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| THE DISINTEGRATION OF YUGOSLAVIA AND CREATION OF NEW STATES IN INTERNATIONAL LAW  Doctoral Thesis |
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**Abstract**

The history of creating and developing states dates back to ancient societies. State creation is a result of historical and social processes, and it is a simple fact outside of the legal domain norms. International law does not deal with the way states are created until the moment they become a matter of fact. However, new entities need to meet certain criteria in order to gain statehood and eventually recognition.

States can be created in different ways, but at the end of the 20th century after the collapse of communism in Eastern Europe certain states were created in dramatic circumstances after bloody wars. The fall of the Berlin Wall in 1989 marked the ending of the communist system in Eastern Europe and the beginning of the disintegration of the three multinational communist federations – Czechoslovakia, the USSR and Yugoslavia, in 1991. The disintegration of three communist federations opened the door for the creation of new states, from which some of them became independent after the tearing conflicts. In the following of the disintegration of communist federations, Yugoslavia underwent a tragic dissolution through wars.

This study deals analytically with the theories of the creation of states in international law, bringing examples of the creation of different states, according to the criteria defined in the Montevideo Convention on the Rights and Duties of States 1933, and it will also analyze the de facto and de jure recognition of states. In particular, the research will deal with the creation of the Yugoslav Federation by analyzing and comparing the constitutions of this federation until its dissolution, including the economic, social, and political factors of the dissolution of the Yugoslav Federation as well as the creation of new states from the Yugoslav federation in international law.

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**List of Abbreviations**

ACNLY-Antifascist Council for the National Liberation of Yugoslavia (AVNOJ)

BC- Before Christ

CDU - Croatian Democratic Union

CIA- the Central Intelligence Agency

CoE - Council of Europe

CSCE - Commission on Security and Cooperation in Europe

DPA - Dayton Peace Agreement

ECCY – European Community Conference on Yugoslavia

EC-European Community

ECMM- European Community Monitoring Mision

EEC - European Economic Community

EU-European Union

EULEX - European Union Rule of Law Mission in Kosovo

FPRY - Federal People's Republic of Yugoslavia

FRY - Federal Republic of Yugoslavia

GA- General Assembly

GFA - General Framework Agreement

HDZ - Hrvatska demokratska zajednica (Croatian Democratic Union)

ICFY - International Conference on the Former Yugoslavia

ICTY - International Criminal Tribunal for the former Yugoslavia

IFOR- The Implementation Force

IPTF - International Police Task Force

KFOR - Kosovo Force (KFOR)

KLA - Kosovo Liberation Army

KOSMET- Kosovo and Metohija

KVM - Kosovo Mission Verifiers

LDK - Democratic League of Kosovo

NATO- North Atlantic Treaty Organization

NDH -Nezavisna Država Hrvatska (Independent State of Croatia)

ONUC-United Nations Operation in The Congo

OSCE - Organization for Security and Co-operation in Europe

PLC - Peoples’ Liberation Council

RSK - Republika Srpska Krajina (Republic of Serbian Krajina)

SANU – Srpska Akademija nauka i umetnosti (Serbian Academy of Arts and Sciences)

SDS - Srpska demokratska stranka (Serbian Democratic Party)

SFRY - Socialist Federal Republic of Yugoslavia

SKJ – Savez komunista Jugoslavije (League of Communists of Yugoslavia)

SOFA - Status of Forces Agreement

TRNC -Turkish Republic of Northern Cyprus

UN Charter-United Nations Charter

UNC Secession- Unilateral Non-Colonial Secession

UNMIK- United Nations Mission in Kosovo

UNPROFOR - The United Nations Protection Force

UNSC - United Nations Security Council

UN-United Nations

USA- United States of America

USSR - Union of Soviet Socialist Republics

# **Introduction**

The history of birth and formation of states could be traced back to ancient societies. States' creation is a result of entanglement with historical and social processes, and it is a simple fact outside of the legal domain norms. International law does not address how the states are created until the moment they become a matter of fact. However, new entities need to meet certain criteria in order to gain statehood and eventually recognition. There are various socio-historical developments and momentums leading to the creation of states. An iterative example of new states emerging in the Eastern Europe resulted following conflicts and wars.

The fall of the Berlin Wall in 1989 propelled the end of the communist system in Eastern Europe contributed significantly ending of the Cold War. This whole new geopolitical constellation eroded the bipolar system of international relations catapulting the USA as the only superpower, paving way for the creation of a New World Order. This period was manifested by many changes and dramatic turbulences, especially in the countries of the socialist bloc, where most of these countries were plagued by sluggish and barely functioning economies expressed interest to connect with the developed and democratic Western world. However, secession process of newly established states from the federations in some instances were accompanied with destructive conflicts and wars.

The dissolution of Yugoslavia was the most horrific example not seen since World War II, leaving behind hundreds of thousands of victims. This federation fell apart at a much higher cost than expected, waging four bloody wars, starting in Slovenia, then continuing in Croatia, Bosnia, and Herzegovina, and ending in Kosovo. This research on this topic has particular importance due to the fact that the Yugoslav Federation consisted of eight federal units; six republics (Bosnia and Herzegovina, Croatia, Montenegro, Macedonia, Serbia and Slovenia) as well as two autonomous provinces (Vojvodina and Kosovo). Despite the fact that the 1974 Constitution of the Yugoslav Federation recognized the right to self-determination until the secession of the federal units, the independence of several federal units occurred only after the ravaging wars.

The research and analysis of the functioning of the Yugoslav Federation gives an intriguing element to this dissertation, particularly when analyzed from the prism of multi-ethnic composition the federation, as well as its cultural and ethnic diversity. Analyzing from the perspective of the legal hierarchy, Yugoslavia the functioned with three levels of constitutions. a) At the top of the pyramid was the constitution of the Yugoslav Federation, b) the second category was the constitutions of the six republics, and c) the third category was the constitutions of the two autonomous provinces of Kosovo and Vojvodina What further warrants the research of this dissertation is the analysis and comparison of the constitutions of the two autonomous provinces, and their evolution with the 1974 constitution , when these provinces became constitutional elements of the Yugoslav Federation, apart from being an integral part of the Republic of Serbia.

The constitutional arrangement of these two autonomous provinces and how they functioned in practice with dual status; as a part of the Republic of Serbia and, and Yugoslavia have been scarcely studied thus far. From the historical point of view, this study attempts to shed light on historical events that reflect the discontent and various aspirations of the nations and nationalities that lived in Yugoslavia until its dissolution. In addition, based on the constitutional arrangements the two provinces had extensive self-governing autonomy, they had their own parliaments enabling them to make their constitutional changes without the consent of the Republic of Serbia, while the constitutional changes of the Republic of Serbia could not be made without the consent of the provinces autonomous.

From the political point of view, the research intends to bring to the surface the political relationships between the units of the Yugoslavia, taking into account that the Yugoslav Federation was comprised of different nations and nationalities, with different aspirations, where the Federation has been received for decades with dissatisfaction and deep ethnic problems up to the armed war that resulted in the dissolution of the federation.

From the economic-social point of view, this research merits a brief analysis of legal framework regulating centralized Yugoslav economy as well as the level social welfare of ethnicities according to socialist concepts and models in the country. In addition, this dissertation analyzes the dissolution of the Yugoslavia in view of international law but also by examining historical developments leading not to peaceful dissolution like the case of Czechoslovakia but igniting waging heinous conflicts and wars and NATO intervention. In order to treat scientifically as well as multi-dimensionally the dissolution of the Yugoslavia and the creation of new states in international law, this dissertation will be divided into five chapters.

**First Chapter** of this dissertation will address the right to self-determination according to international law and the UN Charter, as well as the creation of new states in international law. This chapter will also analyze the general theories of international recognition of states, as well as their evolution. Besides that, this chapter will also deal with legal aspects of the international law of the creation and recognition of states, the theories for the recognition of states, statehood criteria in international law, the de facto and de jure recognition of states, as well as the recognition of states by the United Nations.

**Second Chapter** will provide a clearer picture of the international circumstances contributing to the creation of the Yugoslavia, as well as in brief will be described the World War II 1939-1945, the German invasion of Yugoslavia in 1941, the Organizing of the National Liberation War (AVNOJ). By analyzing the 1946 Constitution, the rights of nations and nationalities that this constitution guaranteed, the political and economic system, and social welfare within the Yugoslav Federation, as well as the 1953 Federal Constitution will highlight a clear picture of the political system of the Yugoslav Federation, as well as the state law for the nations and nationalities living under the Yugoslav Federation.

This chapter will also analyze the social and political developments within the Yugoslav Federation during the 1950s, as well as the Constitution of 1963, the political crisis of the 60s, the economic reforms, the fall from power of Aleksander Ranković, as well as the protests of the Kosovo Albanians of the year 1968. This chapter will show a clear picture of the Yugoslav political crisis after the Croat protests for secession from Yugoslavia, but also will analyze in detail the 1974 Constitution, as a more advanced constitution that guarantees more rights to the two autonomous provinces of Kosovo and Vojvodina than they had with other constitutions.

**Third Chapter** of this dissertation will analyze the Yugoslav crisis after the death of President Tito, political developments in Yugoslavia, the protests of Kosovo Albanians in 1981, the growth of Serbian nationalism, the rise of Slobodan Milosevic to power, the beginning of constitutional changes, until the amendment of the 1974 constitution of the Autonomous Provinces, and the adoption of the Constitution of Serbia 1989. This chapter will briefly analyze international political circumstances which accelerated the dissolution of Yugoslavia, such as the fall of the Berlin Wall and the unification of Germany. Furthermore, this chapter will address the Yugoslav Crisis ignited by the 14th Congress of the Central Committee of the League of Communists of Yugoslavia, 20-22 January 1990.

**Fourth Chapter** of this dissertation is the corner stone of this research where the focused is shifted on the analysis, description, and legal interpretation of the independence of republics from the Yugoslav Federation in view of international law. In detail, this chapter encompasses Slovenia’s independence in international law, international recognition, and its membership in the United Nations. In the same fashion, methodological analysis will be drawn analytical on Croatia's independence in international law. The Hague Conference of the European Community and the Arbitration Commission, known as the Badinter Commission, which had the main role of international arbitrator in the dissolution of Yugoslavia, will be examined. The chapter tackles the independence of Bosnia and Herzegovina the perspective of international law and the peaceful independence by the Republic of Macedonia, its international recognition, as well as the membership of Macedonia in the UN. In brief, the chapter will touch on the case of Kosovo declaring independence in 1991 but without securing recognition. Moreover, the Dayton Conference and the peace agreement and remaining Yugoslavia, Serbia-Montenegro will be elaborated shortly.

**Fifth Chapter** of this dissertation brings to the surface the definitive disintegration of Yugoslavia, especially of that remaining part, known internationally as the Federal Republic of Yugoslavia. In this chapter, the events that led to the independence of Montenegro and Kosovo in international law will be analyzed, such as the war in Kosovo, the Rambouillet Conference, and NATO's military intervention in Kosovo. In this article, NATO's military intervention in Kosovo will be discussed from the perspective of international law, as well as the ICJ Advisory Opinion on the Independence of Kosovo.

# **Chapter 1. Recognition of States in International Law**

# **The Right to Self-Determination in International Law**

The origins of peoples modern right to self-determination comes from Enlightenment ideas associated to popular sovereignty. The principle of popular sovereignty had the main purpose of transferring sovereignty from the ruler to the ruled. In this way, sovereignty as well as political legitimacy would pass from the absolute monarch to the people, while the loyalty of an individual would pass from the monarch to the state. The turning point of this great social change was the American Revolution, and especially the French Revolution, which determined the emergence of the concept of self-determination of peoples, as a modern right.[[1]](#footnote-1)

On the other hand, since its beginning through the nineteenth century, national self-determination remained a revolutionary principle mainly rejected by international law. In Napoleon's wake, the Concert of Europe tried to restore the status quo in Europe, refusing the authority of the people's will to assign borders or the governments that ruled with them.[[2]](#footnote-2) Regarding the concept of secession, philosophers also had different attitudes, some classical thinkers advocated secession as a legitimate means of resisting arbitrary rule. Althusius (1614) argued that secession was a remedy for flagrant tyrannical maladministration in the treatment of a section of the population. A community may leave the political society (the state) due to the violation of fundamental rights by the ruler, while another reason is when a section of the people seeks secession related to the welfare of the section. In this way, secession becomes legitimate when a part of society finds itself in extreme conditions, and saving itself in any other way is impossible (Grotius, 1625). Emer de Vattel advocates secession as a way of avoiding the fallacy of the tyrant who takes life for no apparent reason, as well as a condition that would make life unbearable if that part of society was not separated. According to Heraclides (2000), there are 4 reasons for disengagement; 1. Exploitation and systematic discrimination against a significant minority; 2. The will to secession of a separate society, within a state residing in a region; 3. Peaceful resolution of the conflict within a territory between the new state and the existing state, as a result of the envisaged division; 4. Rejection of compromise solutions by the central government. On the other hand, John Locke (1689) rejects secession and rather favors the abolition of the tyrannical regime.[[3]](#footnote-3)

Self-determination as a concept has united two potentially opposite values such as popular sovereignty and nationalist resentment. Therefore, national self-determination can be identified as a pacification of competing ideals between the rules of the people, and the rules of the moral. The revolutionary time in Europe seemed to convert the "culturally flat state of the 18th century into a symbolically believable nation of the 20th". [[4]](#footnote-4)

In this regard, notwithstanding, the big differences between German and French entities eventually converged on the common goal of uniting a single cultural people within a single sovereign state. Therefore, nations had no status in international law until incorporated into a recognized state. The principle of non-intervention united in terms of a state's treatment of foreigners. The principle of state autonomy paradoxically authorized imperialism. International intervention in the Balkan revolts further disrupted the pattern, leading to the breakup of the European Concert system, and the onset of World War I.[[5]](#footnote-5)

The origin of the modern principle of self-determination arose in the democratic ideals of US President Woodrow Wilson, enunciated in his fourteenth points concerning the new composition of Europe after World War I. The key to the understanding of Wilson’s conception of self-determination is the fact that for him it was absolutely a result of a democratic theory leading to the growth of democracy across the globe and the stabilization of the world order.[[6]](#footnote-6) He first used the term publicly in 1918 towards the end of World War, I, by promoting the principle of self-determination on the remnants of the European Concert, a principle that was thought to be the basis of the Versailles Peace Agreement of 1919. Despite instrumental work of US President Wilson towards Peace Agreement of 1919, the US Congress was not in the same path with the President – opting not to ratify the Peace Agreement.

The Wilsonian principle of self-determination had historical roots in a number of ideas that evolved over the centuries to shape the modern world. First is that the legitimacy of the rule is dependent upon the consent of the governed. Through the English, French, and American Revolutions, the idea that people are sovereign and not subjects of the state was developed, which also built the concept that the legitimacy of power originates from the governed (from the people).[[7]](#footnote-7) Secondly, with the consolidation of the kingdoms, the imperial feudal claims were extinguished, while the sovereignty of the state appeared in the international arena. Third, the rise of ethnic nationalism weakened the great multinational empires of Europe in the nineteenth century and their disintegration in the twentieth century.

President Wilson proposed a postwar order based on the notion that the peoples of ethnically identified nations would govern themselves, consistent with the earlier slogan of "the defense of small nations." This idea was eagerly accepted at Versailles, as "a principle of citizenship, instead of justice". Wilson's concern for oppressed ethnic minorities led to three of the central elements of the postwar settlement. (i) a scheme whereby identifiable peoples would be granted citizenship; (ii) the fate of disputed border areas would be decided by plebiscite; and (iii) those ethnic groups too small or too dispersed to qualify for either of the above courses of action would benefit from the protection of special minority regimes, overseen by the Council of the new League of Nations.[[8]](#footnote-8)

The term self-determination gained prominence in international political discourse around the World War I. American President Woodrow Wilson linked the principle of self-determination to Western liberal democratic ideals and the aspirations of European nationalists.

On the other hand, the doctrine on self-determination advanced by Lenin was “*the right of nations to self-determination means only the right to independence in a political sense, the right to free, political secession from the oppressing nation. Concretely, this political, democratic demand implies complete freedom to carry on agitation in favour of secession, and freedom to settle the question of secession by means of a referendum of the nation that desires to secede. Consequently, this demand is by no means identical with the demand for secession, for partition, for the formation of small states. It is merely the logical expression of the struggle against national oppression in every form*”.[[9]](#footnote-9)

With the creation of the United Nations after World War II, the "*self-determination of peoples*" was included in the UN Charter[[10]](#footnote-10) among the founding principles of this organization. International human rights uphold self-determination as a "right" of (a) all peoples, as does the African Charter on Human and People's Rights[[11]](#footnote-11), as well as the Helsinki Final Act. During a certain era in history, international law exclusively addressed the obligations and privileges of sovereign states, disregarding the humanity that exists outside of states. However, they gain significant attention and a new dimension under the modern ideas of human rights, where the protection of rights believed to be inherited by humans both individually and collectively is a growing concern of international law.[[12]](#footnote-12)

The principle of the right of peoples to self-determination is also confirmed by The United Nations General Assembly Resolution 1514 (1960)[[13]](#footnote-13), according to which all peoples have the right to self-determination; according to this right, all peoples by their will can determine their political status and freely pursue their economic, social, and cultural development.[[14]](#footnote-14)

In a similar vein, the United Nations General Assembly took the initiative in 1950 to petition the Economic and Social Council, asking that the Commission on Human Rights "study ways and use mechanisms that would ensure the right of peoples and nations to self-determination." Subsequently, the International Covenant on Economic, Social, and Cultural Rights grants the right to self-determination, the designation of a notable nation, in an article drafted by the Commission and adopted by the General Assembly in December 1966.[[15]](#footnote-15)

UN General Assembly Human Rights Conventions (1966): the International Covenant on Economic Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) refer only to Self-Determination and were adopted at the height of decolonization, serving as references that helped reinforce this process. But decolonization also raised the issue of Territorial Integrity of the States a little, since most of the colonies were far from their metropolitan countries. France's claims that Algeria, Portugal, Angola and Mozambique where integral parts of their territories were effectively laughed out of court.[[16]](#footnote-16)

On the other hand, in 1970, the General Assembly of the United Nations adopted Resolution 2625 entitled "Declaration on Principles of International Law Relating to Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations" (hereinafter referred to as the "1970 Declaration")[[17]](#footnote-17) was intended to clarify the purposes and principles of the United Nations". This resolution, which determined that "on the basis of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all people have the right to freely determine their political status," also obligates all states to respect the right to self-determination in accordance with the UN Charter. As Shaw says, the 1970 Declaration "may be considered to constitute an authoritative interpretation of the seven provisions of the Charter which she explains".[[18]](#footnote-18)

International law as a dynamic system, in relation to self-determination was more apparent before 1965. In that time in 1960 alone, 17 African colonies achieved independence, increasing the membership of the United Nations by over 20 percent, from 83 to 99 members.[[19]](#footnote-19) In view of international law, minority groups denoted as “peoples” enjoy the prerogative of the right to self-determination, which in essence amounts to their right to shape their political fate and define, present as well as protect their interest through a representative government. Although international law recognizes the principle of self-determination, however the right to secession is not encapsulated by this principle. Nonetheless, there is a growing consensus that under international law: in rare occasions when people face oppression or still live under the colonization rule, the right to secession could be argued.[[20]](#footnote-20)

Since the World War I, the concept of self-determination has led to the dissolution of empires and states, as well as to decolonization and the creation of new states. Roughly half of the currently existing states and most of the 51 founding members of the United Nations have emerged from the breakup of empires or nation-states.[[21]](#footnote-21)

Unlike many other human rights, self-determination is applicable to groups, or “peoples” (defined as a nationally-based substrate group) that are empowered to “freely determine their political status and freely pursue their economic, social and cultural development.”[[22]](#footnote-22) This means that should a people within an existing state be systematically denied their rights, then the prospect of Unilateral Non-Colonial Secession will become the only path. Second, the legal basis for a remedial right to UNC secession in international law is to be found within customary international law. The right to UNC secession in customary international law finds its genesis in Principle 5 paragraph 7 of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.[[23]](#footnote-23)

The principle of self-determination appears to be in its anti-colonial form, but certainly not when it puts all its possible faces, which made the principle of self-determination in the UN era a multi-faceted treatise. [[24]](#footnote-24) The International Court of Justice endorsed the principle in this form in the 1971 Advisory Opinion on Namibia and in the 1975 Advisory Opinion on Western Sahara, where it defined the principle; "*the need to pay attention to the freely expressed will of the peoples". For many years, most states in the UN General Assembly maintained that the expressed will of people to free themselves from colonial rule was the only face that self-determination had*”.[[25]](#footnote-25)

Crawford, considers the difference between the legal principle and the legal right of self-determination, as a right of a people to choose their political organization, to exercise without obligation on the principles of equality (one person, one vote).[[26]](#footnote-26) The exercise of the right to self-determination may result in independence, or in joining in association with another state according to the principle of political equality for that people. On the other hand, the difference between the principle and the right of self-determination in the international law of self-determination is the definition of the subject; so, the definition of a people; the nation as a right that precedes the identification of the subject of the right. In this way, the subject of the right to self-determination, unlike the subject of the principle, is fully defined, according to Chapter XI of the UN Charter, mandated territories and territories treated as non-self-governing have the right to self-determination.

On the other hand, the principles apply to cases where the subject does not enter the object of the right; that is, within one of these defined categories. In such cases, the issue is subject to the interpretation that Crawford considers the question to be "as much a matter of politics as of law" resulting in the resolution of an additional category, which Crawford calls "carence de souveraineté " that is, “where a territory is so misgoverned by the state that secession is permitted".

Additionally, Crawford claims that the legal principle of self-determination for these territories has a residual role because the territories, which are distinct political-geographic areas, enter into force in relation to the portion of the remaining state that is not self-governing because their residents do not participate in the governance of the region or the state to which the region belongs..[[27]](#footnote-27) The principle of self-determination enshrined in the Charter of the United Nations has been used frequently and forcefully after the World War II to make colonized countries independent. In light of the widespread acceptance of the principle of self-determination and its successful application as a legal prescription in the decolonization process, self-determination, in the specific context of colonialism, appears to have acquired the status of an established rule of customary international law. Beyond this, however, there appears to be slow development and little consensus among politicians on the content and scope of this principle.[[28]](#footnote-28)

Based on the principle of self-determination, a group that has a common identity linked to a defined territory is democratically allowed to decide on its political future. In order for a group to be entitled to exercise its collective right to self-determination, it must qualify as a "people". Traditionally, a two-part test has been applied to determine when a group qualifies as a people. The first step of the test constitutes the objective form of assessment by determining the proximity of the group according to a "common racial origin, ethnicity, language, religion, history, and cultural heritage", as well as the "territorial integrity of the area that the group claims". On the other hand, the second step of the test is subjective and examines "the extent to which individuals within the group consciously perceive themselves collectively as a distinct 'people, and "the extent to which the group can form a viable political entity.[[29]](#footnote-29)

There are three ways of exercising the right to self-determination; - integration, free association, or independence”. Whichever method is chosen, it is clear that it is the process itself that is the "essential feature". In a separate opinion in the case of Western Sahara, Judge Dillard says, "It is up to the people to determine the destiny of the territory and not the territory the destiny of the people." [[30]](#footnote-30)Therefore, it is emphasized that self-determination contains three basic elements: 1) there must be a group; 2) that group should be concerned about its political status; and 3) that group must be able to exercise its choice regarding its political future. In addition to these three elements, the next step is to identify areas of inconsistency regarding the term. First, there is uncertainty about the status of the concept of self-determination in international law, raising the question of whether self-determination is a principle of politics, a tool of secessionist rhetoric, or has it crystallized into a norm of international law. The second issue is related to the question of how to define the group. Should self-determination apply only to groups within colonial borders, or to all minorities however encircled?[[31]](#footnote-31)

Having regard to the challenging nature of the idea of self-determination, as well as its role in contemporary international law, there are great differences and radically different assessments regarding the notion of self-determination, particularly by jurists who are involved in thinking about the international legal system. An expert in the field, such as Sir Gerald Fitzmaurice, a former member of the International Court of Justice, sees the concept of self-determination as incompatible with international law. Although, he admits some "sympathy" with "the principle, considered politically." "Juridically," however, Fitzmaurice finds that "the notion of a 'legal right' to self-determination is meaningless.[[32]](#footnote-32)

On the other hand, some see self-determination as a cornerstone of the international legal system, rather than a moral curiosity or political maneuvering. Another study by a UN rapporteur [[33]](#footnote-33)asserted that the principle of self-determination underlies other fundamental principles of international law, including that of the equality of states. Based on this, self-determination is "the most important of principles" of international law regarding friendly relations and cooperation between states." Moreover, the principle of self-determination "includes international rights and obligations";' and it is a "contemporary recognized universal right", with a "general and permanent" character.[[34]](#footnote-34) A changing situation for international diplomacy brought self-determination of the people through the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia, which resulted in the creation of new states finally recognized by the international community.

The recognition of the former Yugoslav republics unfolded in a similar way. The dissolution of the Socialist Federal Republic of Yugoslavia (SFRY) officially began on 27 September 1990 when the Slovenian Parliament declared that it would no longer recognize federal legislation as binding.' Slovenians voted overwhelmingly for independence in a referendum on 23 December, as did Croatia on 19 May 1991, Macedonia on 9 September 1991, and Bosnia (in a controversial vote boycotted by Bosnian Serbs) on 14 October 1991.

The war had started in June 1991and federal troops attacked the Slovenian Provisional Militia, by December 7, 1991, the cohesion of the federal structures had deteriorated to such an extent that the Badinter Commission of the European Community found that the government bodies of the SFRY "do not no longer meet the criteria of participation and representation inherent in a federal state" and that, as a result, "the Socialist Federal Republic of Yugoslavia is in the process of dissolution.[[35]](#footnote-35)

Secessionist tendencies are a phenomenon that occurs rather often in many states. Most States, though not all, try to prevent such attempts from succeeding.The unilateral withdrawal from a State of a constituent part, with its territory and its population, constitutes secession *stricto sensu*. As a consequence of secession, the existing State splits in two: the State continues to exist, but a new State comes into existence concurrently. Secessions in this sense of the term are a rare occurrence. [[36]](#footnote-36)

James Crawford has pointed out that since 1945 there has not been a single separation of a constituent part from a State to which the latter has not, sooner or later, given its consent: ‘In fact no new State formed since 1945 outside the colonial context has been admitted to the United Nations over the opposition of the predecessor State’. [[37]](#footnote-37) Crawford’s statement shows that the role of the existing State’s consent in the context of secession is difficult to capture. One could also understand the term secession as encompassing a situation in which a constituent part separates from a State and the existing State gives its consent at a later stage. According to this understanding, the elements of secession are normally fulfilled at an earlier point in time. [[38]](#footnote-38)

Consensual separation can be constitutional and politically negotiated. Constitutional separation occurs with the consent of the existing state and does not involve the use or threat of force. This type of secession can be divided into two sub-categories: negotiated and explicit. The negotiated separation takes place within the framework of the existing state's constitution, even though there are no special constitutional provisions related to secession, a constitutional amendment is negotiated which allows the legal secession of a part of the existing state's territory.[[39]](#footnote-39) For example, in the Quebec secession case, the Canadian Supreme Court indicated that in the future, Quebec or any other Canadian province may be able to constitutionally secede from Canada, provided a constitutional amendment is negotiated that affects disconnection. Thus in 2000, the Canadian Federal Parliament passed the Clarity Act, which reaffirmed the constitutional process outlined by the Court, allowing for a referendum in favor of secession, followed by a negotiated settlement, through the passage of a constitutional amendment and the secession of Quebec from Canada is legally accomplished.[[40]](#footnote-40)

Clear constitutional secession occurs when the constitution of the existing state clearly defines the secession of a part of its territory, usually federal or provincial units such as; the 1921 Constitution of Liechtenstein, the Constitution of China, the Constitution of the Union of Burma, the Constitution of the Czechoslovak Socialist Republic, 1974 Constitution of the Socialist Federal Republic of Yugoslavia, and 1977 Constitution of the Soviet Union, 1984 Constitution of Saint Kitts and Nevis, Constitution of Ethiopia of 1994, and the 2003 Constitutional Charter of the State Union of Serbia and Montenegro describes a specific procedure for secession under certain circumstances.[[41]](#footnote-41) Politically negotiated secession occurs with the consent of the existing state and does not involve the use or threat of force. In this way, Norway was separated from the Swedish Union in 1905, similarly, in December 1918, following the “Act of Union Iceland seceded from Denmark and assumed the status of an independent state, although still remaining under the personal union of the Danish Monarchy. In 1922, Southern Ireland gained its independence from the United Kingdom after an act of the British parliament relinquished the territory.[[42]](#footnote-42)

Taking advantage of the principle of self-determination, as well as the established statehood criteria, many peoples of the world aim for division and the formation of new states. Although some managed to be success stories in creating new states through secession, some others failed. In this journey, examples of successful separations in recent history, are recognized; the unilateral secession of Kosovo from Serbia, and secession of South Sudan from Sudan, as well as the secession of Eritrea from Ethiopia in 1993 and that of Bangladesh from Pakistan in 1971.' On the other hand, despite their attempts at secession, the so-called "frozen conflicts" in Georgia, including two breakaway provinces of South Ossetia and Abkhazia, are known as unsuccessful, in addition to the recent attempt to secede Scotland from Great Britain, through a popular referendum. Other earlier and unsuccessful secession attempts include Republika Srpska and Northern Cyprus, as well as Quebec.[[43]](#footnote-43) On February 17, 2008, the Parliament of Kosovo unilaterally declared independence from Serbia, which within a few days was recognized as a new state by the United States, as well as by many other powerful Western countries. Kosovo is a member of several international organizations and associations including the International Monetary Fund, the World Bank, and the International Bar Association.[[44]](#footnote-44)

In 2011, South Sudan seceded from Sudan, sparking decades of civil war orchestrated through peace negotiations and a public referendum."

The people of South Sudan voted overwhelmingly for independence and accordingly. The results of the referendum, South Sudan became a new independent state on July 9, 2011, has been recognized by most countries, and has become a member of the United Nations. On the other hand, in February 2014, Russian troops occupied the Crimean Peninsula which until then had been part of Ukrainian territory.' The Crimean parliament held a referendum in May 2014, the result of which declared that Crimea would secede from Ukraine to join Russia as a result of an illegal exercise of Russian military power and an illegal land grab by the Kremlin, but in fact, Crimea seceded from Ukraine and was recognized by only 5 states.[[45]](#footnote-45)

The historical development of the right to self-determination presents it as one of the most important and dynamic concepts in contemporary international life and it exerts a deep influence on the political, legal, economic, social, and cultural levels, in the matter of basic human rights. and on the life and destiny of people and individuals. Analyzing the historical development of self-determination throughout the twentieth century it can be divided into two distinct periods: the period after World War I, known as the period of nationalism, and the period after World War II, known as decolonization.[[46]](#footnote-46) Following the World War I, and the victory of the Allies at the Peace Conference, President Wilson and other world leaders revised the borders of Europe and confirmed the independence of some territories previously dominated by their stronger neighbors. On the other hand, many agreements concluded after the war became an obstacle to recognizing the right of self-determination of all individual nationalities. In this way, many minority groups remaining in the newly created states were worse off than they had been before partition. In addition, Wilson and other world leaders realized that they could not extend the right to self-determination beyond the borders of Europe without greatly disturbing the world order.[[47]](#footnote-47)

The second important period for the development of the principle of self-determination was the period after the World War II, where the principle of self-determination was used to provide a legal basis for the process of decolonization.' This principle has been successfully used by the United Nations justifying their stance against colonialism and the independence of colonized countries. On the other hand, the UN has not been clear on whether the right to self-determination should extend beyond the colonial context and be used as a basis for allowing the secession of oppressed minority groups within an independent state.[[48]](#footnote-48)

The practice of the United Nations in the colonial context can be highlighted in terms of "Who gets what, when, and how". First, who has the right to self-determination? By defining the "self-determination of peoples," the Charter leaves open the question of who has the right to "self-determination—who constitutes a self-determining 'proper unit.'" This key question does not yield an easy answer.[[49]](#footnote-49) Although the right of peoples to self-determination is strongly mentioned in the UN charter, resolutions, declarations and international covenants on human rights, it clashes with the principle of territorial integrity in international law which restricts its application. [[50]](#footnote-50) On the other hand, the right to self-determination limits the right of ethnic groups and minorities as a result of not exactly defining a “people”.

The UN General Assembly Resolution 1514 (XV) grants the right to self-determination to colonial peoples. Nevertheless,it does not emphasize the way how to exercise the right to self-determination for the inhabitants of colonial territories.

# **I.2. Creation of States in International Law**

The history of the origin of the state is explained differently in different social sciences and has different meanings. For anthropologists, sociologists, and historians, the origin of states has passed through different periods from early societies organized in tribes transforming, to more structured forms of organization, such as the ability to keep records, issue orders, organize large-scale forces, and exercise authority. Such a level of organization can be found in the Egyptian dynasties, in the region of Mesopotamia, China, and ancient Greece. The second level of organization is encountered when formal authority structures begin to replace personal rules. Later comes the separation of personal ties between ruler and ruled, which requires a second transformation before the rule becomes fully formalized. In the early stages, even when rulers and ruled were not personally related, the rulers still governed the people.[[51]](#footnote-51)

The idea of state sovereignty historically dominated political thought after the Treaties of Westphalia in 1648, which ended the Thirty Years' War in Europe. As a result of this agreement, the governments recognized each other's autonomy for non-interference from outside in the most important issue of the time, which was religious belief. In this way, governments pledged not to support foreign co-religionists in conflict with their own countries. This agreement changed the balance of power between the territorial authority and the confessional groups in favor of the state, creating preconditions for building an effective system where the state would control and supervise its population. Such "sovereignty" is premised on the conquest and possession of territory. In this respect, the spatial dimension of territorial integrity is more clearly manifested in the definition of the territorial boundaries that separate "inside" (the "domestic" arena) from "outside" (the "international" arena). "Governing" by the "sovereign" thus aimed to bring about the artful combination of space, people, and resources in territorialized containments.

As a result of historical developments that spanned several centuries, the modern territorial state came into existence as a differentiated ensemble of governmental institutions, offices, and personnel that claims the exclusive power of authoritative political rulemaking for a population within a continuous territory that has a clear, internationally recognized boundary.[[52]](#footnote-52)

Looking at the historical context for the emergence of the modern European state, we can only find traces in the classical world of Greece and Rome. The peculiarity of the modern state is more clear and well visible, especially when compared with the complex forms of political organization of medieval Europe. 'Europe' from the end of the Roman Empire to the end of the feudal period or the thirteenth century was a complex social order in which political power was decentralized and highly fragmented. Social order was not ensured by centralized, hierarchical institutions, as in our societies; power and authority were decentralized. In general, medieval Europe consisted of complex, intersecting jurisdictions of cities, lords, kings, emperors, popes, and bishops.[[53]](#footnote-53) The birth of states is the result of a historical and sociological process. According to most authors, the birth of states is a simple fact that lies outside the sphere of legal norms. However, International Law defines the assumptions that must be fulfilled in order to be a state, just as domestic law contains the norms that determine the moment when a person, whose birth is a biological one, becomes the subject of the law.

International law does not deal with the process of the birth of the state, until the moment when the state is born, that is, it appears. The moment when the state was born is taken as the starting point of a legal position. This attitude is contained in opinion No. 1 of the Arbitration Commission of the International Conference on Yugoslavia, in which it is emphasized that the existence or disappearance of states is a matter of fact and that the effects of recognition by other states are merely declarative.[[54]](#footnote-54) States can be created in different ways. In the jurisprudence of international law, states can be formed in different ways such as in an original way and in a (derivative) way. The first way is about the creation of states in uninhabited, barely inhabited territories or in territories where previously there wasn't any state to which the entire population was transferred. In this way, Liberia was created, in 1822, by the African slaves of America who returned to Africa, and the Boer Republic in 1837, in the territory of Rhodesia (Zimbabwe) by the ancestors of the Dutch colonizers of South Africa. Such a way of creating new states belongs to history so that today the entire globe is divided and in each part of it there is a government.

States can be created by dividing a province (of a province) or region from the state they met before (USA 1776, the Ibero-American Republics from 1810-1825, Panama 1903, etc.) or by dividing a state into two or more independent states (Belgium and the Netherlands in 1930, the Netherlands and Luxembourg in 1890, Austria and Hungary in 1918, India and Pakistan in 1947, Pakistan and Bangladesh in 1971, etc.).[[55]](#footnote-55) Such separation can be done by force (insurrection) or peacefully (by agreement), respecting the existing legal order, as happened in the case of the separation of Norway and Sweden in 1905, of Iceland and Denmark, as well as in the case of the independence of some colonies. States can be created by the union of two or more states, Italy in 1870, Serbia and Montenegro in 1918, Syria and Egypt in United Arab Republic in 1958, Tanganyika and Zanzibar in today's Tanzania in 1964, etc.).

States can be created by a legal act: a) by internal law (Philippines in 1934; Guinea after the referendum determined by France, in 1958); b) By international treaty (the free state of Ireland, created in 1921 with the Anglo-Irish agreement; Vietnam with 1946, with the French-Vietnamese agreement; Algeria with the Evian agreement between the National Liberation Front and France, 1962), and, by decision of an international organization (Israel in 1947 and Libya in 1952).[[56]](#footnote-56)

The most frequent way of creating new states today is related to the struggle for the independence of colonial peoples. In this way, most of the new states on the continent of Africa and Asia were created. The creation of new states throughout history has been influenced by various factors, among which the policy of large states has been of great importance, which has stimulated or hindered the creation of new states, depending on their current interests. [[57]](#footnote-57) Nowadays, the principle of self-determination of peoples is extremely important in the creation of new states.

The factual notion of the state has been codified in the 1933 Montevideo Convention on the Rights and Duties of States.[[58]](#footnote-58) Furthermore on the matter, there are researchers’ different thoughts related to emphasizing particular criteria as decisive.[[59]](#footnote-59) The content and purpose of the factual notion of the state are rather straightforward. The state is defined as a functional entity that lives before and notwithstanding whether it is properly recognized or otherwise legally sanctioned by international law. The state is considered an effective entity that de facto exists, of which distinguishing characteristics remain the control of its territory and people.

The process in which a state acknowledges another entity as a state is known as recognition. This can involve an overt statement or an action that implies an intent to recognize the entity as a state. Each state can make its own decision about whether recognition is appropriate, which can carry significant political weight. For example, recognition is usually required to establish sovereign and diplomatic immunities. International law contains two theories of recognition. The constitutive theory of recognition holds that a state does not exist until it receives recognition. By contrast, the declaratory theory of recognition holds that a state exists without recognition, which is merely an acknowledgment of an existing situation. The declaratory theory has become the prevailing view. That said, an entity likely has a stronger claim to statehood when it has received recognition from many other states. This is especially true if questions surround its ability to meet the criteria under the Montevideo Convention.

If international law was merely an instrument for maintaining an international hierarchy by means of regulating legal status, then legal recognition would be, as James Brierly puts it, ‘an attorney’s mantle artfully displayed on the shoulders of arbitrary power’.[[60]](#footnote-60)

The leading Serbian legal scholar Slobodan Jovanović (1869–1958), who was the chairman of the commission for drafting the first constitution of the Serbo-Croatian Slovenian kingdom, emphasized that the new state was not created legally, on the basis of a treaty, but too de facto. This does not mean that the new state did not yet exist legally, but rather that it was created. The fact that it was created de facto does not mean that it could not legally exist: "The state is a legal institution, but its creation is not a legal act, but a historical fact." Had it been created legally; it would have been established through a treaty between the parties. However, the predecessors of the new state were two sovereign states, Serbia and Montenegro, on the one hand, and the provinces of a former state, Austria-Hungary, on the other. Since the new state of Serbs, Croats, and Slovenes was created de facto, and not on the basis of a treaty between several states, it was, from an internal point of view, a new state.[[61]](#footnote-61)

On the other hand, the fact that it continued the legal existence of the Kingdom of Serbia in foreign affairs was not contradictory. Jovanović emphasized that the same state can look like a new state from the outside and the old state from the inside. It was also possible for a state to look like an old one from the outside and be completely new from the inside (when the system of government is destroyed by revolution, but international treaties remain in force): "It only depends on whether its system of governance would be perceived as a historical or autochthonous institution. Foreign states cannot interfere in this matter, as it is an internal matter." Therefore, it is possible for the same country to be new on the outside and old on the inside.[[62]](#footnote-62) According to international law, the state of the Serbs, Croats, and Slovenes was not a new state, but an old one, since it inherited all the system of international treaties signed by the Kingdom of Serbia. However, internally, the state of Serbs, Croats, and Slovenes was not a continuation of Serbia, but a completely new state.[[63]](#footnote-63)

The case of the unification of Germany, although it did not become problematic in terms of the inheritance of the state, nevertheless raised a number of fundamental questions. One of the assumptions was that the unification of Germany did not mean the creation of a completely new state, because otherwise, it would be concluded that the Federal Republic of Germany and the German Democratic Republic had ceased to exist and that the new Germany would have to reapply for membership in international organizations, including the UN and the EC. But if the process was essentially a fusion (absorption) of the German Democratic Republic by the Federal Republic of Germany (a matter which presumably cannot be determined by reference only to the parties themselves), questions arise as to the status of the agreements of the former Democratic Republic of Germany. Was it the case that they were annulled by the accession process, or did they continue to apply on a territorial basis (as provided for in Article 31 of the 1968 Vienna Convention on the Law of Treaties?[[64]](#footnote-64) The answers to such questions, and many others like them, cannot be found in any simplistic process of doctrinal inquiry.

# **1.3. The General Theory of State Recognition and its Recent Evolution**

In Europe, the modern state, with large armies and bureaucracy that exercises sovereignty over a territory, appears later and dates back four or five hundred years with the strengthening of the monarchies of France, Spain, and Sweden.[[65]](#footnote-65) The modern state system is a European construct dating back to the seventeenth century. This significant advancement, a pivotal point in a long and profound process of change, cleared the way for the emergence of contemporary capitalism, science, technology, and most notably, Protestantism, the modern version of Christianity. The emergence and development of the modern state in Europe was accompanied by several important preconditions. First, the secularization of politics created an important precondition for its birth and development. Second, it developed parallel to the beginning of the Industrial Revolution and the development of capitalism.

