

THE STUDY CASES OF THE DISMEMBERMENT OF THE FEDERATIVE STATES

Paul DUTA

Ph.D. Scientific researcher with Romanian Diplomatic Institute,
ppduta@yahoo.com.

ABSTRACT: THERE IS NO EUROPEAN UNANIMITY IN VALIDATING KOSOVO'S INDEPENDENCE. GHEORGHE I. BRĂȚIANU MENTIONED - TALKING ABOUT THE CONCEPT OF THE „SECURITY SPACE” - TWO DECISIVE GEO-POLITICAL POSITIONS AT THE BLACK SEA: THE BOSFOR AND DARDANS STRAIGHTS[1] AND CRIMEEA, RESPECTIVELY „WHO HAS CRIMEA CAN HOLD THE BLACK SEA.”

THE DISMEMBERING OF CHECKOSLOVAKIA AND JUGOSLAVIA AND THE TWO GERMAN STATES UNITED DO NOT CONTRADICT THE FINAL ACT FROM HELSINKI.

KEYWORDS: SLOVENIA, CROATIA, BOSNIA-HERTZEGOVINA, KRAJINA, THE SRPSKA REPUBLIC, KOSOVO, CRIMEEA

It was a state formed by republics that had substantial autonomy, represented in the Federal Parliament and accessing the presidential position by rotation. The breaking of the Federation could have been violent or peaceful.[2] According to the Federative Constitution, the Republics were entitled to secession, except for the two provinces in the Republic of Serbia.[3]

Slovenia is the first to leave, for it had started the process since 1987.[4] On 7th of March 1990, the Parliamentary Assembly of Slovenia changes the name of the country into the Republic of Slovenia, and in April there are the first elections.[5] In December 1990, at the referendum, most people vote for the independence, which will be effective starting 25th of June 1991,[6] causing the "ten days war". On 7th of July 1991, a truce is reached by signing the Briony Agreement and at the end of the month Yugoslavian soldiers left the country.[7] In December 1991, the new Constitution is applied, and in 1992, Slovenia is validated as an independent state by the EU States and by the UN.[8]

Croatia. At the beginning of 1990, the Croatian faction of the Communist Party asked for larger autonomy within the federation.[9] During the same year there are free elections, Franjo Tudjman being elected; this would create inter-ethnic tensions, so that Serbians would create the Republic of Krajina[10], in order to become independent from Croatia. In June 1991[11], Croatia declares its independence, starting the 8th of October 1991.[12] The Yugoslavian National Army and some Serbian para-military groups attacked Croatia, managing to conquer a vast territory.[13] The EU intervened to mediate the Briony

Agreements[14] – to cease fire and to support the independence of Slovenia and Croatia.[15] In 1992, Croatia, Slovenia and Bosnia-Herțegovina are validated by the EU representatives and later on by the UN as independent states.[16] In the summer of 1995, Croatia's war for independence is concluded by the Erdut Agreement in November 1995[17]; the restitution of the occupied zones is ended in January 1998.

Bosnia-Hertzevovina. Slovenia and Croatia's independence declarations started the same process in Bosnia-Hertzevovina. Politicians were divided in two: some wanted to remain in the federation[18], some wanted the independence.[19] Plus that starting with 1991 there were discussions between the Serbian and the Croatian presidents regarding the splitting of Bosnia-Hertzevovina in two, a part for each side[20], but, because each president wanted more for his state, disagreements appeared. The Serbian politicians left the Sarajevo Parliament and formed the Assembly of the Serbians in Bosnia-Hertzevovina, the base of "The Serbian republic of Bosnia-Hertzevovina" (January 1992), that turned into "The Srpska Republic" in August the same year. On 15th of October 1991, Bosnia-Hertzevovina declares its sovereignty, and in February-March 1992 there is a referendum on independence[21]. On 3rd of March 1992, Bosnia-Hertzevovina declares its independence; once it is internationally validated, the Yugoslavian Army is forced to retreat. The Bosnian-Serbian soldiers from the Yugoslavian Army continued to fight, grouped in the army of the Srpska Republic, helped by volunteers, some para-military forces and the Republic of Yugoslavia. In 1992, after the victory of the Bosnian Forces, a part of the Bosnia-Hertzevovina got under the control of the Srpska Republic. In March 1994, the Bosnia-Hertzevovina Federation is formed, following the signing of the Washington Agreements[22]; its army managed to free the Autonomous Province of the West Bosnia in the same year. In 1995, as a result of the massacre in Srebrenica, there is a terrestrial offensive of the Croatian and Bosnian forces against the army of the Srpska Republic; NATO's bombings determined the beginning of the negotiations. In December 1995, by the Dayton Agreement the war was ended.[23]

