

YUGOSLAVIAN CONSTITUTIONAL QUESTIONS: SELF-DETERMINATION AND SECESSION OF MEMBER REPUBLICS

I. FACTS

The "powder keg" of Europe again has a short fuse as the permanence of Yugoslavia¹ is threatened by civil war. On June 25, 1991 the Yugoslav republics of Slovenia² and Croatia³ formally proclaimed⁴ themselves to be sovereign and independent

¹ The Socialist Federal Republic of Yugoslavia [hereinafter S.F.R. of Yugoslavia, S.F.R.Y. or the Federation] is a mountainous nation (70% of the landscape is mountainous) in the Balkan peninsula of Europe. It is populated by 24 million people and 24 ethnic groups practicing three major religions. Two alphabets are used in this nation which is divided into six republics and two autonomous provinces. Kenneth Danforth, *Yugoslavia: A House Much Divided*, 178 NAT'L. GEOGRAPHIC 92, 102 (Aug. 1990). Yugoslavia is bordered to the north by Austria and Hungary, to the east by Romania and Bulgaria, to the south by Greece and Albania, and to the west by Italy and the Adriatic sea. *Id.* at 105; see also Map in Kerin Hope, *Fresh Balkan Conflict Feared Over Macedonia*, FIN. TIMES, Sept. 20, 1991, at 2.

² Slovenia, with only eight percent of the Yugoslavia's population, produces 20% of the Yugoslavian Gross National Product (GNP), provides one-third of Yugoslav exports, and funds over 20% of the federal budget. See Carol Williams, *Attack by Federal Army is Feared as Midnight Deadline Approaches*, L.A. TIMES, Jan. 21, 1991, at A31. It is bordered on the south by Croatia, on the north by Austria, on the east by Hungary, and on the west by Italy. Danforth, *supra* note 1, at 105.

³ Nearly two-thirds of all Yugoslavian industry and most of its exports to the West are produced in Slovenia and Croatia where the Yugoslav standard of living is the highest. Disparity in incomes between the several republics of Yugoslavia has become a major source of political contention in previous months. *Id.* at 103. Croatia is bordered on the northwest by Slovenia, to the northeast by Hungary and Vojvodina (a Serbian autonomous province), to the west by the Adriatic Sea, and to the south and east by the republic of Bosnia-Herzegovina. *Id.* at 105.

⁴ The will of the people of Croatia was clearly expressed in the referendum held on May 19, 1991, when 88% of the population voted, and of those voters, 94.17% supported sovereignty and independence. See *Press Conference with Representatives of the Republic of Croatia, Speakers: Robert Travas, and Norman Bailey*, Federal Information Systems Corporation, July 3, 1991, available in LEXIS, Nexis Library, Omni File [hereinafter *Travas Press Conference*].

The draft text of the Croatian Resolution on Separation stated:

[R]elying on the inalienable and unspent right of the Croatian people to self-determination, including the right to secession and association with peoples of other states

[T]he Assembly of the Republic of Croatia . . . on the basis of Article

nations,⁵ thereby seceding from Yugoslavia.⁶ The Federal Executive Committee of Yugoslavia (FEC) viewed the acts of secession as unconstitutional.⁷ Consequently, the nation has suffered the onset of civil war⁸ at the cost of hundreds of lives.⁹ Serbian militants

140 of the Constitution of the Republic of Croatia and at the proposal of the President of the Republic of Croatia, adopts a Resolution on the Procedure for the Separation of the SFRY [Socialist Federal Republic of Yugoslavia] and on Possible Association in an Alliance of Sovereign Republics. . . .

The Assembly of the Republic of Croatia proposes that the procedure of separation be carried out gradually, democratically and in the interests of all the parties to the agreement.

Croatian Assembly Adopts Resolution on Separation, BRIT. BROADCASTING CORP., Feb. 26, 1991, available in LEXIS, Nexis Library, Omni File.

Slovenia's proclamation of independence asserted that the republic "will no longer be a part" of Yugoslavia and that federal laws no longer have effect. It added that practical steps towards independence "will be carried out gradually and in agreement with the other republics of former Yugoslavia." The republic also promised to pay its share of the national debt (see *infra* note 29) and for its take-over of federally-owned infrastructure. See Blaine Harden, *Yugoslav Regions Assert Independence; Secession of Slovenia, Croatia Prompts Calls for Army Intervention*, WASH. POST, June 26, 1991, at A1.

⁵ The declaration of independence did not change values already held dear by the Croatian people. The Constitution of the Republic of Croatia and Constitutional Act of Serenity and Independence of the Republic of Croatia provide:

[T]he Republic of Croatia guarantees all its citizens their full national and all their fundamental human and civil rights and liberties, including a democratic system of governance, the rule of law, and all other high values contained in the constitution and in international law.

See Press Conference with: Frane Golem, Representative of the Republic of Croatia to the U.S. and Canada at the National Press Club, Federal Information Systems Corporation, July 5, 1991, available in LEXIS, Nexis Library, Omni File [hereinafter *Golem Press Conference*].

⁶ After 45 years of communist rule in Yugoslavia, the various republics of Yugoslavia held free elections. The elections in Croatia, Slovenia, Macedonia, and Bosnia-Herzegovina resulted in the election of pro-Western market oriented parties. Elections in Serbia and Montenegro left communist regimes in power. Soon thereafter, the communist government of Serbia blocked the regular constitutional rotation of the Presidency and prevented the Croatian representative from becoming the first non-communist president of Yugoslavia. Consequently, the Republics of Croatia and Slovenia declared their independence from Yugoslavia. *See Golem Press Conference*, *supra* note 5; see also Harden, *supra* note 4, at A1.

⁷ The federal chamber of the SFRY Assembly concluded that the Slovenian plebiscite was unconstitutional and called upon the Federal Executive Council to guarantee constitutional order. *SFRY Assembly Federal Chamber Conclusions on Slovene Plebiscite*, BBC, Dec. 22, 1990, available in LEXIS, Nexis Library, Omni File.

⁸ In September the fighting between Croatian militia, Serbian nationalists, and the Serbian backed Yugoslav army intensified as heavy artillery, and air force jets

living in Croatia¹⁰ captured at least fifteen percent of Croatia's territory in response to the secession,¹¹ and declared themselves autonomous of Croatian sovereignty.¹² The Serbian-controlled Yugoslav military, which also views the secession as illegal,¹³ joined the fighting on the side of the Serbs.¹⁴ Serbian President Slobodan

were used in combat. Quentin Peel et al., *Dutch Call for Armed Intervention in Croatia*, FIN. TIMES, Sept. 17, 1991, at 1. A Yugoslav army general would not rule out the possibility that Zagreb, the capital of Croatia, would be bombed by the Yugoslav air force in an air raid. *Id.*

⁹ See *Austria Urges United Nations Action on Yugoslavia*, CHRISTIAN SCI. MONITOR, Aug. 7, 1991, at 4; see also David Owen, *Yugoslav Ceasefire Agreed*, FIN. TIMES, Sept. 18, 1991, at 1.

¹⁰ Approximately 600,000 Serbians live in Croatia. 19 ENCYCLOPEDIA BRITANNICA 1098 at 1101 (15th ed. 1981).

¹¹ *Yugoslavia Says Croats, Serbs Agree to Truce*, L.A. TIMES, August 7, 1991, at A1.

¹² Since Croatia, in the name of national self-determination, possessed the right to secede from Yugoslavia, Serbians in Croatia reasoned they too had the same right to secede from the newly independent Croatian state. *Serbs in Croatia Refuse to Be Considered as Minority by Peace Conference*, BBC, Summary of World Broadcasts, Oct. 11, 1991, available in LEXIS, Nexis Library, Currnt File. At present Serbian nationalists have formed autonomous regions within the Croatian republic, namely the autonomous regions of Krajina-Slavonija and Baranja-Western Srem. *Id.* Still, only about 25% of the Serbs of Croatia live in the Serbian self-proclaimed autonomous regions. *Golem Press Conference*, *supra* note 5.

¹³ The Yugoslav government considers the acts of independence and secession by Slovenia and Croatia to be illegitimate and unilateral, and taken without consideration for the other components of the Yugoslav State—namely, the various republics of Yugoslavia. Thus, the federal government declared the secession votes “illegal and illegitimate” and ruled all their consequences “null and void.” *Federal Government to Deploy Troops on Borders of Slovenia*, AGENCE FRANCE PRESSE, June 26, 1991, par. 29, available in LEXIS, Nexis Library, Currnt File; see also *Serbs in Croatia Refuse to be Considered as Minority by Peace Conference*, BBC, Summary of World Broadcasts, Oct. 11, 1991, available in LEXIS, Nexis Library, Currnt File. The Yugoslav legislature's immediate reaction to the secession announcements was to call for the federal army to “undertake measures to prevent the division of Yugoslavia and changes in its borders.” See Harden, *supra* note 4, at A1. In fact, on January 9, 1991, the federal presidency gave the army comprehensive means to disarm “illegally armed groups,” denoting the newly armed Croatian police force. Edward Steen, *Croatians Hold Their Fire*, THE INDEPENDENT, Jan. 27, 1991, at 1. Subsequently, the federal army has taken an increasingly militant stance against the secession efforts.