All these achievements and historical developments facilitated the creation of vast markets for goods and the relatively free movement of labor, causing the gradual breakdown of area boundaries. In this sense, capitalism was a dynamic homogenizing agenda in the newly industrialized countries of Western Europe. Thirdly, the development of the modern European state was also accompanied by tendencies to create unifying cultures around a nominal language. These factors combined to fuse the nation and the state into one political entity: the nation-state. A cultural aspect of the development of the European state is that it succeeded in enticing the citizen to transfer allegiance from the nation to the secular state (Tambiah 1996: 125-60.)

The classical theory of the state is a product of changing power, economic and political conditions in seventeenth-century Europe. While the feudal system had undergone major transformations from the development of centralized, authoritarian, national monarchies, the power, and existence of narrowly based state and quasi-state apparatuses (such as the Catholic Church, for example), which cause-states it was not only questioned but attacked. All this resulted in a series of civil wars that swept Europe in the late sixteenth century and throughout the seventeenth century. On the other hand, the theory of the liberal state developed through a series of important changes, which reflected the political struggles that were taking place during the development of English and French capitalism.

Although recognition is primarily applicable to states, certain circumstances exist when these international legal subjects can choose to use particular forms of recognition in relation to various political reasons. In this regard, many forms can be distinguished depending on the chosen criteria. From a strictly legal point of view, recognition could be either legal (de jure) or factual (de facto). At the same time, recognition can be express or tacit. Nonetheless, states practice limited types of recognition as well, such as government or diplomatic recognition, respectively. [[66]](#footnote-66)

**De jure and de facto recognition**: Throughout history, there have been cases where a great number of states refused to de jure recognize a particular country on ideological grounds. Nonetheless, such a state gained de facto recognition and thus established relations with other states. An example would be the Soviet Union, which was established in 1917, de facto recognised by the UK Government in 1921, but not formally (de jure) recognised until 1927. Another example is the Republic of China (Taiwan) and its dispute with the People’s Republic of China. In this case, Taiwan enjoyed worldwide recognition and held a seat as a permanent member of the UN Security Council until 1971, when UN member states ceased to de jure recognize the Republic of China and recognised the People’s Republic of China (only de facto recognised until then) instead.[[67]](#footnote-67)

Express and tacit recognition: Existing states can choose to recognize a new state either explicitly, through an official declaration, or tacitly, by any means from which it can be implied that the new state would be treated as any other international legal person. For instance, a tacit type of recognition could be in the form of sending a diplomatic mission (with the acceptance of credentials) or even signing a bilateral treaty.[[68]](#footnote-68) However, not all bilateral treaties imply recognition and neither do multilateral treaties. In fact, the United Nations Charter is a prime example, in that many of its signatories do not recognise all other members, so the process of implied recognition should be studied on a case by case basis. [[69]](#footnote-69)

**Government recognition**: In cases of internal conflict or disturbances (civil war, revolution or a coup d’état), the international community can find itself in the position to recognize the authority of a faction or entity over a previously - recognised state. This type of recognition concerns not the state itself, as it was already recognised as an international legal subject, but the government and its power within the given state’s territory. A particular problem arises in the case of governments-in-exile, which are only de jure recognised as such, while in fact the territory and population of the state are under the authority of another entity.[[70]](#footnote-70)

When a state recognises a certain government, in doing so it expresses its will to treat that particular entity as the sole political authority of the respective state. Once a certain state is governed by an entity that is realistically considered to be capable of maintaining stability in terms of being supported by a clear majority of the population and also exerting control over most of the state’s territory, it should be granted recognition. However, such a practice was discontinued in recent times, with the governments of the United Kingdom, Australia, Canada and several civil law countries across Europe cited as examples.[[71]](#footnote-71)

Diplomatic recognition: Full-fledged diplomatic relations, which often refer only to the bilateral ties between two countries, can occasionally exist apart from state recognition. Put differently, in the event that a state is not able to receive complete formal recognition from the international community, there are a number of reasons why its connections with other governments may be terminated or restored. An example could also be the case of Taiwan, which lost its UN membership and is no longer recognised de jure by the international community. [[72]](#footnote-72)Notwithstanding, Taiwan continues to meet the criteria for statehood as established at Montevideo and enjoys de facto recognition through cultural and trade relations with other states. However, the People's Republic of China wields greater economic influence on the world stage and has thus conditioned its diplomatic relations with other states by the immediate termination of any formal recognition or diplomatic mission of these states in the case of Taiwan.

The declarative theory is based on the concept of the state supposed its sovereignty within the territory that it controls exclusively, while the recognition should be automatic and based on defined criteria because the status of statehood is based on the factual situation, not on the individual discretion of the state.[[73]](#footnote-73) As one of the world's greatest advocates of the view that distinguished between politics and law, Hans Kelsen, at the time of World War II, published an essay entitled "Recognition in International Law: Theoretical Observations" in The American Journal of International Law.' What Kelsen meant by recognition was the recognition of a state and its government in international law. In classic Kelsenian fashion, he argued that "the term 'recognition' according to him distinguished between the political and juridical act of recognition.

According to him, political recognition implies the establishment of diplomatic relations, which means that the recognized state is willing to enter into a political relationship with the recognized state. But this political will of the recognized state does not simultaneously imply international legal recognition by the international community of the recognized state. On the other hand, according to him, legal recognition is a component of statehood. It is a legal conclusion -Kelsen calls it "the establishment of a fact"-that a community meets the international legal requirements of statehood According to Kelsen, "By the legal act of recognition, the recognized community is brought into legal existence in relation to the recognizing state, and thus international law becomes applicable in the relations between these states."

Contemporary scholars of recognition in international law treat recognition from the declarative aspect, as an act by a state that declares and recognizes the legal existence of another state. According to the declaratory theory, whether a state exists in international law does not depend on whether other states recognize it as a state; instead, it considers whether it possesses the objective attributes of a state. Despite their differences, what declarative and constitutive accounts of recognition share is the view, eloquently articulated by Kelsen in 1941, that international law itself provides the criteria for determining the international legal existence of a state. This view assumes renewed importance in light of the fact that international law increasingly structures and regulates relations between states and individuals and groups. Numerous international legal instruments assume that individuals belong to certain communities. In some circumstances, communities themselves exist in international law - not as states, but as international legal actors in their own right.[[74]](#footnote-74) Any discussion on the recognition of states in international law is traditionally based on two theories: the constitutive theory and the declarative theory.

The concept of constitutive theory sees recognition as a necessary act priory so that the entity known as a state can enjoy international subjectivity. On the other hand, declarative theory sees recognition simply as an action, that is, a political act that recognizes a pre-existing state of affairs. From the constitutive perspective, the issue is raised "Whether or not an entity has become a state depends on the actions that follow with recognition by the existing states". However, the situation in which a state can be recognized by some states but not by others is an obvious problem and thus a major shortcoming of constitutive theory. In the absence of a central international authority for granting recognition, this would mean that such an entity simultaneously has and does not have an international personality.[[75]](#footnote-75)

Based on this, most contemporary writers support the view that recognition is declarative. This means that a state can exist even without being recognized by other states. According to this theory, when the state exists, regardless of whether it is officially recognized by other states, that entity has the right to be treated as a state. According to this point of view, the recognition of the entity as a state by other states is nothing more than recognition of a situation that existed before, that is, the existence of a new state.[[76]](#footnote-76) International recognition simply accepts the birth of the new state, even if recognition is virtually universally prohibited, there will sometimes be no doubt that the unrecognized entity is a state.[[77]](#footnote-77)

On the other hand, international involvement, often through the act of recognition, acknowledges the fact of the emergence of a new state, creating circumstances and the question of whether constitutional recognition has been made in this way. In some cases, the recognitions have been constitutive, not for the fact of creating a legal subjectivity, but for the fact that the political conditions and circumstances allowed the recognized political subject to consolidate its effectiveness". In other words, recognition may be part of the international inclusion that helps the newly created state to meet the criteria of statehood, but this does not mean that these states are created through recognition. It may be that this was one of the models in the creation of the state after 1990; however, this may not tell the whole truth about the constitutive effects of the act of recognition in contemporary international law.[[78]](#footnote-78)

# **Criteria for Statehood in International Law**

The idea of statehood is frequently framed as a moral debate and even given a murky relationship with international law. On the other hand, the very ontology of the word statehood remains uncomfortably between the notions of fact, empirical power, notions of legal validity, and moral purpose. This ontological dispute of statehood itself raises the question, what is statehood? They are constructions, parts of the human imagination, forms of shorthand by which aspects of experience are rationalized. And yet, of course, this does not mean that they can simply be erased from our world without losing something quite important.

The Declarative theory explains statehood as reliant on four components.

* A permanent population
* A defined territory
* Government
* Capacity to enter into relations with other states

The Montevideo Convention on the Rights and Duties of States of 1933 formalises these four standards for statehood. Statehood is autonomous of recognition by other states, according to Art. 3 of the Montevideo Convention.[[79]](#footnote-79) According to the declaratory hypothesis, acknowledging the preexisting criteria of statehood is all that is required for existing States to indicate their desire to establish relations with a new state. The "constitutive hypothesis," in contrast, contends that a State only acquires the status of a State by the acknowledgement of other States. The declaration theory's factual requirements must first be satisfied before its "factuality" may be validated by the current States.[[80]](#footnote-80) Since there is no universal entity with the power to recognise states' identity on behalf of the whole community of States, this idea has proven to be impracticable. As a result, each State has the discretion to determine whether or not a new State has been created (and recognise it). [[81]](#footnote-81)

If the constitutive theory were to be used as the foundation for statehood, it would have the unusual result that certain States (those that have acknowledged it) would regard an entity to be a state, while other States would not. To prove the contention between the two theories of statehood, I will make use of the example of Somalia and Somaliland. According to the requirements for statehood, Somaliland may be recognised as a State, and not Somalia, since it has a territory (even though its boundaries are in dispute), a population, and a government that effectively controls its area. The declaratory theory of statehood holds that an entity's statehood is devoid of its recognition by other States, like in this example, regardless of whether Somaliland is acknowledged by any other State or not. Thus, before other States can choose to develop relationships with a State, it must first become a State. However, Somalia, unlike Somaliland, is a member of the UN. Additionally, Somaliland might not join the UN as long as other States do not recognise it. The international community continues to recognize Somalia as a sovereign state, despite the fact that it does not meet the factual criteria.

There have been numerous efforts to get consensus on a definition of a state since 1945. A definition of the concept of the State has been attempted during the discussions over the proposal texts for the Declaration of the Rights and Duties of States (1949), the Vienna Convention on the Law of Treaties (1956 and 1966), and the articles on succession of states (1974) [ UN 1978]. International law does offer some recommendations on how to address the question of statehood in spite of the lack of a precise definition of what defines a State. The arbitrator in the case of the Deutsche Continental Gas-Gesellschaft stressed that a State does not arise unless it satisfies the requirements of owning a territory, a population residing in that area, and a public authority which is exercised over the people and the territory. Article 1 of the Montevideo Convention is "the most generally recognised statement of the conditions for Statehood in international law."[[82]](#footnote-82)

1. **A defined territory**

States are undoubtedly geographical entities since territorial sovereignty includes the sole authority to proclaim a State's operations. It is therefore not unexpected that there are still numerous territorial conflicts and disagreements over boundary delineation at the present day given the geopolitical, economic, and symbolic value of territory. Territorial disputes do not, however, prevent a country from becoming a state under international law. For instance, despite its ongoing territorial conflicts with the (mainly Arab) States, Israel was accepted to the UN on May 11, 1949. It has been confirmed that international law does not require that a State's borders be completely delineated and specified in the North Seas Continental Shelf cases.[[83]](#footnote-83)

There are no particular prerequisites with respect to territorial size; the global community of States includes both "mini-states," like Liechtenstein and San Marino, and quite big States, like Canada or Russia. Therefore, it appears that simply a significant border or territorial conflict with a new State is insufficient to call into doubt the concept of statehood. The State must only consist of a certain compact region that is efficiently controlled. Mini States are becoming more prevalent, which has sparked debate concerning their position and authority inside the UN. For instance, a few have urged that mini States' ability to vote in the General Assembly should be restricted.

1. **Permanent population**

States are collections of people even if they are geographical entities. Consequently, a permanent population is required for statehood, although, as with land, no threshold needs to be set. For instance, San Marino had 20,000 people living there in 1973, whilst the projected population of Nauru was only 6,500. International law also does not specify any requirements regarding the composition of the populace, which could be largely nomadic (as in Somalia), demographically homogeneous (as in Iceland), increasingly diversified (as in the former Soviet Union), poor (as in Sierra Leone, where in 2000s nearly 70% of the inhabitants were below the poverty line), or wealthy (as in the west).

States are able to choose who acquires the state's citizenship. The Convention makes no specific mention of how long this population must remain there or what percentage of the population must reside therein indefinitely. This becomes problematic in situations like Samoa, where 56.9% of the population, according to McAdam, lives beyond the country's borders. It implies that the State still would meet the requirements for the declarative theory of Statehood even if there was just one last Samoan in Samoa.

1. **Government**

Considering "all the other components depend on it," Crawford admits that this requirement of "Government" is perhaps the most crucial in the concept of statehood. This is because the government, in a literal sense, may carry out the necessary duties of a state.[[84]](#footnote-84)

Furthermore, there are several notable instances of states that are regarded as states in the international system but do not have a functioning government. In the eyes of the international community, Somalia has long been seen as a "failed" State. The international relations study defined a failed state as one in which "the government, if any, is utterly unable to sustain public services, institutions, or authority, and that central control over territory is absent."

Governance, or "functioning" government, can be a fictitious or subjective concept. The autonomy and statehood elevation of the Republic of Congo in 1960 serves as an example of this. Before it had an opportunity to fully establish an efficient government with legislative, executive, or judicial branches, Republic of Congo was given a "rushed" independence in 1960. Shortly after independence, "the national government was divided into two parts, each claiming to be the legitimate government." The international world nonetheless recognised this entity's assertion to Statehood in 1960, even though it had not yet met this standard for "functioning governance," and its candidacy for membership in the UN "was granted without protest."

Hence, a State should be capable of autonomously and efficiently execute its power inside its boundaries. Therefore, a requirement for the regular operation of international relations is the presence of a government in a certain region.[[85]](#footnote-85)

* 1. **Effectiveness**

The standard of effective authority is a topic that comes up frequently while discussing the formation of new States. According to Crawford, a potential state's claim to statehood "could be considered as crucial to its demand that it have an efficient government." [[86]](#footnote-86) The Aaland Islands case[[87]](#footnote-87), among others, serves as proof of the significance of effective authority. Despite the implementation of the concept of effectiveness appears to be much less stringent in State practice. For example, during a time when significant portions of its territory were not effectively under the authority of the government, Bosnia-Herzegovina was recognised by the international community as a State and was permitted to join the United Nations.

* 1. **Independence**

In addition to the rule of efficiency, the power must be used without intervention from other sources. Furthermore, independence needs to be "formal" and "functional." Formal independence is exercised in situations when the authority to rule a region is conferred in the different State authorities. Functional autonomy exists when the government of a country exercises at least a certain amount of (actual) authority. Crawford adds that "the standard of independence as the fundamental component of Statehood in international law may function differently depending on the requirements for statehood. [[88]](#footnote-88)

1. **Capacity to enter into relations with other states**

It is not just States that have access to international relations; independent national governments, revolutionary groups, and rebels can all continue to have contacts with States and other objects of international law. While States do have such ability, it is a benefit of statehood rather than an obligation. However, ability or competence in this context partly depends on a territory's inherent governing authority. Despite the governmental and administrative difficulties encountered, this community's legal existence is still that of a State. If a State's government is in disarray or its leaders are unable to engage in diplomatic contacts with other States, the State does not automatically disintegrate or lose its international legal identity.[[89]](#footnote-89)

An interesting example of the attempt to create a state was the Liberland case by the Czech politician Vid Jedlicka to establish a microstate, on April 13, 2015, which constituted an autonomous nation located on the west bank of the Croatian side of the Danube River, the natural border in between Croatia and Serbia, in 3 square miles, an uninhabited land, untouched by the two nations because of the border disputes they had these states. Despite Jedlicka's efforts to establish this microstate, no member state of the United Nations had recognized Liberland as a state, and the attempt was seen as nothing more than a provocative experiment undertaken by a libertarian iconoclast in an attempt to reopen the wounds between Serbia and Croatia, and to challenge the rest of the international community.[[90]](#footnote-90)

Even in the weeks following Liberland's declaration of independence in April 2015, Jedlicka and his supporters - including a Czech member of the European Parliament who supports Liberland's gaining international recognition due to repeated efforts to create a peace settlement permanently in Liberland, were arrested on two occasions by the Croatian authorities. Regardless of Jedlicka's true motives, Liberland's aspirations to achieve statehood raise interesting and important legal questions about self-determination, how states are created, and the role international recognition plays in the emergence of a new state as a legal entity.[[91]](#footnote-91)

The Montevideo Criteria are the closest thing to customary international law that exists for determining when an economic entity is a state. As Crawford notes, the Montevideo criteria "are based on the principle of effectiveness between territorial units." According to these criteria, a state exists because of its ability to effectively govern a defined territory. On the other hand, international practices show that there is avoidance of the application of the criteria by the Montevideo Convention since it has recognized states that, at the time of its creation, lacked one or more of the Montevideo criteria. According to the Montevideo criteria, a state becomes a state when it possesses four characteristics. First, there must be a permanent population. Second, there must be a defined territory. Third, there must be an effective government. Fourth, it must have the capacity to enter into relations with other states. Strictly applying the Montevideo Criteria for Statehood, Liberland is unlikely to be recognized as a sovereign state.[[92]](#footnote-92)

# **Theories for Recognition of States**

In a general sense in international law, “recognition involves the acceptance by a State of any fact or situation occurring in its relation with other States.” The concept of recognition in international law applies to many issues, such as recognition of States, recognition of governments, and recognition of belligerent status.[[93]](#footnote-93) In the literature of political science and international law, the recognition of States historically has not gained much attention. However, especially with the dissolution of Yugoslavia and the Soviet Union, the literature has begun to flourish with scholars focusing on the criteria for recognizing States, the decision mechanisms involved in the processes of recognition, and even the criteria for Statehood.[[94]](#footnote-94)

Recognition of a new entity as a State is a free act in which one or more States recognize the existence of a society that is politically organized, exists on a defined territory, is independent of any other State, and has the potential to observe and fulfil the requirements of international law. Hence, States, through recognition, show their intention to consider the new-born State an actor in the international community. Nevertheless, it should be noted that this definition derives from Article I of the Montevideo Convention. There have been different definitions of recognition of States according to the differences in defining what a State is and what criteria should be fulfilled to achieve recognition. [[95]](#footnote-95)

The questions of when an entity can be accepted and recognized as a State and what immediate effects this recognition entails have long been some of the most controversial issues in the literature of recognition of States. The constitutive theory of recognition perceives recognition as the creator of the State as a subject of international law. An entity wishing to be the member of the family of nations has to be recognized by other States to enjoy its international personality.[[96]](#footnote-96) That means that a community that has not been recognized possesses no rights or obligations that a recognized State may have within the limits of international law. Hence, it is the decisions taken by other States that constitute the existence of a new State; it is the actions, in this case recognitions, of the existing States that decide whether an entity is a State or not. [[97]](#footnote-97)

Although Jellinek claims every State is *ipso facto* a part of the general community of States, it nevertheless is recognition that makes this community a part of the juridicalcommunity of States. Also, since an entity that is not a subject of international law cannot constitute its own legal personality, it must be concluded that constitutive unilateral recognition by an existing State creates this legal personality for the entity, thus recognition is a constitutive act that has creating and attributing powers. Crawford[[98]](#footnote-98) explains that before recognition, an entity is “a matter of fact, not of law” to which Oppenheim[[99]](#footnote-99) adds that international law does not recognize the legal existence of an entity unless it is recognized by other States.

The constitutive theory has a number of drawbacks in practice. Firstly, the question of which States’ recognition, if any, must be obtained is ambiguous. Secondly, constitutive theory falls short on finding a solution for a situation where several countries recognize an entity as a State while other States do not. Furthermore, considering there is not a supranational body for recognition of States, there is the question of whether States recognize an entity based on their national interests and policies or if they have to recognize any entity that fulfils the traditional criteria.[[100]](#footnote-100) Lauterpacht answers that recognition is “an act of unfettered political will divorced from binding considerations of legal principle.”[[101]](#footnote-101)

Recognition of Bosnia-Herzegovina by the States of the European Community [EC] and the United States, for example, was a topic of controversy both for the government of Yugoslavia and supporters of the traditional criteria of Statehood since Bosnia-Herzegovina’s recognized government did not have effective control over most of its national territory. Moreover, the peoples of Bosnia-Herzegovina did not demonstrate “the will to constitute the republic a sovereign and independent State” through a referendum. Nevertheless, Bosnia-Herzegovina was still recognized because of an international agenda that aims to avert the sort of violence that had been going on in the region. This action of the EC States and the United States may well be said to have created the State of Bosnia-Herzegovina even though Bosnia- Herzegovina did not meet the traditional criteria of Statehood and the peoples’ will had not been taken then. Yet again, recognition was not used as a confirmation of the criteria of State being fulfilled, but it was used as a substitute for the criteria that were missing. Thus, and so, the recognition created the State.

On the other hand, recent cases in international law have demonstrated that the declaratory theory of recognition is more commonly accepted than the constitutive theory.[[102]](#footnote-102) The declaratory theory of recognition perceives recognition as a means of acknowledging or declaring the existence of the State. Unlike the constitutive theory, the declaratory theory claims that an entity can be accepted as a State as soon as it fulfills the criteria of Statehood, its existence as a subject of international law and recognition only declares this fact. If a State is a fact, this makes recognition “a formal political action

This is because States make the decisions to grant and withhold the recognition and every State may not use the same criteria while assessing the Statehood of an entity. National interests and politics also play an important role in acknowledging or declaring the Statehood of an entity. Lauterpacht, one of the best-known advocates of the constitutive theory, admits that politicization of the process of recognition is the reason for the popularity of declaratory theory among scholars.[[103]](#footnote-103) Crawford states that according to declaratory theory, recognition is merely “a political act that is not a necessary component of Statehood.” [[104]](#footnote-104)In the case of the Federal Republic of Yugoslavia (FRY), for example, the Socialist Federal Republic of Yugoslavia’s (SFRY) dissolution was clear, thus new States could be born. Both the ICJ and the Badinter Commission stated the fact that FRY became a State as soon as FRY adopted a new constitution on April 27, 1992. However, neither the EC States nor the other republics of Yugoslavia declared FRY’s recognition as a State. This demonstrates that States that are not recognized may also exist but cannot be the subject of international law. Visscher and some other writers later, however, state that these two competing theories are not sufficient in explaining the relation between recognition, politics, and international law saying

Recognition is said to be neither declaratory nor constitutive. It simply is a political act which has significant legal effects in the international and domestic legal orders. This approach is premised on the idea that the dichotomy between [the] declaratory and constitutive [approaches] is insufficient to explain the complexity of the impact of recognition on the functioning of legal orders. Yet, such an approach is not exclusive of the idea that recognition occasionally has some declaratory and constitutive effects (the latter being generally reserved to effects of recognition under domestic law).

If an entity fulfills the criteria of Statehood, can it be still considered a State, regardless of the recognition granted by the other States? The answer to this question is where the two theories differ. While constitutive theory perceives recognition as the creator of a State, declaratory theory solely declares or acknowledges the fact that an entity exists[[105]](#footnote-105) as a State. However, similar to the approach under constitutive theory, an entity becomes a subject of international law and possesses all the rights of a State under international law only with the recognition of Statehood according to declaratory theory. Moreover, neither of the theories advocate that recognition is a matter of legal duty for the community that grants it. In other words, both theories perceive recognition as a political act.

Recognition as a Legal Duty

So far in this thesis, the process of recognition has been exemplified mainly with political discretion of the recognizing States. However, there have been many scholars focusing on the legal aspect of recognition, as well. The arguments stress the fact that if a community of people fulfil the requirements of being a subject of international law as a State, then, in their relationships with other States, international law is applicable to this community and that makes the act of recognition a legal act.[[106]](#footnote-106) Kelsen explains that the legal act of recognition simply establishes the fact that the recognized State legally exists as a State with rights and obligations provided by international law which makes the recognition a constitutive act. Thus, it is only with recognition an entity can legally interact with other States on a State-State level. It is also important to assess the question of whether there is an obligation to recognize or not. International law does not obligate any State to recognize an entity by its laws. State practice has also shown that existing States do not have any obligations to recognize. Granting as well as refusing of recognition of an entity fulfilling Statehood conditions are not violations of international law, and they are at political discretions of existing States.[[107]](#footnote-107)

However, Kelsen warns, it is violation of international law to recognize an entity as a State if it does not meet the conditions of Statehood laid down by the law. Furthermore, it must also be noted that if an entity fulfills the criteria of Statehood, other States are ‘legally at risk’ if they choose to ignore the fact that the entity exists as a State under international law.[[108]](#footnote-108)

# **De Jure and de Facto Recognition**

There is distinction employed in the law of recognition is that between *de jure* and *de facto* governments, or the distinction between *de jure* and *de facto* recognition usually of course a government of a state has both *dejure* and *de facto* status. After a revolution or other unconstitutional change of government, however, there may be quite separate *de jure* and *de facto* governments. The use of the term *'de jure'* means that the user recognises its claim to governmental authority (whether or not it is actually in power); the epithet *'de facto'* implies at the least that the regime is in effective control and performing the functions of government and, in some circumstances a variety of further glosses, ranging from reticence about recognizing a particular government to suggesting doubts about its stability or legality. The transition from *defacto* to *dejure* status does not depend on internal domestic ratification of the unconstitutional change of government (although this may be significant) but on the political assessment of the new government by other states. The distinctions between *de jure* and *de facto* governments and recognition have international legal impact only in contexts where legality of acquisition of power is in issue. “Generally *de facto* recognition is regarded as equally strong evidence of effective government as *de jure”.[[109]](#footnote-109)*

A formal statement recognizing a state or government is sometimes employed to indicate recognition. But recognition may be also implied from actions such as concluding a bilateral treaty or establishing diplomatic relations. Less formal dealings with an entity such as negotiations or allowing unofficial representation or participating in organiza- tions, treaties or meetings in which the unrecognized entity is also a member or party do not imply reognition.

De jure recognition is full, permanent recognition that includes relations with the new state. De jure recognition has retroactive value, including recognition from the creation of the state, and it cannot be revoked even if the recognized state has not fulfilled the obligation assumed at the time of recognition. De jure recognition is given through a formal act.

In international practices, de facto states not only have difficulties in their operation and development, due to their status not being accepted as member to the UN, but they are often strongly opposed by the UN, as an international organization that cares for peace and security in the world. The best example illustrating the UN's strong opposition to a de facto state is the case of the 'Turkish Republic of Northern Cyprus (TRNC). In addition to Resolution 541, which called on "all states not to recognize any Cypriot state other than the Republic of Cyprus," the UN Security Council; also adopted Resolution 550 (1983), through which it called on states 'not to facilitate or in any way assist the aforementioned secessionist entity.' As a result of this UN position, UN member states have been reluctant to cooperate with the Turkish Cypriot state. Later this resolution of the Security Council was also supported by a decision of the European Court of Justice which limited the trade of the European Union with the TRNC.[[110]](#footnote-110)

De facto states are usually seen as marginal actors in the international system, hostile or ignored by the vast majority of sovereign states. These entities are usually labeled as "pariahs", excluded from the main channels of international diplomacy, existing in conditions beyond invisible international relations. The de facto states have generally no diplomatic representation, except to the few countries recognized by them and are excluded from intergovernmental organizations, with almost complete socio-cultural isolation. There is no international legal protection for their existence; this makes de facto states permanently liable to reintegrate by force into the recognized parent state.[[111]](#footnote-111)

A state's limitations in international relations are the result of certain relations it has with other members of the society of nations. These limitations have their legal basis in general and special international treaties, through which the legal capacity of states as an international subject is limited. The external limitations of states have two characteristics: (i) the state cannot waive incapacity by its own act; (2) the state is placed in a position of legal incapacity in relation to the entire community of nations. The application of such restrictions to a state or group of states creates legal inequality in relation to other members of the society of nations.[[112]](#footnote-112)

Conversely, de facto recognition occurs when a state is afraid to acknowledge the state and the new government due to political reasons or uncertainty. For this reason, it does not proceed with de facto recognition, which entails full recognition and the establishment of diplomatic relations; rather, it begins with de facto recognition, which entails cooperation in a number of fields as a first step and a transitional period. Such a case of de facto recognition is, for example, the case of Kosovo from several countries, such as Greece, Slovakia, Romania, etc. Countries that have not officially recognized Kosovo, but recognize the Kosovo passport as a document, and cooperate in other areas as well. The de facto recognition is temporary, is limited to areas of cooperation and as such can be withdrawn at any time by the applying states.

De facto recognition usually precedes de jure recognition and is used when the authorities of the new power are independent and exercise effective power over territory but do not possess sufficient stability or are unable to fulfill international obligations. The first can be given by a unilateral act, such as a telegram, statement of the head of state, diplomatic note sent to the state, or through an international treaty. Thus, the de jure recognition of the People's Republic of China was made by agreement on January 1, 1979, by which the USA and the People's Republic of China agreed to recognize each other and establish diplomatic relations. Through this recognition, the US has accepted the Chinese government as the only legitimate government and has accepted the Chinese position that there is only one China, and that Taiwan is part of China.[[113]](#footnote-113)

Recognition in silence is given by an act that does not belong to the first group, but there is no doubt that the acknowledgment has been made. Recognition is considered to be done when a state enters into an agreement with the new state, if it accepts and sends diplomatic representatives, and if the third states accept the consuls of the new state.

The participation of the official delegation of a state in solemnities on the occasion of gaining independence is interpreted as tacit recognition. Recognition of new states can be done individually or collectively.[[114]](#footnote-114) In contrast to strong diplomatic and financial support for the sovereign states, the international community has traditionally responded to the existence of de facto states in three ways: actively opposing them through the use of embargoes and sanctions; ignoring them and not having relations with them; and coming to a kind of limited acceptance and recognition of their presence. Each of these three ways has costs and benefits for the international community and for the de facto state itself. One such example of de facto-state opposition through the use of embargoes and international sanctions is the case of Northern Cyprus. The Greek Cypriot embargo campaign against the Turkish Republic of North Cypriots has been quite successful.

On the other hand, many international organizations, such as the Universal Postal Union, the International Civil Aviation Organization, and the International Air Transport Association, have refused to recognize or deal with Turkish Cypriots in their respective fields of competence.[[115]](#footnote-115) Under this embargo, the airport of Ercan was not even recognized "as it operates unofficially and presents security risks" and the postage stamps of the Turkish Republic of North Cypriots (TRNC) were declared "illegal and invalid". This embargo was greatly strengthened in 1994 when the European Court of Justice (ECJ, the judicial arm of the European Union) ruled that EU member states could no longer accept movement and phytosanitary certificates from TRNC authorities.[[116]](#footnote-116)

The Yugoslav People's Army launched a ten-day war against Slovenia shortly after this incident, and because of the sizeable Serb population in Croatia and the contentious nature of the border issue, the war eventually moved to Croatia and lasted much longer. At first, Germany and other European countries were not in a hurry to recognize the republics, while the US considered Yugoslavia a stabilizing factor in the region, and many European states feared the actions of their regional separatists if they recognized Croatia and Slovenia. On the other hand, the possibility of preserving a united Yugoslavia seemed to be fading due to the expansion of the fighting front on the ground, which also changed the attitudes of the international community, mainly those of Germany.[[117]](#footnote-117)

# **Recognition of States in the United Nations**

Representatives from many nations gathered to discuss the transfer of the League of Nations mandate system to the UN and the potential role of the new organisation in supervising all colonial territories in the future. These included delegates from the 50 United Nations meetings in San Francisco in April 1945 to draft the new UN charter.[[118]](#footnote-118)

The UN Charter clearly defines the criteria for membership in this organization, according to which the admission and exclusion of a state from the UN are regulated. as follows: " (1) Members of the United Nations may be all other peace-loving states, which undertake the obligations of this Charter and which, according to the assessment of the organization, are able and willing to fulfill these obligations. (2) The acceptance of such a state as a member of the United Nations is done with the recommendation of the Security Council and the decision of the General Assembly.

A new state becomes a subject of international law only when it is recognized by other states, while international subjectivity is only related to those states that have recognized it. On the other hand, with the acceptance of the new state as a member of the United Nations, the state becomes part of the organized community of states in the United Nations Organization with full rights according to the UN charter, for sovereign states.[[119]](#footnote-119) In similiar way back in history, Romania, Serbia, and Montenegro were recognized at the Congress of Berlin, as well as Albania at the Conference of Ambassadors in London in 1913. The recognition of Albania was also proposed after the World War I, where despite the negative attitude of some states, Albania was admitted to the League of Nations (December 17, 1920).

Then the conference of the ambassadors of the great powers, permanent members of the Council of the League of Nations (Great Britain, France, Italy, and Japan), the predecessor of the United Nations, decided on the acceptance of Albania as a "Sovereign and Independent State" (November 9, 1921). After that, the USA also recognized Albania (July 1922). Another case of state recognition was Israel, which was created by a resolution of the UN, which at the same time represents an act of acceptance.

The decision for admission to the United Nations is taken by the United Nations General Assembly with two-thirds of the votes with the preliminary recommendation of the Security Council, where nine members of the Security Council must vote in favor, including the vote of five members of the permanent members of the Security Council (with the right to veto, the China, France, Russia, United Kingdom and USA.The conditions for membership in the UN have often been the subject of discussion and interpretation in the past. Up until 1955, there was hardly any deserving decision-making when it came to states' UN membership. Moreover, two superpowers—the United States and the Soviet Union—made a number of political deals, and they used the veto power to prevent states from joining the UN by cloaking themselves in the Charter's provisions. As a result, the USSR and China opposed the membership of the allied states of the USA, while the Western nations opposed the USSR's allied states. In this way, the membership of Bulgaria, Hungary, Romania, and Albania was prevented, while the Soviet Union prevented the membership of Austria, Ceylon, Finland, Italy, Nepal, and Portugal, for various reasons, that they were not peaceful (Portugal and Ireland), that they were not independent (Jordan and Mongolia), because they had not fulfilled the decisions of the International Court of Justice (Albania), because they had not fulfilled the obligations they had received with treaties (Bulgaria, Hungary and Romania, etc.).

Later in 1955, it was decided to join the UN in a package for 16 countries, at the tenth session of the General Assembly of the United Nations, such as Austria, Bulgaria, Ceylon (Sri Lanka) Albania, Finland, Ireland, Italy, Jordan, Cambodia, Laos, Libya, Hungary, Nepal, Portugal, Romania and Spain.[[120]](#footnote-120) So, as can be seen from the way of membership of the states in the organization of the United Nations, since the establishment of this organization there have been many difficulties in the membership of many states because the decisions for membership were almost purely political decisions, even though the membership in this organization it is regulated by the UN Charter. Frequently the political decisions to reject the membership of these states are justified as necessary legal actions by referring to the UN Charter. Even today, it is the same approach of the UN towards the membership of states in this organization, as is the case of Kosovo. Despite being recognized as independent by over 100 nations, including many UN members, and having its independence declared legally recognized by the International Court of Justice, Kosovo continues to be outside the UN. [[121]](#footnote-121)

The UN's Security Council approach has made it clear that in order to be admitted into this organization that upholds global peace and security, votes for admission must be secured by consensus among Security Council members, particularly the five who have the right to veto.

The UN Charter, however, continues to be the formal document that serves as the basis for decisions about admitting or rejecting states.[[122]](#footnote-122)

Another example of the way of admission of a state to the UN is Congo, which became independent in 1960 from Belgium. According to Crawford, the independence of the Belgian Congo in 1960, was under circumstances in which little preparation for independence had been made and in which public order broke down soon (with secessionist factions seeking their independence in Katanga and elsewhere). Belgian troops re-entered the territory under the pretext of humanitarian intervention, while the United Nations responded by creating United Nations Operation in Congo UNOC for the purposes of restoring order, whose mission continued until 1964. Although there was no effective government in Congo, it was undoubtedly a state in the full sense of the term” Its UN membership was accepted, while UN actions were taken on the basis of preserving the "sovereign rights of the Republic of the Congo". This practice of state recognition according to Crawford can be interpreted in three ways: (i) that international recognition of the Congo was simply premature because it did not have an effective government; (ii) that international recognition of the Congo had the effect of creating a state, despite the fact that it was not properly qualified (i.e, this recognition was therefore "constitutive"); or (iii) that the 'government' requirement was, in some particular context, less stringent than might otherwise be thought.[[123]](#footnote-123) The act of collective recognition through the UN is evidence that the Congo is a state (Article 4.1 UNCH), because the ineffectiveness of the Congolese government is not taken into account.

On the contrary, the right of self-determination was established on the principle of effectiveness. Therefore, in the assessment of UN members, Congo had a legitimate government, which was the decisive criterion for accepting it as a new UN member state. Although the Congo had an ineffective government, the criteria for statehood were met because independence was consistent with the self-determination of the people and thus the government was legitimate.[[124]](#footnote-124) However, international law acknowledges a number of instances of non-acceptance of independence. These include the Republic of Korea, which was occupied by the Soviet Union and the United States at the time; Austria, which was regarded as neutral following World War II but was immediately placed under military occupation in Europe; and the relationship between Ceylon, or Sri Lanka, and the United Kingdom, which resulted from Sri Lanka's non-acceptance of independence at the time and its inability to join the UN.

Angola, another colonial state, was also ineligible when it first applied for membership as it was not independent of Portugal at the time. Another interesting case was that of Mongolia, which at that time was dependent on the Soviet Union, and this dependence officially prevented Mongolia from being admitted to the UN.

Within the criteria of statehood, there is also a criterion of defined territory, this was disputed in the cases of Israel (in terms of the lack of defined borders) and Kuwait and Mauritania (as the neighbors of these states had claims to their territory).[[125]](#footnote-125) In international practices of state recognition also have been highlighted anomalies have been brought to the surface during the membership of the states in the UN such as the case of Ukraine and Belarus.

The principles of the UN confirm that only independent states are members of this organization. On the other hand, Belarus and Ukraine were (originally) members of the UN even though they were Soviet republics at the time. These exceptions are explained as anomalies that are entered into the system in specific circumstances. With the independence of Ukraine and Belarus, the anomalies were driven out of the system.[[126]](#footnote-126) Another difficult situation and anomaly of the UN was the case of the Socialist Federal Republic of Yugoslavia (SFRY). While legally binding resolutions of the Security Council affirmed that this state no longer existed and none of its former units was the sole successor of the former federation. [[127]](#footnote-127)

Although membership in the UN is the main goal of every new state, as well as a guarantee of security, practices of the UN during the Cold War show that often the admission of new states has been blocked by two antagonistic states (USA and Russia) with their allies, members with veto rights in the Security Council, for political reasons, justifying their vetoes against the membership of the states with the provisions of the UN Charter. I take into account the polarizations among the members of the Security Council, especially by the five members with veto rights, which are divided into two blocs (the USA, United Kingdom, and France on the one hand, and on the other hand China and Russia), the decision-making in the UN Security Council, in many cases, has blocked for political reasons the membership of new states in this very important organization that cares for peace and security in the world.

## **Chapter 2. Yugoslavia 1946-1980**

# **2.1. Invasion of Germany in Yugoslavia, the role of the Council for the National Liberation (AVNOJ)**

World War I, as well the World War II, had settled the new world order, by changing the geopolitical and geostrategic maps of the world and creating new states. The first state of Yugoslavia was created as a Kingdom of Serbian Croatian and Slovenian at the end of World War I. This kingdom existed until the World War II when it was replaced by the Federal People's Republic of Yugoslavia which was founded after the World War II on the territory of South-Eastern Europe, and it existed since its foundation in 1945 until its disintegration in 1992.[[128]](#footnote-128)

The history of communism in Yugoslavia dates back long before World War II, when in the first elections of the first Yugoslavia in 1920 the Communist Party of Yugoslavia achieved noticeable results of 12 percent of the votes. Well organized and empowered, among other things, the communist party managed to come through as the dominant political force during the wartime period. The communists of Yugoslavia, like the other communists in Eastern Europe, operated under the assumption that they would be in power forever. Concerning the other communist countries, Yugoslavia used the model of Soviet communism until 1948.[[129]](#footnote-129)

The flames the World War II had encompassed many central and eastern European states. In those circumstances, nobody believed that the end of war was close, because the world had split into two big alliances, which showed more willingness to make the war than to make the peace. Following the invasion by Germany and its allies in 1941, Yugoslavia was shattered into pieces as a result of both the disintegrative process coming from below and the violence done to the country from above—complete territorial partition. With the exception of the government in exile, no possible force spoke at this point. [[130]](#footnote-130)

Faced with the bombings by Germany, Yugoslavia, in fact, ceased to exist. On the other hand, under Italian-German protection, Croatia was proclaimed an independent state (Independent State of Croatia), a puppet state of Nazi Germany and Fascist Italy, which included Bosnia and Herzegovina, an old dream of Great Croatia. Slovenia disappeared from the map, two-thirds of its southern territory was annexed by Italy, and economically more important northern part was annexed by German Reich. Montenegro was declared a kingdom again, its crown united with that of its Italian occupiers; the majority of Kosovo region became part of Albania, which was under direct Italian rule from 1939-1943; the Bulgarians occupied Macedonia, Hungary annexed Prekomurje and Medjumurje, Baranje and Backa, the remainder of Vojvodina, while the Yugoslavian Banat was administered directly by Germans.[[131]](#footnote-131)

In order to cope with fascist occupation in November 1942 the partisans organized the first meeting of the Antifascist Council for the National Liberation of Yugoslavia (AVNOJ) at Bihac a city in part of western Bosnia. One year later communists had convened the second AVNOJ meeting in Jajce a city in southern Bosnia. The meeting of Jajce was larger than the Bihac meeting because delegates from Slovenia were included, and it also went much further in staking a political claim on the post-war state, it now claimed it was a legislature respecting all regions of Yugoslavia and verify of anti-fascist political parties.