Serbia tried to control both the collective leading and the Federal Parliament, transferring the decisional process to Serbia.[24]

The dismembering of Yugoslavia is specific to a federal structure (the state entity ceases to exist), but this process is different from the unilateral secession (some part of the territory is taken outside the respective state entity).[25]

If the dismembering is made forcefully with the purpose of the secession, the mutual agreement - method specified by the bases of the federal establishment- the nuances become more complicated.[26]

Kosovo and Crimea precedents contested the onusian theme saying that on an independent and sovereign terrain there is only one people (in the sense of a single nation, referring directly to the right to the respective land)[27] and promoted a new way to validate the pretensions of the autonomous and secessionist movements; the communities represented by them would be distinct people, with distinct socio-cultural determinants.[28]

The dismembering of Checkoslovakia and Yugoslavia and the two German states united do not contradict the Final Act from Helsinki.

To ignore the principle of not revising the borders stated in Helsinki'75 places in a delicate situation the states that gave up the territorial pretencies to which they were entitled, in order to eliminate future problems caused by separatist movements.[29] More than that, it is considered that the secession has regional and global implications; therefore, not even agreements for secession cannot be encouraged or recommended as a modality to change international borders.[30]

In the case of Kosovo, there was considered a case with unique circumstances, not one of self-determination; it was seen as a precedent but a *casus sui-generis* in the international policy, ven though the main justification - human rights violation - exist in other separatist conflicts as well.[31] In the Kosovo file, Russia supported only the solutions "of universal nature" and tried to block any variant that would have "applied a set of principles for a case and another set for other case"[32] considering unilateral secession as precedent for the frozen conflicts in Transnistria, South Ossetia and Nagorno-Karabakh. [33]

Crimea's status questions Helsinki '75.[34]

One opinion justified Kosovo's separation from Serbia with the right to self-determination of the Albanese people compared to the colonial entities, corelated with the right to secession as a "remedy." Yet, Kosovo cannot be used as precedent of the right to self-determination.[35]

The position of CIJ[36], asked by the General Assembly regarding the unilateral independence declaration of Kosovo is built on numerous subtle interpretations that cannot be extended or serve as a fundament for future secession movements.[37]

According to some opinions, Crimea's annexation ignores the principle of non-violent annexation, breaking the integrity and sovereignty of a state creating tensions between the international law agreements and producing international instability.[38]

Starting the Kosovo precedent (semnificative in the international jurisprudence), a political group devoted to Flander's independence suggests a parliamentary procedure with qualified majority and without referendum, based on the right to free circulation in the EU, this being in fact, a "Flander Crimea".

There is no European unanimity in validating Kosovo's independence, but a functional perspective is admitted, without a time frame, to ensure relations between Serbia and Kosovo.[39]

The international stability and the basic principles of the international relations were shaken by the Kosovo issue, by the effect of the self-determination demand on the post-1989 world order.[40] According to some opinions, the status of the international law is seriously questioned, a situation specific to major geo-political re-arrangements.[41]

The Ukrainian Army, less stronger than The Russian Army (see the chart with the forces ratio) so many specialists considered that the Ukrainians would have been quickly defeated in a confrontation with the Russians.[42]

	Defence expensives	Army	Tanks	Artillery	Helicopters	Planes	Battle ships on the Black sea
Russia	69 mld USD	300.000	2.850	4.670	1.404	2.250	39
Ukraine	2 mld USD	68.000	735	2.411	129	322	10

Table no. 1 –Russia -Ukraine armed forces ratio[43]

The political and economical situation in Ukraine at the beginning of 2014 is so difficult in the absence of a consistent external financial help, with the crises extending on the background.[44]