¹⁴ Harden, *supra* note 4, at A1. The republics of Slovenia, Croatia, and Bosnia-Herzegovina repeatedly accused the federal army of backing Serbia. Judy Dempsey, *Croatia Pledges to Keep Up Pressure on Federal Army*, FIN. TIMES, Sept. 20, 1991, at 2. Accordingly, this pro-Serbian stance of the military has led to widespread desertion in the Yugoslav armed forces. *Id.* The outright backing of the Serbian cause by the Yugoslav army became apparent in late September 1991 as a 20 mile-long military convoy attacked Croatian border towns. Robert Mauthner, *Attack Puts*

Milosevic called on Yugoslavia's nine million Serbs to prepare to defend their nation and national interests.¹⁵ Croatian forces initially went on the offensive¹⁶ to recapture gains achieved by the Serbian rebels, thereby furthering unrest.¹⁷ The proclamations of independence descend from various origins¹⁸ and ancient aspirations, and so too does the Serbian response.

Yugoslavia has only existed as a nation¹⁹ since 1918 when the Kingdom of Serbia and Montenegro fused with remnants of the Austro-Hungarian Empire (Croatia and Slovenia).²⁰ This created a

Yugoslavs on Brink of Civil War, FIN. TIMES, Sept. 21, 1991, at 1. Ante Markovic, the federal prime minister, soon called for the resignation of the defense minister, Veljko Kadijevic, but to no avail. Anthony Robinson, *Yugoslav Army Loses Its Sense of Direction*, FIN. TIMES, Sept. 21, 1991, at 2. Stipe Mesic, the federal president of Yugoslavia, saw the acts of the military as miscreant. Mauthner, *supra*.

¹⁵ *Serbiens Say War Remains Threat*, DAILY TELEGRAPH, July 9, 1991. In spite of Milosevic's rhetoric, hundreds of Serbian men of military age recently hid from military police to avoid forced military service. Laura Silber, *Army Moves on Croatia as European Community Adjourns Talks*, FIN. TIMES, Sept. 20, 1991, at 1.

¹⁶ Late in September 1991, Croatian forces escalated their attacks on Yugoslav federal forces and Serbian nationalists after confiscating weapons from besieged federal barracks. Silber, *supra* note 15. Also, in mid-September 1991 Croatia stopped oil deliveries to Serbia in an attempt to deprive that republic of vitally needed fuel. *Croats Fear Air Raid on Zagreb*, FIN. TIMES, Sept. 16, 1991, at 1. That quarantine resulted in an attack on Croatian port cities by the Yugoslav navy and army, and a Yugoslav naval blockade of Croatia. *Id.* at 18; *see also* Nicholas Denton & Anthony Robinson, *Naval Blockade Raises Doubts About Oil Supplies*, FIN. TIMES, Sept. 18, 1991, at 3.

¹⁷ *See* Williams, *supra* note 2, at A31.

¹⁸ The constitutional amendments of 1971 appeared to set Yugoslavia on a course leading to a loose confederation of semi-autonomous units. Previous nationalistic demonstrations in Croatia in November of 1971 resulted in a temporary change in policy and reassertion of control by the League of Communists. 19 *ENCYCLOPEDIA BRITANNICA* at 1106. In 1974 Yugoslavia promulgated its third postwar constitution which decentralized society, thereby giving the six republics and two autonomous provinces more control of internal affairs, and a collective presidency was set up to operate after the death of Tito. *See infra* notes 114, 116, 118, and 122.

¹⁹ In ancient times, the Serbs and Croats came to settle in Yugoslavia by the invitation of the Emperor Heraclius of the Byzantine Empire in the seventh century. 19 *ENCYCLOPEDIA BRITANNICA* at 1098.

²⁰ The collapse of the Austro-Hungarian empire after World War I led to the creation in 1918 of the Kingdom of the Serbs, Croats and Slovenes, a voluntary association that realized a long-held dream of union among southern Slavs under the Serbian dynasty. The Croats and Slovenes were promised wide autonomy under the new kingdom, but this promise was broken when the Serbs lead Croatian nationalists to assassinate the Yugoslavian king in 1934. Claudine Canetti, *Yugoslavia: Divided for Centuries*, AGENCE FRANCE PRESSE, July 6, 1991, available in LEXIS, Nexis Library, Intl File.

nation of various ethnic groups and religious followings.²¹ Civil strife between the Croats and Serbs²² is not uncommon, as it greatly contributed to the one and a half million Yugoslavian deaths during World War II.²³ The Serbians blame most of this past butchery on the "Ustasas" who were Croatian members of a Nazi puppet-formation called "the Independent State of Croatia."²⁴

The Serbs are also distinct from both the Croats and the Slovenes, indicated by their use of a different alphabet.²⁵ Religion also is a barrier, as the Roman Catholic Church has strong traditions in Croatia and Slovenia, whereas Serbians are Eastern Orthodox.²⁶ Despite such differences, a major cause of the turmoil between Croatia and Serbia lies in the simple fact that both Serbs²⁷ and Croats²⁸ lay claim to the same land.²⁹ The boundaries between the Republics have been disputed since the formation of the Federation.³⁰

²¹ The population of Yugoslavia is made up of around 40% Serbs, 22% Croats, 8% Slovenes, 6% Macedonians, 2.5% Montenegrins, 8.5% Muslims, 6.3% Albanians, and 2.3% Hungarians. See 19 *ENCYCLOPEDIA BRITANNICA* at 1100.

²² Croatia and Slovenia have always feared Serbian domination. See Harden, *supra* note 4, at A1.

²³ *Federal Government to Deploy Troops on Borders of Slovenia*, AGENCE FRANCE PRESSE, June 26, 1991, available in LEXIS, Nexis Library, Int'l File.

²⁴ On March 27, 1941 a group of Yugoslav army officers executed a coup d'etat in Belgrade to reverse the Yugoslav monarch's desires to join the Axis powers. Subsequently on April 6, 1941, the Germans attacked Yugoslavia with 24 divisions and 1200 tanks. By April 17, 1941, the Yugoslav army was surrounded in Bosnia and surrendered. Croatia soon proclaimed its independence and annexed Bosnia-Herzegovina. Resistance to the conquest of Yugoslavia by the Nazis began almost immediately after the fascist Croatian Ustashe perpetrated numerous atrocities against Orthodox communities of the Bosnian Serbs. See 19 *ENCYCLOPEDIA BRITANNICA* at 985-986.

²⁵ Serbs use the cyrillic alphabet while the Croats and the Slovenes use the Latin version. See 19 *ENCYCLOPEDIA BRITANNICA* at 1102.

²⁶ *Id.* Interestingly, both Croats and Serbs speak the same language.

²⁷ Serbian President Milosevic stated, "We have to clean our own house ourselves . . . [and Croatia is free to leave Yugoslavia but] they cannot take with themselves part of the Serbian people." Celestine Bohlen, *Fragile Truce in Yugoslavia; The Fighting Wanes, but Hatreds Smolder*, N.Y. TIMES, Aug. 8, 1991, at A1 [hereinafter Bohlen, *Fragile Truce*].

²⁸ A Croatian minority of about 800,000 lives among dominant Serbs and Muslims in neighboring Bosnia. Harden, *supra* note 4, at A1.

²⁹ Economic upheaval has also fueled Slovenia's and Croatia's yearning for independence. Today the standard of living in Yugoslavia has fallen to the levels of the 1960's, and around 80% of Yugoslav wages are spent on food and household expenses. In addition, unemployment lingers around 20%, and foreign debt has grown to over 16 billion dollars. Danforth, *supra* note 1, at 103.

³⁰ In 1945, a severe internal conflict broke out within the Presidium of the Communist Party over the frontiers between the Republics. FRITS W. HONDIUS, *THE YUGOSLAV COMMUNITY OF NATIONS* 139, n.271 (1968).

Some of this disputed land is rocky, mountainous terrain with little economic value, but it remains rich in historical significance for both sides.³¹

Croatia also fears Serbian domination of the Yugoslav Federation,³² and feels Serbian nationalists covet the concept of a Serbian-ruled Yugoslavia.³³ In response to what Croatia believes constitutes Serbian aggression, it has called for an international peace conference on the present crisis,³⁴ and has asked for support by peace-keeping forces.³⁵ Serbia continues to react with hostility towards efforts at mediation and remains opposed to any peace-keeping troops.³⁶ In spite of problems in Croatia, the Yugoslavian government and Serbia have appeared ready to allow Slovenian³⁷ independence.³⁸

³¹ Bohlen, *Fragile Truce*, *supra* note 27, at A1.

³² Only the current Serbian leadership embraces an expansionist doctrine. Celestine Bohlen, *Serbian Voting Today Could Signal a Major Turn in Yugoslavia's Future*, N.Y. TIMES, Dec. 9, 1990, at A22 [hereinafter Bohlen, *Serbian Voting*].

³³ Croats perceive Serbian nationalism as hegemonic and offensive. Croatia feels that Serbia proposes either a centralized Yugoslavia or a Greater Serbia, both of which are unacceptable to the members of the Yugoslav Federation. See Joseph A. Reaves, *Ethnic Battles Flare in Croatia, Slovenes Fear Federal Army Set to Attack*, CHI. TRIB., July 8, 1991, at A1. A current Serbian plan for resolution of hostilities calls for the creation of a much larger Serbian state. *Yugoslavia Croats Pressed by Army Offensive; Military Seen to Back Serb Rebels*, FACTS ON FILE, WORLD NEWS DIGEST, Aug. 29, 1991, at 647, available in LEXIS, Nexis Library, Omni File. In this plan, the Serbian provinces of Vojvodina and Kosovo would be completely consolidated into the Serbian Republic, thereby terminating their existence as separate political entities. *Id.* at 647-48. The plan goes on to propose a division of portions of Bosnia-Herzegovina between Serbia and Croatia, and the surrender to Serbia of certain Croatian lands where Serbian minorities reside. *Id.* at 648.

