity of the existing states was weakened and shifted into the realm of good governance, at least concerning former Communist federations, Yugoslavia included. Hedley Bull's assumption, saying that international law as an institution is very important only if its further application does not have as a consequence the break down of the international order, seems very insightful when judging the legitimacy of Yugoslavia form the standpoint of international law[487]. Had the international community upheld the position it did at the beginning of the crisis and thereafter until November 1991, than it would have definitely contributed to the disorder in international relations since the further existence of the Serb-dominated Yugoslavia was becoming an obvious destabilizing factor. As soon as the Soviet threat disappeared, Yugoslavia was not able to any more have adverse effects elsewhere; its international legitimacy diminished and eventual 'breach' of the international law as conceived of during Cold War years had, in fact, only the stabilizing function in international relations. Order was the goal of the EC and of the rest of the international community throughout 1991, first by trying to promote Yugoslavia's peaceful transformation into a democratic and decentralized state and, when this failed, through containing the conflict

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[486] This liberal view focusing on the very nature of a government, as opposed to the unconditional self-determination preserving an existing state, is expressed by *Gross Espell*, the UN Special Rapporteur of the 1970s, in his paper entitled 'The Right to Self-Determination. Implementation of United Nations Resolutions'. See, *UN Doc. E/CN.4/Sub.2/405/Rev.1/1980/*, para. 90. For an excellent account of the liberal views on the Yugoslav dissolution, see, also, John Williams, *Legitimacy in International Relations and the Rise and Fall of Yugoslavia*, pp. 74-162.

[487] Cf. Hedley Bull, *Anarchical Society*, pp. 127-161.

within Yugoslavia's borders. Following the failure of Yugoslvia's transformation, the Commission made public the EC's views on the very content of self-determination to be pursued in the Yugoslav case. Concerning the policy of containment of the conflict and the mitigation of its consequences, the Commission had no choice but to resort to the old rule of *uti possidetis juris*. On the top of these matters came the Commission's task regarding the further status of the Yugoslav state, thus shifting the right to self-determination, in both forms of its manifestation, from the central government agencies in Belgrade onto the Yugoslav republics. By resorting to the self-determination based on the administrative territories of former Yugoslav republics, Badinter implied that the right to secede varies with, and is dependent upon, the degree of autonomy recognized (or obtained) from the central government (no matter the manner, violent or peaceful, through which this degree of autonomy is realized). By the same token, concerning the fate of the Yugoslav state, the Commission had to observe that the 'existence of the State implies that federal organs represent the components of the Federation and wield effective power'. Since the composition and functioning of the essential organs of the Yugoslav federation by November 1991 no longer satisfied the 'requirements of participation and representative ness inherent in a federal state', the Commission came to the conclusion that 'the Socialist Federal Republic of Yugoslavia is engaged in a process of dissolution'[488]. It is obvious that the possession of a government in the effective control of its territory and population (the classical criteria for an international statehood) have in full been take into account by the Commission during the process of evaluation of the legitimacy of the Yugoslav state. This became more apparent when Badinter further declared that 'the process of dissolution of the SFRY referred to in Opinion No. 1 of November 29, 1991 is now complete and that the SFRY no longer exists', because 'the existence of a federal state, which is made up of a number of separate entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population, constitute themselves as sovereign and independent states with the result that federal authority

[488] *Opinion No.1 of the Arbitration Commission of the Peace Conference on Yugoslavia.* Paris, November 29, 1991.

may no longer be effectively exercised'[489]. When it came to the evaluation of the existence of the independent statehood of the Yugoslav republics, no such measurement criteria were used. The Yugoslav republics had to demonstrate not positive or empirical statehood, as did have to the Yugoslav federation, but rather a negative or juridical one in the way described in the Chapters II and III of this dissertation. This attitude over the statehood of the Yugoslav republics definitely crystallized when the Commission faced the choice between the territorially based self-determination and that based on ethnicity. The issue was raised by Serbia, asking the Commission to answer the question as to who were the subjects entitled to self-determination within Yugoslavia: republics or nations?

Serbia's foreign minister, in a letter addressed to the Commission using the Hague Conference as intermediary, made public the Serbian views on (ethnically-based) self-determination. The Commission had on November 20, 1991 received this letter from Lord Carrington, Chairman of the Conference. The letter requested from the Commission an opinion on the following question put forth by the Republic of Serbia:

'Does the Serbian population in Croatia and Bosnia-Herzegovina, as one of the constituent peoples of Yugoslavia, have the right to self-determination?'[490]

The Commission had in general addressed the issue of self-determination in its first opinion concerning Yugoslavia as a whole. This time, however, the Commission had to render more concrete its own previous ruling, especially those parts speaking as to who were to be the subjects entitled to self-determination. Or, to use Badinter's own wording, the Commission had to answer who were within the Yugoslav context 'the communities that possess a degree of autonomy and, moreover, participate in the exercise of political power within the

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[489] *Opinion No. 8 of the Arbitration Commission of the Peace Conference on Yugoslavia.* Paris, July 4, 1992.

[490] *Opinion No. 2 of the Arbitration Commission of the Peace Conference on Yugoslavia.* Paris, January 11, 1992. Para. 1.

framework of institutions common to the Federation'[491]. To effectuate this, the Commission drew a distinction between minorities and the already established and territorially defined administrative units of a federal nature, that is, the Yugoslav republics, whose population was as a whole entitled to full independence if certain procedures were followed, including the holding of a fair and internationally supervised referendum in which all communities could participate on an equal footing[492]. On the other hand, to temper the possible consequences for a minority finding itself suddenly within a new state, the Commission ascribed a second level of content to the right to self-determination within the Yugoslav context. It confirmed that all members of minorities were entitled to benefit from the internationally recognized human and minority rights standards, the right to choose their nationality being included. The commission, therefore, answered the above question asked by Serbia declaring:

'1) that the Serbian population in Bosnia-Herzegovina and Croatia is entitled to all rights concerned to minorities and ethnic groups under international law and under the provisions of the draft Convention of the Conference on Yugoslavia of November 4, 1991, to which the Republic of Bosnia-Herzegovina and Croatia have undertaken to give effect; and

2) that the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including where appropriate, the right to chose their nationality'[493].

Although the Commission referred to the international standards on human and minority rights as the basis of the internal right to self-determination of the Serbs living in these two republics, it did not further

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[491] *Opinion No. 1, Para. 1.d.*

[492] See, *Para. 2 (1-4) of the Opinion No.4 on International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States*. Paris, January 11, 1992.

[493] *Opinion No. 2 of the Arbitration Commission, Para 4.*

specify the overall extent of this right (the issue of nationality being an exception to this). This extent was defined later in the Commission's Opinion no. 4, dealing with the application for international recognition submitted by Bosnia-Herzegovina. On that occasion, Badinter again repeated the Commission's commitment to the protection of human and minority rights of all living in former Yugoslavia. This time, though, the right of minorities and ethnic groups to equally participate in government took prominence, thus further filling the content of the Yugoslav self-determination. Since no referendum on independence had taken place that would have given a voice to these minorities and groups, the Commission found that the popular will for independent statehood of Bosnia-Herzegovina had not been 'clearly established'[494]. In this way, the Commission juxtaposed both forms of self-determination against each other, making the validity of one form conditional upon the other. In this regard, the Commission indicated that the above conclusion on the popular will, a precondition for the realization of both forms of self-determination, could be changed if an internationally supervised referendum, open to all citizens of Bosnia-Herzegovina without discrimination, were held. This referendum, as discussed, took place on March 1, 1992, without the participation of the Serbs who boycotted it. They opted therefore for a full-scale ethnic self-determination, as planed, whose implementation was done through violence and war. This was against all the prescriptions of the international community.