The Jajce meeting also invested exclusive power in a new all-Yugoslav National Committee for the Liberation of Yugoslavia. It further enacted that post-war Yugoslavia would be a federation and that the king would not allow to return until after a referendum had been held on the future of the monarchy. AVNOJ had an effect that elevated itself into a provisional government, though not recognized by Western Allies. By the summer 1944, the partisans became the dominant force in Bosnia and Herzegovina, Slovenia, and Montenegro, while in Croatia NDH was declining and partisans took under the control of the most powerful groups.[[132]](#footnote-132)

Different from the above- mentioned, situation in Serbia in particular in rural areas the conservative royalist and nationalist chetniks remained predominant. In those circumstances neither Stalin nor the Western allies were not ready to see Yugoslavia under partisan and communist domination, Tito expressed a willingness to cooperate with the former regime.[[133]](#footnote-133) Following many bloody battles, and with the help of the Great Powers, the new Yugoslav Provisional Government was established on March 7, 1945, after Stalin, Churchill, and Roosevelt, had met again in Jalta in February, and exerted pressure on Tito and Subasic to implement and extend their agreements. In light of these events, the establishment of the Yugoslav Federation, through its Constituent Assembly, which convened deliberately on November 29, 1945, the Monarchy was abolished, and Yugoslavia was declared a Federal People's Republic.[[134]](#footnote-134)

# **2.2. The Constitution of 1946, the Political-Economic System - the Rights of Nations**

The political leaders of Yugoslavia and the Soviet Union constantly tried to promote that the constitutional and socio-economic organization of the two states is based on Marxist principles. Without wanting to elaborate on the context of the Marxist economic doctrine, the Marxist theses regarding state and law can be summarized as follows;

1. State and law belong to the so-called phenomena of superstructure whose real bases is the economic structure of society.

2.State and law are class categories that came into being as a result of the dissolution of the primary classes of society and its splitting into enemy antagonistic classes of those who own and those who are deprived of the means of production, which means a division of the exploiters and the exploited.

3.The way of production in any historical period stipulates, the nature of the class division of society into slaves, owners and slaves, feudal nobility, capitalists, and workers. When the productive forces, which are continuously evolving, have so far progressed that they no longer correspond to the existing relationships, a dialectical antagonism arises between the new productive forces and the no longer adequate relations of production.[[135]](#footnote-135)

According to the 1946 constitution The Federative People's Republic of Yugoslavia is composed of the People's Republic of Serbia, the People's Republic of Croatia, the People's Republic of Slovenia, the People's Republic of Bosnia and Herzegovina, the People's Republic of Macedonia and the People's Republic of Montenegro. Other republics did not consist of any provinces, except The People's Republic of Serbia, which includes the autonomous province of Vojvodina and the autonomous Kosovo region.[[136]](#footnote-136)Though each of the six federal republics—Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia, and Montenegro—had a unique history, trying to capitalise on these distinctions for any type of political or economic gain would have amounted to "bourgeois nationalism." This inclination turned out to be the fatal defect rather than "capitalist expansionism," which was intended to be the downfall of the first Yugoslavia.

The flag of the Yugoslav Federation is defined in Article 4 of the Constitution and is composed of three colors: blue, white, and red. In the center of the flag is a five-pointed star with golden rims, signifying the unity of the People's Republic of Yugoslavia. According to Article 5, Belgrade serves as the Federation's capital. Some other important issues were defined in articles 11, 12, and 13. Article 11 sets the right of each of the republics to have its own constitution in accordance with the federal one. On the other hand, the formation of the socialist-owned property was considered to be the most significant act in the policy of the building of socialism in Yugoslavia after the Communist Party seized power in 1945. It should be steered from the beginning that since 1950 a special characteristic of socialism in Yugoslavia has been the essential importance given to the question of who controls social ownership, i.e. the problem of workers, and management, as opposed to state ownership.[[137]](#footnote-137)

The treatment of the property seems to be according to the model of the constitution of socialist countries, by prioritizing and supporting the centralized state economy, and the cooperative economy as well. This kind of approach to the property, by damaging the private sector through strong control in favor of the state and cooperative property was the other element and the indicator that this constitution did not define clear directions for economic development, and the government could not cope with economic and political problems. The Constitution regulated the competence of the FPRY and highest federal authority. The People's Assembly of the FPRY was the top body of state authority and consisted of two houses – the Federal Council and the Council of Nationalities.[[138]](#footnote-138)

The Presidium of the People's Assembly, and the Presidency of the Constitutional Assembly before it, operated as the collective head of state. It was made up of the president, six vice presidents, a secretary, and up to 30 members. The highest executive and administrative body of state authority was the Government of the FPRY, which was made up of the president, vice presidents, ministers, president of the Federal Planning Commission, and president of the Federal Control Commission. The ministries were general federal and "federal-republican." The Government had committees for education, culture, people's health, and social welfare for the purpose of general management in these branches of state administration.

# **2.3. Political-Economic Developments Until the Adoption of the 1953 Constitution**

The Yugoslav communists tried to create an ideological basis for a system that remained socialist and Marxist by presenting itself as more humane and democratic and, most importantly, removing the country from the "socialist camp" and from the Soviet orbit.[[139]](#footnote-139). In 1949, on the one hand, denied by Moscow, and on the other very suspicious in the eyes of Washington, Yugoslavia seemed destined for isolation. To avoid a situation of isolation, Tito started a promotional campaign for Yugoslav tourism abroad, with the slogan "Come and see the truth". Inspired by Marxist principles, the famous final program of the League of Communists of Yugoslavia in 1958 aspired to an "empire of freedom" and declared the unions responsible for living and working conditions, including workers' daily, weekly, and annual holidays.This was the period when Yugoslavia reached out to Western democracies and started to cooperate in many fields of mutual interest. [[140]](#footnote-140)

In pursuit of this idea, the congress documents of the Association of Trade Unions of Yugoslavia appreciated the importance of a good organization of daily and weekly holidays with an impact on increased production and improved work results.[[141]](#footnote-141) The early experiences of the socialist economy in Yugoslavia were oriented towards the need for free trade, realizing that even in a socialist economy it was necessary to resort to the market mechanism in practice . The new Yugoslav economic model introduced in 1950 was the direct management of public property by the labor force of enterprises as defined in the Basic Law on the Administration of State Enterprises by Workers' Collectives of July 2, 1950.

The law entrusted the administration of state property in enterprises to workers in most sectors, such as in production, mining, transportation, transport, trade, agriculture, forestry, etc. The introduction of self-management of the enterprise was not intended to change the property regime: "The law does not affect the ownership of property that continues to belong to the company as a whole, but it gives the rights and responsibilities of administration to the workers of the company, as representatives of the company, instead of the state... The enterprise staff can undoubtedly be considered a better representative of society and a better defender of its interests than the state". This law was the first step towards the many economic reforms introduced in Yugoslavia over the next decades, which would differentiate its economic model from those in other Eastern European countries.[[142]](#footnote-142)

# **2.4. Content of the 1963 Constitution, the Political-Economic System - the Rights of Nations and Nationalities**

Yugoslavia had gone through frequent constitutional changes from its founding after World War II until before its collapse:' such as those of 1946, 1963, and 1974. Regulating the legal and social conditions under which people would operate, each of these constitutions had an impact on shaping national identity." Officially, all were Yugoslavs, united for "brotherhood and unity (bratsvo i jedinstvo)." But at the time of the 1946 Constitution, "Yugoslavia was divided into two categories the terms of Zoran Pajid; hosts and "historic guests". [[143]](#footnote-143)The hosts or nations (narod) were Serbs, Croats, Slovenes, Macedonians, and Montenegrins..[[144]](#footnote-144)

In 1962, faced with the adoption of the new Constitution, which aimed to establish self-management as the central concept of the Yugoslav order, in a statement that included a strong disqualification of any centralist effort, Kardelj managed to claim that "the Federation of the Yugoslav republics is not a framework for the creation of a new Yugoslav nation, or a framework for pursuing the kind of national integration that was, in its time, the dream of various protagonists of hegemony and denationalization by terror, but it is a community of free, equal and independent nations, and peoples united by their common interests and the socio-economic, political, cultural and other progressive aspirations and tendencies of working people in the age of socialism.” The central notion that followed was that the only acceptable form of Yugoslavism was the understanding of the union of the nations of Yugoslavia as a "self-governing community of common interests".

The idea was strongly linked to the Marxist notion of the disappearance of the state: if the nation was destined to disappear through the development of the productive forces and the advent of communism, it would do so through the emergence of a free community. and equal producers, and not by means of a larger, binding and unifying nation.[[145]](#footnote-145) With the Constitution of 1963, national minorities were redefined with the term nationality (narodnosti), a term which was apparently used to avoid the term "minority" because this term was apparently perceived as too humiliating. Nationality includes all those who have a national homeland elsewhere, such as Albanians, Hungarians, Italians, Bulgarians, Turks, Slovaks, Czechs and Russians.

Those without a homeland elsewhere, such as the Wallachians, were apparently left out of the 1963 Constitution, but some were outside nationalities - those without a state elsewhere. After the 1963 Constitution, Muslims were elevated in status from a nationality to a nation.[[146]](#footnote-146) The adoption of the 1963 Constitution was another important step towards Yugoslav constitutionalism. The 1963 constitution was also known as the 'self-government charter' as the model of self-government was introduced into all aspects of social life.

Improving the constitutional position of the Autonomous Province of Kosovo was undoubtedly an important issue. This province was under the Socialist Republic of Serbia until 1963, while this constitution advanced its political status by transforming it into an Autonomous Socialist Province. Nonetheless, the following changes are evident in the text of this Constitution: Consequently, the constitution created four independent commissions—the Economic, Educational, Cultural, Health, and Organisational Political commissions—next to the Federal Executive Council and split the assembly into five chambers..[[147]](#footnote-147)

The Yugoslav constitutional law of 1953 did not treat minorities as separate entities, their rights remaining within the framework of individual rights, as rights for every citizen (Article 4). Conversely, the Federal Constitution of 1963 represented a significant advancement for minority rights compared to republican constitutions and autonomous province statutes, elevating the legal and constitutional status of ethnic minorities in Yugoslavia. The implementation of an accelerated economic development policy on the underdeveloped areas inhabited by nationalities, especially in Kosovo, has improved the socio-economic conditions to achieve nationality status.[[148]](#footnote-148)

The modification of federal and provincial laws, as well as other regulations, stemmed from the need to adapt these regulations to the new constitutions, which also contain broader and more specific provisions on the position of nationalities; they also marked an increasingly visible transition on the establishment of specific rights of nationalities in regulating their equal position vis-à-vis other nations in Yugoslavia.[[149]](#footnote-149) The Constitution of the Socialist Federal Republic of Yugoslavia (SFRJ) from April 1963 brought many changes to the governing structure of Yugoslavia.

The Constitution also defined new institutions: The Vice-President of the Republic, the Federation Council (which brought together former federal and republican employees, national heroes, and other notables), and the Constitutional Court. This constitution defined the Constitutional Court as an independent body of the federation, whose duty was to protect constitutionality and legality. The Constitutional Court was elected by the Federal Council for an eight-year term, while it consisted of ten judges headed by the president of the court. The characteristic of the Constitutional Court was the protection of fundamental freedoms and rights, while those fundamental freedoms and rights were violated by acts or individual actions of state, republican, or municipal bodies and when no other judicial protection was provided by law.[[150]](#footnote-150)

# **2.5. Political Yugoslav Crisis in the 1960s, Political and Economic Reforms**

After the introduction of self-management in 1952, the leadership of the League of Communists of Yugoslavia was again at a turning point in 1958, where the dilemma among leading Party members was whether to continue with decentralization or return to the course of strong central government decision-making. At this turning point, two main currents appeared:The proponents of self-management were on one side, while those who opposed it and believed that the decentralisation movement had gone too far were on the other.. In the late 1950s, Yugoslavia suffered an economic crisis of the balance of payments, the cause of which was the beginning of economic reforms in 1961, a reform which failed, plunging Yugoslavia into a severe recession. Only by heavy government intervention and increased public spending was it halted in the second half of 1962, but not before it resulted in increased public debt.[[151]](#footnote-151)

Tito once again tried to solve the problem of division by calling a secret meeting of the Executive Council on May 14, 1962, which was unsuccessful due to the strong opposition of Kardel, supported by Bakaric and his supporters, as representatives of self-management. Under these circumstances, Tito asked Ranković to call a plenary session to discuss Edvard Kardelj's position, but Ranković refused on the grounds that it would bring more instability, as Kardelj had strong support in the Slovenian federal party and the state unit. At this time, Kardelj had traveled to the United Kingdom justifying this visit for health reasons.[[152]](#footnote-152) The Yugoslav crisis in the 1960s had begun together with the economic and political reform by President Tito.

It became the common point of nationalist historiography (in particular in Serbia) to blame this new structure of federalism, the most important feature of which was the near-sovereign status of the autonomous regions Kosovo and Vojvodina, for the disintegration of Yugoslavia.[[153]](#footnote-153) This period was followed by deep crashes between President Tito who began economic reforms and decentralization of power, and his opponents led by Alexander Rankovic[[154]](#footnote-154) whose intention was Serbian hegemony in the Yugoslav federation. In 1966 military counter-intelligence organization in service of the majority coalition, collected evidence suggesting that Rankovic had misused the secret police apparatus under his control to conduct operations against the privacy and personal security of the leadership members, including even Tito.[[155]](#footnote-155)

On the other hand, the investigation of the secret police activity that accompanied the removal of Rankovic highlighted the general abuses against Albanian and Hungarian minorities carried out by the police.[[156]](#footnote-156) Within security services themselves, there had been systematic policy of discrimination against them.[[157]](#footnote-157) Rankovic was accused of serious disturbances in the state security service and was also accused of the violence he had been using against Albanians.[[158]](#footnote-158) The opposition to progressive decentralization of the Party and the state was finally crushed during the Fourth Party plenum at Brioni in 1966 with the fall of Aleksandar Ranković, the chief of the omnipresent state security for twenty years since the war.[[159]](#footnote-159)

The provisions of the 1963 constitution guaranteeing individual liberties gained new life. Small groups of citizens undertook organized social and economic activities free from close party or police supervision.[[160]](#footnote-160) The fall of Ranković in 1966, was the first serious post-war political crisis in Yugoslavia, who had been head of State Security since 1944 and a close friend of Tito. The fall of Rankovic signaled a shift away from centralist policies, and opposition groups in favor of further liberalization, and political and economic reforms began to become vocal. This occasion was used by the student movement in Croatia which called for cultural autonomy, further decentralization, and the recognition of Croatian as a separate language from Serbian. These moves, which later turned serious, forced Tito to play the "external threat" card and appeal to the republics to remain united, arguing that if any conflict occurred in Yugoslavia, Moscow would take the opportunity to invade, as had already happened in Hungary (1956) and Czechoslovakia (1968).

The demonstrations starting in Croatia and other parts of Yugoslavia were also accompanied by the request of the party leadership in Kosovo who officially requested that it become a republic, a request which was rejected on the grounds that its majority population (Albanians) already had a "mother state" outside Yugoslavia and there was no provision for the provinces to become republics in the constitution. In the face of growing disobedience and unrest, Tito eventually approved the right of central authorities to intervene "if a danger to the communist system should occur", and the movement in Croatia was crushed.[[161]](#footnote-161)

On the other hand, Yugoslavia's non-alignment in the 1960s contained in itself the defensive character of the state, which essentially maintained a neutral role against the two superpowers, as an attempt to avoid entanglements with the two main blocs. By the mid-1970s, Yugoslavia's sovereignty no longer seemed directly threatened, and non-alignment was again broadened, this time to include a strong socialist activist dimension. According to the Party's official history, non-alignment represents more than neutrality. Its fundamental characteristic is to change the character of international relations so that foreign policy becomes an effective instrument for social progress and socialism. Yugoslavia also denies that its non-alignment is class-neutral.

In fact, the official view is that non-alignment is a weapon to limit imperialist ~ i.e. US) and hegemonic (i.e. USSR) influence throughout the world.[[162]](#footnote-162) Thus, during its journey of less than forty years, the League of Communists of Yugoslavia has managed to redefine its foreign policy three times, based on its national needs. It was initially in a close alliance with the Soviet Union, which it later dropped to move into strict neutrality, and then from neutrality to active support of Third World liberation movements and active opposition to alliance policy. No other Eastern European country has proven to be so adaptable in formulating its foreign policy.[[163]](#footnote-163)

Socialist pluralism is the third principle of Yugoslav socialism which distinguished Yugoslavia from neighboring communist countries. Again, it developed largely as a series of ad hoc adaptations to political realities in a fragmented nation and to growing local and regional power bases. The concept of socialist pluralism was first introduced in 1966 after the Brioni Plenum. The rallying call was made for efforts to democratize the political system and reduce the influence of the secret police and later the national government. [[164]](#footnote-164)

After the Croatian demonstrations in 1971, socialist pluralism was strongly identified not only with the dissolution of the federal bureaucratic apparatus but also with the centralization of power in the hands of the republic/provincial leaders.[[165]](#footnote-165) Discussions about reforms followed the Yugoslav Federation to its end, as it faced serious political problems during the 1960s, since the fall of Aleksandar Ranković in 1966, through the student protests in Belgrade and Kosovo in 1968 and until the "Spring Croatian". Among the reasons for the appearance of the political crisis, is the issue of the dysfunction of the self-governing economic model.[[166]](#footnote-166) While in 1961, the federal assembly adopted legislative proposals for changes in the economic system.[[167]](#footnote-167)

# **2.6. The Constitution of 1974, the Constitutional Arrangement of Republics and Autonomous Provinces**

A new constitution, promulgated in 1974, affirmed the status of Kosovo and Vojvodina from Serbia and their establishment as de facto republics – while each retained a veto over decisions affecting the Socialist Republic of Serbia as a whole. This completed Yugoslavia's transition to a semi-confederation of semi-sovereign republics and autonomous provinces.[[168]](#footnote-168) A number of sets of constitutional amendments to the 1963 Constitution announced the changes to the federal order and the Constitution of 1974. The first set of amendments in 1967 thus increased the competencies and the representation of the republics in the rehabilitated Nations’ Assembly. The second set in 1968 included further reinforcements of the various ethnic groups’ language rights and the federal constitutionalism of the two autonomous provinces within Serbia. Finally, the third and most important set of amendments in 1971 introduced a new conception of the federal order.[[169]](#footnote-169)

The constitution granted statuses near the equivalent of the six republics (Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Slovenia) to the autonomous provinces Kosovo and Vojvodina. Constitutional changes had created advanced status for the two provinces by equating them in many fields to the other republics, such as economic decision-making and some areas of foreign policy. The autonomous provinces had their central banks and separate police, education systems, a judiciary, a provincial assembly, and representation in the Serbian parliament.[[170]](#footnote-170) Similar to the constitutions of the other republics, this one guaranteed autonomy provinces parity in relation to their membership in the federation by specifying that decisions at the federal level would be made "in accordance with the principles of agreement among the republics and autonomous provinces" and by granting autonomy provinces the right to representation in every federal body. Two delegates from each republic and one from each autonomous province made up the federal presidency as a whole. As a result, their leaders had separate membership in the collective presidency that rotated after Tito passed away.

The assembly of provinces had the same veto power over any changes made to the federal constitution as the other republics. The provinces' ability to create their own constitutions was also added by the 1974 constitution. However, the republics enjoyed the right to secede, something that the autonomous provinces did not receive from the Yugoslav government. However, all nations and nationalities in Serbia were given equal status under the 1974 constitution, which established their right to sovereign rights both individually and collectively. Kosovo's own constitution emphasized that its people, like the nations and nationalities of Yugoslavia, had freely organized themselves into a Socialist Autonomous Province. The Socialist Republic of Serbia's constitution may be amended "directly and exclusively" by the Kosovo Assembly, which also had the authority to approve changes to the Kosovo constitution.[[171]](#footnote-171)

In February 1974, the new Constitution of Yugoslavia was adopted. Through this constitution, the system of delegation was also clarified, which was the basis that provided assemblies for all social-political communities or communities of interest, including the bodies of social self-government. The 1974 Constitution did not represent any major modification regarding the character and content of functions and relations in the federal state. The main feature of the 1974 constitution was that Josip Broz Tito was nominated as an "indefinite" President.[[172]](#footnote-172)

In addition, two ethnic minorities—the Hungarians of Vojvodina and the Albanians of Kosovo—were given nationality status in 1974. In Kosovo, around 75% of the population was Albanian, whilst the main population in Vojvodina was Serb, with a sizable Hungarian and smaller Croat minorities.[[173]](#footnote-173)

However, the SFRY's 1974 Constitution granted the republics and autonomous regions extensive autonomy over the formulation of their foreign policies. Article 281 of this Constitution, paragraph 7, states that the Federation's only responsibilities were to approve the RSFJ's foreign policy, develop and advance cooperation with developing nations, ratify and implement, and perform certain other general functions. In addition, autonomous republics and provinces have the freedom to independently arrange collaboration with foreign organizations and bodies, as long as it stays within the bounds of international treaties and the SFRY's foreign policy, according to Article 271 of the SFRY Constitution of 1974. Furthermore, as stated in the same article, in order for these treaties to come into effect, they needed to be approved by the assemblies of every subject and autonomy in the federation. Despite this freedom, some modern Slovenian writers contend that because the federation maintained overall authority over their foreign policy, the concept of equality and independence of republics and autonomous provinces in international relations was not fully realized.[[174]](#footnote-174)

The 1974 Constitution, Article 1 of the Constitution determines Yugoslavia as "a federal state with the form of a state community of voluntarily united nations and their Socialist Republics." The possessive construction of this provision is important: the republics belonged to the nations. Many people lived outside of their national homeland, however, frequently in their own national community, and thus the fit between homeland and nation could not be complete. Unlike earlier constitutions, under the 1974 Constitution, sovereignty did not rest simply with the people. Instead, sovereignty rested in the "sovereign rights" that the "nations and nationalities shall exercise ... in the Socialist Republics, and in the Socialist Autonomous Provinces... [and] in the Socialist Federal Republic of Yugoslav when in their common interests.[[175]](#footnote-175)

In this way, the 1974 Constitution gave more importance to national identity, while power under the 1974 Constitution was further decentralized from the federal to the republican level. Each of Yugoslavia's six republics and two provinces had a central bank, separate police, and educational and judicial systems. So did the two provinces of Serbia, Kosovo and Vojvodina. Significant economic and political benefits were shared at the sub-federal level; that is, the six republics and two provinces, these units, with the exception of Bosnia and Herzegovina, were de facto organized primarily around national identity, based on the majority nation living in that region.

The greatest flaw of the 1974 Constitution was that it set up a "census" system which officially "prevented any decisions from being adopted if opposed by any single federal unit (including the autonomous provinces.)"This further weakened the federation "by paralyzing the decision-making process and removing real authority of federal decisions,"' placing it back in the hands of the party. With everything in the control of the party, individuals had little incentive to become involved in politics, and thus, the idea of a civil society was nearly nonexistent.[[176]](#footnote-176) Yugoslavia's 1974 constitution delegated more of its powers to the republics, leaving defense, foreign policy, currency, and customs to the federation. These central powers were within a collective state Presidency that consisted of representatives of six republics and two autonomous regions (Kosovo and Vojvodina). Such a system of Yugoslavia resembled a confederation dominated by a one-party system.[[177]](#footnote-177)

The Constitution of Yugoslavia and Yugoslav federalism differed greatly in approach and concept from many constitutions of federal states around the world. While the constitutions of many states define the organization of power and the relationship between political powers and society, the Constitution of the Socialist Federal Republic of Yugoslavia was, as a whole, a detailed framework for society. [[178]](#footnote-178)

The laws of Yugoslavia not only preserved long-standing privileges but also granted new liberties and rights that empowered workers to exercise economic and political sovereignty. Additionally, the Constitution stated that each person's rights and freedoms were unalienable. This is especially important in Yugoslavia, as a multinational community, where freedom of expression, and equality of nationalities and their languages was of great importance.[[179]](#footnote-179) The Federation always recognized the equality of the peoples of Yugoslavia, recognizing that the Federation was built by several Yugoslav nations" through the political right of self-determination held by its people. Therefore, the right to be equal with others was guaranteed by the Constitution of 1974, which stipulated that all citizens are equal in their rights and duties, regardless of nationality, race, sex, religion, education, or social status.[[180]](#footnote-180)

A special and interesting characteristic of this constitution was the "loyalty duty" owed to the republics, autonomous regions, and citizens of the Federation, which originated from the internal meaning of the Yugoslav Constitution and the essence of the Federation. According to this constitution, the "Duty of Allegiance" prohibits the separate republics and autonomous provinces within the federal system of Yugoslavia from obstructing the international policy of the Federation, subjecting the Federation to unnecessary dangers, or declaring themselves enemies of the Socialist Federal Republic of Yugoslavia. According to that traditional Yugoslav constitutional dogma, a republic's breach of a "duty of loyalty" may require a federal obligation to remedy the disloyalty.[[181]](#footnote-181) In addition to the "Duty of Loyalty" as a principle born in the Yugoslav constitutional doctrine, freedom of thought and choice were also recognized as absolute rights in the Federal Constitution of 1974, which had deeper roots in the foundation of the Federation. With regard to freedom of thought, this provision means that no one can be held responsible for an opinion expressed if such expression has not harmed any social or personal value defined by the Constitution.[[182]](#footnote-182)An analogous right to secede from the Yugoslav Federation remains constitutionally plausible because of the fundamental "duty of loyalty," "right of option," and duty to defend the nation that all formed the basis of Yugoslav constitutional law.[[183]](#footnote-183)

Croatian and Slovenian constitutional doctrines emphasized that the 1974 constitution gave the republics the right to self-determination, including secession. On the other hand, the Yugoslav Constitution seemed unclear about the right to secede, this right can be implied by the constitutional language. [[184]](#footnote-184) On the other hand, many researchers of the Yugoslav constitution emphasize that it cannot be assumed that the constitution gives the republics the right to secede, implying that such a right also means the end of the federation.[[185]](#footnote-185) The 1974 Federal Constitution of the Socialist Federal Republic of Yugoslavia sanctioned secession by stating that all statutes, general acts, and other provisions of the federal government must be consistent with the federal constitution. On the one hand, the constitutions of the Yugoslav republics and provinces are an expression of their citizenship and autonomy and are not based on or imitation of the federal constitution. In other words, the constitutions, statutes, and regulations of the republic and the provinces cannot be in direct conflict with a federal statute or the federal constitution.[[186]](#footnote-186) All functions not held and governed by the federation have been given to the republics and provinces under the concept of jurisdiction defined in the constitution and through which all workers, nations, and nationalities realize their sovereign rights.[[187]](#footnote-187)

A thorough analysis reveals that the Yugoslav constitution of 1974 does not contain a precise clause that defines secession.

The fact that the people expressed their willingness to live together would mean that the right of secession was lost after consolidation into the federation. Therefore, self-determination and secession as the basis for the formation of the Yugoslav federation does not suggest the reservation of these principles as a right, but rather a method by which the liberated peoples of Yugoslavia brought themselves theirs. Therefore, in order for the right of secession to be secure, other constitutional phrases, articles, or doctrines must support the right of secession.[[188]](#footnote-188)

By the mid-1960s, an emphasis on the importance of nations and country republics was promoted at the same time as the importance of Yugoslavia as a whole, but the former gradually took precedence over the latter. Precisely because of the increase in the power of the republics, the Constitution encountered strong resistance in Serbia, which surfaced after the death of Josip Broz Tito, as the constitutional changes were seen in Serbia as the main causes of the weakening and disintegration of Yugoslavia. On the other hand, in the northwestern part of the country, most Croats and Slovenes saw the Constitution as an attempt to resolve the deep political and economic crisis in which Yugoslavia found itself during the 1960s.[[189]](#footnote-189) From my point of view, there is no doubt that the constitution of 1974 was the most advanced constitution of the Yugoslav Federation, which somehow balanced the nationalisms within the republics and autonomous regions, with the exception of Serbian nationalism, which experienced the constitution as the most severe blow.

# **Chapter 3. Yugoslav Crisis After Tito's Death**

After the World War II and the end of the monarchy, Yugoslavia was occupied by different states. However, by 1943 the communists under the leadership of Josip Broz "Tito" had prepared the architecture for the future federal state of Yugoslavia, which in January 1946 adopted the federal constitution, a copy of the Soviet constitution of 1936. Yugoslavia was constituted as a federation consisting of six constituent republics: Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Montenegro, and Macedonia as well as two autonomous territories within Serbia, namely Kosovo and Vojvodina.

This constitution made the state highly centralized in practice, and it was governed by a strong one-party communist dictatorship.[[190]](#footnote-190) In 1974, a new constitution was adopted with advanced powers of the republics, leaving only some powers to the federation, such as foreign policy, defense, currency, and customs. These central powers belonged to the collective state Presidency, which was again composed of representatives of the six republics and the two autonomous regions. This constitutional system resembled a confederation which was also dominated by the one-party system that existed in Yugoslavia since 1945.[[191]](#footnote-191) After Tito passed away on May 4, 1980, a number of changes occurred, chief among them the decline in the Communist Party's influence. Tito had served as the regime's central figure for decades, and his unifying symbols were becoming fewer and farther between.

With the death of Tito, the system of "collective leadership" began to be implemented. consisting of a one-year presidency, based on the rotation of the eight leaders of the republics and provinces, which would prove to be very ineffective, as it created a deep power vacuum that encouraged further differentiation between and within the republics. As a result, it emerged that the Republican elites saw the goals of socialism and the federal state differently, thus beginning to behave more like representatives of their national group, and even began to abandon their mottos and positions for unity.[[192]](#footnote-192) Yugoslavia’s crisis had its origins in the powerful nationalist movement under the leadership of Serbia’s League of Communists. Initially, it sought the restoration of the Yugoslav federation based on the authority of the Communist party, but it soon grew into a movement for the creation of a “Greater Serbia.[[193]](#footnote-193)

On the other hand, demonstrations of Kosovo’s ethnic Albanian population were the second reason for the crisis. Setting Kosovo apart as a de facto republic granted the second opportunity for a Serbian nationalist reaction. Over time Kosovo was considered the cradle of Serbian medieval culture and the symbol of national history and mythology. In this way Albanian demonstrations and the imposition of martial law in Kosovo, the League Communist of Yugoslavia provided the official, socialist interpretation of the disturbances, branding them as instances of “counterrevolution” by Albanian separatists. Viewed in such a way, the Yugoslav leadership avoided identifying ethnic factors as the cause of unrest.[[194]](#footnote-194) In those circumstances, began to highlight the unhappiness of the Serb's intellectual and key political figures with the state of affairs in Yugoslavia in particular around of issue of Kosovo.

The population of this territory, the incorporation of which has been a Serbian national obsession in the nineteenth century, had become increasingly Albanian in the course of the existence of the Socialist state. Although there were a number of reasons for this demographic shift, many Serbs tended to believe in the variety of conspiracy theories and to focus on e few incidents of mistreatment of Serbs in the region. The most well-known expression of that presupposition was the draft memorandum written by a number of members of the Serbian Academy of Arts and Sciences. The Memorandum's published text was leaked to the press in 1986. Although the memorandum was apparently written to find a way to preserve the integrity of Yugoslavia, its authors spent most of the document proving that Tito's Yugoslavia had discriminated against Serbs in a variety of ways, supposedly permitting Serbia’s economic subjugation to Croatia and Slovenia as well as the "genocide" perpetrated by the Albanians against the Serbs of Kosovo.[[195]](#footnote-195)

Slobodan Milosevic and his rise to power in Serbia was critical to Yugoslavia’s disintegration, for Milosevic changed the face of both Serbian and Yugoslav society.[[196]](#footnote-196) It was clear that Milosevic had a political guide in the memorandum of the Serbian Academy. Milosevic quickly rose to a national leader who had two strong sources of support: Belgrade Radio Television, which frequently broadcast his speech in Field Kosovo 1986, and on the other hand there were nationalist activists, who organized protests across many cities. While assimilation politics and the violent start of applying this policy had begun to be seen in Kosovo, Slobodan Milosevic did not stop declaring that Kosovo was an inseparable part of Serbia.[[197]](#footnote-197) Very fast Milosevic became empowered as a national leader, he started consecutive battles. In Serbia by the end of 1987, Milosevic organized the dismissal of Stambolic from power, and he became leader of the League of Communists of Serbia. His battle continued through protests to change party leadership and powers, initially in Vojvodina then moved to Montenegro, where he overturned the leadership and brought his supporters to power.[[198]](#footnote-198)

After these successful battles, the turn came to Kosovo when in the autumn of 1988, dismissed two Kosovo communist leaders, Azem Vllasi and Kaqusha Jashari, by preparing in this way easier constitutional changes. In early 1989, the Serbian Parliament began preparing amendments to the Serbian Constitution, which would greatly narrow the power of Kosovo.[[199]](#footnote-199) Kosovo was involved in demonstrations, while Yugoslavia declared a state of emergency in Kosovo and began arresting hundreds of protesters and strikers including Azem Vllasi.[[200]](#footnote-200) Thus, on March 23, 1989, the Kosovo Assembly convened in extraordinary circumstances surrounded by tanks and armored vehicles. In an atmosphere of terror and insecurity, a large number of state security and party members from Serbia merged with the delegates inside the assembly hall, where they also participated in the vote. Constitutional amendments were approved outside the legal procedures. The final confirmation of the amendments was then voted in an extraordinary and solemn session of the Serbian Parliament in Belgrade on March 28, 1989.[[201]](#footnote-201)

On the other hand, the Republic of Slovenia in September 1989, passed amendments to its own constitution that claimed to render the federal constitution irrelevant to Slovenia. Following this act by Slovenia, the survival of the Yugoslav federation became impossible in constitutional terms and, for this reason, politically as well, which made the outbreak of internal war inevitable.[[202]](#footnote-202) Dramatic developments followed when the Yugoslav communists were unable to maintain the leadership role of the communist party, which was dissolved in January 1990.The cause of the breakdown of the Communist Party was the leader of the Socialist Party of Serbia, Slobodan Milosevic, who forcibly removed the autonomy of the former autonomous provinces of Kosovo and Vojvodina. It seems to me that Milosevic's actions were followed by the replacement of the Montenegrin leadership with a man with whom the dominance of Serbian votes was guaranteed. These actions manifested and encouraged Serbian nationalism, facilitating nationalist movements in other republics within Yugoslavia, especially in Croatia and Slovenia.[[203]](#footnote-203)

Meanwhile, the collapse of communism across Eastern Europe between 1989 and 1990 was accompanied by a new multiparty/free electoral system and was followed by nationalist party victories in most republics. It was the Serbian bloc that tried to rebuild Yugoslavia to be dominated by them, but that was against the will of Croatia and Slovenia who were already preparing to gain their independence anyway.

On the other hand, Bosnia and Herzegovina and Macedonia floated the idea to commit to a new federal constitution for Yugoslavia, but they too would follow Croatia and Slovenia's path to independence if a new federation failed.[[204]](#footnote-204)

The first free elections after the World War II in Yugoslavia which were held in 1990, as well as the results that emerged from these elections, created a suitable ground for the civil war that broke out in the summer and autumn of 1991. In almost all republics, nationalist parties and coalitions won.

In this way, the Croatian Democratic Union (CDU) collected almost two-thirds of the seats in the Croatian Assembly, receiving only about 40 percent of the popular vote, due to a poorly written electoral law. In Slovenia, the DEMOS coalition received 53 percent of the vote, but only as the combined total of six small and medium-sized parties, the largest of which received fewer popular votes than the reformed Communist Party.[[205]](#footnote-205)

The outcomes of these elections opened the door for Yugoslavia's constitutional nationalism, which has two characteristics: While constitutional nationalism is based on the sovereignty of a nation ethnic group rather than that of equal citizens of the state, it allows for the examination of cultural assumptions behind the concept of sovereignty in the context of Central (formerly Eastern) Europe. On the one hand, the Yugoslav republics manipulated the mechanisms of supposedly democratic constitutionalism, thereby enabling the examination of political doctrines that threaten the states they are used to justify.[[206]](#footnote-206) As such, it can make it easier to investigate the causes of the sovereign majority's extreme hostility—which can even reach the point of genocide—against minority populations in this region. Apparently, constitutional nationalism was not limited to the former Yugoslav republics but is also developing in other parts of the world. Since constitutional nationalism discriminates against large and popular minorities, their discontent can make such systems unstable and thus prone to totalizing and suppressing dissent and civil society, both masquerading as the defense of the majority nation.[[207]](#footnote-207)

Constitutional nationalism is expressed in its most overt form in the Croatian constitution of December 1990, which then states, that in the historic overthrow of communism in 1990, the Croatian nation manifested "its millennial state independence and determination to establish the Republic of Croatia as a sovereign state". After referring to the "inalienable right... of the Croatian nation to self-determination and state sovereignty," the Republic of Croatia "is established as the national state of the Croatian nation and the state of the members of other nations and minorities living within it." In all these passages, the "Croatian nation" (Hrvatski narod) has an ethnic rather than a political connotation and excludes those who are not ethnically Croatian.[[208]](#footnote-208)

Similar to Croatia, constitutional nationalism is also growing in other republics.' Thus, the 1989 amendments to the Slovenian constitution defined Slovenia as the "sovereign Slovenian nation-state and citizens" of the republic from which cultural rights were granted only to the relatively small Hungarian and Italian minorities in the republic. Thus, it appears that Slovenia created in 1989 a three-tiered set of national privileges: first was the "sovereign Slovenian nation", second were the "autochthonous minorities", and third (and without constitutionally recognized cultural rights) were the members of any other national group that, in fact, form the largest minority population in Slovenia.[[209]](#footnote-209) This structure was prepared in a draft of the constitution of the Republic of Slovenia, by the Committee on Constitutional Affairs of the Slovenian Parliament, dated October 12, 1990. The preamble of the constitution stated that "we Slovenians have gained our national independence and our citizenship." while Article 1 provided that "the Republic of Slovenia is a sovereign state, based on the inalienable right of the Slovenian nation [narod] to self-determination." [[210]](#footnote-210)

On the other hand, the October 04th, 1990, draft again excluded other minorities by specifying rights only for Italian and Hungarian "autochthonous minorities" (Article 3 [alternative text]; Article 10). Adopted in 1991, the Slovenian Constitution retained much of this rhetoric, referring in the Preamble to "the fundamental and permanent right of the Slovenian nation [narod] to self-determination" and "the historical fact that Slovenians have formed their national identity and established citizenship theirs", and defined Slovenia as "the state of all its citizens, based on the permanent and inviolable right of the Slovenian nation to self-determination".[[211]](#footnote-211)

On its way to independence, Macedonia, through a statement on state and legal relations within Yugoslavia, which was issued by the Executive Council of the Republican Assembly in the fall of 1990, presented its position that Macedonia is "the national state of the Macedonian nation [narod] founded in the sovereignty of the nation. The declaration referred to the sovereign right of the Macedonian nation, but it also defined Macedonia as a democratic state of citizens, thus creating the natural conflict of constitutional nationalism with current European views of democracy. The Constitution of the Republic of Macedonia was adopted on 17 November 1991, the Preamble of which seems to have similarities with that of the Croatian Constitution of 1990.

The Assembly of Macedonia justified the adoption of the Constitution of 1991, which repeatedly proclaims the idea of peaceful coexistence with minority nations in Macedonia and foresees (Article 78) the establishment of the Council for Inter-Ethnic Relations in the Republican Assembly, consisting of the Speaker of the Assembly and "two Macedonian, Albanian, Turkish, Vlach, Roma [sic] members as well as two from the ranks of other nationalities in Macedonia". The Council is tasked with examining issues of inter-ethnic relations within the republic and providing assessments and proposals for their resolution to the Assembly, which must examine them (but not approve them; Article 78).[[212]](#footnote-212)

On the other hand, Serbian constitutional nationalism appears in a more hidden form as the Serbian Constitution of 1990 defines the Republic of Serbia in clear terms as non-ethnic or national, as "the democratic state of all citizens living within it" (Article 1 ) in which "[s]overeignty belongs to all citizens of the republic" (Article 2), which recognizes the "national" and "cultural" rights of man and citizen (Article 3), although the preamble does not leave he also referred to the "century-long struggle of the Serbian people" and his determination "to create a democratic state of the Serbian people". The impact of the 1990 Constitution of Serbia on minorities is measured when it is recognized that enacted to restore Serbia's "full sovereignty" and remove constitutional mechanisms for self-government by the republic's largest minorities.' By failing to provide such mechanisms, Serbia's Constitution has given room for the establishment of a nationalist regime as thoroughly oppressive to minorities as those of any of the other former Yugoslav republics.[[213]](#footnote-213)

Similar to Serbia's 1990 constitution, the Federal Republic of Yugoslavia's 1992 constitution was not a legitimate constitutional document but rather a vehicle used to uphold Slobodan Milosevic's personal power in the country's path of constitutional nationalism. On the other hand, this "Yugoslav" Constitution has at least one national identification emblem of Serbia that was absent from the Serbian Constitution of 1990..[[214]](#footnote-214)

The nationalist parties representing the three national groups emerged as the winners of the 1990 elections in Bosnia and Herzegovina, taking home 80 percent of the vote. The majority had started the process of purging the ethnic minorities until the leaders of the various ethnic groups consented to divide authority within each municipality. However, in October 1991, members of the Serbian Democratic Party departed the Bosnian and Herzegovina parliament in protest over a deal that the Muslim and Croat parties had made to cast ballots in favor of Bosnia and Herzegovina's declaration of sovereignty.[[215]](#footnote-215) After the death of Tito, Yugoslavia took the direction of destabilization which did not stop until its disintegration through bloody wars.[[216]](#footnote-216)

# [**3.1 Political developments, Milosevic's coming to Power**](#_Toc535178496)

There is a consensus among specialists on the politics of socialist Yugoslavia and supporters of Slobodan Milosevic, that Milosevic rose to power because of the broad appeal of his political program. According to a version of the political thesis Milosevic rose in power, because firstly he defeated more powerful opponents in the leadership of Serbia in 1987 by receiving the support of the majority in the highest ranks of the party for his nationalist program, precisely through the abolishing of the autonomy of Kosovo. However, the other version of the thesis says that Milosevic extended nationalist appeals to the general population and established control over party and state bodies in the largest republic of Yugoslav federation mainly by bringing pressure from society on the political elite. In this case, Milosevic emerged from the leadership struggle as a very powerful leader and thus was able to purge his rivals from the regional leadership and begin implementing a nationalist program.[[217]](#footnote-217)

On April 24, 1986, Milosevic went to Kosovo Polje (Fushë Kosovë) to meet local Serbs and Montenegrins, who sought protection from Serbia. While Milosevic was listening to the speech of a local representative in the House of Culture, a fight broke out between a large crowd of Serbs and the police who responded with rubber batons.[[218]](#footnote-218) At that moment Milosevic interrupted the meeting and addressed the crowd "No one dares to beat you". He improvised on the spot his speech in defense of the rights of the Serbs, a speech that was often broadcast by the media in Belgrade, on which his future political career was built.[[219]](#footnote-219)

In the fall of 1988, it was Kosovo's turn, where the first step was the replacement of two Albanian leaders in the party mechanisms, Azem Vllas and Kaqusha Jashari, in order to replace them with figures more audible for cooperation in the destruction of Kosovo's autonomy. In defense of these two figures, the Albanians organized mass protests in Pristina, meanwhile, on November 17, the miners of Trepça came out of their mine gallery and started the march from Mitrovica to Pristina, where on November 18 they were joined by factory workers, students, and students. Despite the massive protests that took place, the Provincial Committee accepted the resignation of the two leaders, while the new chairman of the committee in Kosovo, later appointed the Chief of Police of Kosovo, Rrahman Morina.[[220]](#footnote-220)

While the policy of assimilation and the violent beginning of the application of this policy had begun to be seen in Kosovo, Slobodan Milosevic did not stop declaring that Kosovo was an indivisible part of Serbia. In 1989, at a rally that Milosevic had organized in Belgrade, he addressed the crowd with these words; "Every nation has a love that warms its heart for life. For Serbia this is Kosovo. Therefore, Kosovo will remain in Serbia[[221]](#footnote-221) At the end of the 1980s, the leader of Serbia, Slobodan Milosevic, rose to the political scene, becoming powerful and important, precisely using Kosovo, the fight against the bureaucracy and various constitutional, especially the anti-bureaucratic control of the revolution over Kosovo, Vojvodina, and Montenegro. In 1989 again, dramatic events and discontent took place in Kosovo, where the Serbs used force to impose their solutions and limited the autonomy of Kosovo and Vojvodina.