³⁴ Ante Markovic, the Yugoslav Prime Minister, believes Yugoslavia is unable to solve this conflict alone and has called on the European Community and other international organizations to propose recommendations for a peaceful solution. Markovic stated: "Without foreign support, without the support of the European Community, we are not capable of halting the war, nor are we capable of keeping it under control." Peel et. al., *supra* note 8, at 1. In spite of Markovic's calls for a peace conference, Zvonimir Separovic, Croatian foreign minister, stated: "There will be no further conference until there is an effective ceasefire." Silber, *supra* note 15, at 1.

³⁵ Michael Montgomery, *German Call for Sanctions as Yugoslav Battles Rage*, DAILY TELEGRAPH, Aug. 6, 1991, at 8.

³⁶ *Id.* Serbia has unequivocally refused any suggestion of peace-keeping forces entering Yugoslavia. Silber, *supra* note 15, at 1. Vladimir Jovanovic, Serbian foreign minister, stated: "To send troops into a country without its agreement, that's not a peacekeeping force, that's an invasion. . . . We are not prepared to compromise." *Id.*

³⁷ Slovenia has very few Serbs living within its borders and has maintained its characteristic ethnic identity. Danforth, *supra* note 1, at 110.

³⁸ Celestine Bohlen, *Yugoslav Truce Holds, But Rupture Widens*, CHI. TRIB.,

Consequences of Yugoslavian strife not only concern that nation internally, but may spread to surrounding nations³⁹ as neighboring states all have historic claims to Yugoslav territory. Most Yugoslav neighbors also have national minorities living within Yugoslavia.⁴⁰ Over six percent of the population of Yugoslavia is Albanian.⁴¹ Most of these Albanians live in the autonomous province of Kosovo, which is a part of the Republic of Serbia.⁴²

Kosovo has been causing Serbia problems long before Croatia and Slovenia. Past demands of Kosovo Albanians that the province become a republic in the Yugoslavian system, thereby making it separate from and equal to Serbia, resulted in the eradication of Kosovo as an autonomous province.⁴³ In spite of this crackdown,

³⁸ Celestine Bohlen, *Yugoslav Truce Holds, But Rupture Widens*, CHI. TRIB., Aug. 9, 1991, at C5; [hereinafter Bohlen, *Ruture Widens*]; Montgomery, *supra* note 35, at 8.

³⁹ Macedonia, in the extreme southern portion of Yugoslavia which borders Greece and Bulgaria, overwhelmingly voted for independence in a referendum in mid-September. Hope, *supra* note 1, at 2; see also *A Third Yugoslav Republic Expected to OK Secession*, U.S.A. TODAY, Sept. 9, 1991, at 4A. Kiro Gligorov, the Republic's president, exhibited Macedonian suspicions of Serbia's intentions when he said, "Macedonia cannot stay inside what would remain of Yugoslavia if Croatia and Slovenia left." Bohlen, *Fragile Truce*, *supra* note 27, at A1. Bulgaria has always claimed Macedonia is an artificial creation, and considers Macedonians to be "western Bulgarians." Andrew Borowiec, *Serbia Plans to Form Small Federation*, WASH. TIMES, Aug. 14, 1991, at A8. Greece, prompted by fears of a conflict in this region of Yugoslavia, has attempted to host a regional conference on the present Yugoslavian dilemma. Hope, *supra* note 1, at 2. Greece fears a Serbo-Bulgarian conflict could erupt over Macedonia. *Id.* Slobodan Milosevic, the Serbian President, has implied Macedonia would not be allowed to secede, but would at all costs become part of a greater Serbia. *Id.* In spite of Serbian declarations, Bulgaria has already recognized Macedonia's independence. *Id.* Greece itself refuses to recognize a slavic state of Macedonia as it feels such a nation is repugnant to the historical kingdom of "Alexander the Great." *Id.* To complicate matters, Macedonian nationalists have their eyes on brother Macedonians in Greece and Bulgaria. Richard Davy, *Yugoslavia in Crisis: Old Fault-lines Reappear*, THE INDEPENDENT, July 4, 1991, at 8.

⁴⁰ Bohlen, *Rupture Widens*, *supra* note 38, at C5.

⁴¹ Albanians are ethnically different from Slavs, and recently the Serbs have looked at the Albanian majority of Kosovo as "overbreeding defilers." The autonomous province of Kosovo is considered to be the medieval heart of the Serbian nation, and Serbia seems to have no intention of allowing this province to gain autonomy. Danforth, *supra* note 1, at 100.

⁴² Though Serbs represent only 10 percent of the population of Kosovo, they view it as the historic birthplace of their state. Canetti, *supra* note 20.

⁴³ In 1990, after suppressing several uprisings in Kosovo, Serbia annexed that province and the autonomous province of Vojvodina, thereby violating the Yugoslav Constitution. Bohlen, *Serbian Voting*, *supra* note 32, at A22. Many feel these extra-constitutional exploits by the Serbian government to forcibly integrate Kosovo and

Albanian nationalism survives. Albanian Foreign Minister Muhamet Kapllani worsened Serbo-Albanian relations when he accused Serbia of instigating internal strife within Albania.⁴⁴

To prevent the spread of violence to other parts of Yugoslavia or to other areas in Europe, many advocate the use of peace-keeping forces in Croatia and Slovenia until resolution of the crisis is complete.⁴⁵ This solution was strongly opposed by the Soviet Union prior to the failed coup d'état that attempted to depose Soviet President Gorbachev in August 1991. Many still may agree with the pre-coup Soviet view that military intervention by the United Nations⁴⁶ or by other independently acting nations could lead to widespread warfare throughout Europe.⁴⁷ Even so, the legitimacy and attainment

Vojvodina into Serbia started the disintegration of Yugoslavia. Aleksandra Kornhauser, *International Recognition of the Right to Self-determination is Slovenia's Best Defense*, THE INDEPENDENT, July 4, 1991, at 24. Mass nationalist mobilization in Serbia, combined with indifference for the "delicately balanced" constitution, alarmed the leaders of other republics, including Bosnia and Croatia, which have large Serbian minorities. Judy Dempsey, *Milosevic Moves Behind Smoke of Croatia*, FIN. TIMES, Aug. 9, 1991, § I at 2. These fears led to the eventual secession of Croatia and Slovenia, and the resulting belligerence.

⁴⁴ European Commissioner Karel Van Miert of the European Community said Albania was "playing with fire" by trying to use the Yugoslavian crisis for political and economic benefit. Stephen Nesbit, *E.C. Urges at Least 20 Countries Not to Sell Arms to Yugoslavia*, REUTER LIBR. REP., Aug. 12, 1991, par. 15-16, available in LEXIS, Nexis Library, Int'l File.

⁴⁵ Bohlen, *Rupture Widens*, *supra* note 38, at C5. The European Community has become deeply divided on the issue of deploying peace-keeping forces. See Peel et. al., *supra* note 8, at 1. The Germans see the Croatian cause as a noble fight by an assailed nation battling for survival, and believe intervention is necessary. *Id.* The British, on the other hand, blocked an early move to send a European Community peacekeeping force to Yugoslavia, and prefer sanctions, including a total ban on petroleum shipments. Silber, *supra* note 15, at 1. The German position promoting peacekeeping forces miffs the English, since Germany remains constitutionally barred from deploying troops in such a situation. Robert Mauthner & Quentin Peel, *Europe Split Over Role in Yugoslavia*, FIN. TIMES, Sept. 18, 1991, at 3. Germany's position prompted one senior British official to say: "If the Germans do not intend to participate [in the proposed Western European Union force], they would do better to shut up." *Id.* France feels that the European Community should seek a United Nations mandate granting placement of a peacekeeping force. Silber, *supra* note 15, at 14.

⁴⁶ The United Nations has never backed a secession attempt. When Biafra aspired to secede from Nigeria in the civil war of 1967-70, Secretary General U Thant rejected Biafra's claim for U.N. assistance, stating "the United Nations has never accepted and does not accept the principle of a secession of a part of a member state." Lloyd Cutler, *The Dilemma of Secession*, WASH. POST, July 21, 1991, at C7.

⁴⁷ *Moscow Warns West Against Military Moves in Yugoslavia*, REUTER LIBR. REP., August 6, 1991, available in LEXIS, Nexis Library, Int'l File.

of Croatian and Slovenian secession under the Yugoslav Constitution can act as a blueprint for other nations' withdrawal from eastern European federations under the guise of constitutionally ratified secession and perhaps may prevent devastating bloodshed.

II. LEGAL BACKGROUND

A. *Formation of the Yugoslav Federation*

Yugoslavia possesses a unique constitutional history. Four different constitutions have been adopted since the foundation of federalism immediately after World War II.⁴⁸ Yugoslavia in its present form was created at the second session of the Anti-Fascist Council of People's Liberation of Yugoslavia (AVNOJ)⁴⁹ under the premise that the various Yugoslav peoples⁵⁰ possessed a political right to

⁴⁸ Four post-war constitutions have been adopted comprising the Constitutions of 1946, 1953, 1963, and 1974. Numerous amendments to the present Yugoslavian Constitution of 1974 have been adopted since its ratification.

⁴⁹ The Anti-Fascist Council of People's Liberation of Yugoslavia began as a Yugoslav partisan movement with the goal of expelling Nazi invaders during World War II. The predecessor to the AVNOJ was an organized group of Communist guerrillas under the leadership of Josip Broz (Tito). HONDUS, *supra* note 30, at 121. The goal of this partisan group led by Tito was clear:

The People's Liberation Partisan Detachments in all Regions of Yugoslavia — Serbia, Croatia, Slovenia, Montenegro, Bosnia and Herzegovina, Macedonia, Vojvodina, Sandzak, and Dalmatia — have as their principle objective the liberation of the people from the occupiers, and struggle against the local accomplices of the occupation. . . .