[494] *Opinion No. 4 on the International Recognition of the Socialist Republic of Bosnia-Herzegovina, Para. 4.*

2.2. Uti Possidetis

The application of uti possidetis juris beyond the colonial context has happened only when former Communist federations (Soviet Union, Czechoslovakia and Yugoslavia) dissolved following the Cold War. While Czechoslovakia dissolved peacefully and the Soviet Union did not face deep and violent dissolution, both being the result of an agreement between the interested parties, the case of Yugoslavia brought to the forefront the essence of the nature of Yugoslav wars and a positive function of *uti possidetis* principle. They were, in essence, wars over territory and the application of uti possidetis juris was exactly applied in a effort to mitigate and control these wars.

One side in these wars, the Serbs, denied the legitimacy of Yugoslavia's internal frontiers, while the rest of the Yugoslav republics accepted their validity and legitimacy. Or, to put it another way, some actors of the Yugoslav self-determination were against the territorial *status quo* existing at the time of Yugoslavia's collapse and others were against this change in the territorial status quo. The ruling of the Badinter Commission went along the lines of this latter group of the Yugoslav actors, declaring firmly that 'whatever the circumstances, except where the states concerned agree otherwise, the right to self-determination must not involve changes to existing frontiers existing at the time of independence (uti possidetis juris)'[495], so that, stressed the Commission in its third opinion answering the question asked by Serbia, 'except where otherwise agreed, former borders (here it makes a specific reference to the internal borders between Serbia and Croatia and between Serbia and Bosnia-Herzegovina) become international frontiers protected by international law' This stance was based on the respect for territorial *status quo* (the 'photograph of territory' in the African case) and the principle of *uti possidetis* itself, which, according to the Commission, is connected with the phenomenon of independence. It was, said the Commission, the precedent of the International Court of Justice in the *Burkina Faso v. Republic of Mali case*. Behind this reasoning lies, like in Africa, the prevention of conflicts over borders

[495] *Opinion No. 2 of the Arbitration Commission, Para. 2.1.*

among newly independent states that emerged from former Yugoslavia, maintained the Commission[496].

To further strengthen this position, the Commission expressly noted that only through an international recognition of former administrative borders as international ones, protected by Article 2 (4) of the UN Charter, could the conflicts and wars over territories be protected[497]. This assumption had also been a political aim of the European leaders since June 1991. This European stance had been transmitted to the Belgrade authorities by British officials and meant that only the federal republics of Yugoslavia would be invested with the right to self-

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[496] *Opinion No. 3 of the Arbitration Commission on the Peace Conference on Yugoslavia*, Para. 2.2. This fear about eventual conflicts over borders, Badinter himself shared with Steven Ratner in an interview on June 29, 1994. See, Steven Ratner, 'Drawing a Better Line: Uti Possidetis and the Borders of New States' *American Journal of International Law* Vol. 90 No. 4 (October 1996) pp. 590-624, at 614, footnote 192.

[497] Ibid. pp. 614.Those authors who have criticized the application of uti possidetis juris in the Yugoslav case, usually focus their attention on the appropriateness of such an application, claiming that the goal of preventing the conflict and war had not been achieved. These authors should however admit that the goal was achieved, certainly not as the Commission would like to, in a long run by the mere fact that its application set out the fixed territorial limits for a legitimate exercise of self-determination. Its application has certainly yielded the results. The conflict over borders was not caused by the application of uti possidetis juris, but because the issue of borders had been high on the political agenda of the Yugoslav leaders, long before the process of dissolution of Yugoslavia started. The issue of Yugoslav internal borders was also a hot spot during the January-June 1991 negotiation on the restructuring of the Yugoslav state. The ruling of the Commission was therefore nothing but a response to this political agenda of the Yugoslav leaders, showing the limits of the legitimate exercise of self-determination. See, Steven Ratner, 'Drawing a Better Line: Uti Possidetis and the Borders of New States', pp. 596-691, 613-614, 616, 623-624; Gerry J. Simpson, 'The Diffusion of Sovereignty. Self-Determination in the Post-Colonial Age'. In Robert M. Corqoudale (ed.), *Self-Determination in International Law*. (Dartmouth: Ashgate 2000) pp. 585-616 at 587; Peter Radan, 'Yugoslavia's Internal Borders as International Borders.A Question of Appropriateness', p.137. 19p.

determination, meaning full independence[498]. The problems in practice arose not from using the African precedent to indicate the entities fulfilling the standard conditions for international statehood but from the resistance put by some of the Yugoslav actors to the application of *uti possidetis juris* in the Yugoslav context[499].

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[498] It is sure, though, that the Badinter Commission based its rulings on the elementary assumption of international law and politics, which says that states are considered only those entities who, *inter alia*, fulfill the essential criteria for international statehood (territory, population, and a government in control of this territory and population). In this regard, it had to say the following:

'1. In its opinion No. 1 of November 29, 1991, the Arbitration Commission found that:

· a state's existence or non-existence had to be established on the basis of universally acknowledged principles of international law concerning the constitutive elements of the state;

· the composition and the functioning of essential bodies of the Federation no longer satisfied the intrinsic requirements of a federal state regarding participation and representativeness;

· recourse to force in different parts of the Federation had demonstrated the Federation's impotence;

· the existence or disappearance of a state was, in any case, a matter of fact.

2. The dissolution of a state means that it no longer has legal personality, something which has major repercussions in international law. It therefore calls for the greatest caution. The Commission finds that the existence of a federal state, which is made up on a number of separate entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population, constitute themselves as sovereign states with the result that federal authority may no longer be effectively exercised. By the same token, while recognition of a state by other states has only declarative value, such recognition, along with membership of international organizations, bears witness to these states 'convictions that the political entity so recognized is a reality and confers on it certain rights and obligations under international law'. Para 3 of the *Opinion No. 8 of the Arbitration Commission of the Peace Conference on Yugoslavia*. Paris, July 4, 1992.

[499] This precedent, by analogy, was extended to the former Soviet Union and Czechoslovakia, an attitude firmly endorsed by the Guidelines on recognition. The new states of former Soviet Union accepted *uti possideis juris* in 1993 as a principle that would be a valid answer in their mutual relationships over territorial issues. This was

It should be admitted, however, that the Yugoslav case has historically been different from that of the Soviets. In the former case, as opposed to the latter, only three territorial rearrangements took place. This means that Yugoslavia's internal borders were more stable than elsewhere in the Communist world, especially more stable than in the Soviet Union. Although some of the issues to be discussed below are already discussed in the Chapter IV, it is worth restating them in clearer form for a better apprehension of the manner in which the African precedent was applied in the Yugoslav case.