Despite these circumstances, the protests and demonstrations did not stop, and there were also clashes between the security forces and the Albanian population. Meanwhile, Milosevic was turning into a Serbian hero, actually implementing plans to restore two autonomous regions in Serbia. Milosevic's popularity soared, as confirmed by the celebrations marking the 600th anniversary of the Battle of Kosovo on June 28, 1989, which drew crowds of thousands who applauded their leader.

Many researchers link the escalation of violence in Kosovo with the actions of the president, Slobodan Milosevic[[222]](#footnote-222), who is considered the main cause of ethnic tensions during this period. According to researchers, Milosevic is the only aggressor in the conflict. If he had not come to power when he did, the relationship between Kosovar Albanians and ethnic Serbs would look completely different than it did. In the opinion of many individuals, especially in Western journalism, Milosevic is considered a war criminal and is remembered for the constant oppression of minorities within his country.[[223]](#footnote-223) Louis Sell describes Milosevic as an erratic and ruthless leader with the sole purpose of consolidating power and advancing his political agenda. Milosevic was the first political leader who undertook to realize what many Serbian nationalists had aspired to do, regarding the Kosovo issue.[[224]](#footnote-224)

By introducing the religious element as part of his campaign, Milosevic used an anti-Islamic rhetoric that emphasized the dangers of fanatical Muslim populations not only in Serbia but across the continent. Regarding the figure of Milosevic, Vjeren Pavlakovic claims that he used the ideas of nationalism as a disguise: his real goals were only to preserve political power at all costs. On the other hand, Carole Rogel points out how Milosevic took advantage of Serbian nationalist sentiments to advance his political agenda. According to Rogel, Milošević purged the local governments of Kosovo, Vojvodina, and Montenegro of their elected leaders—arresting many of them—and instated new leaders that were loyal to him.

# [**3.2. Amendments of the 1974 Kosovo Constitution, and the Adoption of the Constitution of the Republic of Serbia**](#_Toc535178497)

The Serbian leadership responded swiftly to the proposed constitutional reform by launching an initiative that culminated in a 1977 report stating that the federal and Serbian constitutions required policy coordination in specific areas. The leaders of the autonomous provinces fiercely opposed this Serbian initiative, and it seems that Tito also gave them tacit support; nevertheless, the initiative failed. After the demonstrations of Kosovo Albanians in 1981, Markovic and Petar Stambolic put this issue back on the agenda in the federal and party bodies of Serbia.[[225]](#footnote-225)Serbian intellectuals had begun to prepare public opinion through the press and the publication of books by inventing and imagining things to justify the persecution of Albanians, which would result in the removal of Kosovo's autonomy and the placement of Kosovo in a colonial rule by Serbia, as and the appearance of Albanians before the Yugoslav and international opinion as an unemancipated people.[[226]](#footnote-226) All these issues have been elaborated by Serbian academics, known as anti-Albanians such as Dobrica Ćosić, who was expelled from the party leadership in 1968, due to his opposition to the political changes that took place in Kosovo after the fall of Ranković. The first signal of this group was the petition submitted to the Assembly of Yugoslavia in January 1986, signed by 216 intellectuals, who complained that the Serbs were suffering genocide and declared thatthe case of Gjorgje Martinović[[227]](#footnote-227) became the case of the entire Serbian nation in Kosovo.[[228]](#footnote-228) As Serbian social scientist Jasminka Udovicki and Macedonian journalist Ivan Torov noted, phrases such as‘‘ genocide against the Serbs,’’ ‘‘the Serbian Holocaust,’’ ‘‘Serbian martyrdom,’’ ‘‘the tragedy of Kosovo Serbs,’’ ‘‘the Serbian Exodus’’... entered the vernacular of politics, and particularly the media, and shaped the framework of many public discussions taking place at the dawn of the war.[[229]](#footnote-229) At that time, Serbian intellectuals had done the main thing for Milosevic as Budding said, was to “generalize" Kosovo, spreading the belief that not just Kosovo's Serbs, but all Serbs, were deprived of their national rights, and urgently in need of a savior".[[230]](#footnote-230)

The events of 1987 and 1988 caused a peak of hostilities between Kosovo Albanians and Serbs. On the one hand, the Kosovo Serbs were mobilized by Milosevic's agenda of radical reforms (to change the 1974 constitution) filled with nationalism, and on the other hand, the Albanians became more and more worried. Now Milosevic had also made the necessary preparations for constitutional changes, where at the beginning of 1989, the Assembly of Serbia started to prepare amendments to the Serbian Constitution which would limit the power of Kosovo excessively. They would enable Serbia to have complete control over the police, courts, and civil defense of Kosovo, as well as other areas of social, economic, political, and educational power, etc.

Kosovo was involved in demonstrations, while Yugoslavia declared a state of emergency in Kosovo and began settling accounts by arresting hundreds of protesters and strikers, among them was Azem Vllasi.[[231]](#footnote-231) However, even these objections did not stop Milosevic's oppressive policy, based on the Memorandum of the Serbian Academy of Sciences of 1985.

In 1989, the Yugoslav government forced the Kosovo Assembly to abolish the autonomy of Kosovo, which it had enjoyed until then. Kosovo Albanians strongly opposed these constitutional changes and the removal of autonomy, but they refrained from violence, hoping that the international community would recognize the harsh repression of the Serbs and support Kosovo's independence. However, the Western response to these events was inconsistent. In December 1991, US President George H.W. Bush issued a warning to Milosevic, warning that unprovoked Serbian aggression against Kosovo Albanians would trigger a US military response. Although the message was reinforced by Bush's successor, President Bill Clinton, shortly after he took office in 1993, it was eclipsed during the November 1995 Dayton Accords, which implicitly reinforced Serb sovereignty over Kosovo as a quid pro quo for Milošević’s support of the Balkan peace.[[232]](#footnote-232)

# According to the findings of this research, the Academy of Sciences of Serbia led Serbian nationalist intellectual elite's primary objective was to remove Kosovo's autonomy. The 1974 Constitution dealt Serbia a severe legal blow that prevented it from coexisting, particularly with regard to the rights of the Albanians who were granted increased autonomy. The 1981 protests in Albania served as a pretext and rationale for Serbia's response because, in any case, Serbia would have embarked on this adventure and eliminated Kosovo's autonomy following Tito's death, which marked the start of the breakup of Yugoslavia

# [**3.3 The Yugoslav Crisis and the 14th Congress of the Central Committee of the League of Communists of Yugoslavia, 20-22 January 1990**](#_Toc535178498)

Milošević sought to become the undisputed leader of the entire country following the overthrow of the party leaderships in Vojvodina, Kosovo, and Montenegro. He believed that he would achieve absolute power through the League of Serbian Communists of Yugoslavia (LCY) by gaining control over the organization and disciplining the dissidents. He called the 14th Extraordinary Congress of the League of Communists of Yugoslavia on January 20, 1990, with the intention of using it as a platform to get rid of his rivals and seize total authority.[[233]](#footnote-233)

Momir Bullatović of Montenegro led the congress, while Milan Pančevski of Macedonia, the then-chairman of the League of Communists of Yugoslavia's Central Committee, gave the introductory statement.[[234]](#footnote-234) The Slovenian demands at the congress were mainly the liberalization of the state and the economy, human rights, improvement of the current situation, democratization, and multipartyism. Slovenian demands were ignored by the Serbian majority. On the other hand, the proposals of the delegates from Serbia went in the completely opposite direction, they proposed an even tougher centralization at the party level and the introduction of the one-man-one-vote system with which the Serbs, due to their numbers, had a distinct advantage and dominance over the other nations of Yugoslavia.[[235]](#footnote-235)

Naturally, due to the composition of the previously mentioned delegates, the proposals from Serbia received fertile ground. Revolted by such a situation, the Slovenian delegates decided on a rather radical move, leaving the Congress. Not long after them, the delegates from Croatia also left the congress after the then chairman of the Central Committee of Croatia, Ivica Racan, came to the podium and said how the delegation from Croatia cannot accept the Yugoslav party in which there are no Slovenians, while delegates from other republics tried to continue the congress without much success.[[236]](#footnote-236)

In the second half of 1989, the conceptual conflict regarding the organization of Yugoslavia entered its final phase, which was also deepened due to inter-ethnic relations.[[237]](#footnote-237) On one side was Serbia, the proposer of the reform, which persistently aimed at strengthening the Federation, which also meant reducing the powers of the socialist provinces in the Republic of Serbia. On the other hand, Slovenia, the main opponent of the centralization of Yugoslavia, responded by publishing the Basic Constitutional Charter in June 1989, which promised the protection of human rights and the sovereignty of the Slovenian people. Based on this charter, the Constitutional Commission was formed, which prepared the relevant amendments. Although Serbia exerted great pressure not to accept the amendments, the Parliament of Slovenia, on September 27, accepted the amendments which gave Slovenia the formal right to secede and the right to accept or reject the decisions of the federal authorities on the application of extraordinary measures in the (Slovenian) Republic.[[238]](#footnote-238)

The day before, Serbian representatives through a session of the Central Committee (CC) of the SKJ tried to prevent a vote on the controversial Slovenian amendments, to which the leader of the Slovenian Communists, Milan Kučan, responded, calling it pressure. He[[239]](#footnote-239) emphasized that it seems that alongside the thesis of the "innate genocidal nature of the Croats" the thesis of the "innate separatism of the Slovenes" is being created and accepted. Slovenian representatives also warned of the threat of the Kosovarization of Slovenia and the madness of the possible force of will be imposed on the Slovenian people.

Although the SKJ Central Committee voted to postpone the vote on the amendments, the Slovenian delegation also had the support of the Croatian delegates. After this session, the Serbian leadership and media strongly attacked the Slovenian amendments, calling them unconstitutional and serving the disintegration of Yugoslavia.[[240]](#footnote-240) On the other hand, with the practice of overthrowing governments through rallies, as in the provinces and Montenegro, the Serbs announced a truth rally in Ljubljana on December 1. In Slovenia and Croatia was appreciated that the truth about Yugoslavia should be imposed on Slovenia over the truth about Kosovo Slovenian authorities responded by banning the rally on the grounds that it could lead to violence. This action of Slovenia was also supported by Croatian politics and media, and on the other hand, in response to the Slovenian side banning the gathering, the Serbian side applied an economic blockade of Slovenia. From that moment, the conflict spread from the political sphere to the economy, which harmed both Slovenia and Serbia;[[241]](#footnote-241)

American intelligence services had predicted the possibility of ethnic tensions and conflicts in Yugoslavia even before the death of Josip Broz Tito in 1980. Thus, a 1961 report stated that it is possible that Yugoslavia's political system would not survive Tito's death. Similarly, CIA reports after Tito's death began to talk more and more often about ethnic tensions in Yugoslavia. According to January 26, 1983, CIA report entitled "Yugoslavia: A Looming Crisis", the focus is placed on the consequences of the economic crisis for Yugoslavia, thus citing the ethnic conflicts in Kosovo as a potential source of instability in Yugoslavia. The report also talks about ethnic conflicts between Serbs and Croats, noting that the rivalry between Croats and Serbs is not yet at the level it was in the 1970s, but the dispute between these two, the largest ethnic groups in Yugoslavia, could explode. Also, the fear of Serbs in Yugoslavia from Croatian nationalism was mentioned as a potential factor that could destabilize the country.[[242]](#footnote-242)

Regular U.S. national security reports during the Cold War extolled the strategic importance of a stable and peaceful Yugoslavia as a neutral factor within Europe preventing the Soviet Union, the United States' archrival, from entering the Mediterranean. The superiority of Yugoslavia's strategic position was also appreciated by Warren Zimmermann, the US ambassador to Yugoslavia between 1989 and 1993, who expressed the high American interest in the existence of this state, precisely for geopolitical reasons, through which it borders the exit of the Soviet Union to the Adriatic and the Mediterranean.[[243]](#footnote-243)

This geopolitical importance was the reason that the US helped the survival of a stable Yugoslavia, despite being a socialist country, and even though Yugoslavia's involvement in helping anti-colonial movements in the Global South was described as "sometimes problematic" .[[244]](#footnote-244) Later, a CIA report of October 1990 accurately predicted that "Yugoslavia will cease to function as a federation within a year, and probably disintegrate within two years".[[245]](#footnote-245) The report, which was classified as confidential, speaks of the "centrifugal forces" that are destroying Yugoslavia, a country that after the death of Josip Broz Tito is held together by "institutional inertia". The "centrifugal forces" mentioned are nationalism, economic aspirations and "the violation of religious and cultural identification based on ethnicity".[[246]](#footnote-246)

The report begins interestingly enough with a quote from P. G. Wodehouse's 1928 comic novel The Inimitable Jeeves, in which Jeeves notes that "all is quiet except for a little tension in the Balkans. That humorous detail at the beginning of one of CIA reports articulates two messages that the conflicts in the Balkans are "nothing new", it is old news that no longer excites anyone, that does not signal the need for action and that belongs to the field of a kind of everyday foreign policy. Elsewhere, the citation of a 1928 text at the time of writing the report reveals that the problems in the Balkans are considered "a constant recurrence of the same," a repeating past whose repetition is determined by geography. space and people themselves which, as the previous report points out, are inherently controversial.[[247]](#footnote-247)

On the other hand, at the beginning of June 1991, Italian President Francesco Cossiga publicly supported the independence aspirations of the Slovenians and Croats, which support was contrary to the position of the KKSB which was taken in Berlin, Germany on June 19-20, 1991. Most of the representatives at this meeting had supported the position of the US Secretary of State, James Baker, who promoted the continuation of the traditional American policy towards Yugoslavia, supporting the Yugoslav Federation as a unitary state, the democratization of the country and the reforms led by Prime Minister Ante Markovic. At the same time, American authorities firmly opposed Croatian efforts to obtain Washington's support for the concept of a peaceful breakup of Yugoslavia. [[248]](#footnote-248)

A few days before the declaration of independence of Slovenia (26 June 1991) and Croatia (29 June 1991), US Secretary of State Baker paid a visit to Belgrade, which is considered a last attempt to save Yugoslavia from disintegration. As he writes, he wanted to “shock the leaders of the various republics into accepting two obvious things: that we should talk about differences and not make unilateral decisions. And that the international community will not under any circumstances tolerate the use of force."

As soon as he arrived in Belgrade, he first paid a visit to the Federation Palace, the seat of the Yugoslav government and representatives of the six republics. Each republic had a large conference room there, decorated with beautiful works made in accordance with the artistic traditions of their own nation. Within ten hours (...) I ran there - writes the US Secretary of State - from room to room, meeting with representatives of all the republics" and with Markovic. "who unsuccessfully tried to prevent the explosion of the Balkan powder keg".[[249]](#footnote-249)

In the meetings with politicians in Belgrade, Baker emphasized that he represented not only the United States but also the CSCE, asking politicians in Belgrade to follow the "principles of the Helsinki Conference", i.e. resolve disputes only peacefully while changing borders is only done the condition that all parties agree and respect human rights, "mainly national minorities" - "Albanians in Kosovo, Hungarians in Vojvodina, Serbs in Croatia". He went on to emphasize that the United States opposes the use of force or intimidation to settle scores."

In conversation with the Slovenians and Croats, he made it clear and emphatic that the United States categorically condemns any attempt to break up Yugoslavia on ethnic lines as it could lead only to bloodshed and denial of minority rights.[[250]](#footnote-250) In the meeting, Baker supported the implementation of the "constitutional rotation of the president of the Yugoslav federation and economic reforms, paying special attention to the politics of Milosevic, whom he described as the man whose life is connected with the use of the past to exasperate and destroy the present. At first sight - writes Baker - Milosevic is a man full of charm (...), but in his soul - a criminal and a fraud. I knew that, like most criminals, he respects only strength (...) at the beginning of the conversation I said: "We want good relations with Serbia, but it depends on you. I must say that in our opinion, your policy is the main cause of the current Yugoslav crisis. You are leading your nation, your republic, and Yugoslavia to disintegration and civil war.[[251]](#footnote-251) Since the Communist Party was the most important and powerful political institution of the regime, the indirect or direct effect of the permanent conflict in the party was the gradual blocking of the work of all other institutions (parliament, government).

**Chapter 4. The Independence of the Yugoslav Federal Units**

**4.1. Independent of Slovenia and Croatia, international recognition and membership to the UN**

Two options crystallized in the development of self-determination within the former Yugoslavia, particularly in its final years. While the second option was based on non-liberal and anti-democratic values and norms, emphasizing non-liberal ideas and values, the first option was based on Western values and norms, emphasizing liberal ideas and values. The two northern Yugoslav republics, Slovenia and Croatia, accepted the former, while Serbia and its small ally Montenegro accepted the latter. [[252]](#footnote-252)A word of caution should be added here: following Franjo Tudjman's ascent to power, the Republic of Croatia started to take on increasingly Milosevic's Serbian characteristics. Despite the ethnic makeup of all four republics, a commonality among all four cases—unlike those of Serbia and Montenegro—was that they were territorially based quests for self-determination.

. After Tito passed away in 1980, Yugoslavia experienced its worst economic crisis ever. Its relationships with the International Monetary Fund (IMF) deteriorated, necessitating the adoption of new economic reforms that were not predicated on the principles of self-management and other postulates of Yugoslav Communism.[[253]](#footnote-253) Branko Mikulic, the Prime <Minister of Yugoslavia, faced a political climate that was dissimilar to the one that demanded the IMF's reforms when he assumed office in 1986.

The socialist notion of self-management and administrative measures formed the foundation of the proposed economic reform for the majority of 1988. This went against the advice of the IMF regarding liberal and free market economic policies. More stringent regulations were applied to Yugoslavia in relation to "stand by" credits. In addition, the IMF requested strong action against the inflation that was already prevalent. Politicians in Belgrade responded to this by arguing for constitutional changes that would give the Yugoslav federation more authority than its individual member states [[254]](#footnote-254). As soon as Mikulic made a sincere attempt to implement economic reforms, just before he resigned in December 1988 at the IMF's request, centralist tendencies in Belgrade were evident. Then, Belgrade applied the pressure instead of Slovenia and Croatia. Up until that point,

Mikulic's reforms were opposed by two northern republics because they were based on antiquated ideas of self-management and administrative procedures. But after Mikulic resigned, Milosevic publicly opposed private property and the free market, concentrating instead on constitutional modifications that would alter the political makeup of the Yugoslav federation in an apparent attempt to seize control of the federal structure. As predicted by the 1986 Memorandum, Milosevic's action on the constitutional front was primarily targeted at the two autonomous provinces of Kosovo and Vojvodina. As a result, Belgrade prioritized unifying Serbia by overthrowing the autonomous regions of Kosovo and Vojvodina, laying the foundation for a federal Yugoslavia ruled by Serbia.

Milosevic was not able to unseat Mikulic as prime minister, even with the support of the Yugoslav military. The liberal-minded Croat candidate from Slovenia and Croatia, Ante Markovic, replaced Mikulic. Milosevic and the Yugoslav armed forces were compelled to back Ante Markovic's candidacy due to the circumstances in Vojvodina and Montenegro.

This endorsement was a political response to the developments in Montenegro and Vojvodina that followed the so-called "anti-beaurocratic" revolutions that resulted in the removal of their duly elected officials; it was not an endorsement of reform.

Following his overthrow of the leaders of these two entities and their replacement by his men, Milosevic came to the realization that he would have to withdraw for the time being. In just a few months, Milosevic was able to topple additional constitutional checks and balances, this time through the removal of Kosovo's and Vojvodina's autonomy (March 1989).

In an attempt to win Serbia's support for his reforms, the new prime minister did not respond when the state of emergency was declared in Kosovo at the end of February 1989. This move was taken to force the Kosovo Assembly to approve the constitutional amendments that would have eliminated Kosovo's autonomy within Yugoslavia. All that the collective Federal Presidency turned out to be Milosevic's personal assistant. Slovenia was the only nation to respond. The opposition, which only recently formed in the former Yugoslavia, as well as the position leaders of Slovenia came together in a show of solidarity for the suffering of the Kosovo Albanians living under emergency rule.

On the eve of Kosovo's autonomy being destroyed, it was a sincere show of support for the region and its majority population[[255]](#footnote-255). Slovenes started their work in two different directions and categorically denounced the Kosovo state of emergency. First came democratization, and then Slovenia's place within the Yugoslav federation was institutionalized. The widespread backing Milosevic received in Serbian and Yugoslav society for his actions in Kosovo eventually overthrew the Slovenes [[256]](#footnote-256)

When the Slovenian Communists progressively gave the various associations' voices a voice, Slovenia's democratic process got underway. They even conducted a direct election in April 1989 to choose Janez Drnovsek to serve as their member of the Federal Presidency. It was an unprecedented move coming from a communist nation. Aside from this, the Slovene Communists wholeheartedly supported the so-called May Declaration, which was approved by the opposition in Slovenia. This proclamation made a deliberate and symbolic reference to the 1918 independence of Slovenia, thus subtly hinting at its future. The "Fundamental Charter of Slovenia," adopted in June 1989, marked the next stage in Slovenia's democratic process and opened the door for later constitutional amendments (September 1989).[[257]](#footnote-257) These reforms granted the Republic of Slovenia the right to protection from centralist tendencies of Milosevic and the Yugoslav military.

The genuine liberal nature of Slovenia's struggle for independence is demonstrated by this charter and the ensuing constitutional amendments. Therefore, when the "Fundamental Charter" was first passed, it stated that the leadership of Slovenia desired to live in "a democratic state grounded on the sovereignty of the Slovenian people, human rights, and the liberties of citizens" and further declared that they "will live only in such a Yugoslavia in which our sovereignty and our lasting and inalienable right to national self-determination are secured, along with the equality of all nationalities and minorities, in which the differences among peoples are protected and guaranteed, and in which the common tasks in the federal state are regulated on the basis of consensus."

The Charter also recognized an explicit right for political pluralism, including freedom of association and free voting.[[258]](#footnote-258)War and confrontation with other nations resulted from Milosevic and his allies' pursuit of a more tightly knit and centralized federation. The Slovenes went further to protect their rights, moving the political dispute over Kosovo to the area of the Yugoslav federation's constitutional restructuring. The Slovene Parliament began a constitutional reform in the summer of 1989 with the intention of maintaining Slovenia's statehood and granting it the ability to sever its ties to Yugoslavia. [[259]](#footnote-259)

Slovenia denied Serbian assertions that its 1918 accession to Yugoslavia "consumed" its right to self-determination. Human rights, political freedoms, democratic processes, economic freedom (including the right to own property), the use of the Slovenian language in Slovenia (including by federal organs), Slovenia's financial responsibilities to the Federation, and the rights of the Federal Army were all covered in further detail by these amendments to the Slovenian constitution. A state of emergency, according to the proposed constitutional amendments, could be proclaimed in Slovenia only with the consent of the republic's parliament.[[260]](#footnote-260)The first significant step in countering Serbian centralist tendencies was taken by Slovenia with these actions. At a meeting of the Yugoslav Communists (also known as the Communist League of Yugoslavia, or LCY) on the afternoon of December 20, 1989, these tendencies were made abundantly evident. The purpose of this meeting, which was called by the Yugoslav military, was to exert pressure on the Slovene Communists to abandon their plans for a loose federation. Refusing to give in to the pressure, the Slovenes' parliament voted on the proposed amendments on September 27, 1989, giving the Republic more autonomy and protection from Serbia and the federal institutions. [[261]](#footnote-261)Though the term "an asymmetric federation" was used to describe it, full democracy and independence in Slovenia were preceded by the country's constitutional amendments. At the time, the message was very clear: stop the Serbian and Yugoslav military from continuing their efforts to centralize the Yugoslav federation, which had already begun with Belgrade's actions against Kosovo, Vojvodina, and Montenegro (October 1988–July 1989).[[262]](#footnote-262)

On December 3, 1989, Serbia severed its economic ties with Slovenia in retaliation. This Serbian action did not trouble Slovenia that much but did trouble the reform-oriented Prime Minister of Yugoslavia, Ante Markovic, who presented his economic program to the Yugoslav Parliament on December 18, 1989, hoping to realize the unity of the Yugoslav market. [[263]](#footnote-263) After Serbia and Slovenia's economic war in December 1989, this was hardly feasible. From this point on, Milosevic did everything in his power to force Slovenia out of Yugoslavia and make amends with the rest of the nation, in addition to opposing Markovic's reforms.

Slovenia's long-term objectives continued to be the maintenance of its independence and the narrowing of the space available to anti-Slovene forces operating inside Yugoslavia. The CLY's Fourteenth Congress, which took place in January 1990, offered a chance to move these objectives forward. In response to Serbia's economic boycott, Slovenia stopped sending money to the Federal Fund for Underdeveloped Regions on February 26, 1990, since Serbia and its regions had benefited from it.

Both the Communist Party and the Yugoslav federation started to break apart along republican lines following the defeat of the LCY in its Fourteenth Congress. Slovenia and Croatia proceeded with their announced multiparty elections for the spring of 1990.

All of the former Yugoslav republics did, however, hold their first multiparty elections. In this process, Slovenia was in the lead where following the elections in April 1990, the Slovenes advanced their cause of self-determination by successfully holding an independence plebiscite in December of that year and by enacting significant federal laws in late February of 1991, paving the way for their "disassociation" from Yugoslavia in June of that same year. [[264]](#footnote-264)

Leaders of the Croatian people started claiming that if Slovenia seceded, so would Croatia. Both republics were drafting new constitutions that were based on the democratic systems of the West. [[265]](#footnote-265) The following Spring and Summer saw the two northern republics declaring their full independence, with Serbia and Montenegro trying to take control over the Federal Presidency and Macedonia and Bosnia-Herzegovina holding a compromise stance between the Slovene and Croat positions and that of Serbia. [[266]](#footnote-266) For most of 1991, the Federal Presidency was blocked in its work.

The President at this time was Borisav Jovic, a Serb and close collaborator of Milosevic; the next line for the office was Stipe Mesic, a Croat. [[267]](#footnote-267) Mesic's offer to replace Jovic was declined. In this case, the Croats announced their desire for independence on May 19, 1991, following the Slovenes' December 1990 declaration. US Secretary of State James Baker met with Prime Minister Markovic and presidents of the two northern republics on June 21, 1991, and urged them to keep Yugoslavia together, preventing the full secession of the two republics. Markovic also addressed the assemblies of Slovenia and Croatia, pleading with them not to break away. [[268]](#footnote-268) The two republics in the north declined to withdraw. Slovenia and Croatia declared their complete independence on June 25, 1991.

When hostilities broke out in July 1991, things would quickly spiral out of control for Croatia as the Yugoslav government, led by Prime Minister Markovic and President Mesic after the Brioni Agreement, had lost control of the Yugoslav military. Tito's Yugoslavia was dissolving by late 1991. Both Mesic and Markovic resigned from their positions as President and Prime Minister of Yugoslavia in December of that year. As the world started to view Yugoslavia as a state that was gradually disintegrating, the two northern republics received international recognition.

In 1918, Slovenia joined with Croatia and Serbia to create the first kingdom of Yugoslavia. After World War II, when Yugoslavia became a socialist state under the leadership of Marshal Josip Broz Tito, Slovenia became one of the six republics of the new socialist state, to become independent later in 1991 during the breakup of Yugoslavia. On July 2, 1990, the Slovenian Assembly approved the "Declaration on the Sovereignty of the Republic of Slovenia", while the Slovenian Prime Minister, Lojze Peterle, declared that the declaration of sovereignty would not yet mean independence, but would lead to independence if Yugoslavia was not reorganized into a confederation.[[269]](#footnote-269) On the other hand, on December 23, 1990, in a plebiscite, Slovenians gave strong support to the declaration of independence, in favor of which approximately 88.5% of the citizens participating in the plebiscite voted, while three days later the Slovenian Assembly adopted a declaration of sovereignty of the republic.

On February 20, 1991, the Slovenian Assembly passed a resolution by which Slovenia seceded from Yugoslavia and other republics. The secession was justified "on the basis of the permanent and inalienable right of self-determination of the Slovenian nation, which is one of the fundamental principles of international law". Independence was based on "fundamental principles of natural law, namely the right of the Slovenian nation to self-determination, principles of international law and the Constitution of the Republic of Slovenia, and on the basis of absolute majority votes in the plebiscite held on December 23, 1990". Since the Slovenian constitutional right to secession was based on the principles of self-determination and the 1990 plebiscite was seen as an exercise of these principles, the Declaration of Independence from Slovenia was deeply rooted in the notion of self-determination.[[270]](#footnote-270)

The Slovenian Constitution (1991) also defined the basic legal framework regarding freedom of belief and the practice of religion. 5 Article 7 of the Constitution defined religious communities as collective forms that enjoy the right to free exercise of religion (as specified in Article 41). These communities must be separate from the state, equal before the law, and free to carry out their activities. In defense of religious freedom, Articles 14 and 63 of the Constitution prohibited the incitement of religious discrimination, hatred, and intolerance. Whereas Articles 46 and 123 recognize the right to conscientious objection based on religious, philosophical, or humanitarian beliefs.[[271]](#footnote-271) Two of the six republics decided to leave the SFRY, which meant the de facto collapse of Yugoslavia. These actions did not receive support and were condemned by most countries, both the United States and the USSR, as well as many other countries that wanted to keep the Yugoslav Federation united.

The United States remained committed to maintaining the unity of the SFRY throughout these events, so they refused to acknowledge the independence of the Croatia and Slovenia because of their unilateral actions toward secession. Rather, they did as the leaders of the European nations themselves would have done and assigned the task of solving this "Balkan cauldron" to the European Economic Community (EEC). According to Jacques Poos, Luxembourg's foreign minister at the time, "This is Europe's hour, not the Americans' hour.”[[272]](#footnote-272)

As it was seen later, the US was not interested in leveling up in this crisis before the Europeans, they had done so in almost all the crises in Yugoslavia, although none of the crises had an epilogue without the direct involvement of the USA.

As J. Baker wrote in his memoirs: “Our vital interests were out of the question. The Yugoslav conflict had the potential to be intractable, but it was a temporary regional dispute.” The US Secretary of State also believed it was a chance for the Europeans to show their strength: "There was a feeling in Washington, often felt but rarely expressed, that it was time for the Europeans to take the stage and show that they could act as a united force. Yugoslavia was as good a first test as any." [[273]](#footnote-273)Therefore, as Richard H. Ullman noted, "the Bush administration decided to leave to the Europeans what they believed would surely turn into a Yugoslav 'swamp.'" J. Glaurdić, on the other hand, stated: “The Bush administration washed its preventive hands of the coming chaos and clearly signaled its withdrawal from the region. The ball was in Europe's court." Therefore, in the initial period of the conflict in Yugoslavia, which was collapsing like a house of cards, the EEC made further efforts to stop the bloodshed, while the Americans decided to stay away, not even sending their representative as an observer.

On May 15, 1991, the mandate of the representative of Serbia as the chairman of the presidency of the Yugoslav Federation ended, and a year later Janez Dernovšek left the office, while Belgrade blocked the election of the Croatian representative as president and chairman of the presidency of the federation. This was the moment when the Yugoslav presidency ceased to function as the supreme commander of the federal army. On the other hand, Slovenia and Croatia declared independence on June 25, 1991, while the Yugoslav army intervened in Slovenia.[[274]](#footnote-274) It was a disastrous decision – not for Slovenia, which was able to defend itself and achieve independence, but for the rest of Yugoslavia, which remained in chaos and war for the rest of the decade.

The military breakthrough in Slovenia was the first decisive step from negotiations to politics, carried out, as the words say, "by other means" - that is, direct war. At the time of the military intervention in Slovenia, the Yugoslav army was still a federal body, but it was soon divided into uniformed Croats, Macedonians, Bosniaks, and Albanians who did not want to fight the Slovenes, aware that one day the same something could happen to them as it happened to the Slovenians.[[275]](#footnote-275)

Slovenia, on the other hand, was determined to fight for independence, holding out during the 10-day war, which resulted in the multi-ethnic dissolution of the Yugoslav Army, which was soon replaced by what was effectively a Serbian army. After a cease-fire, negotiations followed, resulting in the so-called Brion Agreement, which was reached between the federation and Slovenia, with the mediation of the European Union, and which was also the first successful European effort in managing[[276]](#footnote-276) the Yugoslav crisis.[[277]](#footnote-277) The agreement reached in Brijuni turned out to have a lot of ambiguity, according to which Slovenia and Croatia had to accept a three-month moratorium on their sovereignty, while Janez Dernovšek had to return to the federal presidency for three months.On the other hand, it was not clear what would happen next. What happened was that developments came thick and fast.[[278]](#footnote-278)

In the first session of the Yugoslav presidency, it was agreed that the Yugoslav army would be completely withdrawn from Slovenia, and as a result of this decision, Slovenia took full control over its territory. At first, the international community was reluctant to recognize the new state, but at the end of 1991 and the beginning of 1992 came the first international diplomatic recognition, Slovenia had become independent; and had actually managed to escape the growing Yugoslav disaster.[[279]](#footnote-279) The withdrawal of the army began in mid-June 1991 and ended on 25 October 1991, while the withdrawal of the Yugoslav army in Slovenia marked the breakup of Yugoslavia. On the other hand, the war in Croatia began in the second half of July 1991 (before that there were only armed incidents in Croatia, mainly as a result of Serbian guerrilla attacks on Croatian police forces) made the process of disintegration of Yugoslavia irreversible. The existence of Yugoslavia depended mainly on the coexistence of Serbs and Croats.

The major armed conflict between them in September 1991 had two essential consequences: it made the continuation of a joint Serbo-Croat state of Yugoslavia impossible, and it victimized all the other nations of the former Yugoslavia, especially the Bosnian Muslims.[[280]](#footnote-280) It is known that Serbia itself was interested in the removal of Slovenia from the federation because in this way there would be fewer enemies towards the realization of the project for the creation of Greater Serbia.[[281]](#footnote-281)

Many argue that the violence in the former Yugoslavia was due to the extremely passive role of the international community.[[282]](#footnote-282) The US Secretary of State's support for Yugoslav unity, from Milosevic and the European Community was seen as legitimizing the federal structures to undertake military action. Then, similarly, Douglas Hurd, the British Foreign Secretary, noted that many Western diplomats accepted Milosevic's logic and language of "the primal hatred of the Balkan tribes". On the one hand, he claimed that Britain had no interests in the Balkans, except for lasting peace in the region . Moreover, the French position that Belgrade has a legitimate right to ensure the territorial integrity of Yugoslavia was indirect support for Milosevic to start wars throughout the former Yugoslavia.[[283]](#footnote-283)

Slovenia, as one of the six republics of the Yugoslav Federation, had an easier path to independence than Croatia, Bosnia and Herzegovina. It declared independence from Yugoslavia in 1991, establishing itself as an internationally recognized state. It joined the United Nations (UN) in 1992, the Council of Europe (CoE) in 1993, and the European Union (EU) and North Atlantic Treaty Organization (NATO) in 2004. Slovenia adopted the Euro as its currency in January 2007 and entered the Schengen Area in December. In July 2010, Slovenia became a full member of the Organization for Economic Cooperation and Development (OECD).[[284]](#footnote-284)

As far as the development in Croatia is concerned, in April-May 1990, the first multiparty elections in Croatia were held. Less than a year later, the republic would be rocked by a brutal and deadly conflict that claimed hundreds of thousands of lives and killed over 12,000 people, the majority of whom were civilians. [[285]](#footnote-285)

The Croatian Democratic Party (Hrvatska demokratska zajednica, HDZ), which represented a nationalist movement led by Croatian dissident and former Yugoslav general Franjo Tuxman, convincingly won the free elections. HDZwas oriented to ensure greater Croatian independence. Croatian independence was anathema to the republic's Serbian minority (or, at least, part of it), which made up twelve percent of the republic's population, and the majority of the population in a territory called Krajina. On the other hand, during 1990 and 1991, under the leadership of the Serbian Democratic Party (Srpska demokratska stranka, SDS), the main Serb-inhabited regions of Croatia gradually seceded from Croatia, declaring their intention to 'remain in Yugoslavia'. together with the Republic of Serbia and 'other Serbian lands'. In this form, in addition to this political rebellion against the Croatian authorities, another secession began military/paramilitary, starting with the outbreak of the 'Balvan Revolution' (Log Revolution) in Knin, Krajina in August 1990.[[286]](#footnote-286)

The Yugoslav People's Army (YPA) was involved at first with intervention, ostensibly to prevent such clashes, but by the autumn of 1991, the situation had reached open war, with Croatian forces on one side and rebel Serbs and the YPA on the other. The armed conflicts between the Serbian and Croatian forces began to greatly expand in the spring of 1991.. At the time, a peace plan was introduced between the warring parties called the Vance Peace Plan, named after UN negotiator Cyrus Vance, which froze the conflict with a de facto partition of Croatia, with the rebel Serb regions that formed an internationally unrecognized Republic of Serbian Krajina (Republika Srpska Krajina, RSK), which survived until it was militarily defeated by Croatia in 1995.[[287]](#footnote-287)

The most important event towards independence and the constitutional creation of the free and sovereign Croatian Republic was the Decision (Odluka) of the President of the Republic of Croatia regarding the holding of a referendum, issued on April 25, 1991. On the referendum of May 19, 1991, two questions were posed to the voters: 1. Are you in favor of the Republic of Croatia, as a sovereign and independent state, which guarantees cultural autonomy and all civil rights of Serbs and members of other nationalities in Croatia, can enter a federation of sovereign states with other republics (in accordance with the proposal of the Republic of Croatia and the Republic of Slovenia to resolve the state crises of the SFRY)? 2. Are you in favor of the Republic of Croatia remaining in Yugoslavia as a unified federal state (in accordance with the proposal of the Republic of Serbia and the Socialist Republic of Montenegro to resolve the state crisis of the SFRY)? The results of the referendum were in favor of independence and sovereignty with 2,845,521 voters or 93.24%.[[288]](#footnote-288)

On June 25, 1991, the two republics of the Yugoslav Federation, Slovenia and Croatia, declared their independence. In general, the international community reacted negatively to the secessionist actions of Slovenia and Croatia. For its part, the United States declared that it would not recognize Slovenia or Croatia under these circumstances, while the European Community (EC) announced that it expected Yugoslavia to remain a state. Many members of the international community insisted that Yugoslavia remain intact in accordance with the international legal principle of territorial integrity, which prohibits changing borders.

The reluctance of the international community to recognize the independence of Slovenia and Croatia lay in the fear of an outbreak of violence in Europe and the precedent that independence would set for the multitude of separatist ethnic groups in Eastern Europe.[[289]](#footnote-289) In particular, the United States of America did not support the secession of the Yugoslav republics, intending to keep the Yugoslav Federation united. Thus, the Administration of the President of the United States, George Bush, strongly opposed in the early 1990s the secessionist aspirations of Slovenia and Croatia, which as the first republics had declared independence from the Yugoslav Federation. About eight months after Slovenia made its first official move toward secession, the United States as well as European states expressed strong support for Yugoslav unity.[[290]](#footnote-290)

." [[291]](#footnote-291) As the war in Croatia rapidly intensified in late 1991, the government in Zagreb called for international intervention to end the crisis, assessing the deployment of international troops in Croatia as the best chance to restore sovereignty to the regions of its war-torn multiethnic society. For their part, the Serbian government and the People's Army of Yugoslavia, as well as local Serbian militias, took advantage of the passivity and non-intervention of the European Community to suppress Croatian independence, as well as to expand Serbian control of the serb inhibited territories.[[292]](#footnote-292)

The approach of the international community favored the Yugoslav army and the numerous Serbian military forces, which had large quantities of weapons and ammunition, creating a formidable superiority. In these hotbeds of conflict, the European Community sent its Monitoring Missions (ECMM) to observe what was happening, to report to their governments, and to mediate between the conflicting forces, but at the time of the Brijuni Declaration of 7 July 1991, it was already clear that the crisis could not be resolved peacefully through the efforts of that Mission alone.[[293]](#footnote-293)

The UN Security Council, on September 25, 1991, adopted resolution 713[[294]](#footnote-294) through which it expressed full support for the efforts of the international community to bring peace and dialogue to Yugoslavia. It particularly supported the observers, the cessation of hostilities in Yugoslavia, as well as the smooth development of the political process at the Conference on Yugoslavia, calling on the parties to the conflict to resolve their differences peacefully, while engaging the UN Secretary-General to offer his services in agreement with the Yugoslav government. Although Croatia had declared independence on 7 October 1991 and severed all state relations with Yugoslavia, the UN continued to consider Yugoslavia the only legal entity with which it could maintain official relations. Following the November 23 signing of the Geneva Agreement, which aimed to end hostilities, unlock Yugoslav barracks, and remove military personnel, weapons, and equipment from Croatia. The UN Secretary-General wrote a letter to the President of the Security Council about his official envoy Cyrus Vance's mission to Yugoslavia and the Yugoslav government's initiative to maintain peace in Yugoslavia starting on November 26.[[295]](#footnote-295)

On November 27, the Security Council adopted Resolution 721[[296]](#footnote-296), which asked the Secretary-General to immediately suggest that the UN take up peacekeeping duties in Yugoslavia. The Security Council undertook to immediately consider the recommendations of the Secretary-General and take an appropriate decision. It explicitly demands that the parties to the conflict in Yugoslavia fully respect the Geneva Agreement of November 23. Thus, the UN peacekeeping operation began with the condition of maintaining the ceasefire, to which the Croatian side also agreed, with the aim of establishing peace and gaining independence without significant loss of life and destruction.[[297]](#footnote-297)

The basic concept of the plan called for United Nations forces and police monitors (UNPROFOR) to be stationed in UN-protected areas on Croatian territory, other armed forces to leave, police monitors to supervise the work of local police, and to ensure the protection of human rights. The Yugoslav Army would withdraw from all of Croatia. UNPROFOR, in cooperation with UN humanitarian agencies, was to ensure the peaceful and safe return of displaced persons to "protected areas".[[298]](#footnote-298)

The implementation of the Vence Plan on the ground became very difficult due to the Serbian offensives of the Yugoslav army on the territory of Croatia, always in the name of protecting the local Serbs living in Croatia. On the other hand, the Croatian side emphasized that the revolts of the Serbian population in Croatia were part of the strategy of the Yugoslav army and that the issue was how to protect Croatia from aggression, not how to protect the Serbs, and that the problem of the local Serbs can only be solved after to solve the problem of Serbian aggression against Croatia, therefore the Croatian side was not completely satisfied with the Vence plan, however, it saw it as a good opportunity for the permanent independence of Croatia.[[299]](#footnote-299)

On the other hand, the Serbian side through military actions tried to control some territories before a final agreement on the final implementation of the Vence Plan, but after the resistance of the Croatian army, as well as seeing that Croatia would soon gain international recognition, on January 2, 1992, in Sarajevo, the Serbian side agreed to the complete suspension of hostilities.