Id. at 122 (quoting PARTISAN BULL., Aug. 10, 1941).

The AVNOJ later changed itself into the Provisional National Assembly of Democratic Federal Yugoslavia, and furnished the cornerstone for the Yugoslav federal system. *Id.* at 135.

⁵⁰ Early in Yugoslav federalism, the term used to describe the federal community or the general body of citizens was "the people" while the component parts of the federation or the republics were referred to as "the peoples" in plural. In the Yugoslav Constitution of 1946 the Federal National Assembly described itself as: "[T]he supreme representative of the sovereignty of *the people* and the expression of the unanimous will of all *the peoples* of the Federative People's Republic of Yugoslavia." HONDUS, *supra* note 30, at 138 (emphasis added).

The "peoples" of Yugoslavia have been recognized as the constituent inhabitants of the Republics of Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Montenegro, and Macedonia. See Dr. Ranko Marković, *Autonomous Provinces in Contemporary Constitutional System of the SFRY*, 12 Yugo. L. 105, 105-120 (1985). One might also include other nationalities which realized their right to self-determination outside the borders of Yugoslavia but entered into the Yugoslav Federation with the Serbian Republic, namely the Hungarians of the Autonomous Province of Vojvodina, and the Albanians of the Autonomous Province of Kosovo. *Id.* at 106.

self-determination.⁵¹ The Yugoslav Constitution of 1946 reflected the proposition of self-determination⁵² and created a federation of republics, each containing a distinct Yugoslav people.⁵³

B. *Yugoslav Federalism*

A basic concept behind the Yugoslav State and Yugoslavian law is the inevitable fact that the State and its law are withering away.⁵⁴ The process of the withering away of the Yugoslav State and legal order is symbolized by the transfer of power from the federal government to the governments of the member-republics,⁵⁵ and from

⁵¹ Marković, *supra* note 50, at 120. However, early in the annals of the AVNOJ, that organization gave the various Yugoslav peoples the option to unite, but not to separate. Article 1 of the Third AVNOJ Resolution of 1943 illustrates this principle at work: "The peoples of Yugoslavia have never recognized and will not recognize any dismemberment of Yugoslavia by the fascist imperialists, and they [the peoples] have expressed in the joint armed struggle their firm will to remain and further to unite in Yugoslavia." HONDUS, *supra* note 30, at 141.

⁵² Article 1 of the Yugoslav Constitution of 1946 states:

[t]he Federative People's Republic of Yugoslavia is a federal people's State, republican in form, a community of peoples equal in rights who, on the basis of the *right to self-determination, including the right of separation*, have expressed their will to live together in a federative State.

HONDUS, *supra* note 30, at 138 (emphasis added) (citing YUGO CONST. of 1946, art. 1.)

⁵³ The prior recognition by the AVNOJ of self-reliant peoples in Yugoslavia was mirrored in the Yugoslav Constitution of 1946. See *supra* note 50. In Article 2 of the constitution of 1946 the constituent parts of the Federation were recognized:

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 Hercegovina, the People's Republic of Macedonia, and the People's Republic of Montenegro. The People's Republic of Serbia includes the Autonomous Province of the Vojvodina and the Autonomous Kosovo-Metohijan Region.

HONDUS, *supra* note 30, at 139.

⁵⁴ Karl Marx realized that government could not disappear after the seizure of the modes of production from the bourgeois capitalist, and that some form of transition period was needed between capitalism and communism. In this way Marx developed the notion of "the dictatorship of the proletariat" that must exist prior to the withering away of the state. In the *Critique of the Gotha Programme*, Marx asked the question: "What transformation will the state undergo in a communist society?" He answered by saying: "Between capitalist and communist society lies a period of revolutionary transformation from one to the other [from capitalism to communism]. There is a corresponding period of transition in the political sphere and in this period the state can only take the form of a revolutionary dictatorship of the proletariat." D. FERNBACH, KARL MARX: THE FIRST INTERNATIONAL AND AFTER 254 (1974).

⁵⁵ The process of political decentralization continues to play an important role in the Yugoslav policy of federal administration, and has continued to progress since

the republic governments to the people themselves in their local communities.⁵⁶ The Constitution of 1946 gave considerable autonomy to the member-republics,⁵⁷ but followed a principle that Yugoslavia was a single-state entity⁵⁸ comprising a united community⁵⁹

the inception of federalism. HONDIUS, *supra* note 30, at 254. In the course of this evolutionary process, so the theory goes, federal agencies and administration are gradually being relieved of responsibilities which are then transferred to republic and provincial agencies, which in turn transfer responsibilities to local authorities. This process has not yet been completed, but is still reflected in the federal constitutions, and republic and provincial constitutions of 1963 and 1974. See Milan Petrović, *Competence of Federal Administration in Implementing Federal Laws by the Republic and Provincial Administrations (The Issue of the So-called Federal Control)*, 10 YUGO. L. 217, 224-244 (1983). The widening jurisdiction of the republics has occurred mostly under the newest constitution of 1974.

⁵⁶ Authority has been given to local governments particularly in the areas of the economy and social self-management. See Gisbert H. Flanz, *Yugoslavia*, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 81-97, 130 (Albert P. Blaustein & Gisbert H. Flanz eds., Dr. Marko Pavič trans., Supp. 1986) (citing USTAV SOCIJALISTIČKE FEDERATIVNE REPUBLIKE JUGOSLAVIJE [YUGOSLAV CONSTITUTION], arts. 88-128, 248 [hereinafter YUGO. CONST. of 1974]).

Flanz' edition of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia was translated by Dr. Pavič for the Secretariat of the Federal Assembly Information Service and was originally published in Belgrade in 1974. *Id.* at iii. (This translation of the 1974 Yugoslav Constitution is used hereafter unless otherwise indicated).

⁵⁷ Early Yugoslavian constitutional doctrine recognized that the establishment of the Yugoslav Federal State "did not consist of the creation of a closer union between independent or loosely related States, but in the redivision of a State which was previously unitary." HONDIUS, *supra* note 30, at 140. The component parts of the Federation existed as peoples, not states, and at the moment of federation these peoples reconstituted themselves into member-republics. *Id.* at 141. Thus it follows that political power given to the member-republics was not derived from these states' prior autonomy, since no such autonomy existed. Therefore, any grant of power to the member-republics or local authorities comes from the federal constitution and government since all power is derived from the people. See Flanz, *supra* note 56, at 82 (interpreting YUGO. CONST. of 1974, art. 94).

⁵⁸ The notion that Yugoslavia is a single-state entity still exists today. This concept was expressed in Article 10 of the 1953 Constitution as: "The territory of the Federal People's Republic of Yugoslavia is composed of the territories of the several People's Republics and constitutes a single state, economic and customs territory." See EDWARD KARDELJ, *THE NEW SOCIAL AND POLITICAL SYSTEM OF THE FEDERAL PEOPLE'S REPUBLIC OF YUGOSLAVIA* 58 (1953), (translating and quoting YUGO CONST. of 1953, art. 10). Interestingly, the concept of state unity survived the reformulation of the federal constitution in 1974. Article 5 of the Federal Constitution of 1974 proclaimed: "The territory of the Socialist Federal Republic of Yugoslavia is a single unified whole and consists of the territories of the Socialist Republics." See Flanz, *supra* note 56, at 48; YUGO. CONST. of 1974, art. 5.

⁵⁹ The actuality of a unified, consolidated state of Yugoslavia seemed essential to the nation's survival soon after World War II. Thus, early on, political leaders

of the various peoples of Yugoslavia. Yugoslavian federalism has developed through numerous stages since its inception in 1946, and has recently been characterized by the strengthening status and power of the member-republics.⁶⁰ Even so, all basic socioeconomic and political relations are regulated in a unified manner by the federal constitution for the Federation as a whole.⁶¹ Accordingly, prior to the secession of Croatia and Slovenia, the differences existing between the legal systems of the various republics constituted only minor distinctions. The basic characteristics of the legal system of the Federation are at the same time basic characteristics of the legal systems of the republics; the master guideline for all law remains the federal constitution.⁶²

In spite of the supposed dominance of the federal constitution over the Yugoslav federal system, the view that the individual republics have remained nation states has been continually main-

in Yugoslavia were hostile to any thought of possible diminishment of the Yugoslav Federation. These leaders were compelled however to entertain, at least in theory, the idea of secession since the Yugoslav Federal State arose out of the Soviet mold, where the possible diminishment of the federation through secession of a member-republic endured as an explicitly recognized principle. Yugoslavia, following the Soviet lead, added the principles of self-determination and secession to the Yugoslav Constitution of 1946. See HONDUS, *supra* note 30, at 140.

⁶⁰ The legal system of the Socialist Federal Republic of Yugoslavia represents a unity of the State, the economy, and of the federal and republic legal systems. Flanz, *supra* note 56, at 129 (interpreting YUGO. CONST. of 1974, art. 244). This is a necessary consequence of the fact that Yugoslavia is a socialist federal community of nations and nationalities with equal rights. *Id.* at 47, 111-12, (interpreting YUGO. CONST. of 1974, arts. 1, 170, 171). Even so, a distribution of power has occurred between the Federation and the Republics according to the Federal Constitution of 1974. See Flanz, *supra* note 56, at 98; YUGO. CONST. of 1974, art. 133. That constitution enlarged the jurisdiction of the various republics considerably, especially with regard to economic concerns. This was after a series of responsibilities were transferred to the republics from the federal government. See Flanz, *supra* note 56, at 8, 133; YUGO. CONST. of 1974, art. 257.