Two of the above-mentioned territorial arrangements belong to the pre-WW II period, while the last one has to do with Communist Yugoslavia. From 1921 to 1929-31, the Yugoslav state was divided into 33 regions, or so-called *oblasti* that were effectuated mainly in disregard of ethnic and historical considerations. Bosnia-Herzegovina, for its support given to the 1921 Constitution, was left in its 1878 (Congress of Berlin) borders, although divided into four *oblasti*. Another exception was Serbia, who retained its pre-1918 borders due to its privileged position in the new Kingdom. After 1929-31, King Alexander of Yugoslavia introduced the system of provinces, known as *banovine*. The *banovine* system abolished entirely the concessions made to Bosnia-Herzegovina. The *banovine* names were given after the main Yugoslav rivers and waterways. There were nine *banovine.* The last one was formed in 1939, granting to Croatia a special federated status within the Kingdom of Yugoslavia. The *Croat Banovina* enjoyed semi-federal status. The *Sporazum* (the 'Agreement') establishing the *Croat Banovina* set out in essence a federal arrangement between Croatia and the rest of

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stated expressly in Article 3 of the Charter of the Commonwealth of Independent States (June 22, 1993), which affirms the 'inviolability of states' borders, recognition of existing borders and rejection of unlawful territorial acquisition'. At the same time, the *Alma Atta Agreement Establishing the Commonwealth of Independent States* (December 1991) includes similar provisions. Texts reprinted in *European Journal of International Law* Vol. 4 No. 3 (1993), Annex: 'Decision of the Council of Heads of States of the Commonwealth of Independent States', pp. 418-430. For the comments, see, Sergei A. Voitovich, 'The Commonwealth of Independent States: An Emerging Institutional Model' *European Journal of International Law* Vol, 4 No. 3 (1993) pp. 418-430.

Yugoslavia. The rest of the country fell under the provisions of the 1929-31 laws enjoying no distinct territorial identities based either on history or ethnicity.

Following WW II, Tito and Communist-led Partisans made a decision to divide the country into six republics and two Autonomous Provinces. The latter was named 'oblast' and the former 'province', with very little difference regarding the legal position in terms of self-determination as foreseen by the 1946 Constitution of Yugoslavia (only republics had a formal right to secession). The borders of the Republics were considered inviolable, as opposed to the Autonomous Provinces who reached that stage only after the promulgation of the 1974 Constitution. These internal borders were designed to increase political, social and economic cohesion of Yugoslavia and were to serve this goal. This practically means that these borders were considered unimportant and as being in the function of the strengthening of the brotherhood and unity among Yugoslavs, a new Yugoslav identity based on Communist values. This was stated on several occasions by the highest Communist officials of Yugoslavia, Tito himself included. No serious problems over these borders arose for most of the time of Yugoslavia's existence, which shows that they were widely accepted as a basis of new identities and internal loyalties[500].

The Badinter Commission and the international community as a whole, Europeans particularly, respected the same premises in the Yugoslav case as those applied in Africa: since Yugoslavia was a multiethnic federation, the only solution was to take the African *uti possidetis juris* as a reference point in the process of the territorial delimitation of the new sovereign states and their quests for self-determination. In practical terms, this meant that *uti possidetis juris* were to refer only to the Yugoslav republics, not the Autonomous Provinces. The Republics were the only ones constitutionally defined as states in all former Communist federations. The difference with Africa, however, lies in that in this case some corrective criteria were put foreword by the international

[500] See, more on this, in Peter Radan, 'Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness' p.137. 19p.

community, hose fulfillment was a precondition for full independence. The rule of law, democracy, respect for human and minority rights were now to be considered as a basis for the international legitimating of the independent statehood of new states emerging from the collapsed (Communist) federations. By the same toke, former Yugoslav republics were by now to give guaranties as to the above issues if they were to be internationally accepted as new members of the international community. However, no effective mechanism for the implementation of these guaranties existed in practice: economic sanctions proved unsuccessful over the short period of time, while the use of military means resulted in a long waiting period due to the lack of consensus among the drafters of this new model of *uti possidetis juris*[501]. Only

[501] Lord Owen, one of the most influential of internationals in the Yugoslav drama (1992-1995), and former President Francois Mitterrand of France were the ones who have ardently advocated the opposite attitude to the boundary issues in former Yugoslavia. It did not matter that the Yugoslav *uti possidetis* had been a brain child of their respective countries. Both favored the approach that would make the right to secession conditional upon the previous settlement of the issues of borders among the Yugoslavs. See, Petar Radan, 'Yugoslavia's Internal Borders as International Borders: A Question of Appropriateness', p.137, 19p., pp.7-9 out of 14. However the two failed to notice the difference between uti possidetis juris and the right to secede, latter's recognition included. The issue of borders is different, having a separate function from the recognized right to secede. In the first case, the issue at stake is the succession to previous administrative borders for the sake of order and stability in interstate relations. In the second, though, one has to do with a political act of the recognizing state (or states) confirming the existence (or non - existence) of a given factual situation calling for secession of a given entity. The above approach of the two internationals was different as well from the then ongoing plans in Europe over the same issue. Such was the case with the 1993 plan put foreword by the then French Prime Minister *Edward Balladour*, who proposed *Pacte sur la Stabilite en Europe*. The Pact was accompanied by a number of bilateral agreements concerning individual boundary disputes and minorities problems following the recognition as independent states of former Yugoslav republics. The Pact was designed to provide a way to temper the side-effects of the EC's recognition policy since it foresaw economic incentives and technical assistance for a durable settlement of the conflicts in Central and Eastern Europe. These lofty goals, nevertheless, were not pursued further so that the Pact was never implemented in practice. See, more on this,

when it was seen that the Serbs of Croatia and Bosnia-Herzegovina were bent on the wrong interpretation of (or the resistance to) Badinter's self-determination (the Serbs thought apparently that only republics would have the right to full independence, notwithstanding the way they were created), did the international community intervene militarily to protect the territorial integrity of Bosnia-Herzegovina. By the same token, the further dismemberment of Croatia was prevented by allowing it to destroy the illegal Serb entities there (known as 'Republika Srpska Krajina'). Croat military actions against the Serb entities in Croatia were seen in the West as a useful substitute for Western action against the Serbs, which in turn more than justified covert military assistance to Tudjman[502]. In the Bosnian case, however, the international military

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Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice'. In Robert McCorquodale (ed.), *Self-Determination in International Law*, pp. 555-583 at 583; Kemal Sehadi, 'Ethnic Self-Determination and the Break Up of States', pp. 75-85; Stephanos Stathatos, 'Pact on Stability in Europe' *The Southeast European Yearbook: 1994-95* (Athens: ELIAMEP, 1995) pp. 99-105.

[502] See, Jane M.O. Sharp, *Honest Broker or Perfidious Albion? British Policy in Former Yugoslavia.* (London: Institute for Public Policy Research, 1997) p.50. The gradual military defeat of Croatia's Serbs during 1995, culminating with the Summer 1995 total defeat at the hands of Croat forces, is closely connected with the so-called *Z-4 plan* for the special status of the Serbs-held regions in Croatia. The then cochairmen of the International Conference on Former Yugoslavia, Owen and Stoltenberg, and the ambassadors of the US and Russia (*the Zagreb Four: Z-4)* began in late January 1995 to seek a lasting solution to the Krajina issue. The goal was to give the Krajina Serbs a broad measure of self-rule while maintaining the formal unity of Croatia and permitting the refuges to return home. On January 30, 1995, *the Z4* Ambassadors presented a Draft Agreement on the Krajina, Slavonija, Southern Baranja and Western Srem, but both sides rejected it. Zagreb rejected the package because it created a 'state within a state' and thus violated the Croatian constitution. The Croatian Serbs also rejected the plan arguing that Krajina Serbs could not accept a return to Croatian sovereignty and Milosevic apparently did not want to recognize Croatian frontiers, thereby relinquishing his long-standing project for a Greater Serbia. *Z-4 Plan* was seeking a compromise by emphasizing Croatia's territorial integrity, while seeking to assure the Serbian minority of its rights. It offered the rebel Serbs a broad measure of autonomy into parts of the territiory where they formed a majority. Serbs living in other parts of the self-declared 'Republika Srpska

intervention came too late, after a fait accompli and a genocide against the Bosniac Muslims. When the time came again to forcefully apply, and impose the respect for, *uti possidetis* in its complete form (covering the above-mentioned corrective criteria), a paradoxical situation emerged: Kosovo was equated with the illegal Serb entities in Bosnia-Herzegovina and Croatia respectively as far as the international legal framework for the solution of its final status is concerned.