Crimea annexation by Russia means the end of the XXth century and the beginning of a new century in which Russia and the Occident are at war with Ukraine in the middle to have the faith of Poland in the XVIIIth century,[45] there being a tight bond between the Arab Spring and the Ukrainian crises.[46]

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- [2]. See S.L. Burg, *Conflict and Cohesion in Socialist Yugoslavia*, Political Decision Making since 1966 (Princeton, NJ: Princeton University Press, 1983), pp.117–121.
- [3]. See R.J. Crampton, *The Balkans since the Second World War* (London and New York: Longman, 2002), p.251.
- [4]. “The second half of the 1980s proved crucial on the path to independence, particularly the critical writing of intellectuals in the circle of Nova revija magazine. Its 57th issue focused on Slovenia's independence.” See www.slovenia.si; Vezi ši, Hannum P., *Self-Determination*, în M. Sellers, *The New World Order: Sovereignty Human Rights and the Self-Determination of Peoples*, (Oxford: Berg, 1996), p.35.
- [5]. “In 1988 and 1989 the first political opposition parties emerged, which in the 1989 May Declaration demanded a sovereign state for the Slovenian nation. In April 1990, the first democratic elections in Slovenia took place and were won by DEMOS, the united opposition movement, led by Dr Jože Pučnik.” See www.slovenia.si
- [6]. “more than 88% of the electorate voted for a sovereign and independent Slovenia . The declaration of independence followed on 25 June 1991.” See www.slovenia.si.
- [7]. “After a ten-day war, a truce was called, and in October 1991 the last soldiers of the Yugoslav Army left Slovenia.” See www.slovenia.si; See *Brioni Accords*, Europe Documents, No. 1725, 16 July 1991.
- [8]. “The European Union recognised Slovenia in the middle of January 1992, and the UN accorded it membership in May 1992.” See www.slovenia.si.
- [9]. See *Raportul CSCE asupra referendumului din Bosnia-Herțegovina*.
- [10]. “Throughout August (1990), tensions in Croatia led to the beginning of the carving out of what was eventually to become the secessionist, but ultimately short lived enclave of the Republic of Serbian Krajina.” See T. Judah, (2002), “*Kosovo war and revenge*”, Yale University Press, p.12. ”In November, one month after the secession of Croatia, the ‘Badinter’ Arbitration Commission appointed by the EC indicated that the SFRY was in the process of dissolution.” See A. Pellet, ‘The Opinions of the Badinter Arbitration Committee, A Second Breath For the Self-Determination of Peoples’, *European Journal of International Law* 3 (1992): 178, Opinion 1, p.184, para. 3.
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- [12]. Due to the demands from The European Community and those of The Conference for Security and Cooperation in Europe for a three months Moratory on the independence of Croatia. See *Brioni Accords*, Europe Documents, No. 1725, 16 July 1991.
- [13]. See R.J. Crampton, *The Balkans Since the Second World War* (London and New York: Longman, 2002), p. 251. See also, <http://www.infoplease.com/spot/yugotimeline1.html>
- [14]. *Brioni Accords*, Europe Documents, No. 1725, 16 July 1991, p.17. See also, *Declaration on the Guidelines for the Recognition of New States in Eastern Europe and the Soviet Union*, Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991, EC Bulletin 12-1992, p. 119.
- [15]. See M.C. Greenberg et al. (eds), *Words Over War, Mediation and Arbitration to Prevent Deadly Conflict* (Lanham, MD: Rowman & Littlefield, 2006), p.76 and the following.
- [16]. "Three former Yugoslav republics were formally elected as full members of the United Nations today in an emotional session punctuated by pleas to save Bosnia and Herzegovina from imminent disintegration." It's about Croatia, Slovenia and Bosnia-Herțegovina. See "Three ex-Yugoslav republics are accepted into UN", *The New York Times*, 23.05.1992, www.nytimes.com.
- [17]. By this accord, the territories belonging to the self-proclaimed Republic of Krajna (East Slavonia, Baranjei and The West Sirmium) are given to Croatia. See *The Erdut Agreement*-www.usip.org.
- [18]. The Serbians being the main supporters of this idea. See Paul Dănuț Duță, Teodor Frunzeti, Ion Panait, *Organizațiile internaționale și problema balcanică. Studiu de caz: Kosovo*, Colecția Politică și Apărare Națională nr.34, Editura Tehno Media, Sibiu, 2009, p.26.