⁶¹ This notion of federal supremacy is supported in the Yugoslav Constitution of 1974 as Article 197 states:

Everyone shall be bound by the constitution and law.

YUGO. CONST. of 1974, art. 197.

That constitutional phrase is clarified in Article 206:

Republican constitutions and the provisional constitutions may not be contrary to the S.F.R.Y. Constitution.

All statutes and other regulations and enactments passed by agencies and organizations of the socio-political communities . . . must be in conformity with the S.F.R.Y. Constitution.

YUGO. CONST. of 1974, art. 206.

⁶² YUGO. CONST. of 1974, art. 206.

tained.⁶³ This view has been reflected in the administration of the member-republics. The constitution empowers the republics and the autonomous provinces to enact their own regulations in the areas already regulated by federal laws.⁶⁴ Consequently, it may occur that due to a failure by or refraining of the federal legislature to act on a certain issue, republic and provincial legislatures are allowed by that very fact to completely regulate in specific areas outside their jurisdiction.⁶⁵ Republics and provinces may also regulate issues which should be under federal jurisdiction through exercise of their authority to enact laws aimed at executing federal laws.⁶⁶ Thus, republic and provincial governments frequently dabble in the realm of federal jurisdiction. In contrast, the areas of direct control by the federal government cannot go beyond those outlined by the constitution⁶⁷

⁶³ Marković, *supra* note 50, at 126.

⁶⁴ See Petrović, *supra* note 55, at 232. This ability is illustrated under the Constitution of 1974:

In the spheres regulated by federal statutes, the Republics and Autonomous Provinces may pass statutes within the framework of their rights and duties.

YUGO. CONST. of 1974, art. 268.

⁶⁵ This prerogative of a member-republic is outlined in the Constitution of 1974 under Article 268 as:

If in areas to be regulated by Federal statute no such statute has been passed, the Republics and/or Autonomous Provinces may pass their own statutes if this is in the framework of their rights and duties.

YUGO. CONST. of 1974, art. 268.

⁶⁶ See Petrović, *supra* note 55, at 232. This responsibility originates from the fact that republic and provincial governments carry the burden of enforcing most federal laws. This arrangement is controlled by the Federal Constitution of 1974 under Article 273:

Federal statutes and other regulations and enactments shall be enforced by republican and provincial agencies which shall be responsible for their enforcement, unless it is provided by the present Constitution that such statutes and other regulations and enactments shall be directly enforced by federal agencies. . . . Republican and provincial agencies shall pass regulations concerning the enforcement of those federal statutes and other regulations and enactments for whose enforcement they are responsible.

YUGO. CONST. of 1974, art. 273; see Flanz, *supra* note 56, at 139-40.

⁶⁷ "The Rights and Duties of the Federation" are listed under Article 281 of the Federal Constitution of 1974. These enumerated powers of the Yugoslav Federal government occupy over six full pages and are broken into eighteen subsections. Almost all facets of everyday life can be controlled by the federal government through this constitutional article. In any event, it appears the outlined functions of government constitute the only ones which are subject to federal control as Article 281 says, ". . . [t]he Federation *shall* through its agencies" This article also provides that these "federal" powers may be shared with republic and provincial governments. Flanz, *supra* note 56, at 144-50; YUGO. CONST. of 1974, art. 281 (emphasis added).

and federal control may not be expanded above constitutional limits without changing the constitution.⁶⁸ Even considering the ability of the republics and provinces to define federal law, under the present Yugoslav constitution a republic's constitution may not conflict with the federal constitution.⁶⁹

C. *Yugoslav Constitutionalism*

The constitution of Yugoslavia and Yugoslav federalism are fairly different in approach and concept from most federal constitutions of the world.⁷⁰ While the contents of most other constitutions mainly are concerned with the organization of power and the relation between political powers and the society, the Constitution of the Socialist Federal Republic of Yugoslavia is, in its entirety, a detailed framework for the society.⁷¹

Constitutional norms throughout the world are assured and fulfilled primarily by legal provisions.⁷² In Yugoslavia, however, a large number of constitutional norms are directly applied.⁷³ This is illustrated by the present Constitution of 1974.

The Federal Constitution of 1974⁷⁴ of the Socialist Federal Republic of Yugoslavia was enacted in place of the 1963 constitution.

⁶⁸ Petrović, *supra* note 55, at 230.

⁶⁹ See *supra* note 62; see also Flanz, *supra* note 56, at 134; YUGO. CONST. of 1974, art. 260.

⁷⁰ Yugoslavia rejected the principle of the division of power. Flanz, *supra* note 56, at 2. Yugoslavian State organization accepted as a form of state power, beginning with the adoption of the Constitution of 1973, the system of unity of power or the assembly system. The assembly system exists at all levels of Yugoslav politics from the national level, republic level, down to the local level. The assembly of every socio-political community enacts and amends the basic legal act of that community, from constitutions to statutes. See *Id.* at 6-7, 9-10.

⁷¹ The Yugoslav Constitution exists as a more comprehensive constitutional document as it is the most voluminous constitutional text in the world covering various federal concerns, sometimes in great detail. The constitution of 1974 consists of 406 articles. *Survey of Legislation in Yugoslavia*, YUGO. L., Jan.-Apr. 1975, at 63 [hereinafter 1975 *Survey of Legislation*].

⁷² An example is the United States, where congressional statutes and judicial interpretation, and not the text of the Constitution, provide the majority of its legal specificity.

⁷³ See 1975 *Survey of Legislation*, *supra* note 71, at 63-64.

⁷⁴ This constitution was the realization of a series of reforms by Tito which gave powers to the six republics and two autonomous provinces at the federal government's expense. The federal government retained control of such matters as foreign affairs, defense, the currency and customs, but in most other respects the republics were allowed the opportunity to govern themselves. Davy, *supra* note 39, at 8.

The S.F.R. of Yugoslavia⁷⁵ is defined⁷⁶ by the 1974 constitution as a state community of voluntarily united nations and their socialist republics, as well as two autonomous provinces which are constituent parts of the Socialist Republic of Serbia.⁷⁷ The constitution is broken down into six sections covering almost all facets⁷⁸ of federal concerns.⁷⁹ Even so, the forms and means of federal control are not listed exhaustively⁸⁰ in the Yugoslavian Federal Constitution of 1974.⁸¹

D. Yugoslav Constitutional Rights, Doctrines and Duties

Yugoslavian law ensures to its citizens not only those rights which have been known and acknowledged for ages,⁸² but also completely

⁷⁵ The Federation is based on the power of the workers and all working people, and it exists as a socialist self-managing democratic community of working people, citizens, and of nations and nationalities all having equal rights. 1975 *Survey of Legislation*, *supra* note 71, at 63.

⁷⁶ This definition embodies the recognition that the working people and citizens, nations and nationalities "realize their sovereign rights." Marković, *supra* note 50, at 105; *see also* Flanz, *supra* note 56, at 47; YUGO. CONST. of 1974, art. 4.

⁷⁷ 1975 *Survey of Legislation*, *supra* note 71, at 63.

⁷⁸ Some of the many explicit concerns of the federal government of Yugoslavia include: (a) ensuring the independence and territorial integrity of the S.F.R.Y. and protecting its sovereignty in international relations; (b) ensuring of the system of socialist self-management, socio-economic relations, and the unified grounds of the political system; (c) protecting the constitutionality established by the Constitution of the S.F.R.Y. and the legality determined in accordance with that Constitution. Petrović, *supra* note 55, at 224-26; *see also* Flanz, *supra* note 56, at 144; YUGO. CONST. of 1974, art. 281; *see supra* note 67 (text and discussion of Article 281).

⁷⁹ 1975 *Survey of Legislation*, *supra* note 71, at 63.

⁸⁰ The constitution of Yugoslavia does not set out norms of conduct in respect to all matters, but establishes only the frameworks and principles as grounds for autonomous and free creation and establishment of social relations—internationally and internally. Dr. Jovan Djordjević, *Administration and Self-Management*, YUGO. L., Jan.-Apr. 1979, at 8.

⁸¹ *See* Petrović, *supra* note 55, at 237.

⁸² "The Freedoms, Rights and Duties of Man and the Citizen" are outlined in Chapter III of the Constitution of 1974, which covers articles 153 through 203. *See* Flanz, *supra* note 56, at 107-19; YUGO. CONST. of 1974, arts. 153-203. The age-old rights mentioned here are those analogous to the Bill of Rights under the United States Constitution. The freedom of the press, the freedom of expression, and the right to peacefully assemble are covered by the Yugoslav Constitution under Articles 167-69. *See* Flanz, *supra* note 56, at 110; YUGO. CONST. of 1974, arts. 167-69. The freedom of religion is outlined under Article 174. YUGO. CONST. of 1974, art. 174. The rights of an accused are outlined under Articles 175 through 184, and appear similar to Amendments IV, V, VI, and VII of the Constitution of the United States. YUGO. CONST. of 1974, arts. 175-84. The right to bear arms does not exist explicitly under the Yugoslav Constitution of 1974, but an analogous duty to defend the Federation is outlined in Chapter VI of the Federal Constitution of 1974. *See* Flanz, *supra* note 56, at 126-28; YUGO. CONST. of 1974, arts. 237-43.

new rights and freedoms⁸³ which enable the working individual to be the holder and bearer of economic and political sovereignty.⁸⁴ The constitution also guarantees the inalienability of freedoms and rights outlined therein.⁸⁵ This is particularly important in Yugoslavia, which is a multi-national community, as the freedom of expressing one's own nationality and the equality of nationalities and their languages is of utmost importance.