The lack of a real political and administrative organization in post-colonial Africa, inherited from the Berlin Conference (1844-45), did not make necessary the need for an attachment of any corrective criteria to the implementation of *uti possidetis juris*: the rule of law, democracy, and the respect for human and minority rights did not represent an important factor for the level of political and administrative organization existing in Africa (an area without state administration for most of the time of its existence). Apart from this, the African leaders knew long before independence what the territorial limits of their (colonial) self-determination would be so that they had to concentrate only upon the fight against colonialism without taking into consideration the real interests of various ethnic groups living within these (former) colonies. In this state of affairs, the Cold War atmosphere exercised a great impact on East-West relations concerning self-determination. In the Yugoslav case as well, the actors had some previous knowledge as to the limits of self-determination (as noted, since June 1991)[503].

Krajina' would be expected to reintegrate into Croatia and the government in Zagreb would be forced to observe strict human rights legislation to protect the Serbian minority. In the autonomous Serbian region, the Serbs would have control over taxation, police, education, tourism, housing and public services and Zagreb would act for foreign affairs, defense, trade, transport and communications. Krajina would be demilitarized and the border with Bosnia-Herzegovina monitored. See, 'Reuters', February 1, 1995 and February 9, 1995; Partick Moore, 'The Winds of War Return' *Transition* Vol. 1 No. 5 (April 14, 1995) pp. 32-37 at 36.

[503] British Foreign Secretary, *Douglas Hurd*, on a few occasions had urged the Yugoslav leaders to accept the African precedent when the OAU came into existence based on the respect for the previous administrative colonial borders. See, James Miall, 'Sovereignty and Self-Determination in the New Europe'. In Hugh Miall (ed.), *Minority Right in*

There has existed a wide consensuses on the issue, in an apparent belief that the African precedent would prevent further bloodshed in Yugoslavia and gradually put its process of dissolution under control. For internal self-determination as well (the rule of law, democracy, and the respect for human and minority rights), there was a wide consensus. The latter's implementation had to be guaranteed by the states emerging from former Yugoslavia. However, as noted, there were no mechanisms for the implementation of such guarantees, given formally by each of the former Yugoslav republics., now sovereign and independent states. This, in practice, resulted in applying the principle of *uti possidetis juris* the same as in Africa, at least between 1991 and 1995. It is against this background of the corrective criteria concerning internal self-determination that the reasons for NATO military intervention against the Serbs should be examined (both in Bosnia-Herzegovina and FRY). This means that the military intervention has had, in both cases, as its purpose to impose, besides the respect for territorial integrity, the rules on internal self-determination (the rule of law, democracy, and the respect for human and minority rights)[504].

Why have the Yugoslav republics existing at the time when the process of Yugoslav dissolution started have been chosen as a reference point for the application of *uti possidetis juris*? As noted, apart from Serbia, the majority of the Yugoslav republics accepted the territori*al status quo* existing at the time of Yugoslavia's dissolution. This further meant that these republics were to be the would-be repositories of power by the time Yugoslavia dissolved. Serbian resistance to uti possidetis juris was grounded on the alleged artificiality of the internal borders of

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Europe: The Scope for a Transitional Regime (London: Royal Institute of International Affairs, 1994) pp. 10-11; See, also, the speech of the Undersecretary of the Foreign and Commonwealth Office of Great Britain, held before the Parliament on January 19992. In that speech, the official British position was outlined with respect to Croatia's borders. But, at the same time, it was stated that the respect for former administrative borders of Croatia is a common stance of the European Community.'United Kingdom Materials on International Law' (UKMIL), *63 British Yearbook of International Law* (1992) p. 719.

[504] For a similar view, see, also Martti Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice', pp. 555-583 at 580.

Yugoslavia[505]. In practice, though, this rejection of uti possidetis by the Serbs was a cost-benefit calculation in a hope to achieve territorial gains. In other words, the Serb argument coined in terms of the alleged artificiality of the Yugoslav internal borders, was nothing but a realpolitik approach, as it was that of other Yugoslav republics who were aware of the implications of this Serbian stance well before June 1991 while the negotiations on the redefinition of Yugoslavia were under way. No wonder than that the goal of *uti possidetis* in Yugoslavia was the same as that in Africa, that is, preventing the conflicts and bloodshed over borders. At the root of these conflicts rests the cost-benefit calculation of the parties as to the advantages of the territorial *status quo*. It took time, pressure from the outside world and, above all, human lives until the Serbs realized that they also have to accept the principle of *uti possidetis juris.* In order to depict this trajectory of the Serb attitude towards the internal borders of Yugoslavia, we shall make use of a full quotation from an author, Jeffrey Herbst, expressed in the African context but that clearly reflects the crux of the issue in the Yugoslav case of *uti possidetis juris*:

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[505] The then Serb-dominated 'rump' federal presidency denied the validity of Badinter's rulings, that is, the Presidency rejected the applicability of *uti possidetis juris* to internal borders of Yugoslavia since, it assented, they had been drawn up to meet policy considerations after WW II at the instigation of the Yugoslav Communist Party and without regard to ethnic consideration. Therefore, the Presidency considered them to be artificial creatures of Tito. See, 'Position of SFR Yugoslavia on the Question of Internal Borders of Yugoslavia'. Belgrade, December 30, 1991.Text reprinted in *Review of International Affairs* Vol. XLIII, February 5, 1992 (Belgrade) p. 23. The issue of the artificiality of the Yugoslav internal borders has in fact been a Serbian discourse long before the case was on the agenda of the international community. Not only the 1986 Memorandum, but later on the eve of Yugoslavia's break up the Serbian public was very active in the discussions on the 'artificiality of Yugoslavia's internal borders'. Thus, the Belgrade-based daily newspaper *Ilustrovana Politika* published a map on February 12, 1991 showing the future shape of Serbia. According to this map, Serbia would have the right to incorporate the bulk of Bosnia-Herzegovina and large parts of Croatia. Kosovo as a whole was taken for granted, e.g., as a territory that without no doubt were to belong to Serbia.

'The borders in Africa are often characterized as artificial and arbitrary on the basis of the fact that they do not respond to what people believe to be rational demographic, ethnographic, and topographic boundaries. However, borders are always artificial because states are not natural creatures. Therefore, it is important to judge boundaries - political creations - on the basis of their usefulness to those who created them. Based on this criterion, the current African boundaries are not arbitrary. The boundary system developed in 1885, represented a rational response by the colonialists because it served their political needs. The vast majority of borders have remained virtually untouched since that time because the system for the most part continues to serve the political needs of the colonialists and present-day African leaders. There is a chance that in the future African elites may find preservation of existing borders to be more costly than other alternatives, but a large number of political calculations will have to change first. Until then, Africa's 'rational' borders will be preserved'[506]. Will the political calculations in the former Yugoslav territory change in the near future? It is very hard to predict. For the time being, it seems unlikely that these calculations will change, at least for the foreseeable future matching the African case.