Wanting to sign a peace plan before international recognition of Croatia, the Serbian side confirmed that it fully accepts the plan and will fully cooperate in its implementation, but at the same time asked for additional guarantees for the local Serbian communities in Croatia.[[300]](#footnote-300)

The deployment of UN forces would not change the status quo, while the laws and institutions of the Republic of Croatia would not apply in the areas under the protection of the UN. This interpretation is contrary to the spirit and meaning of the Vance Plan and to the opinion of the International Arbitration Commission chaired by R. Badinter, according to which the existing borders of the Republic of Croatia are considered a border in the sense of international law and under which local Serb communities have no right to self-determination. Goulding's interpretation questioned the territorial integrity of the Republic of Croatia, encouraged Serbian separatist aspirations, and limited the peacekeeping force of Croatia ??? . he Croatian side protested and incorporated in its new Constitution the requested additions regarding the protection of human rights and the rights of ethnic communities and the international control of this protection. But this had no fundamental impact on the status of "protected areas", Goulding's assurances only encouraged local rebel forces to ignore Croat's assurances.[[301]](#footnote-301)

As far as the reactions of the European countries, Germany maintained close interest for the developments in Yugoslavia. Germany was not alone in softening its support for a united Yugoslavia, as well British Foreign Secretary Douglas Hurd also felt compelled to qualify an earlier statement in support of the 'integrity of Yugoslavia' by adding that it did not it must be accomplished by the use of force.

Throughout the summer and fall of 1991, differences continued between Germany and its partners over the modality of recognition of Croatia and Slovenia, rather than whether these states should be recognized at all. Even France, the most vocal critic of German action throughout the period, had come to the conclusion by the end of the summer that recognition would finally be extended to those republics. At the end of August, as the Yugoslav People's Army (JNA) launched its fierce offensive against the Croatian city of Vukovar, Hubert Vedrine, the Secretary General of the Elysee, received Croatian President Franjo Tudjman and offered him guarantees of international recognition on the condition that Croatia guaranteed the rights of its Serbian minority.[[302]](#footnote-302)

In order to deal with the legal aspect of Croatia's path towards independence, as well as its international recognition, the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) must initially be analyzed, in which the 'right to secession' of 'nations of Yugoslavia, starting from the right of every nation to self-determination' was implemented. Since there was no mechanism in the Constitution to exercise the right to secede, Croatia declared its independence on June 25, 1991. Article I of the Constitutional Resolution Concerning the Sovereignty and Independence of the Republic of Croatia declares Croatia as a sovereign and independent state.[[303]](#footnote-303)

On the other hand, the same resolution states that Croatia will start the process of gaining international recognition.' This statement is interesting from a legal point of view, I take into account that Croatia cannot initiate international recognition, as it is completely up to third countries to recognize its statehood. Otherwise, this resolution can be interpreted as a signal to third countries that demonstrates Croatia's readiness for international recognition and as a desire to be internationally recognized.[[304]](#footnote-304) When Croatia declared its independence to break away from Yugoslavia, it appealed for the right to self-determination.

The right to self-determination is guaranteed in the United Nations Charter, Article 1.2 which recognizes the right to self-determination for all peoples, although the Charter does not define what is to be understood by the word "people" or how the right to self-determination is to be exercised. theirs. On the other hand, the Badinter Arbitration Commission held the position that "in its current state of development, international law does not make clear all the consequences derived from this principle". The critical statement of the Arbitration Commission was Opinion 2, in response to the question: 'Does the Serbian population in Croatia and Bosnia-Herzegovina, as one of the constituent peoples of Yugoslavia, have the right to self-determination?' The Commission in its response had replaced the term 'communities' with the term 'people' by assigning rights to communities within existing states, as well as recognizing 'that within a state, different ethnic, religious or linguistic communities may exist', and they have to benefit from "all basic human rights and freedoms recognized in international law, including, under favorable conditions, the right to choose their national identity".[[305]](#footnote-305)

On December 16, 1991, the Council of Ministers of the European Community in Brussels, at its meeting, authorized the Badinter Comission to evaluate within one month the conditions of the interested parties (Croatia, Slovenia, but also Macedonia and Bosnia and Herzegovina) to accept the recognition of the inviolability of the republican borders, nuclear non-proliferation, peaceful resolution of conflicts and protection of human and minority rights. Similarly, as in the pro-unity approach, Germany ignored the work of the Commissiob and without waiting for the results whether the conditions were met or not, it recognized the independence of Slovenia and Croatia on December 23, 1991,.

The process of creating the Croatian state continued in the field of international law, with the important role of the International Conference on Yugoslavia and its Arbitration Committee, which consisted of the presidents of the constitutional courts of the five countries of the European Economic Community, which set preconditions for the recognition of the new states of Eastern Europe, such as the protection of human rights, the rule of law, democracy and the protection of national minorities, which necessarily influenced the constitutions of the former Yugoslav republics that sought recognition. In its opinion, the Arbitration Commission, responding to Croatia's request for statehood recognition, had concluded the country meets the criteria for recognition but requested the amendment of the Constitutional Law on Human Rights and Freedoms and the Rights of Communities or Minorities Ethnic and National. [[306]](#footnote-306)

These changes Croatia accepted and did so immediately after it got recognition in January 1992. In this context, the Arbitration Commission predicted that the declarations of independence of the individual republics were not 'secessions' (as Serbia claimed), but part of the process of the 'dissolution' of the federal state, which disappeared while each of the five states declaring independence will be considered a new state an

d an equal successor of the absent SFRY (as claimed by the four republics.[[307]](#footnote-307)

The Arbitration Committee found that the right to self-determination granted by international law provided every citizen of these two republics, including Serbs, with the right to be recognized as a member of a particular ethnic group and another group and to enjoy other human and minority rights in these republics.[[308]](#footnote-308) Even though the European Community recognized Slovenia and Croatia on January 15th 1992 long after the Yugoslav People's Army had started a ten-day conflict with Slovenia and had entered a much longer war that resulted in the occupation and "ethnic cleansing" of nearly a third of Croatia, the move was met with harsh international criticism, with many accusing the EC of being hasty and premature, and also of being the primary cause of the later dramatic developments.

In most academic literature, the idea that Germany's policy of recognition towards Slovenia and Croatia was wrong prevails and is even cited as one of the reasons why the war remains implicitly or explicitly uncontested. This is the approach adopted, for example, by the former ambassador Yugoslav in the European community Mihailo Crnobrnja; by former US ambassador to Belgrade (until 1992), Warren Zimmermann; by Britain's "peace broker" and EU representative at the International Conference on the former Yugoslavia, Lord Owen; and, most notably, by Susan Woodward, senior adviser to the UN Special Representative for Yugoslavia and the former Yugoslavia, Yashuki Akashi.[[309]](#footnote-309)

The process of international recognition of the Republic of Croatia ran collaterally. Croatia's high level of cooperativity, the guarantees given in the Constitution for the protection of human and ethnic rights, with special guarantees for the autonomy of the Serbian ethnic community in Croatia, speeded up recognition of the Republic of Croatia as a sovereign and independent state within its existing borders, and its acceptance in the UN and other international organizations

4.3. [The Hague Conference of the European Community 1991](#_Toc535178501)

The European Community and its member states through a joint declaration agreed to convene a peace conference for Yugoslavia, in which the Presidency and the Federal Government of Yugoslavia, the presidents of the six republics as well as the President of the Council of the European Community, representatives of the Commission of the European Community and member states of the European Community.[[310]](#footnote-310)

With the outbreak of the conflict in Yugoslavia, the EC's foreign ministers expressed their ambition to mediate in resolving the crisis. This was to become – to paraphrase the historic words of Winston Churchill – 'Europe's finest hour'. The Americans should not be brought in this was a crisis that happened in Europe's backyard, where it had high interests at stake. In this way, the EU wanted to send a signal to the United States that they could no longer play the leading role in European security issues. Moreover, the Foreign Minister of Luxembourg, acting as the president of the Council of Ministers, said in this regard: “If a problem can be solved by Europeans, it is the Yugoslav problem. This is a European country, and it does not depend on the Americans or anyone else" similarly Jacques Delors, president of the European Commission, stated: "We do not interfere in American affairs. Hopefully they will have enough respect not to interfere with ours”.[[311]](#footnote-311)

Despite the ambitions to get the situation under control, there were major differences between the EU countries, as according to the United Kingdom, the EC was not yet ready for a common foreign and security policy (CFSP) in such a complex region as the Balkans. On the other hand, the Gulf War had taught us that only the US had been able to expel the Iraqi army from Kuwait. The Europeans simply lacked the military capacity to do the same.

France, Italy, Germany, and other member states did not agree. On one side was France, which had a historical alliance with Serbia, and could only agree to Slovenian and Croatian independence if these processes were to be developed peacefully and democratically but she believed strongly in the need for arbitration, since the conflict was of a legal nature. Italy supported France: it had a very close working relationship with the Yugoslav government. The Netherlands, which hold the presidency of the Council, took a different view: the conflict was political in nature, so it was vital that peace be restored by a peace conference.[[312]](#footnote-312)

The situation began to explode into conflict at the end of June 1991, when the Slovenian and Croatian parliaments declared independence and sovereignty. As soon as possible, the Yugoslav government retaliated by seizing control of all airports located within Slovenia's borders with Italy, Austria, and Hungary. In order to find a solution to the conflict, the European Community in coordination with the interested parties convened a Peace Conference for Yugoslavia in The Hague (later to be continued in Brussels) which aimed to mediate the cessation of the conflict in the former Yugoslavia and for achieving a comprehensive solution to the Yugoslav crisis. [[313]](#footnote-313)

The Hague Conference of the European Community began its work in September 1991 and was chaired by the British Lord Carrington. This conference was another failed attempt which began to keep Yugoslavia alive and ended by considering the possibility of breaking it up.[[314]](#footnote-314) It is significant that one of the obstacles in the Hague was the issue of Kosovo, which was raised by the Slovenians, where later the Slovenian foreign minister Dimitrije Rupel recalled: The only issue that really worried the Serbs in the Hague was the issue of Kosovo.[[315]](#footnote-315)

The Hague Conference developed the work in two commissions: 1. Badinter Commission and 2. Commission for Succession. Badinter relied on the 1974 Constitution of the RSFJ (in point 1 c), while Kosovo was not recognizing the constituent element in the Yugoslav Federation relying on point 1. b of this constitution. Thus, by the decision of the Badinter Commission, Kosovo remained part of Serbia and Yugoslavia remaining from the successive divisions of the republics, whose political will was recognized internationally.[[316]](#footnote-316)

Although the Badinter Commission internationally legitimized the breakup of Yugoslavia and recognized its internal borders as international borders, this right was denied to Kosovo forcing it to choose armed struggle as a means of victory for its freedom.[[317]](#footnote-317) The solution of the ethnic issues was drawn up in a document entitled: "Elements of the Agreement for the Global Settlement of the Yugoslav Crisis." According to this document, ethnic issues were defined in two terms: Ethnic groups (groups that are not the majority in a territory) and national groups (groups that are the majority in a territory). For the status of national groups in Yugoslavia, the Document applied a twofold solution, advancing groups living in the majority in a territory and granting them a more advanced form of status called "special status." This form of status was prepared for Kosovo, so it was dedicated and reserved in particular for Kosovo.[[318]](#footnote-318)

This status offered fewer rights for Albanians than they enjoyed under the 1974 Constitution. Although this draft document had few rights for the Albanians, it still this draft document was still rejected by the Serbs, who as a sign of reaction had boycotted The Hague Conference.[[319]](#footnote-319) Conference boycotting had become a standard practice in Serbian politics and had frequently produced results. Even now, with Kosovo's recognition as an internationally recognized state, the practice is still prevalent in many meetings and conferences. How far the resolution of the Kosovo issue by peaceful means has gone, one can only imagine, when the Serbs reject even a status that grants fewer rights than the Kosovo Albanians had with the 1974 Constitution!

The European conference on Yugoslavia, which was held in The Hague in 1991, where for the first time the disintegration of the former Yugoslavia was addressed on an international scale, Kosovo was ignored precisely because of the favorable position that Serbia had on the international level. Thus, Milosevic managed to make his participation conditional on the elimination of the Kosovo issue from the agenda.[[320]](#footnote-320) Now one thing was clear the four Yugoslav republics were moving towards independence, starting with Slovenia and Croatia which were openly and almost unilaterally supported by Germany. Thus, in support of them, on November 27, 1991, German Chancellor Helmut Kohl before the German Bundestag set the date December 24 when Germany will recognize the independence of Slovenia and Croatia.[[321]](#footnote-321)

The European Community and its member states had the power to appoint three members of the Arbitration Commission, and for this, they appointed the President of the French "Constitutional Counselor", the President of the German Federal Constitutional Court, and the President of the Italian Constitutional Court. The Yugoslav Federal Presidency had the right to unanimously appoint the other two members. However, since this body could not reach a unanimous agreement on the appointment, the three members of the Arbitration Commission chosen by the European Community appointed two other members, namely the President of the Constitutional Court of Spain and the President of the Belgian Court of Conflicts.[[322]](#footnote-322)

# [**4.4. The Badinter Arbitration Commission and the Dissolution of Yugoslavia**](#_Toc535178499)

The European Community took the first important step to deal with the crisis in Yugoslavia, in September 1991, three months after the start of the war following the declaration of independence of Slovenia and Croatia, by creating an arbitration commission, known as the Badinter Commission according to its chief jurist, Robert Badinter, president of the French Constitutional Court. The Commission was mandated to help resolve disputes that might arise in the context of peace negotiations between the Yugoslav parties. The Commission was formed to regulate the legal basis of what had begun to happen between the republics of the former Yugoslavia, and the Badinter Commission Arbitration had the power of international adjudication.[[323]](#footnote-323) The mandate of the Commission was somewhat vague; it was initially envisaged to decide by means of binding decisions at the request of "valid Yugoslav authorities". Although no consultative procedure was formally established, the Arbitration Committee was convened at the request of Lord Carrington, in his capacity as President of the Peace Conference, to issue an opinion (Opinion No. 1); similar requests were then made by the Republic of Serbia, who tried to use the Conference as a mediator (Opinions No. 2 and 3) and the EEC Council of Ministers (Opinions No. 4 to 7).[[324]](#footnote-324)

European Community policy had brought an innovation regarding the recognition of new states, going beyond the traditional international legal criteria for citizenship." In general, candidates for recognition are defined as states that "constituted themselves on a democratic basis, accepted appropriate international obligations and committed in good faith to a peace process and negotiations." These criteria set by the EC were intended to ensure that issues arising from the transition in the former Soviet Union and Yugoslavia would be resolved through negotiations, while states created through peaceful processes would guarantee respect for the rule of law, democracy, and human rights, with a special focus on minority rights.[[325]](#footnote-325)

Also, through a statement, it was emphasized that the Yugoslav republics seeking independence had to request recognition by December 23, 1991, while in response to the request, the Badinter Commission would make a decision by January 15, 1992. In such circumstances, with a letter on December 20, 1991, Bosnia and Herzegovina requested recognition from the European Community. In its response, the Badinter Commission in its opinion dated January 11, 1992, emphasized that although the Bosnian authorities had taken the commitments required by the EC recognition policy, "Serb members of the [Bosnian] presidency did not comply with that declaration and undertaking", and that the Serbs demanded the same for secession from Bosnia and Herzegovina.[[326]](#footnote-326) Therefore, the commission concluded that "the will of the peoples of Bosnia and Herzegovina to establish itself as a sovereign and independent state cannot be considered to have been fully established. The commission left open the possibility of revision, if the applying republic for recognition offers adequate guarantees through a referendum of all citizens of SRBH without distinction, conducted under international supervision.

Taking this suggestion into account, Bosnia held a referendum from March 29 to April 1, 1992. The Bosnian Serbs, who made up 31 percent of the republic's population, boycotted the vote. With a turnout of 63.4 percent, the pro-independence vote exceeded 99 percent.[[327]](#footnote-327) Convinced that recognition would help avert the violence in Bosnia that had been sparked by Croatia's declaration of independence, the EC and the United States issued a joint statement on March 10, 1992, expressing their willingness to recognize the Republic of Bosnia and Herzegovina. [[328]](#footnote-328)

The EC issued a statement on April 6 indicating its intention to recognize Bosnia the following day, and on April 7 the United States issued a statement reflecting the (first) Bush administration's belief that Bosnia, Croatia, and Slovenia met "the criteria of necessary for recognition." Recognition from other countries soon followed.[[329]](#footnote-329) The results were disastrous, on April 6, 1992, in anticipation of EC recognition the next day, Bosnian Serb rebels attacked Sarajevo's Holiday Inn, heralding the start of an armed war that would ravage Bosnia for three and a half years.

The EC recognition process forced Bosnia and Herzegovina to seek recognition under arms, while the Badinter Commission prompted another disastrous development when it suggested that Bosnia hold a referendum. The EC's thoughtless application of democratic processes was, proverbially, like pouring kerosene on a fire.[[330]](#footnote-330)

The four requested opinions were delivered on 14 January 1991. They were concerned with the question of whether the Republic of Croatia, Macedonia, and Slovenia, which had formally requested recognition by the European Economic Community and its Member States, had fulfilled the conditions laid down by the Council of Ministers of the European Community on 16 December 1991,. Based on these conditions, the Arbitration Committee decided that the Republic of Macedonia and Slovenia met all the conditions for recognition, while the Republic of Croatia had a reservation regarding the rights of minorities, and on the other hand, the request for recognition made by Bosnia-Herzegovina, in the absence of a referendum, was rejected.[[331]](#footnote-331)

The main Serbian issue concerned the right to self-determination of the Serbian population in Croatia and Bosnia-Herzegovina, while the second issue concerned the determination of internal borders, in other words, the identification of borders between republics.[[332]](#footnote-332) At the heart of the Badinter commission solution was the separation of territoriality and self-determination from the ethnic principle. The commission proposed the marked advancement of 'ethnic and minority' rights, upholding the criterion of 'internal boundaries' for the delimitation of territory, and adopted it as a general principle rather than simply the post-colonial principles of international law. According to Pellet, who was the commission's rapporteur (and a well-known French international lawyer, to whom the commission sought guidance on international law), the main goal was to avoid territorial disputes by protecting the rights of minority communities within the new states. Such agreements, where ethnicity would be separated from citizenship, would be meritorious for guaranteeing people's rights and avoiding the fragmentation and weakening of states. [[333]](#footnote-333)

The territorial principle was clearly presented in Opinion 3, in response to the question: "Can the internal borders between Croatia and Serbia and between Bosnia and Herzegovina and Serbia be considered borders in terms of public international law?" The Commission determined that except when the parties agree, otherwise, the former borders become borders protected by international law".

The Commission based its decision on two principles: respect for the territorial status quo and, 'in particular the principle of uti possidetis', which he claimed as a general principle, applicable to all cases where the independence of a territorial entity was being claimed.[[334]](#footnote-334)

Although named an "Arbitration commission", the Badinter Commission lacked the features of an arbitration forum, which is usually created by the parties to resolve a dispute through a compromise in which the parties also agree on the applicable law.[[335]](#footnote-335) On the other hand, all the commission's opinions were of a consultative nature.

The Commission's competence to issue the required opinions was challenged twice by the Federal Republic of Yugoslavia (FRY) and twice upheld by the Commission, the first time through a formal "mediation decision" and the second time through informal "feedback" from Commission members (collective data). [[336]](#footnote-336)

1) In June 1992, Lord Carrington, Chairman of the Peace Conference in Yugoslavia, requested the Commission's opinion on three issues relating to the status of the FRY in international law. The first issue required the opinion if the dissolution of the SFRJ was complete; the second, whether the FRY was the only successor of the SFRJ or is it a new state, whose recognition was subject to the guidelines of the European Community; and the third asked for an opinion regarding the solution of the problem of state succession between successor states. The competence of the Commission to express itself on these issues was jointly opposed by the Presidents of Serbia and Montenegro on behalf of the FRY, with the claim that "all issues involved in the overall solution of the Yugoslav crisis should be resolved in an agreement between the FR Yugoslavia and all former Yugoslav republics, and that "all legal disputes which cannot be settled by agreement ... should be referred to the International Court of Justice, as the principal judicial organ of the United Nations".[[337]](#footnote-337) Moreover, Serbia also objected to the right of the Commission to declare its competence, on the other hand, the Commission took an "intermediary decision" rejecting the objection to its competence and proceeded with issuing the three requested opinions (no 8, 9, and 10), in a way that is unfavorable for the position of the FRY.[[338]](#footnote-338)

2) The Arbitration Commission was reformed in January 1993 under new conditions with a partially new composition, as well as a more defined competence consisting of contentious and advisory jurisdiction." While the Commission was authorized to give decisions "with force binding on the parties concerned" for "any dispute submitted to it by the parties with the authorization of the Co-Chairs of the Steering Committee of the [International] Conference [for the former Yugoslavia]". Also, unlike before, the Commission was authorized to grant advice specifically on “any legal matter” to be “submitted by the Co-Chairs of the Steering Committee of the Conference.” The paragraph on advisory jurisdiction in the Commission's new arbitration governing instrument, which includes the formula "any matter of law," was clearly modeled after the provisions of Article 96 of the UN Charter and Article 65 of the ICJ Statute. The Commission's dual jurisdiction is evidently parallel to that of the ICJ.

In this round as well, the Arbitration Commission adopted and published official rules of procedure on April 26, 1993." However, these rules differed greatly from those of the ICJ, especially in the informality and secrecy of the procedures provided, and in the hope that the advisory procedure would not normally include hearings. Furthermore, ad hoc judges would not be allowed in the Commission's advisory proceedings.[[339]](#footnote-339)

Arbitration Commission, in Opinion 1 of November 29, 1991, the Badinter Commission found that the Socialist Federal Republic of Yugoslavia was in a process of dissolution, while in Opinion 8 of the Arbitration Commission, of July 4, 1992, since Slovenia, Croatia, and Bosnia-Herzegovina were already recognized as independent states and had become members of the UN, the Commission noted that the process of dissolution had been completed.

This made it clear to the Federal Republic of Yugoslavia that they could not continue the international legal personality of the Socialist Federal Republic of Yugoslavia, but, according to the Declaration and Opinion 1 of the European Community, Serbia and Montenegro could choose to establish a new association.[[340]](#footnote-340)

Despite the finding that the RSFJ is in the process of disintegration, the Commission emphasized again that Yugoslav territorial unity can be preserved if “the republics want to form a new association with democratic institutions". However, if continuity occurs, then the republics will have to implement it in accordance with the principles and rules of international law, especially based on the principle of respect for human rights and the rights of peoples and minorities.[[341]](#footnote-341)

The document in question de facto meant the international legitimacy of the aspirations of the republics for independence, which was a direct influence on the process of the dissolution of the Yugoslav Federation and the recognition of the new states.[[342]](#footnote-342)

The Badinter Commission issued its first opinion on 29 November 1991. The opinion was of particular importance in that it paved the way for a final settlement of the legal status of the former Yugoslavia under international law applicable in cases of state disintegration, that "the Socialist Federal Republic of Yugoslavia is in the process of dissolution". Although this opinion encountered open and negative reactions from the Serbian side, it found support from the UN Security Council, the UN General Assembly, and other international bodies. Furthermore, even the national courts of various countries, when faced with the issue of Yugoslav heritage, supported the above opinions of the Badinter Commission and the authoritative decisions of the UN Security Council and the UN General Assembly.[[343]](#footnote-343) Contrary to international law on state succession, Serbia or Serbian authorities consistently considered the Federal Republic of Yugoslavia (FRY), and later the State Union of Serbia and Montenegro, to be the sole successor to the former Yugoslavia.

The issue of Yugoslav succession was formally discussed for the first time in the Working Group on Heritage in 1992, while the underlying issues continued to be addressed within the framework of the Conference on the Former Yugoslavia, in Geneva and London from 1992 until the Dayton Conference in 1995. After the conclusion of the Dayton Peace Agreement of 1995, the only remaining division of the Conference was the group charged with dealing with the succession of the former Yugoslavia, The Peace Implementation Council, established by Dayton, delegated the issue of the legacy of the former Yugoslavia to the High Representative for Bosnia and Herzegovina.[[344]](#footnote-344) The Succession agreement has two separate parts, which together form a unified document.

In its basic text, the Succession Agreement addresses the main issues of Yugoslav heritage discussed since 1992, including the legal status of the former Yugoslav republics vis-à-vis their predecessor state; the role of the Vienna Convention I and II; the role of the principle of equality; the scope and extent of the mutual rights and obligations of successor states; and finally, issues of institutional cooperation between equal heritage subjects in the former Yugoslavia.[[345]](#footnote-345)

The second part of the Succession greement consists of seven annexes, which cover the relevant segments of the inheritance and the rights and duties as follows: 1. Annex ‘‘A’’ --- Movable and Immovable Property; 2. Annex ‘‘B’’ --- Diplomatic and Consular Properties; 3. Annex ‘‘C’’ --- Financial Assets and Liabilities; 4. Annex ‘‘D’’ --- Archives; 5. Annex ‘‘E’’ --- Pensions; 6. Annex ‘‘F’’ --- Other Rights, Interests, and Liabilities; and 7. Annex ‘‘G’’ --- Private Property and Acquired Rights.[[346]](#footnote-346)

# **4.5. Independence of Bosnia and Herzegovina and Macedonia**

These two Yugoslav republics' histories are largely representative of the power dynamics that prevailed within the Yugoslav federation throughout all stages of its growth. As mentioned, the internal balance of forces led to their formation following World War II. Their creation was primarily intended to prevent the Serb-Croat conflict over Bosnia and Herzegovina and to check and balance Serbia's southward expansion (FYROM).[[347]](#footnote-347)

The independence of these two countries was, to use Meier's words, unwanted.[[348]](#footnote-348) However, each case has a different route to complete independence as well as specific reasons for it. This is not to argue that the fundamental ideas underlying the power dynamics that gave rise to them several decades ago have changed. The League of Communists of Macedonia (LCM) Congress in November 1989 marked the beginning of the anti-Serbian trend in Macedonian politics. The long-standing, pro-Serbian party leadership was voted out of office in this congress.

Milosevic's famous speech on June 28, 1989, on the Field of the Blackbirds in Kosovo, where he alluded to certain aspects of Serbian medieval history that also covered Macedonia, further demonstrated these Serbian intentions. Milosevic visited the Macedonian capital of Skopje in response to the Macedonians' demand for an explanation. However, his actions were incredibly haughty, ignoring the Macedonians' claims over the Monastery of Prohor Pcinjski. This is significant for the country's national consciousness today but was previously assigned to Serbia due to a decision made by Tito's Communists during the war when the inter-republican borders were being drawn. It was clear to Macedonian officials that Milosevic's gesture was a sign of his desire to include Macedonia, which the Serbs had called 'South Serbia' in the interwar period, among 'Serbian territories'[[349]](#footnote-349) In fact, this was one of the aims of the 1986 Memorandum.

In contrast to earlier pro-Serbian officials, the new Macedonian Communists who emerged from the congress also had to prepare for their independence, which served as a signal to Milosevic that this republic did not support or endorse Belgrade's course. But Macedonia's independence referendum in September 1991 was even more lenient than Croatia's, raising questions about continued cohabitation within a reorganized Yugoslav federation. In actuality, this was the main goal of the Macedonian and Bosnian-Herzegovinan representatives (Gligorov and Izetbegovic) when they unveiled their compromise plan for a new system in Yugoslavia at the beginning of June 1991. Though it was much closer to the former, it was a counterproposal to the Slovenian-Croatian confederative.

The Bosnian-Macedonian proposal represented an attempt to preserve some sort of Yugoslavia and, if this would prove impossible, to realize the right to self-determination in a democratic and civilized manner[[350]](#footnote-350). The Bosnian-Macedonian proposal anticipated that the members of the new Yugoslav association would be considered legal entities, as they would inevitably require external recognition. It also predicted that Yugoslavia would have a common foreign policy, although its member states would retain the freedom to pursue independent foreign policy initiatives, and that it would be a single economic, customs, and currency zone.

Both Macedonia and Bosnia-Herzegovina filed their applications for international recognition as required by the EC Hague Conference on Yugoslavia after their joint proposal was rejected. Later, Gligorov successfully negotiated the Yugoslav military's withdrawal from Macedonia during the period that the military was centered in and around Bosnia-Herzegovina (February–March 1992). The military of the former Yugoslavia left Macedonia, presumably hoping that this republic would be unable to maintain its stability.[[351]](#footnote-351) Nonetheless, Macedonia was able to hold onto its tenuous peace thanks to two strategies: first, redefining its own constitution to designate that sovereignty derives from the citizens and belongs to the citizens and not nations (Art. 2 of the Constitution); and second, winning the support of the local Albanian population, which voted in favor of the country's independence.

The remainder of Macedonia's struggle to solidify its international statehood centered on the international recognition and eventually, country’s name. Greece took issue with its name because they saw it as implying territorial claims. [[352]](#footnote-352) In response to this action, Macedonia declared in a constitutional amendment that it would not be involved in any "interference" with the affected states' sovereign rights or internal affairs, a move that was made at the insistence of the West European states. Keeping with the same theme, an additional amendment declared that Macedonia had no territorial claims against its neighbors.[[353]](#footnote-353)

With the Yugoslav army out of Macedonia and the guarantees given to its neighbors, the new state of Macedonia was more or less secured in its way towards full independence[[354]](#footnote-354). This indicates that, notwithstanding a few challenges as mentioned above, the Macedonian quest for (territorial) self-determination was accomplished in its entirety. In the case of Bosnia-Herzegovina, this was not true. When the Communists of Bosnia-Herzegovina sided with Slovenes and Croats in 1988, it was first clear that the League of Communists of Yugoslavia's Central Committee had made an ethnically motivated decision. This was a worrying indication of the ethnic realities in Bosnia-Herzegovina, where there were very few ethnically pure municipalities.

The delayed democratization process in this republic had to take this ethnic reality into account. This republic's parliament adopted a new constitution in January 1990, introducing the idea of a multi-party system. However, the parliament had to address the reality of ethnic diversity, and in an attempt to defuse ethnic tensions, it passed a law in April 1990 prohibiting the formation of political parties using national names.[[355]](#footnote-355) Despite these legal constraints, in the first free elections, held on November 18, 1990, national parties of the three dominant communities won an overwhelming majority.

Following the elections, Radovan Karadjic, the leader of the Serbian Democratic Party later convicted as war criminal, declared a day after elections that the 'conditions had now been established for the three national parties (Muslims, Serbs and Croats), as legitimate representatives of their peoples, to reach an agreement as to the future of Bosnia Herzegovina'. The Serbs clearly stood for national (ethnic) self-determination, a line pursued throughout 1990 to 1995. Only after the Dayton Accords (1995) did territorial self-determination enter the scene in this republic. In fact, the Dayton Accords shattered down the Serbian (and Croatian) illusions about ethnic self-determination within Bosnia and Herzegovina[[356]](#footnote-356). The Bosnian Serbs have been pursuing this ethnically based self-determination since the beginning of 1991, and it was already underway in this republic in conjunction with the constitutional changes. With time, the Serbs withdrew from the Bosnia-Herzegovina constitutional order and demanded the establishment of independent state structures. The new constitution for Bosnia-Herzegovina was drafted by the republic's organs in 1991. In November 1991, Bosnia and Herzegovina's draft constitution was completed. The sort of self-determination that should be practiced in this republic was at stake.[[357]](#footnote-357)

The constitutional commission of Bosnia-Herzegovina entrusted with the above work on the new constitution faced the same dilemmas and difficulties regarding the type of self-determination, the dilemmas already being aired in the public opinion at large. These dilemmas centered on two issues: the status of Bosnia-Herzegovina as a state within the Yugoslav federation and, second, the status of its component nations in the future redefinition of the internal structure of Bosnia- Herzegovina.

The Serbian Democratic Party (SDS) was firmly in favor of keeping Bosnia andHerzegovina within Milosevic's Yugoslavia. As for the second issue, Bosnian Serbs also held the view that the sovereigns of the republic were its three ethnic communities (Muslims, Serbs and Croats), not the state of Bosnia-Herzegovina as a whole. In the final draft of the constitution (November 1991), the Muslim-Croat view on (territorially-based) self-determination prevailed, defining Bosnia- Herzegovina as 'a common state of three equal ethnic communities, Serbs, Muslims and Croats, with the right to full independence in a case Yugoslavia dissolved'.[[358]](#footnote-358) This was the position held by the majority of, and it was made known to the international community as well as other Yugoslav republics (through the already mentioned Macedonian-Bosnian peace plan of June 1991, initially proposed in May 1991). Based on this, the state of Bosnia andHerzegovina, along with other Yugoslav republics, applied for international recognition of its statehood in December 1991, held its own independence referendum on March 1, 1992, and eventually received international recognition on April 6 and 7, 1992.[[359]](#footnote-359)

The actions of the state organs of Bosnia-Herzegovina after war broke out were also based on territorial self-determination of the state of Bosnia-Herzegovina as a whole, a stance clearly expressed in the so- called 'Platform for Action of the Bosnian Presidency During War Times', dated June 26, 1992.[[360]](#footnote-360)

By signing this agreement, the state of Bosnia-Herzegovina promised, via its institutions, not to recognize any regionalization or division of the nation based on ethnic criteria or along ethnic lines, particularly not if that division is accomplished through coercion.[[361]](#footnote-361) The latter dealt with the parallel authority structures—which began as so-called autonomies and eventually evolved into full republics—that the Serbs constructed during the Bosnian-Herzegovinian war. These Serb entities did not have a clear territorial base when they were formed.

In this way, Bosnia and Herzegovina became the first non-NATO state in which the Western Alliance conducted military operations. In order to secure and facilitate humanitarian operations, the UN imposed a "no-fly zone" over Bosnia in October, while in April 1993, NATO began enforcing the "no-fly zone". In early 1994, seeing the UN-EU efforts stall, the United States decided to undertake more active involvement, seeking to support diplomacy with the threat of NATO air power to protect safe zones and peacekeepers. the UN. The UN's failure to maintain "safe zones" justified the Clinton administration's decision to bypass the UN and the OSCE in favor of NATO. NATO agreed in July to use air power to defend UN forces if attacked and, in August, declared its readiness to respond with airstrikes.[[362]](#footnote-362)

The international community seemed unprepared to take decisive action to stop the conflict until brazen assaults by Bosnian Serbs on Muslim safe areas and revelations of concentration camps, massacres, and systematic rape exposed the ineffectual efforts of Europe and the United States. Seeing a hopeless situation and without the ability of the UN to end the conflict in Bosnia and Herzegovina, in August 1995, Richard Holbrooke stepped in to lead a new, aggressive effort to negotiate peace, which was ultimately to be supported by North Atlantic Treaty Organization (NATO) airstrikes, as well as accompanied by economic sanctions to t they ended the war.

After three months of frenzied diplomacy, Holbrooke and his team were able to negotiate a series of agreements on basic principles and a cease-fire that eventually led to the Dayton Accords, ending the bloodiest European conflict since World War II; in total, the Balkan wars caused more than 100,000 deaths.[[363]](#footnote-363) NATO's goal was primarily to lift the siege of Sarajevo and force the Bosnian Serbs to stop fighting and come to the negotiating table, initially targeting a small number of targets that, if destroyed, would not be adversely affected. In this way the strikes decreased the Bosnian Serbs’ ability to command and control their troops.[[364]](#footnote-364)

On September 1, NATO stopped the bombing, giving an ultimatum to Serbian forces to withdraw all heavy weapons within 12 miles of Sarajevo, to stop attacks on Sarajevo or other "safe areas" and to allow full freedom of movement for UN forces, and non-governmental organizations (NGOs) (including unrestricted use of Sarajevo airport). The Army of Republica Srpska did not obey NATO's ultimatum, thus forcing NATO to resume bombing on September 5.[[365]](#footnote-365)

Due to military defeat on the ground and NATO bombing from above, Serbian forces stopped their attacks and were forced to sit down and comply with negotiating terms, which took place at a US Air Force base in Dayton, Ohio. On November 21, 1995, at a US Air Force base in Dayton, Ohior, the presidents of Serbia, Croatia, and Bosnia-Herzegovina gathered with representatives of the Contact Group (consisting of NATO countries - such as the USA, France, Britain, Germany - and Russia) to discuss a peace agreement that ends the war in Bosnia. The road to the Dayton agreement was long and difficult, paved by NATO bombing, and successful negotiations in Geneva and New York, which resulted in the acceptance of basic principles after three weeks of talks at Wright Air Force Base -Patterson who finally brought about agreement.[[366]](#footnote-366)

The signing of the Dayton Peace Accords in Paris in 1995 by the presidents of Yugoslavia, Croatia, and Bosnia-Herzegovina had as their main task an end to the violence – something very desirable after the Srebrenica massacre, in which Bosnian Serb forces and paramilitaries killed 8,000 men and boys in a few days. To keep the peace the North Atlantic Alliance had landed a force of 60,000 troops (IFOR), tasked with separating the warring armies, collecting weapons, and destroying heavy artillery, a task which was carried out relatively quickly and successfully. Questions about NATO's mandate in Bosnia remained, for example when it came to arresting suspected war criminals. At the same time, major European powers and the US also began to focus on physical and political reconstruction, establish political institutions, rebuild badly damaged infrastructure, and ensure freedom of movement throughout B&H. Although important, these tasks were more difficult to achieve successfully than demilitarization.[[367]](#footnote-367)

On the other hand, the infrastructure was also rebuilt, providing significant money for post-war reconstruction, economic development, and transition, which initially There was little visible progress towards creating a political system that would bring Bosniak, Serb, and Croat parties and leaders (Bosnia's constituent peoples and the main warring parties) together in stable political coalitions. Instead, ethnic cleansing continued after the end of direct hostilities, the return of refugees was slow and undermined by local resistance, and none of the three main groups were willing to make the newly described state institutions (Annex IV of the DPA includes a constitution with a new political framework) of work.

Further, the non-military terms of the DPA were drafted with little attention to detail, and the civilian enforcers paled in comparison to the military (IFOR) in terms of numbers, resources, and mandate.[[368]](#footnote-368) The implementation of the Peace Agreement is not the first peacekeeping action of NATO as an Alliance under the authority of the Security Council.

This large-scale peacekeeping operation was in line with Security Council Resolution 1031 [[369]](#footnote-369), in which NATO will provide political and military leadership for IFOR as a whole, rather than cooperating with the existing (multifunctional) peace or traditional) of the United Nations. The retention of forces such as UNPROFOR warrants a closer examination of the legal nature of NATO's role within IFOR and how this may affect the Security Council Resolution 1031 assigns unified command and control of contributing states to IFOR, a coalition force created 'through or in cooperation' with NATO, but not identical to it. Based on Security Council Resolution 1031 NATO takes responsibility for the establishment of IFOR, while Annex 1-A24 goes much further by providing that 'IFOR will operate under the authority and subject to the direction and political control of the North Atlantic Council, through the NATO chain of command.[[370]](#footnote-370) Unlike international peacekeeping missions, such as the case of Kuwait with Security Council Resolution 678[[371]](#footnote-371), where the peacekeeping states cooperated with the Kuwaiti government, in the case of the peacekeeping mission in Bosnia and Herzegovina based on resolution 1031, states are required to coordinate with NATO and not with the Government of the Republic of Bosnia and Herzegovina.