The Federation has always strongly recognized the equality of the peoples of Yugoslavia.⁸⁶ Indeed, Yugoslavian constitutional doctrine recognizes that the Federation was built⁸⁷ by the several Yugoslav

⁸³ Some of these "new" rights not recognized in Western constitutions are: the right to work under Article 159, right to health care under Article 162 and Article 186, the right to receive social security under Article 163, the right to shelter or tenancy in a dwelling permanently under Article 164, the freedom of thought and option under Article 166, the right to social welfare or relief under Article 189, the right of family planning under Article 191, the duty to preserve nature, national landmarks, and cultural monuments under Article 193, and the duty to help others in danger under Article 196. See YUGO. CONST. of 1974, arts. 159-196.

⁸⁴ The power and importance of the working man in Yugoslav society is reflected in the Constitution of 1974 under Article 244:

[T]he nations, nationalities, working people and citizens *shall realize and ensure* sovereignty, equality, national freedom, independence, territorial integrity, security, social self-protection, the defense of the country, the international position of the country and its relations with other states . . . , the system of socio-economic relations based on self-management, the unity of the political system, the basic democratic freedoms and rights of man and the citizen . . . and shall adjust common economic and social development and their other common interests.

YUGO. CONST. of 1974, art. 244 (emphasis added).

⁸⁵ The liberty outlined by the present Constitution of 1974 is secure as Article 203 maintains:

The freedoms and rights guaranteed by the present constitution may not be restricted.

YUGO. CONST. of 1974, art. 203.

⁸⁶ The AVNOJ created modern Yugoslavia in order for the various nationalities living therein to realize their sovereignty, and upon that principle ensured full equality of status between Serbs, Croats, Slovenians, Macedonians and Montenegrins. Marković, *supra* note 50, at 122. Article II of the Third Resolution of the AVNOJ declared:

In order to realize the principle of sovereignty of the peoples of Yugoslavia and to make Yugoslavia a true fatherland of all its peoples and never again the domain of any clique whatsoever, Yugoslavia is developing and will develop according to the federative principle, which will guarantee full equality to the Serbs, Croats, Slovenes, Macedonians, and Montenegrins, respectively to the peoples of Serbia, Croatia, Slovenia, Macedonia, Montenegro, and Bosnia and Hercegovina.

HONDUS, *supra* note 30, at 130.

⁸⁷ In constitutional theory the working class itself wields total economic and

nations⁸⁸ through the political right of self determination held by its people. Therefore, the right to be equal with others is guaranteed by the Constitution of 1974, which accords that all citizens are equal in their rights and duties, regardless of nationality, race, sex, religion, education or social status.⁸⁹

There exist several duties owed by the republics, autonomous provinces, and citizens to the Federation which arise from the inner meaning of the Yugoslavian Constitution and the essence of the Federation.⁹⁰ One of these innate duties is the "duty of loyalty."⁹¹ The "duty of loyalty"⁹² prohibits the distinct republics and autonomous provinces within the federal system of Yugoslavia from hindering the international policy of the Federation, subjecting the Federation to unnecessary dangers, or declaring themselves enemies of the Socialist Federal Republic of Yugoslavia.⁹³ Under traditional Yugoslavian Constitutional dogma, the breach of a "duty of loyalty" by a republic may invoke federal coercion⁹⁴ to rectify the disloyalty.⁹⁵

political power in its own name and in its own interest, and in the interest of the whole society as: "The socialist social system of the Socialist Federal Republic of Yugoslavia is based on the power of the working class and all working people" See Flanz, *supra* note 56, at 30; YUGO. CONST. of 1974, Basic Principles II, para. 1.

⁸⁸ See *supra* note 53.

⁸⁹ Since the Third Resolution of the AVNOJ, the right to express one's nationality has become as essential right in Yugoslav constitutional doctrine. The Constitution of 1974, in Article 170 guarantees to all citizens the freedom of expressing their national culture and nationality:

Citizens shall be guaranteed the right to opt for a nation or a nationality and to express their national culture, and also the right to the free use of their language and culture and alphabet.

No citizen shall be obliged to state which nation or nationality he belongs, nor to opt for any one of the nationalities.

Propagating or practicing national inequality, and any incitement of national, racial or religious hatred and intolerance shall be unconstitutional and punishable.

YUGO. CONST. of 1974, art. 170.

⁹⁰ Petrović, *supra* note 55, at 241.

⁹¹ *Id.* at 241.

⁹² The "duty of loyalty" appears to have been codified in the 1974 constitution. In Article 203, the Constitution of 1974 proclaims restrictions on the use of freedom may result if such freedoms are used in a way contrary to the constitution. See YUGO. CONST. of 1974, art. 203. Any misuse of rights will be determined unconstitutional including endangering the independence of the country, and the stirring up of national, racial, or religious hatreds or intolerance. *Id.*

⁹³ Petrović, *supra* note 55, at 241-42.

⁹⁴ Any transgression of federal policy by a republic or autonomous province might invoke federal coercion depending on the severity of the infraction. The seriousness

The "duty of loyalty" does not exist as the only innate precept in Yugoslavian constitutional doctrine. The freedom of thought and option were recognized as absolute rights in the Federal Constitution of 1974,⁹⁶ but have deeper roots at the foundation of the Federation.⁹⁷ In relation to the freedom of thought, this provision means by its very expression that no one can be held responsible for an opinion expressed, if such an expression did not harm any social or personal value set forth by the constitution.⁹⁸ The freedom of

of the violation of federal policy will also affect the intensity of federal coercion used to return to the status quo. *Id.* at 240-43. Article 273 of the Constitution of 1974 provides:

If republican and provincial agencies do not enforce federal statutes and other regulations and enactments for whose enforcement they are responsible, the Federal Executive Council [FEC] shall warn the Republican and/or Provincial Executive Councils thereof, and shall request them to take appropriate measures to ensure the enforcement of federal statutes, other regulations and enactments.

The Federal Executive Council is described *infra*, note 116. YUGO. CONST. of 1974, art. 273.

⁹⁵ Deciding on the employment of federal coercion through the use of force is a decision of the Presidency of the S.F.R. of Yugoslavia. Petrović, *supra* note 55, at 243. The use of military force according to Articles 313 and 316 of the Yugoslav Constitution of 1974 is exclusively the right of the President, and can be used at his complete discretion. *See* YUGO. CONST. of 1974, arts. 313 and 316. However, Article 240 of the Constitution of 1974 reads as follows, "The Armed Forces of the Socialist Federal Republic of Yugoslavia shall protect the independence, sovereignty, territorial integrity, and the social system of the Socialist Federal Republic of Yugoslavia established by the Constitution." YUGO. CONST. of 1974, art. 240. Thus in reality, the President does not have unbridled discretion concerning the use of coercive force. Consequently, the use of armed forces to exercise federal coercion could only take effect if immediate and direct jeopardy of the Federation's existence was at stake. Petrović, *supra* note 55, at 241.

⁹⁶ The Constitution of 1974 guarantees the freedom of thought and option without reservation. Article 166 determines: "Freedom of thought and option shall be guaranteed." YUGO. CONST. of 1974, art. 166. Fortunately, such a declaration means the constitution does not impose conditions for the realization of these freedoms, nor does it indicate how the rights arise.

⁹⁷ The people and citizens of Yugoslavia are recognized as the source of all Federal authority, and these people's can be seen to have reserved certain personal freedoms for themselves. This reservation of certain freedoms is illustrated in Article 5 of the constitution of 1953:

The following are guaranteed:

Free association of the working people for the purpose of realizing democratic[,] political, economic, social, scientific, cultural, artistic, professional, athletic and other common interests;

Personal freedom and the other basic rights of man and of citizen

KARDELJ, *supra* note 58, at 54, (quoting YUGO. CONST. of 1953, art. 5) (emphasis added).

⁹⁸ The Basic Principles embodied in the Constitution of 1974 confirm the original

option represents a new constitutional right since it is a specific extension of the prior classical freedom of determination.⁹⁹ The freedom of option, along with other extensions of liberty, demonstrate new freedoms to self-determination and the right to accept and stand for ideological-philosophical, moral, and other conceptions and views in accordance with internal determinations, personality, and respect for one's own dignity.¹⁰⁰

The convictions behind the Yugoslav Constitution distinguish the realization of freedoms and rights towards oneself and for oneself, and those freedoms relating to other people. From these distinctions in the Yugoslav Constitution emanate corresponding duties and personal responsibilities of man.¹⁰¹ One of the basic duties of each citizen is the duty to defend the country. This duty is spelled out in Section VI of the Basic Principles,¹⁰² and Article 172¹⁰³ states in

importance of Marxist scientific socialism in Yugoslavian society:

The system of upbringing and education shall be based on the achievements of modern science, especially of Marxism as the foundation of scientific socialism, and shall be instrumental in training young people for work and self-management and educating them in the spirit of achievements of the Socialist Revolution, the socialist code of ethics, self-management democracy, socialist patriotism, brotherhood and unity, the equality of the nations and nationalities, and socialist internationalism.

YUGO. CONST. of 1974, Basic Principles IV, para. 25.

⁹⁹ Article 39 of the constitution of 1963 states that "Freedom of thought and determination shall be guaranteed." PETAN MIJUSKOVIC, *THE CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA* 38 (1963) (translating and quoting YUGO. CONST. of 1963, art. 39).