[506] Jeffrey Herbst, 'The Creation and Maintenance of National Boundaries in Africa', p. 692.

3. Rule of Law, Democracy and the Respect for Human and Minority Rights

As it could be seen from the above sections of this chapter, the issues of the rule of law, democracy and the respect for human and minority rights have been high on the top of the agenda of the Western countries in dealing with the Yugoslav self-determination. These liberal values dealt with the issues of self-determination itself, territorial limits for its implementation, as well as the international recognition of self-determination as such. Although at first sight these values looked as if they were of a procedural nature, in reality they were meant to fill the content of the Yugoslav self-determination. For the first time they appeared in the rulings of the Badinter Commission and other documents related to the International Conference on Former Yugoslavia (ICFY), but were later on repeated throughout documents and other endeavors undertaken by the international community during the Yugoslav wars of self-determination[507]. The essence of the human rights approach to self-determination was to avoid the Westphalian concept of territorial exclusivity by focusing instead on manageable set of criteria for international statehood in the conditions of an increasingly interdependent world. This was done, to put it differently, to mitigate the territorially-based self-determination and its consequences. In line with

[507] Democracy, the rule of law and respect for human and minority rights were the basic values the West offered to those Yugoslav republics wishing to become independent states. Apart from the opinions of the Badinter Commission, respect for these values had been strongly expressed in the Guidelines on Recognition. These values were then inserted in the constitutions of the Yugoslav republics wishing to become independent and sovereign states, a practice followed almost without exception by all former Communist countries. See, Vladlen S. Vereshchetin, 'New Constitutions and the Old Problem of the Relationship between International and National Law' *European Journal of International Law* Vol. 7 (1996) No. 1 pp. 29-42; Aeyal M. Gross, 'Reinforcing the New Democracies: the European Convention on Human Rights and the Former Communist Countries - A Study of Case Law' *European Journal of International Law* Vol. 7 (1996) No. 1 pp. 89 -103; Menno T. Kamminaga, 'State Succession in Respect of Human Rights Treaties' *European Journal of International Law* Vol. 7 (1996) No. 4. pp. 469-485.

this, self-determination in the rulings of the Commission that were followed by the international community at large was not perceived as an end in itself reflecting the preference for a homogenous, independent and small 'nations states'[508]. To be able to have a universal application without massive discrepancy, the Commission viewed self-determination from the opposite perspective. In its views, self-determination was a means to an end, the end being order and stability through the promotion of a democratic, participatory political and economic system in which the rights of individuals and the identity of minority communities shall be protected[509]. In this sense, the Yugoslav

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[508] As noted earlier in this chapter (see the *uti possidetis* issue), the Serbian government posed two questions to the Commission, one concerning the borders and the other concerning the issue of self-determination. On the issue of self-determination, the Serbian government asked the Commission as to whether 'the Serbian populations in Croatia and Bosnia-Herzegovina were entitled to benefit from the right to self-determination'. The Commission had already addressed the problem of self-determination in abstract when rendering the second opinion. In this case, however, the Commission concluded that 'the Serbian populations of Bosnia–Herzegovina and Croatia have the right to benefit from all the rights recognized as belonging to minorities and ethnic groups by international law and by provisions of the Draft Convention of the Conference on Peace in Yugoslavia' and, further, 'that the republics ought to grant to the members of these minorities and ethnic groups the totality of human rights and fundamental freedoms recognized by international law, including as the case may be the rights to choose their nationality'. This type of self-determination granted to the Serbian people, that is, the right to internal self-determination was more apparent when it came to the discussion of the application for international recognition of Bosnia-Herzegovina. In this regard, the Commission based its ruling on the right of minorities and ethnic groups to equal participation in government. Cf. Paras. 3 - 4 of *the Opinion No. 2 and Para. 4 of the Opinion No. 4 of the Commission.*

[509] The Commission did not in fact use the same terms as we do here. In addressing the above question of Serbia concerning the rights to self-determination of the Serbian peoples living in Bosnia-Herzegovina and Croatia, the Commission drew a distinction between minorities and entities that were a territorially defined administrative units of a federal nature by the time the former Yugoslav state dissolved, that is, the federated republics of former Yugoslavia. The latter were entitled to a full external-type of self-determination, while the latter not. The Commission tempered the bad consequences for

self-determination did not mean only independent statehood, but the exercise of what is termed 'functional sovereignty'. This functional sovereignty assigned to sub-state groups the powers necessary to control political and economic matters of direct relevance to them, while bearing in mind the legitimate concerns of other segments of the population and the state itself[510]. This meant that the Commission was against further partitioning along ethnic lines of former Yugoslav republics. In this regard, it fully endorsed the Judgment of the International Court of Justice of December 22, 1986 in the already - mentioned case between Burkina Faso and Mali, stating that the obvious purpose of the principle of non-violability of the previous administrative borders was 'to prevent the independence and stability of new states being endangered by fratricidal struggles'[511].

In some respects, this functional sovereignty reflects the 'principle of subsidiarity' developed within the EU and the old injunction that

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a minority suddenly finding itself within a new state by ascribing a second level of content to their right of self-determination. This level was connected to the preservation of minorities' identity and culture. Cf. Paras. 3 to 4 of the Opinion No. 2 and Para. 4 of *the Opinion No. 4 of the Commission*.

[510] In fact, the Commission clearly referred to the so-called Carrington Proposal (its chapter II on human rights). Cf. Para. 2. 2. of the Opinion No. 2 of the Arbitration Commission. Chapter II of the Carrington Proposal, on the other hand, specified to the details the rights and duties of the minorities and ethnic groups. This chapter, in fact, was named as 'Human Rights and Rights of National or Ethnic Groups'. See, *Treaty Provisions for the Convention*, The Hague, November 1, 1991. *UN Doc. S/23169, Annex VII.* (This is amended and supplemented draft arrangement for general settlement of the Yugoslav crisis of October 18, 1991). Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 370-378.

[511] Para. 2. 2. of the *Opinion No. 3 of the Arbitration Commission of the Peace Conference on Yugoslavia.* Paris, January 11, 1992. Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunosvka, *Yugoslavia Through Documents*, pp. 479-480.

'government governs best which governs least'[512]. Those republics who did not confirm to this rule were denied international legitimacy. However, those who refused this had gradually been forced to obey the common liberal values of international behavior. To achieve this, the international community has had at its disposal various means.

[512] Hannum Hurst, *Autonomy, Sovereignty and Self-Determination* (Philadelphia: University of Pennsylvania Press, 1990) p. 260. See, also, Alain Pellet, 'The Opinions of the Badinter Committee', pp. 178-181.