The Republic of Bosnia and Herzegovina, in fact, had already negotiated before the deployment of IFOR. Before Security Council Resolution 1031 was adopted, it was preceded by a Status of Forces Agreement (SOFA) with NATO. SOFA gives NATO personnel unprecedented privileges and immunities, including 'the right to bivouac, maneuver, billet and uses any area or facility as required for support, training and operations'.[[372]](#footnote-372) However, the SOFA also expressly grants "non-NATO states and their personnel participating in the operation the same privileges and immunities as those granted under the [agreement] to NATO states and personnel." The Status of Forces Agreement and the Transit Agreement[[373]](#footnote-373) negotiated at the same time with the Republic of Croatia and the Federal Republic of Yugoslavia respectively are identical in this respect: NATO and non-NATO troops are in exactly the same legal position with regard to the countries of the former Yugoslavia in which they may be stationed.[[374]](#footnote-374)

The fact that NATO has negotiated the Status of Forces and Transit Agreements on behalf of IFOR does not affect the status of the contributing states with respect to their sovereign authority to control their troops, nor the obligations that states have in relation to them.[[375]](#footnote-375) Each peacekeeping state was bound by the same obligations, just as it enjoyed the same rights as if it were acting individually in accordance with the Security Council resolution. Thus, IFOR forces operated in Bosnia and Herzegovina under the authority of the United Nations Security Council and are accountable only to the United Nations for their actions or inactions. However, the Security Council made a significant concession to the view of diplomats at Dayton by asking contributing states to act 'through or in cooperation' with NATO.[[376]](#footnote-376)

A resolution of that session decided that Serbian/Croatian, Slovenian, and Macedonian were equal languages throughout Yugoslav territory and that the state would be a federation that would also include a Macedonian republic. It was the first time in its history that the Macedonian language was recognized as an official language in any state, and Macedonia became part of a federal state on equal terms with all other republics of the federation.[[377]](#footnote-377)

Modern Contemorary Macedonia was established in 1944 as one of the six constituent republics of Federal Yugoslavia following the Second Session of AVNOJ. With the breakup of Yugoslavia in 1991, Macedonia declared independence on the referendum on September 8, 1991, and today it is a multi-party democratic state. Unlike the former republics of Yugoslavia, Macedonia had the good fortune of seceding from the Yugoslav Federation peacefully, without war. However, its full international recognition became a paradoxical obstacle, which was delayed due to Greek objections to the new state being called Macedonia. This was also the reason that the admission of Macedonia to the United Nations was blocked until April 1993, when it was done under the provisional reference “the Former Yugoslav Republic of Macedonia", until the final resolution of this dispute with Greece. Although the reference to the country's Yugoslav past would be used exclusively within the UN as a result of Greek pressure, other international institutions have also used the provisional reference.[[378]](#footnote-378)

In the transition from the 1960s to the 1970s in Yugoslavia, constitutional changes began under the slogan "for equality of peoples and nationalities". In that period, the trends for the decentralization of the Yugoslav Federation and the strengthening of the functions and independence of the republics and provinces were clearly observed.

The constitutional amendments adopted in 1971 were the basis of the constitutional reform of 1974. They were fully incorporated in the Constitution of Yugoslavia and, of course, in the Constitution of the Socialist Republic of Macedonia, which contributed to the political stability of the Federation and the stabilization of international relations.[[379]](#footnote-379)

During 1989, disagreements between the leaderships of several republics and provinces created serious friction. Under these circumstances, Macedonia led a more flexible policy, even to the detriment of Macedonian national interests. At that time, Vasil Tupurkovski, a member of the Presidency of the SFRY declared that the "coalition" between the communist parties of Slovenia and the communist parties of Croatia against the Socialist Republic of Serbia was unprincipled.[[380]](#footnote-380) Milan Pančevski, chairman of the Central Committee of the SKJ, with a one-year mandate from the Socialist Republic of Macedonia, tried to find a solution not to interrupt the work of the Congress and was ready to accept Slobodan Milosevic's proposal for defining a quorum new without the participation of delegates from Croatia and Slovenia. In these dramatic moments, the optimism of Ante Markovic came to the fore, who emphasized that "League of communists does not have to exist, but SFRJ will exist".[[381]](#footnote-381)

With the crisis caused by the Slovenian and Croatian secessionist processes, the democratically elected leadership of Macedonia was challenged by the threat of going to war against Slovenia and Croatia, in support of Serbia and Montenegro. The first multiparty elections were held in November 1990, while in January 1991, the Macedonian Assembly approved the Declaration of sovereignty, which was confirmed on referendum in September by 76% (50% required) of the population. The main secessionist actor was IMRO-DPMNU (Macedonian Internal Revolutionary Organization - Democratic Party of Macedonian National Unity), which had won the 1990 elections, as well as the coalition partner SMK-PDP (League of Communists of Macedonia - Party for Democratic Transformation). As a party with a historical tradition IMRO played the main role in Macedonian independence. On the other hand, the former communists under the elected President Kiro Gligorov favored the independence of the Republic within a reformed of the Yugoslav Federation based on a common currency, foreign policy, and army.

IMRO found support for Macedonian state sovereignty by using the argument of Macedonia's non-involvement in the war, thus gaining massive support in the army and population. Military drafting had already begun, when President Gligorov's negotiations with representatives of the Yugoslav National Army led to the withdrawal of YNA troops from Macedonian territory in February 199.

Macedonia was de facto sovereign, but not yet de jure as the international community was reluctant to recognize the independence. of the republic.[[382]](#footnote-382) Based on the results of the referendum, on November 17, 1991, the Assembly of Macedonia approved the new constitution, which defines the Republic of Macedonia as an independent and sovereign state.

On the other hand, the political pluralization in the Republic of Macedonia had started even earlier, when at the end of 1990, the first multiparty elections took place, while in June 1991, the parliament deleted the designation "socialist" from the name of the country.[[383]](#footnote-383)

In its preamble, the constitution of the Republic of Macedonia expressed the historical aspirations of Macedonians for their state, emphasizing that the Republic of Macedonia is a nation-state of the Macedonian people which safeguards the body of law to achieve equality of all citizens and lasting coexistence of the Macedonian people with Albanians, Turks,, Vlachs, Roma, and other nationalities inhabiting the Republic.[[384]](#footnote-384) The Constitution of the Republic of Macedonia evoked immediate reactions from the official Athens, which on November 29, 1991, through the spokesman of the Greek government, Emanuel Kalamidas, declared that: "The new Constitution of the Republic of Macedonia is a "multiple provocation". According to the official Athens, the Constitution of the Republic of Macedonia does not guarantee the inviolability of the borders, raises territorial claims against Greece, and opens the problem of the existence of a Macedonian minority in Greece.'

Shortly after these reactions, on December 4, 1991, Athens set its first conditions for recognizing the Republic of Macedonia. "It may not use the name Macedonia, as it has only a purely geographical and not an ethnic significance. It must also guarantee that there are no territorial claims against our country. Further, the Republic must admit that there is no "Macedonian minority" in Greece."[[385]](#footnote-385)

The biggest controversies were caused by the constitutional clauses that had already been introduced as amendment L VIII to the Constitution of the Socialist Republic of Macedonia on September 20, 1990, which stated: "The Socialist Republic of Macedonia takes care of the status and rights of that part of the Macedonian nation that lives in neighboring countries, takes care of the needs of Macedonians in other countries, displaced persons from Macedonia and citizens working temporarily abroad, supports them, helps their development and helps maintain contacts with them. [[386]](#footnote-386)

On the other hand, in Article 49. Clause 3 of the new Constitution, which only stated that the territory of the Republic was indivisible, its borders permanent and inviolable, did not convince the Greeks that these provisions gave them sufficient guarantees. On the contrary, such provisions were interpreted as an expression of the desire to interfere in the internal affairs of Greece and to pursue territorial expansion.[[387]](#footnote-387)

On the other hand, to moderate the tense situation with Athens, the president of the Republic of Macedonia, despite the opposition of the then-majority party VMRO-DPMNE, managed to approve two amendments to the Constitution to appease the Greeks. The amendments were approved on January 6, 1992, and were related to articles 3 and 49. Article 3 was supplemented with two sentences: 1. The Republic of Macedonia does not present territorial claims to any of the neighboring countries. 2. The borders of the Republic of Macedonia can be changed only in accordance with the Constitution on the basis of goodwill and in harmony with accepted international law.[[388]](#footnote-388)

Article 49, which protected the rights of the Macedonian minority and displaced Macedonians, was amended to read: "To achieve this status, the Republic of Macedonia will not interfere in the sovereign rights of other states or in their internal affairs." This change gave the guarantees of the Republic of Macedonia for non-interference in the internal affairs, guarantees which the Greek Government welcomed from Macedonia, although it was not completely satisfied. It was emphasized that allowing changes in boundaries excluding territorial losses does not mean giving up new acquisitions. Furthermore, no changes had been made to the preamble, which continued to cause concern in Greece.[[389]](#footnote-389)

On the other hand, international recognition was vital for the new Republic of Macedonia andf or this reason, the Macedonian politicians acted as one in cooperation with the European Community. The Macedonian Parliament issued a special statement in which it emphasized that the Republic of Macedonia will guarantee the rights of national minorities in its territory in accordance with the Charter of the United Nations. The same statement was sent to the Arbitration Committee for Yugoslavia, which, as it was already mentioned, on January 11, 1992, decided that Macedonia, like Slovenia, met the conditions for international recognition.[[390]](#footnote-390)

In this way, Macedonia began a diplomatic battle to seek the support of the nations that would recognize Macedonia's independence, which was reinforced by the report of the Arbitration Commission of the European Community (which has concluded that Macedonia has fulfilled all the conditions for international recognition.[[391]](#footnote-391)

The Badinter Commission considered this request in the light of the EC's 16 December EC Guidelines and its Declaration on Yugoslavia, which had a curious final paragraph, as follows: "The Community and its member states also require that the Yugoslav Republic undertakes, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims against a neighboring Community state and that it will not carry out hostile propaganda activities against a state neighbor State of the Community, including the use of a designation implying territorial claims."[[392]](#footnote-392) The Badinter Commission advised that the recognition of the republics should be done only when they fulfill the criteria of CSBE (Conference on Security and Cooperation in Europe, the predecessor of the OSCE) for democracy, offering guarantees in respect for the rights of minorities.

According to the commission, only Slovenia and Macedonia have fulfilled this condition. However, this advice was not followed by the European community, which delayed the recognition of Macedonia (due to the Greek veto), while on the other hand, it recognized the independence of Croatia, without waiting for guarantees for the protection of minorities and despite the risk of escalating civil war. The international community also ignored a commission ruling that the vote on Bosnia's independence would only be valid if it was supported by a significant number of the three main communities in the Republic.[[393]](#footnote-393)

Badinter's opinion did not satisfy the aspirations of Greece, which used all its political and diplomatic commitment to prevent Macedonia from entering the international arena. Faced with a serious blockade, the Macedonian government began negotiations, leading to a policy of compromise. President Gligorov's policy of concessions and negotiations resulted in some success, but Greece did not withdraw apart from using the name ‘Macedonia’ as the official title of the state, they were also concerned about Macedonia adopting for their state emblem and flag the Vergina sun borrowed from the tomb of Philip II in ancient Aigai (now Vergina). The Greeks persisted in trying to make the government in Skopje change the design of the new official flag. Thousands demonstrated in Thessaloniki and Athens against the Republic.

Greece’s veto delayed the recognition of the Republic of Macedonia by international bodies, like the UN and European Union countries.[[394]](#footnote-394) In the meantime, Greece managed to convince the EU regarding its attitude towards Macedonia, while Greek President Karamanlis emphasized that Skopje has no right, whether historical or ethnological, to use the name Macedonia. Thus, at a summit of the European Council held in Lisbon on June 26-27, 1992, it was decided that the Republic of Macedonia would be known "[…] by a name that did not include the term Macedonia." This stance was criticized by the government in Skopje, while the Macedonian parliament on June 3 passed a statement saying: "The name Macedonia is a fundamental description of the Macedonian nation, which constitutes the majority in the Republic of Macedonia, and to deny its existence would mean discrimination against him [...]".[[395]](#footnote-395)

In the Greek diplomatic battles to prevent the Republic of Macedonia from joining the UN, in January 1993, the Greek Foreign Minister, Mihalis Papakonstantinou, issued a memorandum to the UN in which he presented arguments against the admission of the Republic of Macedonia to the organization. His accusations were mainly related to the name Macedonia, according to which the territory of the Republic of Macedonia constituted only 38.5% of the territory of the region Macedonia, which is only a small percentage compared to the Greek part of 51%.He also warned that Greece would not allow the Macedonian flag to be flown at the UN building, as it used the Vergina sun symbol (sixteen triangular rays).[[396]](#footnote-396)

To prevent the conflict from escalating, on 9 April 1993, the Republic of Macedonia became the 181st state to be admitted to the UN, but because of Greek protests, its admission was under the provisional reference ‘the Former Yugoslav Republic of Macedonia’.[[397]](#footnote-397)

Resolution 817 (1993) stressed that the country met the conditions for membership in the UN, but it indicated that a difference of opinion concerning its name needed to be resolved. In the words of President Gligorov, ‘the admission of Macedonia into an international organization like the UN as an equal member will help the country r attain a wholly new status in talks about its recognition by all countries.[[398]](#footnote-398)

The American recognition of Macedonia's independence is an interesting case of foreign policymaking considering that the United States did not follow the normal process by which it usually gives recognition to developing countries. The Clinton administration recognized Macedonia's independence in 1994 under the provisional reference "he Former Yugoslav Republic of Macedonia." However, the first US ambassador to Skopje was appointed only in 1996 after the White House had delayed the extension of full diplomatic relations with FYROM at the level of ambassadors.[[399]](#footnote-399)

In February 1994, Greece suspended relations and imposed a trade embargo on Macedonia, until it recognized the country under the provisional reference in September 1995.' The remainder of Yugoslavia (Serbia and Montenegro) had already acceded to Macedonian independence in March 1992 when it withdrew federal forces from the new country, but formally the Republic was recognized in 1996.

Relations with Yugoslavia remained strained, however, as Serbs sharply criticized the election of a new patriarch of the Macedonian Orthodox Church, who in Belgrade was said to be an anti-Serb Macedonian nationalist.[[400]](#footnote-400)

The existence of a nation is a daily plebiscite, just as the existence of an individual is an eternal affirmation of life In this regard, it is of course essential to the notion of sovereignty and self-determination that "a state must have the right to establish its constitutional system in accordance with the obligations imposed by international law (for example, in relation to treaties of rights of man), and to choose its own national symbols including its name and flag. The subject of the dispute between Greece and Macedonia is clearly related to an issue which, as a matter of sovereignty, should fall exclusively to Macedonia's own discretion [[401]](#footnote-401)

It seems that the Greek request to change the name of Macedonia was nonsensical, without any legal basis and outside international practices, claiming that the right to use that name should belong exclusively to Greece’. States' rights to freedom of expression "come not as an extension of much newer human rights law, but rather from the basic notions of state sovereignty and the equality of states". Because the name of a state represents an inseparable and significant part of its sovereignty, it follows that Greece denies Macedonian sovereignty. Sovereignty includes what is under the exclusive competence of the state – domain réservé, i.e. political and territorial sovereignty (where the population is included). The name of the state refers to both, i.e., it is related to the state in terms of its political independence and territorial integrity, where a state is physically and politically limited by other subjects or states in the international community.[[402]](#footnote-402)

After a long dispute over Macedonia's name in June 2018, the Prime Ministers of Macedonia and Greece signed an agreement aimed at resolving the "name dispute" between the two countries. This agreement was met with reactions from the local and international public that ranged from disbelief to rejection to congratulations. The epilogue of the bilateral disputes that originated from the independence of Macedonia, and which guided Macedonian foreign policy for decades, was not an easy decision for both governments, but it was the main determinant of Macedonia's relations with the main international partners such as NATO and the EU.[[403]](#footnote-403)

The Macedonian government agreed to change the country's name to "North Macedonia", which was a major compromise, and for many Macedonians a move indicating that Greece had "won" the dispute. According to this agreement, the new name is for international and domestic use, including in forums and in bilateral relations with countries that have already recognized Macedonia as the "Republic of Macedonia." The Greek government, on the other hand, pledged to revoke its veto in NATO and the EU and to support Macedonia's membership in these organizations. It also accepted the use of 'Macedonian' to designate the nationality and language of Macedonian people. In addition, both sides committed to improving mutual relations and working together to eradicate irredentist and hate speech aimed at the other.[[404]](#footnote-404)

# **[4.6. London International Conference on the Former Yugoslavia, 26-27 August 1992](#_Toc535178499)**

The peace process for the former Yugoslavia officially began with several declarations by the European Community in mid-1991, but essentially the EC Conference on the Former Yugoslavia (ECCY) was established in September 1991 and chaired by Lord Carrington, which the ECCY held a total of thirteen plenary sessions in Brussels between September 1991 and August 1992. By the eighth session, five of the six former Yugoslav republics had agreed to a draft Convention.The ECCY also consisted of several working groups, the most important of which held ten rounds of talks on constitutional arrangements for Bosnia, Sarajevo, London, Lisbon, and Brussels. In the fifth and sixth rounds of these talks, all parties agreed on a declaration of principles, but this declaration of principles was later rejected by the Bosnian government.[[405]](#footnote-405)

The ECCY was succeeded by the UN-EC International Conference on the Former Yugoslavia (ICFY), which was established in August 1992 at the London Conference, where an important set of principles was established. This conference was chaired by its Steering Committee Co-Chairs, Cyrus Vance and David Owen, where ICFY consisted of six working groups, including a group dealing specifically with Bosnia. Although it remained in operation throughout the period under review, its personnel changed, with Vance later replaced by Thorvald Stoltenberg in May 1993 while Owen was replaced by Carl Bildt in in June 1995. During that time, its main products were the Peace Plan of Vance–Owen of January 1993, the Tri-Republic Union Plan of September 1993, and the European Union Action Plan of November December 1993.[[406]](#footnote-406)

The work methodology of the London Conference was similar to the methodology of the Versailles Conference of 1919 in the protocol part, that is, in the ranking of the participants of the conference. Similar to the Versailles Conference, wherein the first category were those who actively participated and decided on all issues at all stages of the conference those in the last category who could only be heard, and only when invited to to help the flow of work. The same methodology was used in the London Conference.[[407]](#footnote-407)

As direct participants of the conference, were the representatives of the six republics of the former Yugoslavia, the representatives of the then EEC, all the members of the UN Security Council, Canada, and Japan (representatives of the seven richest countries in the world), representatives of the Islamic world and those of the neighboring countries of the former Yugoslavia. On the other hand, as the interested parties have been invited the Albanians of Kosovo (together with the Albanians of Macedonia, Montenegro, and those of eastern Kosovo), the Serbs of Bosnia and Croatia, the Croats of Bosnia, the Muslims of Sanjak and the Hungarians of Vojvodina.[[408]](#footnote-408)

During its work, the London Conference issued four main documents: "Basic Principles", "Action Program", Declaration for Bosnia", and "Declaration for Serbia". In this conference on the crisis in the former Yugoslavia, the unsolved issue of Kosovo was not raised nor discussed in the dimensions it really had, but as a special problem it was only mentioned in the document called "Action Program" and in the "Declaration on Serbia".[[409]](#footnote-409)

In this document, Kosovo has been treated as an internal issue of Serbia, where its solution must always be sought within Serbia. According to the "Action Program" within the tasks of the "Working Group for Minorities" in point 2: "The group had to propose new initiatives about the issue of minorities and in particular about the issue of Kosovo, Vojvodina and of Sandzhak, as well as the position of Albanians in Macedonia". In the other document "Declaration for Serbia", among the conditions requested of Serbia was the for "Restoration of all civil rights of the population of Kosovo and Vojvodina" (paragraph 2), and "to guarantee the rights of national and ethnic communities and international minorities in accordance with the provisions of the UN Charter, the CSCE and the provisions of the draft resolution of the EEC Conference on Yugoslavia" (paragraph 6).[[410]](#footnote-410)

The London conference created a special group for Kosovo (Kosovo Special Group), which was chaired by German Ambassador Gert Ahrens. According to Marc Weller, an international law jurist at the University of Cambridge, the group "quickly decided to sidestep difficult questions of status and instead tried to focus on practical issues" of life in that territory. The issue of education was chosen as one of the areas where progress seemed possible.[[411]](#footnote-411) The London Conference and the Kosovo group have carried on working within the framework of the United Nations, specifically the Geneva Peace Conference for the Former Yugoslavia (1992–1995), where attempts have been made to resolve the Kosovo issue in accordance with the concept of the issue partial, giving priority to concrete issues and concluding the talks on the final status. The Geneva Conference's negotiations, which succeeded in narrowing the discussion to the topic of education alone, came to an end in vain. This occurred after Serbia was able to disrupt the Geneva Conference as a result of some Conference officials' pro-Serb stance.[[412]](#footnote-412)

Except for Kosovo, the Geneva Conference had no results even in the case of Bosnia. After the failure of the UN and the Geneva Conference on the former Yugoslavia in Bosnia, it was more than clear that the US had to finally take the lead in resolving the crisis.[[413]](#footnote-413) The London conference which was announced and trumpeted as an international mechanism that would stop the wars in Croatia and Bosnia and Herzegovina did not turn out to be successful, in this way, seeing the inability to manage the crisis, the organizers inaugurated some continuation of the work of this conference, calling it a peaceful negotiation process, to take it to the UN headquarters in Geneva, Switzerland. [[414]](#footnote-414)

With regard to the "threat of crucifixes," the USA adopted a more circumspect stance in 1993. According to American officials, a red line was drawn that was supposed to remain uncrossed in Kosovo because doing so "would harm American interests in the Balkans and beyond." Bearing in mind the spirit of the declarations aimed at preventing possible escalation, the "Washington Agreement" was drawn up in May 1993, in which (in points 10 and 11) it was stated that: "the prevention of the expansion of the war in Macedonia and Kosovo can be done through the deployment of peace troops and international observers". This decision was made, but without any success for Kosovo and the war that would follow later, while for Macedonia it is estimated that it had a positive role for a while.[[415]](#footnote-415) The London and Geneva Conferences, to make peace, failed. Efforts continued, however, combining NATO military forces with tentative diplomacy that led to another US-sponsored conference on Yugoslavia at the military base in Dayton, Ohio.[[416]](#footnote-416)

# **4.8.** [**Kosovo’s Independence and International Law**](#_Toc535178501)

Kosovo lacked sovereignty over its own territory and people in comparison to other former Yugoslavian territories such as the autonomous province of Vojvodina and federal republics. This was because the institutions and organs of Kosovo, which were established just before Yugoslavia broke up, were unable to maintain control over their own territory and the fact that throughout Yugoslav post-World War II the entity was established as an autonomous province within Serbia.[[417]](#footnote-417) Even though they operated under the 1974 Yugoslav constitution, these organs were deprived of any genuine authority by the Belgrade regime well in advance of the dissolution of the Yugoslavian state. As early as the mid-1980s, the so-called Territorial Defense of Kosovo and its Police Forces had been disarmed and placed under strict Belgrade control. Furthermore, when the Serbs and Montenegrins residing in Kosovo began to receive public armament in 1987, the process of disarming Kosovo's legal organs and institutions quickened. Milosevic's repressive policies were well underway when the Yugoslav dissolution started in 1990, and Kosovo Albanians chose a peaceful path in response to Serbia's 1989 abolition of their autonomous status.

This was a very specific way of opposing Serbian sovereignty and rule over Kosovo under Yugoslav conditions. Through a complete boycott of the Serbian-installed system in Kosovo since 1989, the Kosovo Albanians were able to position Serbia as the occupying power, which was immediately apparent to foreign visitors.[[418]](#footnote-418)

This challenge to the Serbian authority and sovereignty over Kosovo was very successful and effective throughout the first years of the Yugoslav wars of dissolution, and well beyond that until Milosevic's repressive policies reached unbearable proportions for the local population.

At the heart of the conflict in Kosovo was the issue of the autonomy of Kosovo, which had been forcibly made a semi-autonomous province within Serbia in 1946 after the end of World War II. Continued abuses under Serbian rule and periodic uprisings by ethnic Albanians led to increased autonomy in 1974 when the Yugoslav constitution gave Kosovo greater self-government, although still under communist rule. This constitution guaranteed rights to Albanians in many areas, including the representation of the province in the collective federal presidency.[[419]](#footnote-419)

This constitution was not welcomed by the Serbs, who remained a minority in Kosovo, afraid of the complete secession of Kosovo from Serbia, they began to complain about mistreatment by the Albanians. When Milosevic came to power, he took advantage of these fears and concerns, fanning the flames of Serbian nationalism. In 1989 Milosevic led efforts to end Kosovo's autonomy and sent Serbian troops and police to Kosovo, the Albanian language was eliminated from schools, while the Parliament of Kosovo was abolished in 1990, and political leaders left the country.[[420]](#footnote-420) Over 100,000 ethnic Albanians were forcibly fired from their workplaces in various institutions, government, police, education, and health and replaced by Serbs.

Milosevic's destruction of Kosovo's autonomy provoked concern in Slovenia, Croatia, and other republics in the Yugoslav Federation, which had not approved of Milosevic's crackdown on federal government institutions. Many in other republics feared they might be the next victims of Milosevic's nationalist policies. For this reason, many analysts say that with his movements in Kosovo, Milosevic "lighted the fuse" that eventually resulted in the dissolution of Yugoslavia in 1991.[[421]](#footnote-421) In response to Serbian attempts at "quiet ethnic cleansing" , Kosovo Albanian political leaders, led by Ibrahim Rugova and the Democratic League of Kosovo (LDK), developed a "parallel system" in the early 1990s. This parallel system formed the basis for the Kosovar proto state that directly challenged Serbian authority over the region). According to Clark (2000), these institutions, which included health care initiatives, parallel media companies, popular elections, and cultural institutions along with the parallel education system, took a central role in the Albanian nonviolent resistance of the early 1990s.[[422]](#footnote-422) Soon, Rugova was prized as a Western-style politician among Kosovo Albanians, due to the fact that he had studied at the famous Sorbonne University in Paris with the famous literary critic Roland Barthes. This gave Rugova an advantage over other politicians, who were educated in other republics of Yugoslavia, or in Eastern Bloc countries. [[423]](#footnote-423)

The Declaration of Independence of Slovenia and Croatia in June 1991 influenced the LDK to change its decision on Kosovo, from the status of a Republic within Yugoslavia to declaring the sovereignty and independence of the republic. Thus, in September 1991, Kosovo Albanians organized a referendum to declare Kosovo a Sovereign and Independent Republic. In this referendum, 87% of the voters participated, while 99% of them voted in favor of the Republic, on May 22, 1992, the elections for the Assembly of the Republic of Kosovo were organized, while private houses were used as polling stations.[[424]](#footnote-424)

Voting results in the parliamentary elections showed a deep victory for the LDK which won 76.44% of the votes, while Rugova was elected president with 99.5% of those who voted, but in fact, there was no other candidate against. The Serbian authorities did not prevent the holding of the elections but did not allow the assembly of deputies. Thus, on June 24, the Serbian police prevented the meeting of the parliament. After this intervention by the Serbian police, the parliament never convened again, but 13 parliamentary commissions were created consisting of small groups of deputies who had the task of giving some direction to politics. Despite this, the elections had given Rugova and his party some kind of legitimacy and authority. Rugova was described by almost all Kosovars as the president of the Republic.[[425]](#footnote-425) The government, which was previously established on October 19, 1991, until May 1992, was based in Ljubljana, Slovenia, but later moved to Germany, eventually settling in Bad Godsberg in a district of the surroundings of Bon. The prime minister and foreign minister was Bujar Bukoshi, who had been the general secretary of the LDK before being appointed to this post.[[426]](#footnote-426) While the Government of Kosovo tried to consolidate, the government of Serbia continued with the wave of arrests.

Thus, in 1994, 200 policemen were arrested who were accused of trying to create the axis of the interior ministry of the Republic of Kosovo. These policemen were part of the group of 3,500 Albanian policemen who were fired in 1991 and organized themselves into a kind of union and later began efforts to act as Albanian shadow police to slowly turn into parallel police.[[427]](#footnote-427) As a result of the mass expulsion from the work of Kosovo Albanians, mass poverty spread among the Albanians. Thus, the charitable association "Mother Teresa" reported, in 1993, that it was supplying basic food items to 50,000 Albanian families with nearly 250,000 people, who did not have enough means of living.[[428]](#footnote-428)

The Kosovar Albanians (1990–1997) channeled their policy through the policy of parallel institutions in contrast to those established by the Belgrade regime. The establishment of parallel institutions in Kosovo dates back to 1989, when Serbia abolished the autonomy of the region. The Assembly of Kosovo, a legitimate body under the 1974 Yugoslav constitution, had taken the first step in this direction on July 2, 1990, when it proclaimed Kosovo an equal and independent part of the still-existing Yugoslav federation. The response from the Belgrade regime was harsh. The Kosovo Assembly was shut down; its members fled into hiding and the assembly carried on without Serb and Montenegrin deputies. The Assembly went one step further and proclaimed Kosovo a federal republic inside Yugoslavia. It then declared that an independence referendum would be held, with the date set for September 26, 1990, to September 30, 1990. 97-87% of the Kosovo population participated in this referendum (the Serbs and Montenegrins abstained), and they voted in favor of Kosovo's independence.[[429]](#footnote-429)

The self-proclaimed Government of Kosovo in exile submitted its application for international recognition of Kosovo's independent statehood to the European Pace Conference on Yugoslavia in December 1991, attempting to keep up with the rapid developments taking place elsewhere in the Yugoslav territories.[[430]](#footnote-430)

The international community did not respond favorably to Kosovo's request for full independence, despite the fact that the entity has always had its own population and territory. This was because the self-styled President of Kosovo and the self-styled Government of Kosovo, two parallel organs and institutions, were unable to maintain effective control over their own territory and the people residing inside Kosovo's borders. This also meant that the organizations and organs lacked the authority and coercive powers to impose their will on the others. For example, the exiled government of Kosovo lacked an army and a police force to assert itself both domestically and internationally. Their powers and authority, if any, rested on moral rather than political grounds and considerations[[431]](#footnote-431)

The first such military force of the Kosovor Albanians was set up only during 1998-1999, under the name 'Kosovo Libration Army' (KLA) or (in Albanian) 'Ushtria Clirimtare e Kosoves' (UCK). The process of its formation has been a long one and was connected to two factors, one internal (the repressive policies of the Belgrade regime) and other external (the reluctance of the international community to take concrete steps to reward the peaceful way pursued by the Kosovar Albanian leadership until then, including the geostrategic shifts that followed after the Dayton Accords (1995). The lines of the section to follow are devoted to these issues, in order to be able to close this chapter and put the whole discourse of this dissertation into a proper context.

In the aftermath of the Dayton Accords (1995), Dragoljub Micunovic, one of the most influential Serbian opposition leaders, told the media that Serbia felt relaxed because the international community recognized its frontiers as international borders, the territory of Kosovo included within them. The same opinion prevailed within the Serb regime circles and has ever since been very frequently reiterated in public.[[432]](#footnote-432) This situation, which aligns almost entirely with the international community's position on the possible internationally recognized borders versus the Kosovo Albanian perspective on the same issue, highlights two important points that are essential to comprehending NATO's actions against FRY (March–June 1999) and potential consequences of future developments in and over Kosovo, including its final status. In the first instance, the matter pertains to the international community, whereas in the second, it concerns Kosovo and its potential to become a separate state apart from the FRY and Serbia.

The mindset of Serbian circles, both the opposition and the position, only speaks to a particular political profile that is common in Serbian society as a whole. This profile uses the state as its point of reference rather than the populace or regular people. In terms of borders and general self-determination, this has aligned well with the strategy adopted by the international community after the end of the Cold War. This in no way implies that this Serbian political profile was created by the international community in general.

All we contend is that Serbian misconceptions about Kosovo and their a priori entitlement to definitely control its majority population have been further solidified by the international community's stance regarding the (inviolability) of the previous administrative borders.[[433]](#footnote-433). Why were these guarantees of the (unconditional) inviolability of Serbian borders given to the Belgrade regime? Was it purely pragmatic, accounting for other geopolitical and geostrategic considerations, or was it a question of principle? These are the questions we will attempt to address in the paragraphs that follow. When talking about the NATO intervention against FRY (March–June 1999), two conundrums come to light. First, the inviolability of (former republican) borders was a byproduct of NATO's concern for peace and stability in the Balkans and beyond, not an objective in and of itself, according to the realpolitik dilemma based on geopolitical/geostrategic considerations. The conundrum based on humanitarian concerns follows, which was the open goal of NATO officials prior to and following the intervention against FRY. [[434]](#footnote-434)

On the final day before the airstrikes started on March 24, 1999, Javier Solana, who was the Secretary General of NATO at the time, also prioritized humanitarian concerns. In fact, NATO officials almost exclusively mentioned humanitarian concerns when discussing the use of airstrikes against the Federal Republic of Yugoslavia. As we'll see below, this wasn't the case in the early going of the Kosovo conflict (February–March 1998 and beyond). Whatever the case, it is still true that the NATO airstrikes ultimately preserved the territorial integrity of the FRY and, as a result, imposed a form of internal self-determination on Kosovo in the long run.[[435]](#footnote-435)

This is supported unambiguously by the provisions of the UN Security Council Resolution No. 1244 (June 12, 1999). The question we pose at the outset, which also represents our second conundrum, cannot be resolved by basing the NATO air campaign against FRY exclusively on humanitarian grounds. Our case is based on what happened both before and after the air campaign (January - June 1999). NATO clearly indicated that it fully endorsed the UN Security Council resolutions on the Kosovo issue up until that point in its public declarations about the crisis in Kosovo. This indicates that borders and other related issues (most notably the maintenance of global peace and stability and the resolution of Kosovo's final status) are not more important than humanitarian considerations in these UN documents.

The Rambouillet Peace Accords (February–March 1999) and UN Security Council Resolution on Kosovo No. 1244 (June 12, 1999) are the two documents from this era that best capture NATO's stance. Currently, the only legal basis for the current international administration over Kosovo is found in the latter document, which applies to both its military and civilian components.

The humanitarian situation in Kosovo at the time was linked to issues of peace and stability as well as the territorial integrity of FRY and the neighboring states, as the only feasible solution to the crisis in Kosovo.

According to a statement released on January 19, 1999, by the Contact Group on the former Yugoslavia, which also agreed to summon representatives of the Serbian and FRY governments and representatives of the Kosovo Albanians to Rambouillet, which is southwest of Paris, France. NATO officially endorsed this statement on January 30, 1999.[[436]](#footnote-436). In both cases, the previous UN Security resolutions on the matter were taken into full account, reinforcing in this way even further the international community's commitment to FRY's territorial integrity and to the preservation of regional and wider peace and stability.[[437]](#footnote-437)

The international community's aforementioned position pervaded the entire Rambouillet negotiations, which took place between February 6 and February 23, 1999. The inviolability of the FRY's borders was emphasized in the so-called non-negotiable principles that were put forward for signature prior to any discussion on the Rabouillet Accords, suggesting that any resolution had to be found within the confines of the FRY's sovereignty and territorial integrity. This effectively meant that Kosovo's majority population would have to settle for the internal right to self-determination in terms of self-determination. For the Albanians of Kosovo, this was nothing new. The international community had previously referred to this kind of internal self-determination as "a substantial autonomy for Kosovo."[[438]](#footnote-438)

Apart from the imprecise comparison with other extant autonomies, no comprehensive document had been generated, at least not prior to the Rambouillet Accords. This document was the first to outline the specifics of Kosovo's "substantial autonomy," albeit for a three-year transition period.[[439]](#footnote-439) This agreement guaranteed everyone residing in Kosovo peace, security, and democratic self-government. All issues that Kosovo's citizens cared about on a daily basis, such as economic growth, health care, and education, were covered by democratic self-government. Strong local government, an Assembly, a President, and national community institutions with the power to preserve each community's unique identity have been foreseen.

International forces were supposed to be stationed all over Kosovo to ensure security. It was anticipated that regular law enforcement would be provided by local police, who are representatives of all the national communities in Kosovo. All Federal and Republic security forces would have to evacuate Kosovo, with the exception of a small force stationed to guard the border. The last matter to be addressed concerned the final settlement's mechanisms. In this regard, the Rambouillet Accords foresaw an international meeting to be convened after 3 years to determine a mechanism for a final settlement for Kosovo. The will of the people was conceived as an important factor to be taken into account at that international meeting.

The FRY's sovereignty and territorial integrity were guaranteed in the document, but Belgrade officials declined to sign it. Thousands of Albanians were driven from their homes as a result of Milosevic's regime's ongoing war campaign in Kosovo, which it pursued rather than engaging in negotiations over the Rambouillet peace terms. By the time the Rambouillet Conference ended, the humanitarian situation in Kosovo was posing a serious threat to the peace and stability of the region, leaving NATO with no option but to take the actions outlined in its statement from January 30, 1999. But by the time the airstrikes started on March 24, 1999, NATO leaders' rhetoric had shifted. Instead of focusing on other factors related to regional peace and stability, the humanitarian aspect was now highlighted.

However, UN Security Resolution No. 1244 of June 12, 1999, provided that preservation of regional peace and security as well as the territorial integrity and sovereignty of the FRY were prioritized in this resolution, as they were in earlier ones pertaining to the Kosovo crisis. Following these are the humanitarian concerns (returning refugees and internally displaced people) and the ultimate resolution regarding Kosovo's status, which also involves establishing a provisional self-government system.[[440]](#footnote-440)

The UN Security Council's earlier resolutions on the Kosovo crisis are recalled and wholeheartedly supported by the 1244 Resolution. Both the current resolution and the previous ones demand the maintenance of the territorial integrity of the Free Republic of Yugoslavia (FRY) and its neighboring states. Adopted on May 6, 1999, the 1244 Resolution further codifies the G-8 formula for a political resolution of the Kosovo conflict.[[441]](#footnote-441) The formula is essentially the same as the one stated in Resolution 1244, which states that it "reaffirms the call for a substantial autonomy for Kosovo" in previous resolutions. "Facilitate a political process designed to determine Kosovo a future status, taking into account the Rambouillet Accords" is one of the duties assigned to the international civil presence in Kosovo.

## [**4.10. Federal Republic of Yugoslavia in International Law**](#_Toc535178500)

Declarations of independence in Slovenia and Croatia prompted an intervention by the Yugoslav National Army (YNA), first in Slovenia, and later, on a much larger scale, in Croatia as well.

A bold decision made by Bulatovic during the "Hague Conference," which was chaired by Lord Peter Carrington and organized by the European Community (EC), severely strained relations between Titograd (Podgorica) and Belgrade. According to the "Carrington Plan," the SFRY would eventually dissolve into a loose coalition of sovereign states with the legal standing of subjects of international law.[[442]](#footnote-442) Bulatovic declared that Montenegro would sign the agreement after accepting it. Bullatovic's actions were viewed by many in Montenegro as tantamount to treason. Bulatovic made an effort to persuade the Montenegrin assembly's delegates, but Belgrade's pressure and the general sentiment turned the tide against him. In a new variant, the SFRY could continue to exist if two or more republics wished to remain in the federation, so on October 30, 1991, Serbia and Montenegro proposed an amendment to the Carrington Plan, which allowed those states that did not wish to secede from Yugoslavia to create a successor federal state. Thus, plans were made by elites in Serbia and Montenegro to establish the 'Federal Republic of Yugoslavia (Savezna Republika Jugoslavija, SRJ), comprising approximately 44% of the population and about 40% of the territory of the SFRY. Despite opposition protests, these plans were made public only two months before their realization; constitutional experts took only five days to write the new constitution and opposition parties were not consulted.[[443]](#footnote-443)

After the declaration of independence by Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia, the dissolution was not immediately perceived as a fact by the international community. Although, it became a reality sooner than others thought,' despite the objections from Serbia, which continued to claim that such a decision constituted "aggression against Yugoslavia.[[444]](#footnote-444) In response to these announcements, on April 27, 1992, a joint session of what remained of the Parliamentary Assembly of the former SFRY, the National Assembly of the Republic of Serbia, and the Assembly of the Republic of Montenegro was convened, which adopted a statement through which the Federal Republic of Yugoslavia is proclaimed, as the will of the citizens, inheriting the SFRY, as a state, legal and international political subject. Moreover, they claimed 'succession' to the rights and obligations of the dissolved federation.[[445]](#footnote-445)

The new FRY state adopted its Constitution in 1992, which formally defined the FRY according to the criteria of a liberal democracy, including guarantees for the protection of minorities. Regarding relations between Serbia and Montenegro, the 1992 constitution was ambivalent, and tended to oscillate between a federal and confederal system, describing the Federal Republic of Yugoslavia as a voluntary union of its two constituent entities, Serbia and Montenegro.[[446]](#footnote-446)

The constitution affirmed the sovereignty of the republics, but also the sovereignty and unity of the federal state, which did not give the constituent entities the right to secede, nor did it describe any procedure for an eventual separation. The constitution explicitly recognized the right of the republics to develop international relations, so that both republics could have a ministry of foreign affairs. At the federal level, the constitution also guaranteed the Montenegrin Republic. A second chamber of parliament was indirectly elected, with equal representation from the two republics, while the first chamber reflected the demographic predominance of Serbs. The deputies' mandates in this second chamber were drafted to ensure that they would reflect the opinions of their respective republics' leaderships.[[447]](#footnote-447)

The creation of the Constitution of the FRY was more related to the international circumstances of the dissolution of the previous state, the Socialist Federal Republic of Yugoslavia, than to the internal conditions of the whole state, or the real need to ensure stable constitutional foundations for the new state union of Serbia and Montenegro. In order to validate the theory behind the four republics' secession from the old federation, the new constitution had to guarantee the legal and state continuity of both the former and current states. The external political interests of the ruling class shaped the constitution of that era, which is why everything was done quickly and without a legal foundation, circumventing the essential democratic processes. Put differently, the Constitution was less a general statement of those for whom it would further serve as the principle and standard of their lives and more an act of clumsy political engineering .[[448]](#footnote-448)

Although Serbia and Montenegro did not apply for recognition in accordance with the EC Declaration, this does not mean that they did not respond to the EC offer. Serbia and Montenegro were referred to their recognized statehood at the Congress of Berlin in 1878. In this way, the Montenegrin Foreign Minister responded to the EC's offer to apply for recognition emphasizing that when Montenegro, by the union, became part of Yugoslavia, the sovereignty and international personality of Montenegro did not cease to exist, but became part of the sovereignty of the new state. In the event that Yugoslavia disintegrates and ceases to exist as an international entity, the independence and sovereignty of Montenegro continue to exist in their original form and substance.[[449]](#footnote-449) Thus, Montenegro, together with Serbia, claimed the continuation of the FRY of the international personality of the SFRY, while at the same time, it claimed the continuation of the international personality of the Principality of Montenegro, which would continue if Yugoslavia did not exist anymore.[[450]](#footnote-450)

On the other hand, the claim for the continuity of the international personality of the FRY with that of the SFRY was rejected by the EC and the UN.[[451]](#footnote-451). In Opinion No. 1 from 29 November 1991, the Badinter Commission held that the SFRY was in the process of dissolution. On the other hand, in Opinion No. 8, from 4 July 1992, after Slovenia, Croatia, and Bosnia-Herzegovina were already recognized as independent states and had become members of the UN, the Commission noted that the process of dissolution had been completed. This meant that the FRY could not continue the international personality of the SFRY, but, according to the EC Declaration and Opinion No. 1, Serbia and Montenegro could opt to find a new association.[[452]](#footnote-452)

The Badinter Commission in its Opinion No. 8 referred to Resolution 757 of the UN Security Council, rejecting the claim of the Federal Republic of Yugoslavia (Serbia and Montenegro) to automatically continue (membership) of the former Republic Socialist Federative of Yugoslavia (at the United Nations).[[453]](#footnote-453)

The claim that the Federal Republic of Yugoslavia (Serbia and the Montenegro is automatically the successor of the Socialist Federal Republic of Yugoslavia is also rejected by Security Council resolution 777[[454]](#footnote-454) later that same year in September 1992. This resolution emphasizes that, given that the state most recognized as the Socialist Federal Republic of Yugoslavia has ceased to exist, specifically citing resolution 757 (1992) which notes that "the claim of the Federal Republic of Yugoslavia (Serbia and Montenegro) to automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted.". The resolution confirms that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue its membership as the successor of the former Socialist Federal Republic of Yugoslavia in the United Nations. For this reason, recommended that the General Assembly decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it should not participate in the work of the General Assembly.[[455]](#footnote-455)

Furthermore, the same Resolution maintained that FRY (Serbia and Montenegro) should apply for membership and not participate in the proceedings of the General Assembly. The General Assembly accepted this recommendation on the same day, 19 September 1992, in Resolution 47/1. Nevertheless, the Resolutions were unable to remove the SFRY from the UN, meaning that a disbanded state remained a member of the organization. However, as stated in Opinion No. 9 of the Badinter Commission, which is based on the European Council's Declaration on the Former Yugoslavia, which was adopted in Lisbon on June 27, 1992, the new federal entity that comprises Serbia and Montenegro will not be recognized as the successor state of the former Yugoslavia until that decision has been made by appropriate international institutions.[[456]](#footnote-456)

They decided to demand the suspension of Yugoslavia's delegations to the CSCE [Commission on Security and Cooperation in Europe] and other international forums and organizations.[[457]](#footnote-457)

The Commission also took the position that the membership of the SFRY in international organizations should be terminated and that none of the successor states could continue it. The Commission also held that the properties, assets, and debts should be divided equally among the successor states. On the other hand, on May 18, 1992, the Chairman of the Peace Conference in Yugoslavia addressed a question to the Chairman of the Arbitration Commission regarding the status of the FRY in terms of international law: is the Federal Republic of Yugoslavia a new state, seeking recognition by the member states of the European Community in accordance with the joint declaration on Yugoslavia and the Guidelines for the recognition of the new states in Eastern Europe and the Soviet Union adopted by the Council of the European Communities on December 16, 1991[[458]](#footnote-458)

In its response, the Badinter Commission in Opinion No. 10, maintained a position similar to the previous findings, reaffirming that the FRY could not claim continuity with the international personality of the SFRY. In this way, the Badinter Commission stated that: FRY (Serbia and Montenegro) is a new state that cannot be considered as the sole successor of the SFRY […] its recognition by the Member States of the European Community will be subject to its compliance with the conditions laid down by general international law for such an act and the joint declaration and guidelines of December 16, 1991.[[459]](#footnote-459)

In Opinion No. 10, the Commission made some additional comments, which are of interest to the issue of statehood and recognition. The Commission admitted that "within the borders consisting of the administrative borders of Montenegro and Serbia in the SFRY, the new entity meets the criteria of public international law for a state".[[460]](#footnote-460)

# **Chapter 5. Dissolution of The Federal Republic of Yugoslavia**

# [**5.1. The Kosovo’s War and the Rambouillet Conference**](#_Toc535178503)

# **The Rambouillet Process**

In this sense, the unfavorable outcome of the EC Arbitration process for Kosovo, as well as the constitutional modifications in Serbia and the FRY that contributed to this outcome, may help to explain why the international response to the Kosovo crisis involved diplomatic efforts to bring about a comprehensive constitutional settlement that would restore to Kosovo the vast powers of self-government it had lost since 1989, in addition to efforts to restore peace and alleviate humanitarian issues.