¹⁰⁰ L. BASTA, *The Limits of Constitution and Constitutional Law: Rule of Law as a Superconstitutional Principle*, in *INSTITUTE OF COMPARATIVE LAW YUGOSLAV ASSOCIATION OF COMPARATIVE LAW* 53-54 (1986).

¹⁰¹ Article 173 for the first time introduces a new right and duty which refers to social self-protection. This involves an active relationship of working people and citizens toward the protection of the constitutional system and other freedoms and rights. This new right is somewhat explained in the Basic Principles of the 1974 constitution:

Social self-protection, as a function of society . . . shall be achieved through activities by working people, citizens . . . and other . . . organizations and communities . . . with a view to *safeguarding constitutional order*

YUGO. CONST. of 1974, Basic Principles IV, par. 22 (emphasis added).

¹⁰² YUGO. CONST. of 1974, Basic Principles VI.

¹⁰³ Article 172 of the Constitution of 1974 creates the duty to defend the country as: "The defense of the country shall be the inviolable and inalienable right and the supreme duty and honor of every citizen." YUGO. CONST. of 1974, art. 172. But, Chapter VI of the Constitution of 1974 outlines national defense. YUGO. CONST. of 1974, arts. 237-243.

detail that the defense of the country¹⁰⁴ is the inviolable and inalienable right and the supreme duty and honor of every citizen.

E. The Right of Secession under the Yugoslav Constitution

The inherent "Duty of Loyalty," the duty to defend the country, and the "Right of Option" all exist as precepts of Yugoslav constitutional law, and from these precepts an analogous right of secession from the Yugoslav Federation remains constitutionally plausible.¹⁰⁵ Croatian and Slovenian constitutional doctrine maintains that the 1974 constitution gives republics the right to self-determination, including secession.¹⁰⁶ While the present Yugoslavian Constitution¹⁰⁷ appears unclear on a right to secession,¹⁰⁸ this right may be implied from constitutional language.¹⁰⁹

¹⁰⁴ The duty to defend the Federation is outlined in Articles 237-243 of the Constitution of 1974. YUGO. CONST. of 1974, arts. 237-243. Importantly, Article 240 charges the armed forces with the responsibility of maintaining the territorial integrity of the Federation. YUGO. CONST. of 1974, art. 240. Article 5 of this constitution also requires that the borders of the S.F.R. of Yugoslavia can not be changed without the agreement of all the republics and autonomous provinces. YUGO. CONST. of 1974, art. 5. Since a special role belongs to the armed forces concerning the defense of territorial integrity and sovereignty of the country against aggression, by virtue of their function, the armed forces are responsible for ensuring both the exterior and interior security of the federation, and thus constitute a very important part of the social self-protection system.

¹⁰⁵ Though he felt secession of a republic was unconstitutional, the vagueness of the right to secession prompted Mosa Pijade to state:

[A]lthough our Constitution has not guaranteed the right to secession, this does not mean that it is ruled out altogether. It is theoretically possible that some people or people's republic would bring up the matter of its secession. But that would be a thing to be solved in concerto [sic], either as a revolutionary or as a counter-revolutionary case, according to the situation.

HONDRIUS, *supra* note 30, at 142-43.

It is interesting to note that many consider Mosa Pijade, the chief framer of the Yugoslav Constitution of 1946, as the Yugoslav equivalent of James Madison to the United States. *Id.* at 141.

¹⁰⁶ See *Travas Press Conference*, *supra* note 4, at 4.

¹⁰⁷ A document entitled "An initiative for a peaceful and democratic solution of the Yugoslav crisis and adoption of a new Yugoslav Constitution" was approved during the Belgrade meeting of top representatives of Bosnia-Herzegovina, Montenegro, and Serbia on August 14, 1991. This new initiative recognized that Yugoslavia must be preserved as a joint state of equal republics as nations. It based a new Constitution on the equality of the republics, and on free market economy guarantees. However, no explicit right of secession was mentioned in the new constitutional draft. *Ripartite Meeting in Belgrade Issues Document on Yugoslavia's Future*, BRIT. BROADCASTING CORP., Aug. 14, 1991, available in LEXIS, Nexis Library, Omni File.

¹⁰⁸ Traditional Yugoslav constitutional doctrine has maintained the constitution does not guarantee to the member-republics of the federation a constitutional right

Many Yugoslav constitutional scholars point out that it cannot be assumed that the constitution grants a right of secession to member-republics.¹¹⁰ In addition, the exercise of the right of secession by one republic might mean the end of the Federation for the other member-republics as well.¹¹¹ Thus since 1946, it had been

of secession. This denial is based on the fact that the Constitution mentioned the right of separation only in connection with the peoples which had created Yugoslavia, and not in connection with member states composing the Federation. The founding peoples were fully free to decide their fate, and they possessed the right not only to unite, but also to separate. But by uniting, they voluntarily renounced their right of separation. HONDUS, *supra* note 30, at 141.

¹⁰⁹ Many feel that the present Yugoslav Constitution of 1974 guarantees each republic the right of secession. See George F. Vrbancic, *Western Powers Should Stop Playing God*, TORONTO STAR, July 10, 1991, at A20. The Official Gazette of the S.F.R. of Yugoslavia (which prints all constitutional materials and federal laws) is printed only in the languages of the peoples of Yugoslavia as determined by republican constitutions as well as in Hungarian and Albanian tongues. See *Survey of Legislation in Yugoslavia*, YUGO. L., Sept.-Dec. 1976, at 71. Therefore, interpretation of the Yugoslav Constitution by the various political segments of Yugoslavia has not been translated into English very quickly.

¹¹⁰ Vlado Strugar, a colonel of the Yugoslav Army, expressed in a letter to Mosa Pijade in 1950 that:

The Communist Party of Yugoslavia has not excluded the idea of the right of peoples to self-determination and separation . . . [b]ut this principle of mutual relations between our peoples cannot be applied today in the form of a right of separation, for our peoples have passed through this phase of development in the Revolution and by living together have entered into a joint State.

HONDUS, *supra* note 30, at 142.

This view was confirmed by Mosa Pijade's response to Sturgar's letter:

Our Constitution contains no clauses which would give the republics the right of secession in the same sense as expressed for example by Article 17 of the Constitution of the U.S.S.R.

We do not wish to include such a provision into our Constitution for it would be insincere, as it is in fact in the Soviet Union. It would be not only insincere, but directly opposed to the historical origin and development of our federation. The latter has been established because our peoples, making use of the right to self-determination, 'to separate and unite with other peoples', did decide to live together in a common federal State and they have not used the right to secession, but the right to unite with others.

Inasfar as the Constitution has mentioned the right to secession, it is only in connection with the origin of the F.N.R.J. and not in order to ensure that our republics still have today the right of separation.

Id. at 142.

¹¹¹ The boundaries dividing the republics from one another would provide for the destruction of the Federation if particular member-republics were to secede. For example, if Croatia decided to secede, Slovenia would be forced to follow as it would no longer have a border with the remaining republics of the Federation. If Serbia were to secede, Macedonia would have to follow as it would no longer have a border with other republics. If Bosnia-Herzegovina were to secede, the entire federation would be in turmoil as the other republics surround it.

official theory that the Yugoslav peoples, by uniting into a Federation in 1943, had made use of their right to self-determination, and that the right to secession was thereby consummated.¹¹² However, after the adoption of the Federal Constitution of 1963 views concerning constitutional secession of a republic changed drastically, and secession was thereafter considered conceivable.¹¹³

Regardless of which constitutional theory remains in force concerning secession, the eight-man collective head of state¹¹⁴ acknowledged that the Yugoslav Constitution gives the six republics the right to secede from the Federation forged in 1918.¹¹⁵ The Federal Executive Council of Yugoslavia (FEC)¹¹⁶ has also affirmed this

¹¹² Even if this right still existed, it did not rest with the republics because they were not parties to, but rather results of, the union of the peoples. HONDIUS, *supra* note 30, at 250.

¹¹³ J. Djordjevic, whose views generally represented those of the regime, surprised others by his comment after the enactment of the new constitution of 1963. Coming round to the side of those constitutionalists who were in favor of a continued right of secession, he stated: "The new Constitution, which makes voluntariness and legal equality the bases of the Federation . . . does not modify in any way the constitutional right which the Republic has to leave the Federation." HONDIUS, *supra* note 30, at 251.

¹¹⁴ Introduced in 1971, the Presidency of the S.F.R. of Yugoslavia is a body which represents the Federation at home and abroad. It is the supreme body in charge of the administration and command of the armed forces. See Flanz, *supra* note 56, at 164, 165-166; YUGO. CONST. of 1974, art. 315. It is entitled to propose to the assembly of the S.F.R. of Yugoslavia programs on domestic and foreign policy. *Id.* at art. 315. In its activities, the Presidency takes into account the needs and common interests of the republics and autonomous provinces. Introduced as an expression of the specific needs of Yugoslav federalism, the Presidency is composed of a member from each republic and autonomous province. *Id.* at Amend. IV. The members are elected for a term of five years by respective assemblies. *Id.* at art. 324. The Presidency elects from among its members a president and a vice-president, according to a schedule laid down by the Presidency rules of procedure. *Id.* at 169-170, YUGO. CONST. of 1974, art. 327. Interestingly, the Presidency usually works from adaptations of the views of its members. The Presidency remains entitled in the event of war or an immediate danger of war to enact decrees which have the equal force of a statute passed by the Federal Assembly of Yugoslavia. *Id.* at art. 317.