4. Means at the Disposal of the International Community to Achieve its Goals Concerning Yugoslav Self-Determination

In its dealing with the Yugoslav self-determination, the international community has used various means at its disposal. The aim was to channel possible consequences stemming from the realization of self-determination within the Yugoslav territory. That is to say, the means used by this community were meant to check and balance the implementation of self-determination in this specific case, a self-determination that was a mixture of territory and ethnicity. The means the international community used can be divided into two categories. One category has had a coercive nature and the other has not. There are, to be sure, many types of coercive pressure (sanctions, military actions, diplomatic isolation, etc.). However, here we focus only on two such measures: military actions and economic sanctions[513]. Both of them have had a multilateral character and were undertaken by the international community as a whole. This is the reason why we did not list in this category the so-called 'outer wall of sanctions', undertaken by one state only – the US. In line with this, we took out of the list the category of

[513] Coercion is the use of threatened force, including the limited use of actual force to back up the threat, to induce an adversary to behave differently than it otherwise would. We use this particular definition to emphasize that coercion relies on the threat of future military force to influence adversary decision making, but that limited uses of force sway adversaries not only because of their effects on an adversary's perception of future force and the adversary's vulnerability to it. Coercion is not destruction. Although partially destroying an adversary's means of resistance may be necessary to increase the effects and credibility of coercive threats, coercion succeeds when the adversary gives in while it still has the power to resist. Coercion can be understood in opposition to what Shelling termed 'brute force'. 'Brute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage, or of more damage to come, that can make someone yield or comply'. Thomas C. Shelling, *Arms and Influence* (New Heaven, Conn.: Yale University Press, 1996) p. 3. Coercion may be though of, then, as getting the adversary to act a certain way via anything short of brute force; those who coerce must have the capacity for organized violence but choose not to exercise. See, Robert A. Pape, *Bombing to Win* (Ithaca, N. Y.: Cornell University Press, 1996) p. 13.

the diplomatic isolation, putting it into the second category instead. Diplomatic isolation is dealt with in the context of non-coercive means and should be seen as a part of the policy of non-recognition used by the international community in the process of solving the Yugoslav case of self-determination. This means that the diplomatic isolation is a variant of non-recognition in international relations and that it shall be treated as such in this work. Along with the 'outer wall of sanctions', the policy of non-recognition forms the core of the non-coercive means used by the international community in the Yugoslav case of self-determination.

When the international community decided to use these means, it did not specifically say that their use was meant to implement a certain type of self-determination *per se*. This community has rather used the above means in a very selective manner and against those Yugoslav actors acting against the Western and liberal conceptions of self-determination. This conception had as its premise the territory, not ethnicity, and the international order and stability. These values were to be kept only via the respect for liberal principles, norms and values, such as human rights, democracy, the rule of law and the respect for human and minority rights. At the beginning of the Yugoslav crisis, the international community explicitly used these means to influence the type of self-determination it wanted to implement. Later, it used these means to protect the independence and sovereignty of former Yugoslav republics and the human rights of their citizens without a distinction of any kind.

The first category we chose to discuss here, the sanctions (mainly of economic nature as foreseen by the Article 41 of the UN Charter), have been widely used in the Yugoslav case. The target country has been the FRY (Serbia and Montenegro). This country was seen as the most responsible actor for the conflict in Bosnia-Herzegovina and, later, in Kosovo (1992-1999). However, there is a difference between the regime of sanctions instituted against the FRY during the Bosnian war and the conflict in Kosovo. In the first case, the FRY was held responsible for the direct involvement in the ongoing conflict in Bosnia-Herzegovina, while in the second 'threats to the peace' came as a result of the FRY's actions within its own territory.

The imposition of sanctions in connection with the war in Bosnia-Herzegovina has been a long process. The UN Security Council first decided with its resolution no. 713 (1991) to impose an arms embargo against the then Yugoslavia. The use of sanctions as a means to impose on the Yugoslav actors the Western-type of self-determination was first encouraged by Europeans. In this regard, the European Union during the first stages of the Yugoslav crisis (June - December 1991), within the mechanisms of the Hague Conference, proposed the sanctions regime (mainly on oil embargo and trade embargo) against those Yugoslav republics who obstructed the work of the EU and its efforts to peacefully settle the Yugoslav crisis[514].

Following the above, the UN Security Council with its resolution no. 752 of May 12, 1992 demanded that 'all parties and others concerned in Bosnia-Herzegovina stop fighting', while third parties ceased 'all forms of interference from outside Bosnia-Herzegovina, including by units of the Yugoslav People's Army (JNA) and Croatian Army'[515]. Fifteen days

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[514] 'EC Declaration on the Situation in Yugoslavia'. Brussels, October 28, 1991; 'EC 'Declaration on the Suspension of the Trade and Cooperation Agreement with Yugoslavia'. Rome, November 8, 1991. Texts provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trufunovska, *Yugoslavia Through Documents,* pp. 368-69; 378-380. For a complete scholarly analysis of the relations between the EU and the FRY, see, Blagoje Babic and Gordana Ilic (eds.), *Jugoslavija i Evropska Unija* (Beograd: IMPP and Beobanka, 1999). The contributors to this volume, however, do not make any difference between former Yugoslavia and the FRY (Serbia and Montenegro), referring to 'Yugoslavia' for both cases. See, also, Peter Bruckner, 'The European Community and the United Nations' *European Journal of International Law* Vol. 1 (1990) No.1/2, pp. 174-193; Rachel Frid, 'The European Community - A Member of a Specialized Agency of the United Nations' *European Journal of International Law* Vol. 4 (1993) No. 2, pp. 239-265; Sebastian Bohr, 'Sanctions by the United Nations Security Council and the European Community' *European Journal of International Law* Vol. 4 (1993) No. 2, pp. 256-269.

[515] *UN Security Council Resolution No. 752 (1992).* Adopted at the 3075th Meeting of the Security Council (May 15, 1992). Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents,* pp. 575-577.

later, the UN Security Council adopted the resolution no. 757 (1992) deploring the 'failure of the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro), including the Yugoslav People's Army (JNA), to take effective measures to fulfill the requirements of resolution 752 (1992)'. The Council further asked that all 'states adopt the measures foreseen in Art. 41 of the United Nations Charter, including a wide range of sanctions in trade, finance, communications, international cooperation, as well as the reduction of the level of staff at diplomatic missions and consular posts of the Federal Republic of Yugoslavia (Serbia and Montenegro)'[516]. The sanctions regime imposed on FRY was reinforced by two other resolutions of the UN Security Council, nos. 787 (1992) and 820 (1993), which had widened the scope of the existing sanctions. The sanctions now covered not only FRY's territory but also the territory under the control of the Serbs of Bosnia-Herzegovina[517]. The first group of sanctions lasted only until the Dayton Accords were reached[518]. To reward Milosevic's behavior for the signing of the Dayton Accords, the UN Security Council first suspended and later totally lifted trade and other sanctions against FRY (Serbia and

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[516] *UN Security Council Resolution No. 757 (*1992). Adopted at the 3082th Meeting of the Security Council (May 30, 1992). Text provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 593-599.

[517] Texts provided by the Albanian Foreign Ministry, Tirana. Also reprinted in Snezana Trifunovska, *Yugoslavia Through Documents*, pp. 757-762; 909-915.

[518] It should be noted, however, that after the acceptance of the Contact Group Plan by the FRY (July 1994), the UN Security partially suspended these sanctions (mainly those concerning culture, sport and communication) and for a limited period of time depending on FRY's behavior *vis-à-vis* Bosnia-Herzegovina and Croatia. See, the following resolution in connection, The *UN Security Council Resolution No. 713* of September 25, 1991; The *UN Security Council Resolution No. 752* of May 25, 1992; The *UN Security Council Resolution No. 787* of November 16, 1992; The *UN Security Council Resolution No. 820* of April 17, 1993; and The *UN Security Council Resolution No. 943* of July 30, 1993. Texts provided by the *Albanian Foreign Ministry*, Tirana.