The international initiative that started in March 1998 evolved into an attempt to impose a comprehensive constitutional settlement that would return Kosovo's autonomy to its pre-1990 level or higher. This would potentially undo some of the injustices that Kosovo felt were related to the Badinter process and the promises of internal self-determination and minority rights that it had not been able to fulfill. If we go back to our description of what happened toward the end of 1998, this becomes clear. Although the aftermath of the October Agreements and of SC Res. 1203 [[461]](#footnote-461) initially saw a stabilization in the situation on the ground with a cautious welcome accorded to it by both sides,[[462]](#footnote-462) things soon began to deteriorate and the November 1998 deadlines for electoral rules etc.[[463]](#footnote-463)

Serious indications of a breakdown in the political process started to emerge in January 1999; by the end of 1998, not much had changed, and by January 1999, Western patience was running thin, especially given the security forces continued occasional atrocities. Though the political deal hatched in October seemed to set in motion the final diplomatic push for a solution to the crisis, it would be incorrect to say that there was a sudden lurch towards humanitarian catastrophe, even though Holbrooke's political agreement fell apart.

NATO held an emergency meeting on January 17,[[464]](#footnote-464) which was followed by a Contact Group meeting of January 22, and a call to both sides to come to peace talks soon followed. At a subsequent meeting on January 29, the Contact Group summoned representatives from the FRY, Serbia and the Kosovo Albanians to meet at Rambouillet by February 6, “to begin negotiations with the direct involvement of the Contact Group.”[[465]](#footnote-465) This call, backed by a threat of NATO military action, was again hedged in the language of humanitarian problems, with the statement of 30 January issued[[466]](#footnote-466) by the NAC suggesting that NATO’s strategy was designed to avert a “humanitarian catastrophe”.[[467]](#footnote-467) This last attempt to mediate a settlement is remarkable because, as negotiations began in February at Rambouillet in France, both sides were presented with what amounted to a virtual fait accompli: a detailed agreement that included a provision for an international peacekeeping force in the region and a fully detailed autonomy model for Kosovo, both of which they were expected to accept. Moreover, this was reinforced by the threat of using force, specifically aimed at the FRY side. "If the Serbs fail to agree to the... plan and the Kosovar Albanians do... the Serbs will be subject to air strikes," stated a spokesman for Washington. [[468]](#footnote-468) Tim Judah’s laconic summation of the situation was: “both sides were being told: ‘Sign or die.”[[469]](#footnote-469)

After weeks of negotiation the Kosovo Albanian side did indeed sign an agreement on 18 March and the FRY’s refusal to do so led directly to air-strikes, following a final intervention by the OSCE,[[470]](#footnote-470) commencing on March 24 in Operation Allied Force. Perhaps more than any other initiative over the previous twelve months, the Rambouillet process highlighted the Western preoccupation with Kosovan autonomy. It emerged at a time when the refugee situation was getting worse but in other ways the situation on the ground was arguably less serious than it had been in the late summer/autumn of 1998. [[471]](#footnote-471) In addition, it stipulated that an international meeting would be held three years after the agreement's entry into force to determine a mechanism for a final settlement for Kosovo. This meeting would be based on the will of the people, the opinions of relevant authorities, the efforts made by each Party to implement the agreement, and the Helsinki Final Act. It would also involve a thorough assessment of the agreement's implementation and the consideration of any Party's proposals for additional measures. Lastly, the agreement gave Kosovo a detailed autonomy program, but only for a three-year period. Despite the commitment to Kosovar autonomy, reference to the Helsinki Final Act once again illustrates the West’s ambivalence on the self-determination question, in particular on the question of statehood for Kosovo.

On the one hand, on offer was a final solution in three years which Kosovar nationalists hoped would lead to independence, but the reference to the Helsinki Final Act was a reminder of the commitment in that document to the territorial integrity of existing states. Nonetheless it is notable that air-strikes commenced in direct consequence of the failure of the FRY to sign the agreement. Although the language of justification was couched in humanitarian terms, it seems that references to humanitarian problems were also instrumental in that they served as legal justification for military intervention.[[472]](#footnote-472)

Also crucial to the commencement of bombing was the collapse of Rambouillet, the importance of which is seemingly borne out by the recollections of Richard Holbrooke from his last meeting with Slobodan Milošević shortly before the bombing started. As Judah notes: “Instead of mentioning that tens of thousands were again in flight, he says he told Milosevic that Serbia would be bombed: ‘if you don’t change your position, if you don’t agree to negotiate and accept Rambouillet as the basis of the negotiation.”[[473]](#footnote-473) This leads Judah to conclude that the West’s motives were mixed: “The humanitarian catastrophe *was* a part of the reason, but the other part was a modern-day version of gun-boat diplomacy”. Gun-boat diplomacy, it is submitted, which had as its primary aim an autonomy settlement for Kosovo.[[474]](#footnote-474)

At this time, even Western diplomats finally understood that after many years of warnings, the conflict in Kosovo was very close. American diplomacy moved to the region to get closer to the situation. Thus, on February 23, 1998, Robert Gelbard, the United States special envoy to the region, visited Pristina, where, among other things, he said: "The violence we are seeing, which is increasing day by day, is extremely dangerous.", he also criticized the "officially announced" violence by the Serbian police, and then attacked the Kosovo Liberation Army. "We strongly condemn the terrorist actions in Kosovo. Kosovo Liberation Army is undoubtedly a terrorist group".[[475]](#footnote-475)

Designation of the Kosovo Liberation Army as a terrorist group by the American diplomat Gelbard, who represented the most powerful country in the world, was a heavy blow given to the Kosovo Liberation Army in particular and the Kosovar Albanians in general, who were fighting to defend the existence their national. Undoubtedly, this designation of the American diplomat gave the green light to Belgrade to intensify attacks against Kosovo Albanians in the name of pursuing and disbanding the Kosovo Liberation Army. This was the second time that an American statement could be interpreted as an invitation to act.[[476]](#footnote-476)

During a meeting in February 1998, Gelbard requested Ibrahim Rugova to be a much more dynamic leader and to fortify his leadership even further. Gelbard also assured him that the parliamentary and presidential elections scheduled for March 22 would be accepted.[[477]](#footnote-477)

Also, on March 9, in London, an emergency meeting of the Contact Group[[478]](#footnote-478) was called, the first of its kind, which was dedicated exclusively to the situation in Kosovo. The conclusions of the Contact Group insisted on the withdrawal of the Serbian special police forces from Kosovo. Meanwhile, even though it was well known that the official Serbian policy was responsible for all the crimes of the Serbian forces in Kosovo, in the conclusions of the Contact Group there was no question of any exceeding of the authorizations of the special units of the Serbian police. In this meeting, the Contact Group underlined that it opposes the independence of Kosovo. This was a position of the Contact Group that contradicts the very concept of the Contact Group to prepare the negotiations unconditionally and without prejudice to their outcome.[[479]](#footnote-479)

After the massacre in the village of Prekaz on the Jashari family, international diplomacy began to act more seriously on the issue of Kosovo, particularly the United States of America. At that time, US Secretary of State Madeleine Albright would not hide the friendship and sympathy she had for the Albanians. During a meeting of the Foreign Ministers of Western countries held at "Lancaster House", Secretary Albright, among other things, emphasized: "I warned that the Kosovo issue would have consequences in the entire region. We cannot allow the Serbs to call it an internal matter. Milosevic claimed that Kosovars were violent, but the violence started when he came to power. Albanians had autonomy during Tito's regime, but Milosevic took it away.[[480]](#footnote-480)

There would be no Kosovo Liberation Army if Kosovars had not been denied their rights. We had to take concrete measures to increase the authority over Belgrade. This is exactly how we forced Milosevic to sit at the Dayton table, and this was the only language he understood".[[481]](#footnote-481)   
On the other hand, the Kosovo negotiation group negotiations with Serbia were started and established by American diplomacy through Ambassador Robert Gelbard. As a result, on March 24, 1998, a Wednesday, Ibrahim Rugova announced the results of the Kosovo election and released the list of the Kosovo negotiating team members who will set up a meeting space for Milosevic's delegates. The Negotiating Group for Kosovo, because of the number of its members, would also be referred to as the G-15. This group was intended to lead and prepare the negotiations with Serbia, but as will be seen later, from the time of its formation until its dissolution, it did nothing but fight and argue among itself.[[482]](#footnote-482)

The Contact Group met on April 29 in Rome at the level of directors, where it seems that the US Secretary of State, Madeline Albright, was dissatisfied with the work of this group. She assessed that the meetings of the Contact Group which do not provide long-term results in short, they are useless and redundant, even counterproductive.[[483]](#footnote-483) Because of Milosevic's reluctance to accept Felipe Gonzalez's mission's mediation, Ambassador Robert Gelbard will be more frequently persuaded to suggest adopting far harsher political and economic sanctions against Belgrade in his meetings with Madeleine Albright Additionally, he will not rule out the possibility of a NATO air intervention. While international diplomacy continued unabated, it was now the turn of Richard Holbrooke, the architect of the Dayton Conference, who will arrive in Pristina on May 10 along with Robert Gelbard, the special American delegate for the former Yugoslavia. Christopher Hill, American ambassador to Macedonia and Holbrook's main aide in the Dayton process, Richard Mills, head of the American diplomatic mission in Belgrade, and their assistants.[[484]](#footnote-484)

The meeting between the American delegation and the 15th group meeting was held at the headquarters of the Democratic League of Kosovo. Holbrooke said in this meeting that he came to Kosovo with the authorization of President Bill Clinton and Mrs. Medellin Albright and that here he represents the USA and not the Contact Group. Holbrooke warned that he would be staying for a few days in the area and that he would also be visiting Tirana to meet with Albania's prime minister, Fatos Nano. Meanwhile, the delegation of Kosovo presented its concerns with the deterioration of the situation in Kosovo and with the lack of will of the Serbian authorities to accept the negotiations.[[485]](#footnote-485)

From the public statement of Gelbard and Holbrooke, it is easy to understand that this meeting is the result of the mediation of US diplomacy. From now on, Washington will lead the negotiation process for Kosovo in different forms. Finally, Ibrahim Rugova and the other negotiators should speak completely openly with Milosevic, and why not, elaborate before him the request for the independence of Kosovo, this American diplomat concluded. Ibrahim Rugova had expressed his doubts that his confrontation with Milosevic could be harmful to him, that not much could be expected from his visit to Belgrade, and that the Kosovar public may strongly criticize this action of Rugova. [[486]](#footnote-486)But, for his part, Holbrooke immediately raised as his own argument the confidential letter that Rugova had sent to him and Secretary Albright, in which Rugova requested that Washington send Holbrooke as a special emissary for Kosovo. "You asked me, here I am, and I tell you that it is good to meet with Milosevic.[[487]](#footnote-487)

You can gain from this meeting because you will show in front of the whole West that you are ready to swallow a lot just to stop the war in Kosovo. After the meeting with Milosevic, you will be received in Washington by our president Bill Clinton, who in this way also wants to show how worried and preoccupied he is with the situation in Kosovo," Holbrooke addressed Rugova.[[488]](#footnote-488)

After these unsuccessful meetings, the Kosovo delegation consisting of Ibrahim Rugova, Bujar Bukoshi, Fehmi Agani, and Veton Surroi travelled to Washington, where on May 29, US President Bill Clinton received them at the White House. Secretary of State Medeleine Albright and Strobe Talbott, her spokesman, also participated in this meeting. This was a historic meeting and a decisive moment that confirmed American support in solving the Kosovo issue. President Clinton's speech publicly said after this meeting, that "A second Bosnia in Kosovo will not be allowed" had the greatest possible political weight.[[489]](#footnote-489)

The second meeting between the negotiators of Pristina and Belgrade, scheduled for June 5, was not held since the war had also engulfed Dukagjini region in Kosovo and the G-15 decided not to hold the meeting, which also marks the end of the Albanian-Serbian negotiations of this nature.[[490]](#footnote-490) With the war having spread to other parts of Kosovo and the negotiations having produced no results, international diplomacy moved without any clear idea of how to end the crisis. Thus, it was evident that the concept of Western diplomacy itself was in crisis. This was also seen from the visit of the political director at the Ministry of Foreign Affairs of Germany, Wolfgang Ischinger, to Pristina, where he met the negotiating team on June 2. In this meeting, the German diplomat asked for the continuation of the talks after the situation in Drenica and Dukagjin calmed down. Moreover, the German diplomat did not bring any news about finding a solution to the crisis, except that at the end of the meeting he said: "We will be constantly present in Kosovo, but please do not create the belief that the West is ready to intervene militarily in Kosovo.

In August 1998, NATO Secretary General Javier Solana publicly announced the existence of military plans that would enable NATO "to act rapidly and effectively [in Kosovo] if the need raised. The alliance’s military planning and the concentration of air assets in the region signaled the escalation of NATO’s coercive diplomatic approach to the “tacit ultimatum"[[491]](#footnote-491) Keeping abreast of diplomatic and military movements, Milosevic acted as if he was doing something. Thus, one day after the military exercise of the NATO alliance in Macedonia and Albania, the President of the Federal Republic of Yugoslavia Slobodan Milosevic traveled to Moscow to meet with the President of the Russian Federation, Boris Yeltsin. The result of the Milosevic-Yelcin meeting will be an agreement with which Milosevic would meet the demands of the Contact Group and the International Community for a cessation of hostilities, the beginning of the reconstruction of the destroyed houses in Dukagjin and Drenica, as well as the permission of humanitarian organizations international, for providing observation of the situation in Kosovo by foreign diplomats, etc.[[492]](#footnote-492)

On October 13, Solana announced that the Council had approved an activation order and that he was authorized to launch a phased air campaign within 96 hours. This was a clear jump and a timeline where NATO moved to the "classic ultimatum" variant of coercive diplomacy.[[493]](#footnote-493) After these serious threats, Holbrooke reached an agreement with Milosevic within hours, which contained several important components; such as allowing NATO aircraft to fly over Kosovo's airspace to monitor the situation on the ground, deploying 2,000 unarmed observers of the Organization for Security and Cooperation in Europe as part of a Kosovo verification mission. Finally, Milosevic agreed to remove most of the Serbian paramilitary forces from Kosovo, while a political process would begin, which would be led by the US Ambassador to Macedonia, Christopher Hill, and the European Union's special envoy for Kosovo, Wolfgang Petritsch.[[494]](#footnote-494) In support of this agreement, the Security Council immediately adopted Resolution 1203 on October 24, which supports the agreements signed in Belgrade on October 16, 1998, between the Federal Republic of Yugoslavia and the OSCE, and on October 15, 1998, between the Federal Republic of Yugoslavia and NATO, as well as all other requirements of resolution 1199 (1998) related to Kosovo.[[495]](#footnote-495) Two days later, on Thursday, October 8, the KLA's General Headquarters issued Political Statement No. 12, announcing a two-day suspension of military operations beginning on Friday, October 9, in accordance with UN Security Council Resolution 1199.[[496]](#footnote-496)

The Secretary General of the United Nations, Kofi Annan, also emphasized that the threat of force is "essential" and legitimate to push both sides towards a peaceful solution. By accepting the signing of the agreement, the Kosovar Albanian side was seen as the party that did not want to reject the agreement, while on the other hand, the Serbian side refused to sign a legally binding agreement. The agreement was signed between the international community and the Albanian side on March 18, 1999.[[497]](#footnote-497)

After the failure to reach an agreement in Paris at the Avenue Kléber conference center from 15 to 19 March, Richard Holbrooke on 23 March, with much regret for Slobodan Milosevic, declared that the situation was "darker than ever."[[498]](#footnote-498) The situation worsened greatly, while for the Western countries, there was only one way to impose peace, legal or not. On the other hand, the Russian president provoked by initiating a resolution in the Security Council, which received only three votes and was not adopted. On February 12, Boris Yeltsin told Bill Clinton "We will not let you touch Kosovo."[[499]](#footnote-499)

# [**5.2. NATO intervention in Kosovo 1999 in International Law**](#_Toc535178504)

The humanitarian situation in Kosovo was very serious due to the fighting on the ground. On the other hand, the Security Council of the United Nations was involved in this issue for a while. Based on Chapter VII of the UN Charter, the Security Council had adopted three resolutions on Kosovo prior to the NATO bombing campaign, which authorized the Organization for Security and Co-operation in Europe (OSCE) to deploy an observer force, the Kosovo Mission Verifiers (KVM), in Kosovo to monitor the situation. The Security Council also called on the FRY and the KLA to cease the use of force and end human rights violations, reaffirming the sovereignty and territorial integrity of the FRY.[[500]](#footnote-500)

When the Serbian delegation refused to sign the Ramboullet agreement, the peace process for the conflict was rendered hopeless, and on March 19, 1999, the talks were called off. The final hours before NATO's intervention were spent trying to find a solution by US President Bill Clinton's "special negotiator," Richard Holbrooke. He traveled to Belgrade on March 22, 1999, in an attempt to convince Milosevic to accept the Interim Agreement, but he returned empty-handed on March 23, 1999, when the Serbian parliament passed a resolution overwhelmingly opposing the request to station NATO forces in Kosovo and Yugoslavia. This strain of events led to NATO airstrikes on March 24, which lasted until June 9, 1999.[[501]](#footnote-501) The Security Council was unwilling to approve NATO military operations against Serbian forces even though the humanitarian crisis was reaching catastrophic proportions. In reaction to this circumstance, the US Senate authorized "air operations and missile strikes" against Yugoslavia on March 23, 1999, working with NATO.

A day later, on March 24, President Clinton authorized the use of force in Kosovo, while the House of Representatives passed a resolution supporting US armed forces "engaged in military operations against the Federal Republic of Yugoslavia".

However, on March 26, the President informed Congress that he had given the go-ahead for US forces to participate in "Operation Allied Forces" in accordance with the War Powers Resolution (WPR). This coincided with the move made by NATO in reaction to Milosevic's attempt to expel Albanians from Kosovo. The opinions and support of Congress were expressly considered in the decision. "I appreciate the Congress's support in this action," the President said to Congress.".[[502]](#footnote-502) Meanwhile, the international military humanitarian engagement in Kosovo did not have strong reactions and was not challenged by the great powers. There were only two reactions that criticized NATO's military campaign. One reaction was from the Rio Group and the other from the Non-Aligned Movement countries.

In a communique issued on March 25, 1999, the countries of the Rio Group expressed their open criticism against NATO's intervention[[503]](#footnote-503), due to the fact that these actions did not have the mandate of the UN Security Council. The Rio Group, expressing regret, emphasized that the use of force in the Balkan region is contrary to the provisions of Article 53, paragraph 1, and Article 54 of the Charter of the United Nations, which states "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council" and "the Security council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security".[[504]](#footnote-504) Similarly, the Non-Aligned countries also issued a statement on 9 April 1999 against NATO intervention.

The Non-Aligned Movement, by indirectly criticizing the role of the international community and NATO's military attacks, highlighted the primary role that the UN should play in maintaining peace and security. [[505]](#footnote-505)

In response to the NATO intervention, Yugoslavia initiated a lawsuit at the International Court of Justice on April 29, 1999, against the ten NATO members involved in the airstrikes, asking the court to hold each of the defendants’ states responsible. for violating international law by participating in airstrikes. The Yugoslav case centered on a number of alleged violations of the law of nations, notably:

1) The obligation not to violate the sovereignty of another state;

2) The obligation banning the use of force against another state;

3) The obligation not to intervene in the internal affairs of another state;

4) The obligation to protect the civilian population and civilian objects in wartime;

5) The obligation to protect the environment;

6) The obligation relating to free navigation on international rivers;

7) The obligation to respect fundamental human rights and freedoms;

8) The obligation not to use prohibited weapons; and

9) The obligation not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group.[[506]](#footnote-506)

At the same time, Yugoslavia asked the court to order each of the defendants to immediately cease the use of force against Yugoslavia. The charges brought by Yugoslavia against the NATO members cover a wide range of international law, including the laws of war and human rights law. Since the scope of this article is limited to legal restrictions on states in relation to the initiation of war, only the first three alleged violations were relevant.[[507]](#footnote-507) In order to establish the Court's jurisdiction in each of the ten cases submitted, Yugoslavia invoked various bases of jurisdiction, including:

1) Article 36, paragraph 2 of the ICJ Statute in the cases against Belgium, Canada, the Netherlands, Portugal, Spain, and the United Kingdom;

2) Article 38, paragraph 5 of the Rules of Court in the cases against France, Germany, Italy, and the United States;

3) Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in the cases against all ten respondents;

4) Article 4 of the Convention of Conciliation, Judicial Settlement and Arbitration between Belgium and the Kingdom of Yugoslavia (1930); and

5) Article 4 of the Convention of Conciliation, Judicial Settlement and Arbitration between the Netherlands and the Kingdom of Yugoslavia (193 1).27.[[508]](#footnote-508)

The International Court of Justice rejected Yugoslavia's requests for provisional measures, on the grounds that it lacked prima facie jurisdiction. The Court's rejection of the measures was a serious blow to Yugoslavia to end the conflict, however, it did not affect the fundamental issues related to the legal status of NATO's intervention, the Court was deeply concerned with the use of force in Yugoslavia, which "in the present circumstances ... raises very serious questions of international law". [[509]](#footnote-509)

It emphasized that all parties before it must act in accordance with their obligations under the Charter of the United Nations and other rules of international law, including humanitarian law." Finally, the Court reminded the parties that they must take care to not aggravate or widen the dispute between them and that when such dispute gives rise to a breach of the peace, the Security Council of the United Nations has special responsibilities under Chapter VII of the Charter of the United Nations."[[510]](#footnote-510)

Human rights have been a concern of warring states since the American Civil War. However, until the Kosovo war, international law had not recognized the right to go to war to protect human rights, or to intervene militarily against a state in the name of human rights. The modern doctrine governing the use of force is laid down in the Charter of the United Nations, which states that "[a] members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State". In this sense, only two exceptions are allowed: States can use force in self-defense, or when authorized by the Security Council.

The Charter does not contain a right of humanitarian intervention and specifically prohibits the United Nations from intervening "in matters which are essentially within the domestic jurisdiction of any State", although "this principle shall not prejudice the application of enforcement measures under Chapter VII".[[511]](#footnote-511)

Unlike the Gulf War, the military intervention in Kosovo took place without the approval of the Security Council. Although the Security Council was deeply alarmed and concerned about the dire humanitarian situation in Kosovo, and feared a humanitarian catastrophe, the certainty of a Russian or Chinese veto prevented it from authorizing the use of military force.

NATO and its member states assessed that their military action did not violate Article 2(4) of the United Nations Charter because it was implicitly authorized by Security Council Resolutions 1160, 60, 1199, 61, and 1203.[[512]](#footnote-512) NATO's action "was not an intervention against the territorial integrity or independence of the former Republic of Yugoslavia, but the purpose of NATO's intervention [was] to save a people in danger, in deep distress... [This was] an armed humanitarian intervention, in accordance with Article 2, paragraph 4, of the UN Charter, which covers only intervention against the territorial integrity of the political independence of a State.”[[513]](#footnote-513) The war in Kosovo caused a significant legal debate, and it is still difficult to say whether it will be overturned or not confirmed by practice. Therefore, it is instructive to examine on the other hand, the legal aspects of these two debates.[[514]](#footnote-514)

The debate inevitably shifts especially when dealing with the issue of Kosovo, dividing the debate into two camps on the question of the role of a universal international organization, the UN, versus the role of a regional security organization.[[515]](#footnote-515) In legal terms, NATO can intervene to maintain international peace and security, provided that the actions it takes are consistent with the Purposes and Principles of the UN (Article 52), but Article 53 is also extremely clear: "No enforcement action shall be taken under regional agreements or by regional agencies without the authorization of the Security Council".[[516]](#footnote-516) Most legal experts agree with this provision, that the airstrikes against Serbia were illegal, due to the fact that they did not have the mandate of the Security Council.

On the other hand, other, more libertarian experts rely on humanitarian law or the law of "collective emergency" to justify NATO's action. Likewise, the Secretary General of the UN, Kofi Annan, himself admitted that NATO's action was legal. Moreover, it says that a new norm of intervention was now emerging—for cases involving the violent oppression of minorities—that would and should take precedence over other concerns of state law. Thus, any flagrant violation of humanitarian law, be it crimes against humanity, violations of human rights or the Geneva Conventions, or ethnic cleansing can provide a legitimate basis for action by the international community, because all these issues have international consequences. and go far beyond the sacred principle of the internal jurisdiction of states. The real dilemma lies in the fact that "while the Charter was ahead of its time in 1945, the opposite is true today," because the world has evolved to the point where it has entered a post-Westphalian era in which the humanitarian law is as compelling as the law of treaties freely entered into by states. [[517]](#footnote-517)

In support of NATO's military actions, in a speech in Bonn on February 4, 1999, in Bonn, the US Assistant Deputy Secretary of State, Mr. Strobe Talbott, in his speech went beyond what the allied countries thought, emphasizing the incredible synergy between the various security institutions, in particular the UN and NATO. He emphasized that it was very important "not to subjugate NATO to any other international organization [meaning the UN] or to compromise the integrity of its command structure". According to him, NATO could certainly "act in cooperation with other organizations and respecting their principles and goals", but the Alliance should "reserve the right to act, when its members, by consensus, deem it necessary".[[518]](#footnote-518)

The legal supporters of NATO's intervention bring arguments based on the UN Charter and Security Council resolutions for Kosovo. According to Christoph Schreuer, the atrocities committed by the Federal Republic of Yugoslavia against the civilian population in Kosovo are completely contrary to international law and constitute serious violations of human rights and crimes against humanity. The excuses of the Yugoslav authorities to treat the events as internal affairs, hiding them behind the concept of sovereignty has no legal basis, and as such constitutes a deep concern for the international community.[[519]](#footnote-519)

Another exception to Article 2(4) of the Charter is enforcement action by the Security Council under Chapter VII, specifically Article 42. Before taking enforcement action, the Security Council must determine the existence of a threat to the peace, a breach of the peace, or an act of aggression under Article 39 of the Charter. The Security Council has repeatedly found massive violations of human rights with serious humanitarian situations for threats to peace, approving Resolution 1160 (1998) of March 31, 1998, in harmony with Chapter VII of the Charter.[[520]](#footnote-520)

In Resolution 1199 (1998) dated September 23, 1998, and in Resolution 1203 (1998) dated October 24, 1998, it is established that the situation in Kosovo constitutes a threat to peace and security in the region, therefore the Security Council had imposed an arms embargo on the FRY in Resolution 1160 (1998) in accordance with Article 41 of the Charter. However, it has not undertaken or authorized military enforcement actions.[[521]](#footnote-521)

A determination under Article 39 that the conditions for coercive action exist does not authorize member states to use force to enforce a Security Council decision. The Council must take a special decision according to Article 42. On the other hand, using the veto of a permanent member of the Security Council, against the intervention of NATO in humanitarian crises that threaten the peace of the world can be against Article 55 (c) of the Charter, which encourages the United Nations to promote "universal respect for and observance of human rights."[[522]](#footnote-522) On May 28, Yugoslavia accepted the principles presented on May 6 in Petersberg (Germany) by the G8, accepting a Russian delegation, for the political solution of the Kosovo crisis. On June 3, with the Attisaari [[523]](#footnote-523)-Chernomyrdin mediation, it accepted the peace plan proposed by the Contact Group.[[524]](#footnote-524)

# [**5.3. Kosovo from the Serbian point of view**](#_Toc535178505)

Mainstream Serbian historiography asserts that since the Battle of Kosovo (1389), the Serbs suffered centuries of oppression by a Muslim empire, fighting against this empire by fighting an endless battle for the revival of their great medieval empire. Even today, Serbian historiography places emphasis on the Serbian myth of Kosovo, emphasizing Serbian suffering and martyrdom as well as the contradictions between Islam and Christianity.[[525]](#footnote-525) Most contemporary Serbian historiography, especially books written by respected scholars such as Gjoko Slijepcevic (1983), Dimitrije Bogdanovic (1986), and Dushan Batakovic (1992), provide an image of the inherent conflict Bogdanovic (1986) and Dushan Batakovic (1992), provide an image of essentially conflictual relations, especially after the Albanians accepted Islam. On the other hand, Albanian historians and intellectuals known as; Skënder Rizaj (1992), Ismail Kadare (1994), and Rexhep Qosja (1995), reflect a similar picture of the continuing Albanian anxiety under Serbian hands. According to them, Serbs have a genetic and racist predisposition, unchangeable and violent towards Albanians.

Kosovo is referred to as the 'ethnic territory' of the Albanians that has been occupied by the Serbs. The claim that Albanians make up ("more than") 90% of Kosovo's population, which is being repeated in most Western publications, serves to underline this assumption, although this percentage is most likely very high.[[526]](#footnote-526)

# [**5.4. Kosovo under Interim United Nations Administration, Resolution 1244 of the UN Security Council**](#_Toc535178506)

June 10, 1999, the UNSC adopted Resolution 1244 after recalling resolutions 1160 (1998), 1199 (1998), 1203 (1998)and 1239 (1999), authorized an international civil and military presence in the Federal Republic of Yugoslavia and established the United Nations Interim Administration Mission in Kosovo (UNMIK). The very broad consensus in the adoption of this resolution, with only China's abstention, argued the legality of Resolution 1244 even more.[[527]](#footnote-527) Therefore, the Security Council, acting explicitly under Chapter VII of the UN Charter, authorized member states to establish international security presence and the Secretary-General to establish international civilian presence through Resolution 1244. It is widely accepted that Chapter VII provides sufficient legal basis for the establishment of a territorial administration, including the full assumption of governmental functions as in the case of UNMIK in Kosovo.[[528]](#footnote-528)

The political principles of the peace plan, based on the principles of the Rambouillet Accords, were embraced by the Security Council in Resolution 1244, which required the FRY to end violence and withdraw all military, police, and paramilitary forces from Kosovo., while the KLA gives up all offensive actions and demilitarizes. The resolution also authorizes NATO to establish an "international security presence" (KFOR), while the UN Secretary-General to establish an "international civilian presence" (later UNMIK).[[529]](#footnote-529) The resolution, in particular, requires the Federal Republic of Yugoslavia to immediately and verifiably end violence and repression in Kosovo and begin and complete the withdrawal of verifiable stages from Kosovo of all military, police, and paramilitary forces. According to a quick time plan, the international security presence in Kosovo will be synchronized under the patronage of the United Nations, although under a separate command - respectively the Mission of the Interim Administration of the United Nations in Kosovo (UNMIK) and KFOR- led by NATO.

Resolution 1244 also envisaged the international security presence with significant participation of the North Atlantic Treaty Organization, NATO, which should be placed under unified command and control and empowered to create a secure environment for all people in Kosovo, as well as to facilitate the return of displaced persons and refugees to their homes. [[530]](#footnote-530) In this way, the Resolution places Kosovo under the protection of the civilian and security forces of the United Nations, which will have the appropriate equipment and personnel as needed.[[531]](#footnote-531) In order to control the implementation of the international civilian presence, the Resolution asks the Secretary-General to appoint a Special Representative in consultation with the Security Council. Furthermore, the Resolution requests the Secretary-General to instruct this Special Representative to coordinate closely with the international security presence to ensure that both presences work towards the same goals and in a mutually supportive manner.[[532]](#footnote-532) Resolution 1244 also decides on the responsibilities of the international security presence that will be deployed and will operate in Kosovo, which will include preventing renewed hostilities, maintaining and implementing the ceasefire, ensuring the withdrawal and preventing return to Kosovo of the federal and republican military, police and paramilitary forces, except as provided for in point 6 of annex 2: On the other hand, the resolution obliges the demilitarization of the Kosovo Liberation Army (KLA) and other Kosovo Albanian armed groups.

The resolution demands that the KLA and other armed groups of Kosovo Albanians immediately stop all offensive actions and respect the demands for demilitarization determined by the head of the international security presence in consultation with the Special Representative of the Secretary-General. With the aim to return the displaced and refugees, the resolution calls for the creation of a safe environment in which refugees and displaced persons can return home safely, while the international civilian presence can create a functional administration that will offer humanitarian aid.

The resolution also provides for the maintenance of public order and safety, price surveillance until the international civilian presence assumes responsibility for this task, as well as monitoring the border as necessary, as well as providing protection for freedom of movement for myself and other organizations international.[[533]](#footnote-533) Resolution 1244 also clearly defines the duties and responsibilities of the international civilian presence as an interim administration of the United Nations. It decides that the main responsibilities of the international civil presence will include:

a) Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of Annex 2 and of the Rambouillet accords(S/1999/648);

b) Performing basic civilian administrative functions where and as long as required;

c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections [ ….]

j) Protecting and promoting human rights;

k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.[[534]](#footnote-534)

The humanitarian situation after the end of the conflict was dire. Out of a population of 1.7 million, 800,000 people had taken refuge in neighboring countries, and about 500,000 were internally displaced. The security situation was tense, and many Serbs left Kosovo as a result of crimes committed by Kosovo Albanians against Serbs, including murders, and force. expropriations, looting, and arson.[[535]](#footnote-535)

UNMIK officials faced a very difficult situation in their mission in Kosovo when they began work on June 13, 1999. The country was devastated as a result of the war, the systematic cleansing of the Albanian population of Kosovo by the Yugoslav and Serbian security forces where the majority of the population had been driven out of Kosovo, living in refugee camps. Refugees began returning to their homelands from Macedonia and Albania at a rate and speed historically unprecedented, immediately after the establishment of the UNMIK administration in Kosovo. By 25 June 1999, the number of spontaneous returnees had reached 300,000, with around 50,000 refugees crossing into Kosovo every day, by car, tractor, and foot. Just two weeks later, by July 8, more than 650,000 refugees had returned to the territory, creating a tense humanitarian and security situation. In an aggravated situation of housing and food needs, violence, intimidation, looting, and robbery, as well as organized crime by criminal groups and gangs, also increased.[[536]](#footnote-536)

On the other hand, with the aim of maintaining order and public security, until the UNMIK administration assumed its role, based on Resolution 1244 of the Security Council, the Kosovo Force (KFOR), an international force composed of NATO troops, was created. In response to growing security needs, as well as in line with its mandate, KFOR began carrying out large-scale arrests to restore peace and public order in the territory, bringing the number of detainees to 200 within two weeks, many of whom for serious criminal offenses, such as arson, violent attacks, and murder, but also for serious violations of international humanitarian law and human rights.[[537]](#footnote-537) Given the gravity of these crimes and the potential effect of their prosecution and trial on the peace and reconciliation process in Kosovo, UN staff considered it particularly important to uphold fair trial standards to the maximum extent possible. For the prosecution of these crimes, in the absence of legislation, the criminal procedure code of the Federal Republic of Yugoslavia was used as its basis but applying those laws within the framework of recognized international human rights standards,[[538]](#footnote-538)

UNMIK attempted to give detainees initial court hearings within seventy-two hours of their arrest and to determine whether or not to detain them and begin investigations. Another challenge faced by UNMIK was the provision of qualified legal protection for prisoners, taking into account that most of the prisoners would only accept defenders from their ethnic group did not make the task any easier.

This situation led UNMIK to give priority to the establishment of the Kosovo judiciary because KFOR was neither ordered nor prepared to exercise these functions, which, according to Resolution 1244, was a civil duty falling under the mandate of UNMIK.[[539]](#footnote-539) UNMIK's mission was also very challenged due to the lack of staff in the administration, as from 1989, not a single Kosovar Albanian remained in the civil service. Dismissals with political motives had affected the judicial system, such as politically and ethnically motivated appointments, dismissals had led to a judiciary in which of 756 Kosovo Albanian judges and prosecutors, only 30 remained[[540]](#footnote-540)

The international administration in Kosovo, defined in Resolution 1244, was of a temporary nature and aimed at creating suitable democratic conditions for resolving the final status of Kosovo.[[541]](#footnote-541) The legal basis for issuing the Resolution was the Charter of the United Nations, which foresees the primary right and responsibility of the Security Council, for maintaining international peace and security.[[542]](#footnote-542)

Resolution 1244 contains a multitude of solutions of a humanitarian, military, legal, economic, and political nature, with rather generalized and vague formulations, with a text containing the Introduction, 20 points, and 2 annexes. During the drafting of this resolution, the will of the people was not taken into account, rather it was the report of the forces of the great powers at the time of its approval, which has enabled many issues of importance for Kosovo not to be resolved and to be hostage to that resolution. According to Resolution 1244, "UNMIK is one of the largest and most challenging enterprises of the UN in the field of territorial administrations."[[543]](#footnote-543)

During the first phase of the administration of the international community in Kosovo, Bernard Kouchner was appointed as a special representative of the UN.[[544]](#footnote-544) During this phase of administration, the Kosovar political leaders did not have any power other than that of consultation. After this phase, at the beginning of 2000, the second phase began, which resulted in the creation of the joint administrative structure (Joint Administrative Structure).

This common administrative structure consisted of twenty departments, which were responsible for civil administration. The heads of these departments were: an international and a local official. At the end of 2000, municipal elections were held, and local self-governing structures were established, with the completion of the establishment of local self-governing structures, the second phase also ended according to resolution 1244. In the third phase, according to this resolution, conditional self-government was foreseen, and this government should be fulfilled based on the rules set in the Constitutional Framework approved on May 15, 2001.

The constitutional framework was approved during the administration of the second special representative in Kosovo, Hans Haekkerup. Before the adoption of this constitutional framework, there were contradictions among the Western members of the Contact Group. The main problem was the use of the word "constitution". After many debates and meetings, this document was named the Constitutional Framework, which served as a kind of constitution for a period of 7 years.[[545]](#footnote-545) From my point of view, evaluated in general, even against the legal loopholes that had, the adoption of Resolution 1244 by the Security Council and the establishment of the civil and security administration in Kosovo, created the legal and institutional basis, to move towards the independence of Kosovo in International Law.

# [**5.5. The independence of Montenegro in International Law**](#_Toc535178507)

The first Montenegrin state was formed the 8th century with the arrival of the Slavs and their mixing with the local population. It was originally called Doclea, whose ruler received a royal seal from Pope Gregory VII in 1078. At the end of the 15th century, Montenegro fell under the rule of the Ottoman Empire, acting as a de facto independent state until formal recognition came at the Congress of Berlin in 1878.Even though it emerged victorious in the Balkan Wars, World Wars I and II, and World War II, it was annexed by Serbia, lost its independence in 1918, and joined socialist Yugoslavia following World War II, where it stayed until 1992. After the Agreement Belgrade was signed in March 2002, Montenegro's political transition got underway in earnest. It also held an independence referendum in 2006, was accepted into the UN and other international organizations, and started membership negotiations with the European Union (EU).[[546]](#footnote-546) During socialist period Montenegro, along with Bosnia and Herzegovina and Macedonia, was one of the least developed republics. As a small republic in size, roughly a third of the next largest republic, Montenegro is a special case.