- [19]. a Bosnian opinion. "The neighboring republics of Serbia and Croatia indicated interest in dividing the republic, and ethnic Serbs and Croats in Bosnia-Herțegovina have supported either joining these other republics or dividing their own into three distinct, nationality-based territories." See *Raportul CSCE asupra referendumului din Bosnia-Herțegovina*. See also, Paul Dănuț Duță, Teodor Frunzeti, Ion Panait, *Ibid.*, p.34.
- [20]. The Karadordevo Agreement (or The Karadordevo meeting), by which Bosnia-Herțegovina had to be divide between Croatia and Serbia based on the preponderance of the nationality of the people in the zone. See Paul Dănuț Duță, Teodor Frunzeti, Ion Panait, *Ibid.*, p.35 și urm.
- [21]. boycoted by the Serbians. "Bosnia-Herțegovina, one of six constituent republics of the Yugoslav federation, held a referendum on its sovereignty and independence on February 29-March 1, 1992." See *Raportul CSCE asupra referendumului din Bosnia-Herțegovina*. See also, Paul Dănuț Duță, Teodor Frunzeti, Ion Panait, *Ibid.*, p.107 și urm.
- [22]. "The undersigned have agreed on the attached Framework Agreement establishing a Federation in the areas of the Republic of Bosnia and Herzegovina with a majority Bosniac and Croat population and on the attached outline of a Preliminary Agreement for a Confederation between the Republic of Croatia and the Federation." *The Washington Agreement*-www.usip.org. See also, Paul Dănuț Duță, Teodor Frunzeti, Ion Panait, *Ibid.*, p.107 și urm.
- [23]. Total number of the casualties in this war was 110.000 people killed and 1,8 mil. people relocated.
- [24]. See M. Kohen, *Secession: International Law Perspectives* (Cambridge: Cambridge University Press, 2006), p.125.
- [25]. See, *Vienna Convention on Succession of States in Respect of Treaties*, 23 August 1978, 17 I.L.M 1488, 1946 U.N.T.S 3 (entered into force 6 November 1996), Art. 34–5.
- [26]. The annalisys upon those situations is the object of the third study of the project.
- [27]. The principle of the self-determination, the people's right to decide their own destiny, against the collonial system and against human fundamental rights. See The Helsinki Final Act of 1975.
- [28]. According to the Resolution on 24th of October 1970, the right to self-determination cannpt be interpreted as „authorising or encouraging of some actions, whichever they might be, meant to dismember or threatn, totally or in part, the territorial intergity or the political unity of any sovereign or independent state." Para 6 of Resolution 1514 (principiul Uti posseidētis)- „any attempt to distroy partially or totally the unity or the territorial itegrity of a country is incompatible with UNO principles.”
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- [30]. See Stefan Wolff & Annemarie Peen Rodt, Self-Determination after Kosovo, *Europe-Asia Studies*, 01 Jul 2013, *Europe-Asia Studies*, <http://www.tandfonline.com/loi/ceas20>.
- [31]. See James Ker-Lindsay, *Preventing the Emergence of Self-Determination as a Norm of Secession: An Assessment of the Kosovo 'Unique Case' Argument*, *Europe-Asia Studies*, 01 Jul 2013, *Europe-Asia Studies*, <http://www.tandfonline.com/loi/ceas20>
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- [33]. See Putin, Vladimir, *Excerpts from Transcript of Meeting with the Government Cabinet*, 30 January 2006, The Kremlin, Moscow, available at: <http://archive.kremlin.ru/eng/>, accessed 3 June 2014.
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- [36]. See The Advisory Opinion of 22 July 2010, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*
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- [38]. See Shimon Stein, *The Ukraine Crisis: Preliminary Comments*, INSS Insight No. 549, May 16, 2014.
- [39]. See Etain Tannam, The EU's Response to the International Court of Justice's Judgment on Kosovo's Declaration of Independence, *Europe-Asia Studies* 01 Jul 2013, <http://www.tandfonline.com/loi/ceas20>.
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- [46]. See Zvi Magen and Udi Dekel, *Russia's Linkage between the Ukrainian Crisis and the Middle East*, INSS Insight No. 556, p. 3.