Montenegro) with its resolution nos. 1022 of November 20, 1995 and 1047 of October 1, 1996 respectively[519].

The regime of sanctions against the FRY was re-imposed again after the outbreak of hostilities in Kosovo in March 1998. This time, however, the *reaison d' etre* of the new sanctions regime was the behavior of the FRY authorities within its own territory, a behavior that gradually posed a threat to the peace and stability of the region and wider. The UN this time guaranteed the FRY's territorial integrity but asked the Belgrade authorities to respect the rights of its citizens living in Kosovo and to find a peaceful accommodation for their rights[520].

The second group of means, military ones, have been used twice by the international community, in Bosnia-Herzegovina and Kosovo. Compared with the already-mentioned case of Kosovo (see, infra pp. 197-205), where the military actions were used to prevent the unraveling human tragedy that gradually became a threat to international peace and security, the use of these means in Bosnia-Herzegovina has had a different nature. In the first case their use was meant to prevent a human tragedy threatening international peace and security, the end result of which was the imposition upon Kosovo a fixed territorial limits for the exercise of the internal-type of self-determination. In the second case, though, the use of military means was designed to prevent the consecutive breaches of the cease-fire agreements by the Bosnian Serbs, as well as the breaches of the provisions of other provisions of the

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[519] See, *Resolution No. 1022*. Security Council - Suspension of Sanctions Against Federal Republic of Yugoslavia. Date: November, 22 1995. Meeting: 3595; *Resolution No. 1047*. Security Council - Lifting Sanctions Against Federal Republic of Yugoslavia. Date: October 1, 1996. Meeting: 3700. Texts provided by the *Albanian Foreign Ministry*, Tirana.

[520] See, *UN Security Council Resolution No. 1160 (1998)* of March 31, 1998; *UN Security Council Resolution No. 1199 (1998)* of September 23, 1998; *UN Security Council Resolution No. 1203 (1998)* of October 24, 1998; *UN Security Council Resolution No.1239 (1998)* of May 14, 1999; and *UN Security Council Resolution No. 1244 (1999)* of June 12, 1999. (also available in internet: http://www.un.org/).

international humanitarian law[521]. In both cases, however, the mandate of the UN for action as foreseen in Chapter VII of the UN Charter had been taken after such a measure was already taken on the ground. In terms of self-determination, this should be made clear, the use of these military means has meant that the borders of former Yugoslav republics were to be inviolable and that within these borders the respect for human and minority rights, democracy and the rule of law should prevail.

Among the non-coercive means used by the international community to effectuate the types of self-determination described thus far, the policy of non-recognition takes prominence[522]. It appears in all documents concerning the Yugoslav crisis, from the Badinter Commission to the Dayton Peace Accords, the relevant UN documents dealing with the Kosovo issue are included. Non-recognition, as an established rule in international law that aims at invalidating the illegal uses of force employed to achieve territorial gains, proved very effective and a strong rule in the case of Serbs living in Bosnia-Herzegovina and Croatia. Apart from this domain, the policy of non-recognition was used as a threat to former Yugoslav republics with the view of imposing on them a

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[521] See, Gabriel Manuera, 'Preventing Armed Conflict in Europe: Lessons from Recent Experience' *Chaillot Paper* No. 15/16 (Paris: the Institute for Security Studies of the Western European Union, June 1994), especially the chapter 'Bosnia-Herzegovina'; Nicole Gnessoto, 'Lessons of Yugoslavia'. *Chaillot Paper* No.14 (Paris: the Institute for Security Studies of the Western European Union, June 1994). Filippo Andreatta, *'The Bosnian War and the New World Order*' *Chaillot Paper* No. 1 (Paris: the Institute for Security Studies of the Western European Union, October 1997), especially the chapter 'the Causes of Peace'. (all papers available in internet at http://www.weu.int/institute/).

[522] For the policy of non-recognition in international law and relations, used as a means to invalidate the illegal and illegitimate situations and positions, see, in general, James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press 1979), pp. 31-77; Iean Brownlie, *Principles of International Law* (Oxford: Clarendon Press, 1990) pp. 87-106 at 98; Helen Ruiy Fabri, 'Etat (Creation, Succession, Competences).Geneze et Disparition de l' Etat a l' Epoque Contemporaine' *Annuaire Francias de Droit International* Vol. XXXVIII (1992) (Paris: Editions du CNRS) pp. 153-178.

given system of values concerning democracy, the rule of law, the respect for human and minority rights[523].

[523] The case of the FRY authorities regarding Kosovo and that of Croatia concerning its own Serbs. It should be noted, however, that other Yugoslav republics as well had to obey the same liberal values but these two cases were the most conspicuous ones that took most of the attention of the international community. This distinction concerning the policy of non-recognition is reflected throughout the following documents of the international community:

- the EC Statement on Yugoslavia (Brussels, June 8, 1991);
- documents adopted by the Committee of Senior Officials in the framework of the CSCE Mechanisms (Prague, July 3-4, 1991);
- the EC Declaration on Yugoslavia (the Hague, July 5, 1991);
- Joint Declaration of the EC Troika and the Parties Directly Concerned with the Yugoslav Crisis, the so-called 'Brioni Accords' (Brioni, Croatia, July 7, 1991);
- the EC Declaration on Yugoslavia (Brussels, August 27, 1991);
- the EC Declaration on Yugoslavia (the Hague, September 3, 1991);
- the UN Security Council Resolution No. 713 (1991) of September 25, 1991;
- the Arrangements for General Settlement of the International Conference on Yugoslavia, the so-called 'Carrington Draft Convention' (the Hague, October 18, 1991);
- Treaty Provisions for the Convention of the Peace Conference on Yugoslavia (the Hague, November 1, 1991);
- Statement issued by the Heads of State and Governments Participating in the Meeting of the North Atlantic Council (Rome, November 8, 1991);
- the UN Security Council Resolution No. 721 (1991) of November 27, 1991;
- the EC Declaration Concerning the Conditions for Recognition of New States (Brussels, December 16, 1991);
- Opinion No. 2 of the Arbitration Commission of the Peace Conference on Yugoslavia (Paris, January 11, 1992);
- Opinion No. 3 of the Arbitration Commission of the Peace Conference on Yugoslavia (Paris, January 11, 1992);
- Opinion No. 4 of the Arbitration Commission of the Peace Conference on Yugoslavia Concerning the Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States (Paris, January 11, 1992);

Within non-coercive measures fall the so-called 'outer wall of sanctions'. This measure was imposed by one state only, the US. It has a long history that lasted until the Dayton Peace was reached. Then, in a statement issued by the US State Department on November 23, 1995 (distributed by the US Informative Agency), it was made public, for the first time, the 'outer wall of sanctions' concept[524]. This in practical terms

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- Opinion No. 5 of the Arbitration Commission of the Peace Conference on Yugoslavia Concerning the Recognition of the Republic of Croatia by the European Community and its Member States (Paris, January 11, 1992);
- Opinion No. 6 of the Arbitration Commission of the Peace Conference on Yugoslavia Concerning the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States (Paris, January 11, 1992);
- Statement by the Presidency of the European Community on the Recognition of Yugoslav Republics (Brussels, January 15, 1992);
- the UN Security Council Resolution No. 752 (1992) of May 15, 1992;
- the EC Statement on Yugoslavia (London and Brussels, August 6, 1992);
- the UN Security Council Resolution No. 769 (1992) of August 7, 1992;
- International Conference on the former Yugoslavia – Statement on Principles (London, August 26-28 1992);
- the UN Security Council Resolution No. 776 (1992) of September 14, 1992;
- the UN Security Council Resolution No. 777 (1992) of September 19, 1992;
- decisions of the Council of CSCE on Former Yugoslavia (Stockholm, December 14 and 15, 1992);
- the Dayton Peace Accords (November 1995);
- the Rambouillet Peace Agreement (February-March 1999);
- the UN Security Council Resolution No. 1244 (1999) of June 12, 1999.
- The above list is not exhaustive. It has been compiled selectively in a belief that these documents reflect the spirit of the international community's stance over the issue of liberal values, that is, democracy, the rule of law, and the respect for human and minority rights.