Caught in the ambiguities of Montenegrin identity, the Republic was also the 'homeland' of the Montenegrin people, while, at the same time, a significant part of Montenegrins identified themselves as Serbs, who expressed themselves rather as Serbian nationalism than as a distinct Montenegrin nationalism.[[547]](#footnote-547) As a result of a decentralized federation, during the 1960s and 1970s, Montenegro was the participant in resource redistribution debates within Yugoslavia along with other less-developed republics that benefited from the Federal Fund for the Development of Underdeveloped Republics ( 1964-1990).

Montenegro's participation in these discussions on income redistribution required an articulation and defense of a specific Montenegrin interest, which in turn regularly reinforced the sense of a specific Montenegrin identity.[[548]](#footnote-548) Montenegro was later excluded from inter-republican debates on compensation when a powerful earthquake struck it in 1979, destroying Budva and Kotor. The exclusion of Montenegro from the aid package was done under the influence of Serbia, even against those who supported greater aid. Since Serbia was held responsible for the lower-than-expected amount of aid, it strengthened the most anti-Serbian wing within the Montenegrin leadership.[[549]](#footnote-549)

In early 1990s, Montenegro had also soured relations with Serbia at the sponsored Geneva Peace Conference. by the European Community to end the war in Yugoslavia in September-October 1991. This plan, which envisioned Yugoslavia à la carte—where the republics could choose the degree of sovereignty and their participation in the common Yugoslav institutions—was named after the chief negotiator of the European Community, Carrington, who in Geneva sought the support of the former Yugoslav republics, as it was already discussed in previous chapters [[550]](#footnote-550)Milosevic opposed the plan as it would not rescind Croatia's declaration of independence and allow only very limited central control of the new state. Contrary to expectations, Momir Bullatovic backed the plan after getting the support of the Montenegrin parliament. This change of policy came as a surprise and a shock to Serbia, which expected to receive the support of Montenegro. Bulatović's simultaneous request to withdraw Montenegrin soldiers from the front in Croatia prompted Borisav Jović, a Serbian member of the Yugoslav presidency, to exclaim that "this is nothing less than treason".[[551]](#footnote-551)

Milosevic's response, reported by a European Community diplomat that 'Bulatovic will soon be relieved of his duties...' Under pressure from nationalist politicians in Montenegro (and Serbia) and under attack from the media-backed Serbian leadership, Bulatović eventually returned his support. In the subsequent negotiations, the Montenegrin and Serbian delegations insisted that the old Yugoslavia would continue to exist for those willing to participate in it, rather than agreeing to the creation of a new state, thus undermining the plan for a confederation of cloud.[[552]](#footnote-552)

Following Djukanović's electoral victories in 1997 and 1998, Montenegro and Serbia engaged in a constitutional dispute over representation in the federal parliament, which ultimately resulted in Milosevic excluding the Montenegrin government from federal decision-making. Thus, the FRY government passed a number of constitutional amendments in June 2000, including the direct election of the president, with the intention of diminishing Montenegro's influence within the federation. Conversely, the Kosovo War of 1998–1999 exacerbated Montenegro and Serbia's political impasse. The DPS's strategy of maintaining a neutral position in the conflict and its determination to further strengthen the journey towards independence were confirmed by NATO's military intervention in the conflict and Serbia's defeat.[[553]](#footnote-553) On 24 September 2000, Milosevic lost the elections, although he tried to falsify the results, he was forced to resign on 5 October. In the opposition forces that came to power in Serbia, Milosevic appeared to support the country's integration into the European Union, while Milosevic was seen as the main obstacle to Montenegrin autonomy within the federation and its European integration. However, while negotiations were underway to determine how future relations between Serbia and Montenegro would look, the Montenegrin government extended an invitation to the Serbian government to convert the federation into a union of independent states. This was something that neither federal president Vojislav Kostunica nor Serbian leaders would accept. The European Union played a significant role in these discussions.[[554]](#footnote-554)

The strong influence of the High Representative for the Common Foreign and Security Policy of the European Union, Javier Solana, Montenegro agreed to sign the so-called Belgrade Agreement on March 14, 2002. Through this agreement, on the one hand, Montenegro agreed to withdraw from the independence referendum for at least 3 years, and, in turn, the FRY turned into a loose state union with a new name - Serbia and Montenegro. Regardless of Montenegro's right to secede, as was the case with other former Yugoslav republics that were instantly recognized by the then European Community, Montenegrin society at the time was divided on issues of independence, while the European Union favored some sort of union between Serbia and Montenegro.[[555]](#footnote-555)

However, because the republics are permitted to maintain their own economies, currencies, and customs services, there was uncertainty regarding internal and external economic relations as well as the federation's authority.[[556]](#footnote-556)

The assassination of Serbian Prime Minister Zoran Djindjic in Belgrade on March 12, 2003, led the "common state" to a deep crisis. Just a year after the signing of the Belgrade Agreement, the union appeared to be heading for a crisis, while the murders and subsequent "Operations Sabre" in Serbia only reinforced the Montenegrin government's claim that Serbia was not at all ready to make the kind of democratic reforms that Djindjic himself had defended. However, pro-independence activists frequently invoked Montenegro's failure to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) and the EU's threat to halt accession talks with the state union in 2005 as reasons why the country needed to become independent.[[557]](#footnote-557)

The European Union took the lead in the negotiations prior to the referendum because it did not want to leave the decision-making to the Balkan states this time. Javier Solana was seen as a steadfast supporter of unity and the architect of the Belgrade Agreement, which gave the State Union of Serbia and Montenegro the nickname “Solania”. The Montenegrin government wanted to hold a referendum after the moratorium was passed in order to move toward independence.

# [**5.6. The independence of Kosovo and its International Recognition**](#_Toc535178508)

UN Security Council Resolution 1244, as a compromise of the five permanent members of the UN Security Council with veto power, created a status quo for Kosovo, accommodating conflicting principles and policies. In this way, Resolution 1244 places Kosovo under a temporary "international civil administration", with an "international security presence" to guarantee peace, security, and a stable environment.

According to Resolution 1244, Kosovo remains part of the FRY/Serbia, while at the same time, a substantial self-government will be established in the province. De facto, this resolution had two goals with different content, which means that the international presence has to "constantly balance between the Scylla of Kosovo's independence and the Charybdis of Yugoslavia's sovereignty". On the other hand, a very bold interpretation of Resolution 1244 led the UN administration to suspend de facto FRY/Serbia's administrative control, "thereby reducing FRY's sovereign rights to a nudum ius " for an infinite period.

What constitutes a void in Resolution 1244 is the lack of a mechanism to resolve the final status of the province, or a timeline, or roadmap for that purpose.[[558]](#footnote-558) Before the talks on the final status of Kosovo opened, the United Nations had proposed the "standards before status" policy through which it was required that Kosovo meet a certain level of political and economic standards before a decision regarding its final status.

To further this process, on December 10, 2003, UNMIK presented the "Standards for Kosovo," a broad and detailed outline of requirements that must be met before addressing the issue of Kosovo's future status.[[559]](#footnote-559) Related to the status of Kosovo, Europe, and the United States were convinced that after almost seven years of international administration under the auspices of the UN, Kosovo's identity as part of Serbia was unstable. Furthermore, they believe that any delay in granting at least partial sovereignty to Kosovo is a major obstacle to its development, stability and security.

EU officials believed that after Slovenia's EU membership, and Croatia's journey towards integration, Serbia would also agree more easily with Kosovo's independence if it benefited from its aspirations in the EU.[[560]](#footnote-560) Russia, on the other hand, was against the independence of Kosovo, without the will of Serbia and without real guarantees for the rights of the Serbian ethnic community in Kosovo.

Moscow was against the unilateral declaration of Kosovo's independence and had declared the use of the veto in the UN Security Council, in the event of the adoption of any resolution containing an ultimatum to Serbia, which according to it would be a clear violation of the UN Charter and the principles of the Helsinki Final Act. Moreover, according to Moscow, any attempt to grant Kosovo independent status before it complies with the standards outlined in Security Council Resolution 1244 could encourage further ethnic cleansing against Serbs in Kosovo.[[561]](#footnote-561)

Finally, Russia has warned that any decision on Kosovo would set a precedent that could fuel separatism in other parts of the world, including post-Soviet Eurasia.[[562]](#footnote-562) The same attitude was presented by the Russian representative at the UN, threatening to veto a coordinated resolution between the EU and the US, developed by the UN special envoy and former Finnish president Marti Ahtisaari, which gives Kosovo internationally supervised sovereignty. Regarding the Kosovo issue, Richard Holbrooke asserted that "Kosovo is shaping up to be Vladimir Putin's biggest international test yet... [and] a key test of Russia's relations with the West.". Vladimir Putin, on the other hand, accused the West of trying to ignore international law, claiming that the solution to Kosovo's status is unique and would not constitute a precedent.

UN Security Council Resolution 1244 authorized the UN civilian administration to operate on the territory, alongside the NATO security presence, for a temporary period until the final settlement of Kosovo's status. The international community was faced with major challenges of rebuilding the country after a devastating conflict, while in March 2004, violence broke out in place of considerable progress made in preparing Kosovo for self-government. During these events, the Albanian majority turned against the minorities, where 19 people were killed and thousands were displaced. Many private properties and cultural heritage sites were destroyed in the unrest, including a number of Orthodox churches and shrines. The prospect of further instability caused by pent-up frustration over the unresolved status quo prompted the international community to react more quickly by accelerating the steps toward finalizing the status of Kosovo.[[563]](#footnote-563)

In this way, after the violent unrest of March 2004 in Kosovo, the members of the Contact Group: Great Britain, France, Germany, Italy, Russia, and the United States, which overseen the implementation of Resolution 1244 of the UN Security Council, began to be divided on what should be done next with the Kosovo issue. The five Western countries - Quint finally assessed that waiting for Kosovo to meet the "pre-status standards" would not work. The impatience of waiting for independence was growing among Kosovo Albanians, a result they had expected from NATO's intervention, so Quint estimated that the process should continue forward.[[564]](#footnote-564)

In 2005, the UN decided to start talks on the political status of Kosovo. The UN made this decision assessing that there were many areas that needed improvement, especially the area of protection of minority rights, while on the other hand, it acknowledged that the postponement of the status issue had led to widespread frustration and suggested that the postponement of continued would lead to greater instability.

As a result, status talks began in early 2006, before all benchmarks had been fully met. To lead this process, the UN appointed special envoy former Finnish president Martti Ahtisaari, who led diplomacy between Prishtina and Belgrade, as well as face-to-face negotiations between Kosovo Albanian and Serbian officials.[[565]](#footnote-565)

However, there proved to be little room for compromise between the parties, as they firmly took their positions: full independence for Kosovo or substantial autonomy within Serbia. Encountering major obstacles, the talks ended in stalemate, while the Ahtisaari Report urged the UN to resolve the status issue unilaterally and recommended Kosovo's "independence, overseen by the international community." Ahtisaari's plan included extensive provisions for the protection of Serb minorities in an independent Kosovo, including a process of decentralization and redistribution, which ensured that most Serbs would live in Serb-majority municipalities. Most importantly, the plan also proposed that UNMIK be disbanded and replaced by the EU.

Serbia and Russia strongly opposed the Ahtisaari Plan, while Moscow used a veto threat in the UN Security Council to oppose the Ahtisaari Plan. In order to break the impasse, a new round of internationally mediated talks began in August 2007, which had a UN deadline of December 10, 2007, which ended without an agreement.[[566]](#footnote-566) Faced with this impasse, Kosovo received tacit support from Washington and several European states for the unilateral declaration of independence in February 2008. In the declaration itself, the Assembly of Kosovo pledges to fully implement Ahtisaari's plan.

Therefore, among the first acts of independent Kosovo was the acceptance of an EU rule of law mission (known as EULEX) to provide support and oversight in the security and judicial sectors, as well as an International Civilian Representative who would oversee the implementation of Ahtisaari's plan, acting as the EU's Special Representative in Kosovo. Both EULEX and the special representative possess a range of executive powers, although in no case do, they reach the level of authority enjoyed by UNMIK and its chief.[[567]](#footnote-567) In this way, after a long historical and diplomatic journey, in coordination with powerful states, on February 17, 2008, Kosovo declared independence for the second time, an event that also marked the dissolution of the former Yugoslavia. Unlike the independence of Kosovo, which was declared in 1991, the newly created state of Kosovo was immediately recognized by the United States of America, Great Britain, France, Italy, Turkey, and many other countries.[[568]](#footnote-568)

## **5.7. ICJ Advisory Opinion on Kosovo’s Declaration of Independence**

Kosovo seems to be a special case in the creation of its state. In 2008, it unilaterally declared its independence from Serbia after a brutal and bloody armed conflict that followed years of oppression and discrimination against the Albanian majority in Kosovo. International recognitions from 96 countries, including 22 member states of the European Union, immediately followed. The biggest opposition to the independence of Kosovo, of course, comes from Serbia, as many of its historical myths and legends are related to Kosovo as the cradle of Serbian citizenship.[[569]](#footnote-569)

Strongly opposing Kosovo’s declaration of independence, in September 2008, Serbia submitted a UN General Assembly resolution, attempting to challenge the issue of Kosovo’s political independence through the International Court of Justice. In response to this, in October 2008, the UN General Assembly adopted Resolution 63/3, which requested the opinion of the International Court of Justice, on whether or not Kosovo’s unilateral declaration of independence was in accordance with international law. After a tense period of voting in the UN GA, Serbia’s resolution was adopted, while all EU countries abstained.

The Unilateral Declaration of Independence with regard to Kosovo did not violate general international law, the Court concluded. Because the Court evaluates a UDI's legality without considering related issues of territorial integrity, self-determination, and secession, its reasoning seems incomplete. Although the Court made it clear that it would refrain from making any decisions on these, it did not provide a different legal foundation for the UDI that would comply with universal international law. Misunderstandings concerning the Court's stance on the UDI's legality in light of general international law have been caused by this very factor.[[570]](#footnote-570) The principle of territorial integrity of states is the only substantive legal question that the Court addressed. It was determined that this principle did not directly apply to or forbid the UDI made in Kosovo.

The scope of the territorial integrity principle is limited to the area of relations between States, according to the Court's Opinion”[[571]](#footnote-571)

Judge Bennouna's dissent, for example, explained the Court's position on general international law by stating that "the Opinion holds that United Nations law does not apply to the situation the Court has chosen to consider: that of a declaration arising in an indeterminate legal order, and that general international law is inoperative in this area."[[572]](#footnote-572) However, the Court did not state that there is no general international law that applies to circumstances in which unilateral declarations of independence (UDIs) occur; rather, it stated that general international law has no specific bearing on the actions of parties like the Kosovo Albanian leadership, including their declaration of independence, and that general international law is not relevant to the question of whether unilateral declaration of independence are substantively legal or permissible.

This is undoubtedly confusing, not the least because the Court's approach may seem to support the notion that there is a gap in this area of the international legal system in the absence of alternative criteria for the legality of UDIs. However, this would only be a false impression, as the Court only discusses a portion of the available legal arguments. Furthermore, upon closely examining the Advisory Opinion, it appears that the Court's handling of S/RES/1244 as lex specialis—that is, the question of who, rather than what, provided the basis for the Court's approach—might alleviate some of the awkwardness associated with its silence on the relevant general international law issues. Generally speaking, the Court has supported the idea that secession and the response to it are unregulated by international law due to its limited interpretation of the General Assembly's question.

Similarly, Judge *Skotnikov’s* concerns with the majority’s wording that general international law “contains no prohibition” on UDIs are understandable; for, if misunderstood, this statement can indeed have “inflammatory effect.”[[573]](#footnote-573) However, Norway's submission emphasized that declarations of independency are "not, as such, the object of regulation by public international law," which helps to explain the Court's approach. A UDI does not constitute a state and does not meet any of the statehood requirements outlined in the Montevideo Convention; rather, its legal existence and validity depend on the entity in question meeting the statehood requirements.

In terms of the relevance of the principle of territorial integrity, as France has most pertinently submitted to the Court,“ the principle of territorial integrity, as conceived by the United Nations Charter, excludes any *foreign* intervention designed to break up a State, including by providing armed support to a secessionist movement; but that certainly does not imply that international law condemns (or, indeed, encourages) secession per se.”[[574]](#footnote-574)

Michael Bothe has taken a similar stance, noting that "Declarations of independence are not prohibited." However, a state may choose not to acknowledge a secession before it is formally constituted. Premature recognition is equivalent to interfering with another state's internal affairs, which is prohibited. Thus, the territorial integrity principle does not inherently forbid UDIs; rather, it forbids a state from procuring, fostering, or supporting UDIs and entities that subsequently seek statehood through secession within the borders of another state.[[575]](#footnote-575) According to *Crawford*, for international law to prohibit secession, it would have to address the seceding entity, which it does not. Furthermore, secession is “a legally neutral act the consequences of which Crawford argues that international law would need to address the seceding entity—something it does not do—in order to forbid secession. Furthermore, secession is defined as "a legally neutral act with internationally regulated consequences." This observation provides a good starting point, but it does not support the thesis that secession is neutral, which has been advanced by Franck and others, and which holds that secession is allowed by international law due to its "neutrality" and lack of prohibition.

Franck supports the idea of using secession's "neutrality" to create or alter international rights and obligations, but doing so would render secession no longer neutral. Although it is true that international law does not address secession, pursuing the “neutrality” thesis further would necessitate making the unsupported assumption that, as a result of attempting or carrying out such “neutral” secession, the seceding entity, which was previously unrecognized and unaddressed by the international legal system, has now gained standing within that same legal framework.

This version of “neutral” secession essentially projects the right to secede for every potential seceding entity even before it secedes.[[576]](#footnote-576)

The difference between *Crawford’s* and *Franck’s* treatments of the problem of secession is that *Franck*, unlike *Crawford*, takes matters un- justifiably far by attempting to translate the “neutrality” of secession into a potential statehood, international legal status of the seceding entity, and entitlements of third states to recognise the seceding entity and take up legal relations with it.

Even though it is conceptually indirect, this doctrinal distinction can help explain how the International Court was able to separate the UDI issue from other important legal issues. In actuality, the international legal position on this matter, which also forms the basis of the International Court's approach, is that, although there is no reason for international law to forbid secession and a UDI prior to its occurrence, the reality that is created by it becomes an inter-state matter governed by international law, primarily through states' obligations not to interfere with one another's territorial integrity and, as a result, not to establish legal relations with the seceding entity. Whether third states can recognize the seceding entity, sign treaties, establish diplomatic relations, or engage in trade with it without the parent state's approval exemplifies the inter-state nature of the issue.

The relationships between the parent state and third states are the only topics covered by international law. International law has no reason to be concerned about a secession attempt until it becomes significant enough to disrupt those interstate relations, as the prevailing view is that domestic rebellion and irredentism are internal affairs. In other words, international law’s non-regulation of secession does not equate to its approval, still less to its approval of legal relations between the seceding entity and third states, but merely signifies its abstention from regulating an event which has not yet been raised to the level of producing an impact within the international legal system. [[577]](#footnote-577)

To provide another example, let us say that Scotland or the Basque country, should they declare their independence from Spain or the United Kingdom, respectively, would not in and of themselves be in violation of international law, if only because they would not be exhibited in an area where international law is applicable. Nonetheless, the question of whether these actions are lawful in light of the parent states' territorial integrity would come into play if third parties chose to recognize Scotland or the Basque nation and build diplomatic ties or agreements with them. There can never be a question of international law being violated because it is not affected or involved until and until the positions and actions of third states are taken into consideration. But it would be another additional and qualitatively different step too far to argue that once the actions and positions of third states in relation to the secessionist entity come into play, international law still provides no guidance of assessing the legality of those actions and positions and of dealing with them. The Court’s Opinion indicates nothing of that kind.

As another argument against the independence of Kosovo, they also take as a basis Resolution 1244 (1999)22 of the UN Security Council, in addition to the protection of the sovereignty and territorial integrity of Serbia, saying that the term "solution" required an agreement between the two parties and not unilateral action.[[578]](#footnote-578)

On July 22, 2010, the International Court of Justice issued an Advisory Opinion, in accordance with International Law on the Unilateral Declaration of Independence in Respect of Kosovo. The court concluded that the adoption of the Declaration of Independence on February 17, 2008 “did not violate any applicable rule of international law.[[579]](#footnote-579)

As expected, the reaction of the high authorities of Serbia was immediate. In this way, describing the Opinion as "difficult for Serbia", President Tadić emphasized that the court chose to discuss "only the technical content of the declaration of independence", while the Minister of Foreign Affairs of Serbia, Mr. Vuk Jeremić, in the UN Security Council, emphasized that the court did not decide whether Kosovo had achieved statehood, whether Kosovo had the declared right to secede from Serbia or whether the ethnic Albanians of Kosovo had any right to self-determination.

In this regard, Mr. Jeremic warned against "a risk of misinterpretation" of the Opinion as the legalization of the attempt of ethnic Albanians for unilateral secession. Such a misrepresentation would not only "become the decisive step in legitimizing bias on the global stage," but would also set the stage for the creation of a "workable universal unit, precedent that provides a ready model for unilateral separation.[[580]](#footnote-580)

On the other hand, in full support of Serbia against the Independence of Kosovo and the Western countries, the Russian Federation also came out, which through the Ministry of Foreign Affairs reacted, that the UDI "violates the sovereignty of the Republic of Serbia, the Charter of the United Nations, the Resolution 1244, the principles of the Final Act of Helsinki, the Constitutional Framework of Kosovo and the Agreements of the Contact Group at the level and warned the international community of inter-ethnic tensions in the province and of a new conflict in the Balkans. Likewise, President Putin declared that the UDI would destroy the entire system of international relations", while the future President of Russia, Dmitri Medvedev, after his visit to Belgrade, supported Serbia, stating that "[for] the EU, Kosovo is almost what Iraq is to the United States, [being] the latest example of the undermining of international law".[[581]](#footnote-581)

# **6. Conclusions**

1. The state as a subject of international law, arises as a result of a historical and sociological process, which is presented as a simple fact, often extends beyond the notions of legal norms. However, international law clearly defines the rules of which must be fulfilled to be a state, as defined in the provisions of the 1933 Monte Video Convention, according to which the state must have a) permanent population, b) definite territory, c) government and d) the ability to enter relations with other countries. In this way, International Law does not deal with the issue of the birth of states, until they are actually presented, which also represents the starting point of the state's legal status. Therefore, it is not important whether the state was created in accordance with the existing domestic or international legal order, but whether the state actually exists or not. During this study, state recognition in international law, theories of recognition, statehood as a very important factor in the creation of new states, de jure recognition and de facto recognition of the state, and membership of states in the United Nations organization were addressed.
2. The case study of this dissertation was the dissolution of the Yugoslav Federation and the creation of new states in international law. The very creation of the Yugoslav Federation that arose out of the World War II was a failed challenge, due to the fact that it was a multi-ethnic federation, while everything had to be handled very carefully so that the people of Yugoslavia could enjoy their lives in this federal state.

While, over the years, on the one hand, the majority of the people living in the Yugoslav Federation, accepted the constitutional changes, the decentralization of power from the federation to the republics and autonomous regions, which offered equality and rights to all the peoples of Yugoslavia that were guaranteed by the Yugoslav Constitution of 1974, on the other hand, it was Serbia that fought for a centralized federation dominated by Serbs. This tendency of Serbia first appeared after the death of Tito, becoming tougher after the Albanian demonstrations of 1981, to reach the climax with the coming to power of Milosevic, who had the mission of implementing the Memorandum of the Serbian Academy of Sciences. The extreme polarization between Serbia on one side and Slovenia and Croatia on the other side at the XIV Congress of the Central Committee of the LKY marked the beginning of the disintegration of Yugoslavian and pushed ahead declaration of independence, first of Slovenia and Croatia, and later of Bosnia and Herzegovina, Macedonia, and Kosovo. Prior to delving into the equilibrium of law and politics in state recognition, it could be beneficial to further examine the significance of 'state recognition'. The quest for a definition becomes tangled right away in a lengthy dispute that greatly splits the global legal community: is acknowledgment a crucial condition for statehood - the constitutive school - or a validation of an existing factual circumstance - the declaratory school?  In line with the constitutive theory, a state is formed when it is acknowledged as one. Acknowledgment is essential for establishing statehood, as stated by the traditional positivist view of international law. This perspective labels recognition as a vital component in the process of evolving into a state through the consent of other states.

1. The challenging issue of statehood is simplified to a more practical question of whether other states have acknowledged the entity. It is widely acknowledged that the constitutive theory has significant limitations, particularly when a state is only recognized by some states in the international community. Questions emerge regarding the minimum number of recognizing states necessary for an entity to transition into statehood and the criteria for recognition, including facts, norms, geopolitical factors, or a blend of these. At a deeper level, the theory suggests that the concept of statehood is more of a relative idea rather than an absolute one, which may seem counterintuitive. As per the declaratory school's perspective, statehood is entirely determined by a specific set of factual requirements, including a lasting population, a defined territory, a functioning government, and the capacity to engage in relationships with other states. The Montevideo Convention on Rights and Duties of States lists criteria that are widely recognized as customary international law, and these criteria are expanded upon in doctrine and jurisprudence. When a body meets these conditions, it becomes a state erga omnes. In this theory, recognition is simply an official acknowledgment of a factual scenario - a retrospective action that goes back to the moment when the factual requirements were met and the entity achieved statehood. Formally acknowledging a state does have practical implications for the relationship between the acknowledging state and the acknowledged state, but it is not essential for statehood. The declaratory theory is currently the most prevalent theory in doctrine and jurisprudence. Its success is partially attributed to the fact that it prevents states from determining statehood arbitrarily, instead favoring objective legal standards. However, this theory also has its own critics. To start with, it is commonly stated that unrecognized entities do not possess international legal status and therefore cannot be recognized as a state, even if they fulfill all the specified criteria. Another issue is that the theory fails to consider how the entity obtained the necessary prerequisites, allowing states to be formed through serious breaches of international law.

The significant difference between the constitutive theory, where recognition is entirely normative, and its declaratory counterpart, where recognition lacks normative value altogether, appears impossible to overcome. Some writers suggest an alternative approach to address this divide, where acknowledgment is not solely constructive or solely formal. Statehood is viewed based on effectiveness, with recognition viewed as a political gesture that enhances the international effectiveness of an entity.  The EC, aided by the Badinter Commission, quickly released a Declaration on Guidelines for Recognizing New States in Eastern Europe and the Soviet Union on December 23, 1991, addressing legal matters like sovereignty and state succession. This statement outlined the requirements entities needed to meet in order to receive recognition. Therefore, it established the standard basis for European state actions including towards the newly formed Balkan countries.

The disparities from the conventional structure were evident. The European Community and its member states will consider the principle of self-determination in their recognition practice, despite traditionally applying it only in colonial situations. Another notable requirement mentioned was the need for the new entities to demonstrate their dedication to democracy in order to receive recognition. The traditional legal system had never focused on the internal structure of a potential state, as doing so would be seen as an illegal intrusion into the state's internal matters. The lack of democratic governance did not prevent the recognition of states, as seen with the widespread recognition of newly formed states post-decolonization, even if they were not democratic.

1. The EC guidelines specified that the new republics must establish themselves democratically, while also emphasizing the importance of human rights and minority rights - a significant expansion from the previous focus on racial discrimination and apartheid. Finally, it is important to acknowledge the necessary obligations regarding disarmament and prevention of nuclear proliferation.  The European Council, backed by the Badinter Commission, made efforts to establish a strong, thorough, and consistent normative system for recognizing the new republics, but state practice soon revealed a lack of strict adherence to this framework. On 15 January 1992, the European Community, following the recommendation of the Badinter Commission, made the decision to acknowledge Slovenia and Croatia as newly independent nations. By doing this, it was evident that the new criteria with potential could be used in a highly adaptable manner.

At that time, Croatia also lacked a stable government capable of governing its entire territory. The decision to give recognition explicitly went against a key traditional requirement. Furthermore, the decision to recognize Croatia went against a newly established norm, as the Badinter Commission had pointed out that the Croatian constitution did not completely satisfy the standards for safeguarding minority rights. The acknowledgment of Bosnia and Herzegovina on 7 April 1992 demonstrates a similar liberal interpretation of the legal principles governing state recognition. Bosnia and Herzegovina lacked a competent government that could govern a significant portion of its land - a fact acknowledged by its president, who admitted that his country needed foreign military assistance to maintain its independence.

The violent civil war arising from this situation also failed to create a space where human rights were properly upheld.  Although two out of the three recognized republics did not fully conform to the normative framework, be it traditional or new, Macedonia experienced the opposite situation: despite meeting all criteria, it was initially recognized by only a few states. Despite receiving favorable recommendations from the Badinter Commission, Greece blocked the recognition, which was only resolved in 1993.

1. To protect the identity and interests of all national groups, it is important for republics to ensure their protection. In this institutional setting, the principle of uti possidetis acknowledged only the self-determination rights of powerful nations in the new states formed after Yugoslavia's breakup. The recognition of the Yugoslav republics' sovereignty and borders globally did not lead to their institutional reorganization to address the needs of constituents from other nationalities residing outside their designated region. Consequently, they were deprived of the equal constitutional rights. In some new states, their relegation to national minority status was worsened by the refusal of basic rights. Uti possidetis also refused the self-determination right to sizable national minority groups like Albanians, who lived in specific regions. The increase in importance of the transition from internal borders to international boundaries stranded non-dominant national groups in emerging nation-states that were less likely to offer the same level of collective rights and territorial autonomy as socialist Yugoslavia.

However, uti possidetis was the only viable option at the time as changing the inter republican boundaries peacefully would require all parties to agree, which was unlikely to happen in that context escalating nationalist dispute. The former Yugoslav republics could have gained international recognition if they restructured their institutions to grant national groups extensive collective rights and territorial autonomy where they were the majority. As this did not occur, affected groups were left with the option of either tolerating the loss of rights, leaving the new states, or challenging them to change border arrangements, either through peaceful protest or armed conflict. People residing in regions with a high concentration of their ethnic group, who were backed by their fellow ethnic members from nearby regions, opted for the second choice, like Serbs in Croatia and Serbs and Croats in Bosnia-Herzegovina.  A somewhat minor issue of restructuring within the former Yugoslav republics quickly turned into potentially dangerous irredentist demands. Predictably, the inter-republican borders that have not faced disputes, like the Slovenian-Croatian border and the one between Serbia and Macedonia, did not have significant national groups residing on the "incorrect" side of the border.

1. The imminent downfall of multi-national Yugoslavia, amid the clamor for national self-determination and escalating conflict in neighboring Croatia, led to similar events in Yugoslavia's most diverse republic. Bosniak Muslims closely tied their identity and interests to Bosnia-Herzegovina in their efforts to have its sovereignty and borders recognized internationally. Serbs and Croats, worried about being dominated by Muslims, started seeking security from Serbia and Croatia, who promptly offered assistance.  Before Bosnia-Herzegovina gained international recognition, an independence referendum took place on Feb. 29-March 1, 1992. More than 98% of the votes, from a 63% turnout primarily consisting of Muslims and Croats, favored independence. Serbian people refused to participate in the referendum and retaliated by severing connections with the regions where they were the largest population group within the republic. The start of a civil war was marked by the global acknowledgment of Bosnia-Herzegovina's sovereignty and boundaries in April 1992.
2. The conflict, lasting until 1995, caused immense civilian suffering on all sides, widespread ethnic expulsion, and mass killings. Over half of the people were forced to leave their homes, whether it be within Bosnia-Herzegovina or abroad. This is seen in the increasing number of charges and verdicts for serious violations of human rights, ethnic cleansing, and even genocide by the UN-established International Criminal Tribunal for the former Yugoslavia through Security Council Resolution 827 on May 25, 1993. The signing of the Dayton Peace Accords in November 1995 by Bosnian President Alija Izetbegovic, Tudjman, and Milosevic (also representing the Bosnian Serbs) marked the end of hostilities.
3. The Dayton agreement confirmed Bosnia Herzegovina's sovereignty and borders and created a state with a high level of decentralization. Bosnia-Herzegovina is divided into two nearly equal-sized highly autonomous political entities - the Serb Republic (Republika Srpska) and the Federation of Bosnia Herzegovina. The dividing line between the two parties is determined by the military front line, with some minor changes in the Sarajevo region.  While other republics were gaining independence and international recognition, Serbia and Montenegro, the biggest and smallest republics in socialist Yugoslavia, remained united as one country.

The establishment of the Federal Republic of Yugoslavia (FRY) in April 1992 came after all other republics, including Slovenia, Croatia, Bosnia Herzegovina, and Macedonia, declared independence. The newly formed state remained unacknowledged after the UN Security Council refused to grant the FRY the status of being the only successor to the Socialist Federal Republic of Yugoslavia, even though only Serbia and Montenegro had been recognized as independent states before the establishment of the Kingdom of the Serbs, Croats, and Slovenes.

The Federal Republic of Yugoslavia was finally accepted into the United Nations in 2000 following the downfall of Milosevic and the election of the new democratic government in Belgrade. Slightly more than two years after, the state was redefined and given a new name of Serbia and Montenegro with the assistance of EU mediators. Serbia and Montenegro is a unique type of federal state, where the majority of the population and resources are concentrated in the larger republic. Despite this, Montenegro has held a significant position in decision-making since 1992 because of constitutional agreements that guarantee power distribution, fair representation in government, and minority veto rights.  Regardless of the unusual composition and potentially dysfunctional constitutional arrangements, the state functioned normally so long as the ruling, refurbished Communists in the two republics shared views on the main issues of policy.

1. It is common knowledge that Kosovo declared its independence from Serbia without any agreement on 17 February 2008. As a result of this action, Serbia requested the United Nations General Assembly to seek an advisory opinion from the International Court of Justice regarding the legality of the declaration under international law. In a controversial decision on June 22, 2010, the International Court of Justice stated that this declaration does not conflict with UN Security Council Resolution 1244 (1999), the Constitutional Framework for Kosovo (2001), or general international law.  As per the Yugoslav constitution, republics were identified as the homelands of the constituent nations - Serbs, Croats, Slovenes, Macedonians, Montenegrins and, later, Muslims - and were given the right to self-determination. However, republics were mostly made up of multiple nationalities.

Kosovo announced its independence from Serbia unilaterally on 17 February 2008. This led to the UN General Assembly asking the International Court of Justice, as requested by Serbia, for an advisory opinion on the legality of the declaration under international law. In a controversial decision on June 22, 2010, the International Court of Justice ruled that this statement was not in conflict with UN Security Council Resolution 1244 (1999), the UN Mission in Kosovo, the Constitutional Framework for Kosovo (2001), or international law in general.   
  
The advisory proceedings in front of the ICJ sparked significant interest among states. Besides Serbia and the authors of Kosovo's declaration of independence, 42 states took part in the proceedings before the Court. Pro-Kosovo states chose to present only restricted justifications rooted in self-determination and secession. The development of the unique argument can serve as an illustration. According to Crawford Kosovo's status as sui generis was the key political point highlighting its uniqueness and deterring others from copying its actions. The states that supported Kosovo did not want to frame the issue as a clash between self-determination and territorial integrity. Initially, they understood that the ICJ would be hesitant to address the self-determination argument, and the phrasing of the inquiry would give the ICJ a way to evade it. Also, the major powers in favor of Kosovo were hesitant to fully endorse Kosovo's independence due to the level of commitment it required based on self-determination.  Doing so would require them to act consistently with regard to any other oppressed group in future. As a result, they chose to argue that the principle of territorial integrity did not apply to non-state actors. Thus, the application of the principle of territorial integrity within a state became one of the key issues argued by the participants as the proceedings developed. As per the Montevideo Convention, the State must have a permanent population, defined territory, government, and ability to engage with other States in order to be considered a subject of international law.

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    The Purposes of the United Nations are:

    To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

    To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

    To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

    To be a centre for harmonizing the actions of nations in the attainment of these common ends. Accessible at: <https://www.un.org/en/about-us/un-charter/full-text>> [↑](#footnote-ref-10)
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423. Ströhle, I., 2006. Pristina's" Martyrs' Cemetery"–Conflicting Commemorations. *Comparative Southeast European Studies*, *54*(3), pp.404-426. [↑](#footnote-ref-423)
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425. Judah, Tim., 2002, p.95. [↑](#footnote-ref-425)
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427. Ibid., at 119. [↑](#footnote-ref-427)
428. Malcolm, Noel., 1998, p. 366. [↑](#footnote-ref-428)
429. Fatmir Sejdiu, 'Baza Juridiko-Politke e Republikes se Kosoves'. In Instituti i Historise se Kosoves dhe Shqiperise (eds.), *Çështja e Kosoves - Një Problem Historik dhe Aktual* (BESA: Tirane 1996) pp.371-379. [↑](#footnote-ref-429)
430. For the full text of this application, see, The Academy of Arts and Sciences of the Republic of Albania (ed.), *The Truth on Kosovo (*Tirana: Encyclopedia Publishing House, 1993) pp. 341-343. [↑](#footnote-ref-430)
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432. In referring to the so-called Kumanovo Agreement which made possible for NATO troops to enter Kosovo in June 1999 and the promulgation of the 1244 UN Security Council Resolution on Kosovo (June 12, 1999), the Chief of the General Staff of the Yugoslav Army, Nebojsa Pavkovic, told the press in Belgrade that they (the Serbs) held the deeds over Kosovo because both of the above documents recognized and guaranteed the integrity and sovereignty of the Federal Republic of Yugoslavia. Cf. Radio Slobodna Evropa (In South Slavic languages), 17 Decembr 1999, 10:00h p.m. CET. [↑](#footnote-ref-432)
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440. Federation (Victor Chernmerdin) have later revealed that Milosevic had accepted NATO's conditions for surrender when he was given by them assurances that the international mission in Kosovo would be under the UN auspices and, above all, that the same community guaranteed FRY's territorial integrity and sovereignty over Kosovo. Cf. *The UN Document: S/1999/699* (dated June 2, 1999). [↑](#footnote-ref-440)
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458. Ibid., at 90. [↑](#footnote-ref-458)
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461. https://digitallibrary.un.org/record/262334?ln=en&v=pdf [↑](#footnote-ref-461)
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463. By the end of December, there was still no progress on reaching a political settlement despite the

     deadline of 9 November having come and gone. The Secretary-General reported, “alarming signs of

     potential deterioration”. UN Doc. S/1998/1221 (24 December 1998), para. 4, and that violence had

     reached its highest level since the October 16 Agreement. [↑](#footnote-ref-463)
464. US: NATO Set to Strike Vs. Serbs,” *Associated Press* (18 January 1999). The OSCE also held an emergency meeting on 18 January, “Kosovo Massacre: OSCE Calls Emergency Meeting,” *Associated* *Free Press*, 18 January 1999 [↑](#footnote-ref-464)
465. Contact Group statement, London, 29 January 1999. On the background to this meeting see, “Big Powers to Summon Kosovo Sides to Peace Talks,” *Reuters*, 26 January 1999; “US Discloses Plan to Impose Kosovo Settlement,” *Reuters*, 27 January 1999 [↑](#footnote-ref-465)
466. At the same time NATO issued fresh warnings and expressed its preparedness to back with force the final political initiative launched by the Contact Group on 29 January. Javier Solana announced, “NATO stands ready to act and rules out no option... The North Atlantic Council has decided to increase its military preparedness to ensure that the demands of the international community are met.” Hence an ultimatum was issued to both sides that they must agree to meet for peace talks within a week or face the consequences. “NATO Warns Both Sides in Kosovo,” *Reuters*, 28 January 1999; “Major Powers to Give Ultimatum on Kosovo,” *Reuters*, 29 January 1999. [↑](#footnote-ref-466)
467. On 30 January, the NAC agreed that Secretary-General Solana could authorize air strikes against targets on Yugoslav territory. He stated, “NATO stands ready to act. We rule out no option to ensure full respect by both sides in Kosovo for the requirements of the international community”. Statement

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470. The OSCE reported that Chairman-in-Office Norwegian Foreign Minister Knut Vollebaek, telephoned President Milošević on 24 March and urged him to accept the Rambouillet interim agreement and put an end to the excessive use of force by FRY and Serbian forces in Kosovo. OSCE Press Release, Vienna, 26 March 1999. [↑](#footnote-ref-470)
471. The IIC Report notes the lack of verified data at this time, but still concludes, “apart from the shocking exception of the Recak/Racak [applying both Albanian and Serb place names] massacre, it is reasonable to assume that the number of civilian killings was significantly lower… than during earlier months.” [↑](#footnote-ref-471)
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475. Ibid., at 174. [↑](#footnote-ref-475)
476. Ibid., at 175 [↑](#footnote-ref-476)
477. Shala, Blerim., p.34 [↑](#footnote-ref-477)
478. The Group of Seven (G7) is an informal forum of the seven leading industrial nations and democracies. Besides Germany, the G7 consists of Canada, France, Italy, Japan, the United Kingdom, the United States and the European Union.

     The G7 sees itself as a community of shared values committed, for instance, to freedom and human rights, democracy and the rule of law, prosperity and sustainable development. [↑](#footnote-ref-478)
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     The countries members of the Rio Group express their anxiety about the commencement of air strikes by the North Atlantic Treaty Organization against Serbian military targets and, in particular, their concern that no peaceful means of solving, in conformity with international law, the exibting dispute among the various patties to the conflict in Kosovo has been found.

     The Rio Group therefore calls on all parties to resume, as soon as possible, talks with a view to achieving a comprehensive and final settlement with a view to re-establishing a stable and lasting peace based on respect for the human rights of all ethnic groups and minorities in the region, and on the territorial integrity of States. For further reference access: < <https://archive.globalpolicy.org/security/issues/kosovo24.htm> > [↑](#footnote-ref-503)
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576. *Franck* argues that international law permits and does not prohibit unilat- eral secession, Report by T. Franck, in: Bayefsky, see note 31, 75 et seq. (82- 83); elsewhere, in his Hague Lectures, *Franck* has advocated a view of se- cession with conclusions that are mutually exclusive and cannot enable us to reach any consistent conclusion on this matter, see T. Franck, “Fairness in the International Legal and Institutional System (General Course on Public International Law)”, *RdC* 240 (1993), 13 et seq. In one place, *Franck* argued, focusing on the ICCPR, among others, that “a cultural, ethnic or racial group may secede, but there is no *right* in law to do so. The law is es- sentially silent on secession, neither mandating nor prohibiting it, *per se*”, ibid., 106 (emphasis original), and 141. Later on, it is argued that “nothing in [the ICCPR] or any other international text *prohibits* secession”, ibid., 135 (emphasis original). [↑](#footnote-ref-576)
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