[524] See, 'USIA Wireless File', November 23, 1995, pp. 38-39. Text provided by the Albanian Foreign Ministry, Tirana. The very concept of the 'outer wall of sanctions' is closely related to the previous sanctions imposed on FRY. This can be seen from the Statement of November 23, 1995 that contained the following message: 'A resolution will be introduced in the UN Security Council to lift the arms embargo against all of the states of former Yugoslavia. Trade sanctions against Serbia will be suspended, but may be re-

meant that following the Dayton Accords, president Slobodan Milosevic of Serbia was being recognized as a new peacemaker ending the war in Bosnia-Herzegovina. The UN Security Council, accordingly, first suspended and later totally lifted trade and other sanctions against the Federal Republic of Yugoslavia as described above. Apart from the Dayton Accords' obligations, especially those concerning the cooperation with War Crimes Tribunal, the rest remained identical to those fulfilled by other Yugoslav republics on the occasion of their admission to the membership of the international community. They specifically concerned the respect for liberal values on the part of the FRY authorities *vis-à-vis* the majority Albanian population in Kosovo.

Not only in the opinions of the Badinter Commission and the Guidelines on Recognition, but also in other international documents, the Western values concerning democracy, the rule of law, respect for human and minority rights took a very prominent place. This fact is noted already in the penultimate section of this dissertation and in this section we are about to complete. The Kosovo issue was not an exception to this: the FRY authorities had to comply to the same liberal values as did other Yugoslav republics when they were admitted as full-fledged members of the international community. This position did not change until the conflict in Kosovo took dramatic dimensions, threatening international peace and security[525].

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imposed if Serbia or any other Serb authorities fail significantly to meet their obligations under the Dayton Agreement. An 'outer wall' of sanctions will remain in place until Serbia addresses a number of other areas of concern, including Kosovo and cooperation with the War Crimes Tribunal'.

[525] In this regard, the first pronouncement of the international community via the so-called Contact Group on Former Yugoslavia (formed in April 1994 to tackle the Bosnian crisis) spoke about the respect for these liberal values and the internal type of self-determination on behalf of Kosovo and its majority population. See, *Statement on Kosovo.* London Contact Group Meeting (March 9, 1998); *Statement on Kosovo.* London Contact Group Meeting (March 15 and 25, 1998); Bonn Statements by the Contact Group (April 29 and May 9 1998); *Statement on Kosovo*. London Contact Group Meeting (June 12, 1998); *Statement on Kosovo*. Bonn Contact Group Meeting (July 8, 1998). The first UN Security Council Resolution, issued after the outbreak of hostilities in Kosovo, adopted the same

Although unilaterally imposed by one state, the US, the 'outer wall of sanctions' was by no means a category of a purely political nature. As already noted in the previous section of this chapter and the Chapter VI, the concept has had a strong international legal basis starting from the opinions of the Badinter Commission up to the stipulations of the Dayton Accords (the issue of cooperation with the War Crimes Tribunal)[526]. The issues forming the core of the concept had to do with the following: FRY's membership of international organizations; financial and other assistance by the International Monetary Fund (IMF) and World Bank (WB); and normalization of relations between the US Government and FRY. All these issues were mutually connected. As noted (infra, pp. 140-164), the Belgrade regime was denied the claim to state continuity with the former Yugoslavia. This meant that it had to apply for the UN membership as foreseen in the UN Security Council Resolution No. 777 (1992) of September 19, 1992 and the UN General Assembly Resolution No. 47/1 (1992). By definition, this further meant that FRY would not inherit former Yugoslav seat in other international organizations and bodies (the OSCE, the Council of Europe and other regional organizations). The implications of this US stance regarding the FRY stretched over to international financial institutions, such as the IMF and WB. These two very important financial institutions fully endorsed this international position in December 1992 and February

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language. See, *UN Security Council Resolution No. 1169 (1998)* of March 31, 1998. This resolution imposed for the second time the sanctions regime on the FRY authorities. They concerned mainly arms and trade embargoes.

[526] Following the fall of Milosevic in October 2000, the US Government showed its readiness to lift the 'outer wall of sanctions', an event that happened gradually until January 2001. In January 2001, however, the new US administration of President *George W. Bush* withdrew the previous Bill Clinton's consent to lift the 'outer wall of sanction'. This move was based on the fact that the newly elected President of the FRY, Vojislav Kostunica, was showing no readiness to cooperate with the Hague Tribunal concerning the handover of Milosevic to the Hague authorities. See, Ylber Hysa, 'Problemi i Presheves Zgjidhet ne Mitrovice'. Prishtina-based daily *Koha Ditore* (January 31, 2001), p. 10.

1993[527]. The latter decision were a logical consequence of the previous ones, that is, the consequence of the fact that a non-member state of the UN cannot enjoy the membership of the IMF and WB.

The 'outer wall of sanctions' has had a marginal effects only. It triggered some two-track diplomacy and the signing of the Education Agreement by the then President Milosevic of Serbia and the Kosovor Albanian leader of the time, Ibrahim Rugova. The two-track diplomacy consisted of informal talks held between the Serb opposition and the Kosovor Albanians during March and June of 1996 in New York (USA) and Ulcin (Montenegro) respectively[528]. However, these means proved ineffective to impose any sustainable form of self-determination over Kosovo and its majority population. Only military actions, undertaken by NATO in March – June 1999, managed to serve the liberal values of the West and consequently, preserved peace and international stability.

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[527] On December 15, 1992, the IMF found that 'Yugoslavia has ceased to exist and has therefore ceased to be a member of the IMF'. The same position was taken by the WB on February 25, 1993. See, the IMF Press Release No. 92/92 of December 23, 1992 and the Decision of the Executive Directors of the World Bank, February 25, 1993. For comments, see, Malcolm Shaw, 'State Succession Revisited' *The Finnish Yearbook of International Law* Vol. V (1994), pp. 52-54; Paul R. Williams, 'State Succession and the International Financial Institutions: Political Criteria vs. Protection of Outstanding Financial Obligations' *International and Comparative Law Quarterly*' Vol. 43 (Ocober 1994), Part 4, pp. 776-808.

[528] For the meeting of New York, see, Daily Report (In Albanian) of the *Kosovo Information Center*, Nos.1687 (April 7, 1997), pp. 1-2, 1689 (April 9, 1997), pp.1-2, 1690a (April 10, 1997), pp. 1-2. For Ulcin meeting, see, Daily Report (In Albanian) of the *Kosovo Information Center* Nos. 1754 (June 24, 1997), pp. 1-3, 1756 (June 26, 1997) pp. 1-3, and 1757 (June 27, 1997) pp. 1-2. (also available in internet at http://www.Albanian.com).