¹¹⁵ The collective presidency also stated:

The Yugoslav state presidency considers that . . . the secession of the republic of Slovenia from the S.F.R. of Yugoslavia . . . is an *anti-constitutional act* and one-sided action that attempts to impose on other Yugoslav republics through the policy of a *fait accompli*. The Yugoslav state presidency cannot agree nor accept anybody's one-sided action which violates the constitutional legal order and integrity of the country and its interests. See *Parliamentarians Draw Up Plan for Survival of Yugoslavia*, REUTERS, Dec. 18, 1990, available in LEXIS, Nexis Library, Omni File (emphasis added).

¹¹⁶ The Federal Executive Council (FEC) is the executive body of the Assembly

right of self-determination to the point of secession.¹¹⁷ Even so, the FEC considers that the realization of this right must result from a democratic process,¹¹⁸ and not from a unilateral act.¹¹⁹ Secession as a unilateral act, the FEC maintains, would mean a violent change of current Yugoslav constitutional guarantees.¹²⁰ The FEC holds that

of the S.F.R. of Yugoslavia. It consists of a president and the members elected in conformity with the principle of equal representation of the republics and autonomous provinces. See YUGO. CONST. of 1974, art. 348. The Federal Assembly elects the President of the FEC on the proposal of the Presidency and its members. *Id.* Introduced in 1953, the FEC is a body which in accordance with the principle of the assembly system is responsible to the Federal Assembly for the state of affairs in all spheres of social life. KARDELJ, *supra* note 58, at 88; YUGO. CONST. of 1953, art. 84. It is responsible also for implementing the policy and executing federal statutes and other regulations and acts of the Assembly as well as directing the work of federal bodies of administration. YUGO. CONST. of 1974, art. 347. Thus, the FEC ensures the execution of policy and the enforcement of statutes. *Id.* at 355.

¹¹⁷ *Premier Ante Markovic Presents Government Report on Crisis*, BRIT. BROADCASTING CORP., June 24, 1991, available in LEXIS, Nexis Library, Int'l File.

¹¹⁸ Executive bodies and the bodies of administration, such as the FEC, have the power to pass ordinances or other temporary measures. These acts always have to be in accord with the acts of the Assembly. YUGO. CONST. of 1974, art. 356. The Assembly of the Federation determines the policy and decides on basic issues of significance for political, economic, social, and cultural life, as well as for social development of the specific socio-political community. *Id.* at art. 282. The various assemblies—federal, republican, or provincial—perform political control over the activities of their executive bodies, bodies of administration, and of all subjects performing public functions which are responsible to the assembly. *Id.* at art. 286. The assemblies through directives, steer the activity of all these bodies. They also elect, nominate and remove from office executive councils, high officials of administration and other officials, including judges. *Id.* at art. 288. Therefore, the FEC as a body of administration is responsible for its work to the National Assembly, and the National Assembly has the right to revoke regulations which are contrary to the constitution, statutes or other regulations of the Federal Executive Council itself. *Id.* at art. 282.

¹¹⁹ The right of secession and self-determination, according to the FEC, exists only through joint agreement of the republics and dictates a realistic time factor. This requires there be no interruption of the functioning of essential federal units whose dismantling would objectively lead to catastrophic economic, social, and political ends. Therefore, dissociation must not produce negative or harmful consequences for the interests of the other republics and Yugoslavia as a whole. See *Premier Ante Markovic Presents Government Report on Crisis*, BRIT. BROADCASTING CORP., June 24, 1991, available in LEXIS, Nexis Library, Int'l File.

¹²⁰ The FEC considers unilateral decisions of any kind on altering the external or internal borders of Yugoslavia to run counter to the peaceful and democratic solution of the crisis, and such acts are considered illegal and illegitimate. Furthermore, unilateral acts of secession would lead to the negation of democracy in the seceding areas through the use of coercive force. *Id.*

if dissociation occurs as a simultaneous event, new relations between the remaining republics and the newly created nations must begin with the new modern multinational communities, such as those under way in Europe.¹²¹

In late 1990, in response to growing concern over the fragile federation, the Constitutional Commission of the S.F.R.Y. Assembly¹²² almost replaced the outdated Constitution of 1974. The draft declaration began, "Having decided that the present state of economic, political and constitutional relations in Yugoslavia threatens the future[,] . . . Yugoslav relations must be arranged in a new way if a crisis is to be overcome."¹²³ Part of this new arrangement provided for the constitutional right of self-determination, including the right of secession,¹²⁴ and territorial integrity and sovereignty of all republics.¹²⁵ This constitutional draft¹²⁶ was never ratified by the Yugoslav republics.¹²⁷

¹²¹ This means that the right to self-determination should be directly linked to discussion of the inevitable integration of Yugoslavia into the European international groups, like the European Community. *Id.*

¹²² The Assembly of the S.F.R.Y. is a body of social self-management and the supreme organ of power within the framework of federal rights and duties. The Assembly is vested with the following duties and responsibilities: to decide on amendments to the Constitution, to determine the fundamentals of the internal and foreign policies of the federation, to press federal statutes and other regulations and enactments such as the social plan of Yugoslavia and the budget of the Federation, to decide war and peace, to ratify international treaties of a more important nature and character, to elect the President of the Federation and the president and the members of the FEC and of federal administrative agencies. See YUGO. CONST. of 1974, arts. 283, 285, 286. Thus, the power of the National Assembly remains extensive in spite of the various alterations, revisions, and re-adoptions of the Yugoslav Constitution.

¹²³ *S.F.R.Y. Assembly Constitutional Commission Issues Draft Declaration on System*, BRIT. BROADCASTING CORP., Dec. 20, 1990, available in LEXIS, Nexis Library, Int'l File.

¹²⁴ The new constitution would have provided:

When drafting and endorsing documents which will shape relations in Yugoslavia in a new manner, the republican assemblies and the Federal Chamber of the S.F.R.Y. Assembly will consistently respect *national identity; the right of nations to self-determination, including the right to secession* under jointly outlined conditions; the principle of acting of one's own free will; economic, political and cultural subjectivity and sovereignty of republics.

Id. (emphasis added).

¹²⁵ *Id.*

¹²⁶ The terminology concerning secession was added to the draft of the new constitution to remove inconsistencies in the procedure for a possible secession of any republic, thereby removing the danger of republics regulating this matter as

F. Constitutional Basis for Secession

The constitutions of the Yugoslavian republics and provinces are not based on and do not emulate the federal constitution, because they are expressions of statehood and autonomy.¹²⁸ Even so, according to the Federal Constitution of 1974 of the S.F.R. of Yugoslavia, the republic and provincial constitutions cannot be in direct conflict with the federal constitution whereas all the statutes, general acts, and other provisions of the federal government must be in conformity with the federal constitution.¹²⁹ In other words, republic and provincial constitutions, statutes, and regulations cannot be in direct conflict with a federal statute or the federal constitution.

All functions not maintained and governed by the federation are vested to the republics and provinces¹³⁰ according to the conception of jurisdiction spelled out by the constitution and through which all working people and nations and nationalities realize their sovereign rights.¹³¹ The new Croatian Constitution of 1990 proclaimed the republic a sovereign independent nation state,¹³² and assured ethnic minorities equality.¹³³ This constitution provided the basis for

they saw fit. *Stipe Suvar on New S.F.R.Y. Constitution*, BRIT. BROADCASTING CORP., Feb. 17, 1990, available in LEXIS, Nexis Library, Int'l File.

¹²⁷ *Id.*

¹²⁸ Dr. Dordi J. Caca, *Constitutional Judiciary in Yugoslavia*, YUGO. L., Jan.-Apr. 1976, at 25.

¹²⁹ Thus, republic and provincial constitutions do not have to be in accordance with the Constitution of the S.F.R. of Yugoslavia; nevertheless, these constitutions cannot be in direct conflict with the S.F.R.Y. Constitution. See *supra* note 61.

¹³⁰ Even so, constitutional courts ensure constitutionality as well as legality in accordance with the federal constitution. Article 205 of the Constitution of 1974 provides:

Protection of constitutionality and legality shall be the responsibility of the courts of law, agencies of the socio-political communities, organizations of associated labor and other self-managing organizations and communities, and of those exercising self-management, public and other functions. Constitutional courts shall ensure constitutionality and legality in accordance with the constitution.

YUGO. CONST. of 1974, art. 205.

¹³¹ See *supra* notes 74-76.

¹³² The new Croatian Constitution proclaimed: "The right to people's sovereignty guarantees the Croatian nation the right to secession, to the creation of their independent state, to joining forces with other nations and states, as well as the right to managing economic, legal and political relations in its own state." *Croatian Assembly Begins Discussing Draft of New Republic Constitution*, BRIT. BROADCASTING CORP., Nov. 26, 1990, available in LEXIS, Nexis Library, Int'l File.

¹³³ At the convention that adopted the new Croatian Constitution, Croatian Assembly President Zarto Domljan stated that the new constitution guarantees that all

the Croatian secession in the summer of 1991.¹³⁴ The new Slovenian Constitution is notably similar to the Croatian Republic's new constitution.¹³⁵

III. ANALYSIS

The right to self-determination¹³⁶ and the authority to secede¹³⁷ exist as two distinct and separate concepts. In a federal system of government like Yugoslavia, the unilateral secession of a state or states can change the course of a nation's history,¹³⁸ and possibly end the very existence of the nation.

ethnic minorities "are equal with Croats and that their national rights will be realized in accordance with democratic norms outlined by the United Nations and countries of the free world." *Id.*

¹³⁴ Pursuant to the Croatian Constitution, the Croatian State declared its fundamental right to self-determination and sovereignty. *Id.*

¹³⁵ See C. Michael McAdams, *Croatia's and Slovenia's Fight for Autonomy*, CHRISTIAN SCI. MONITOR, Aug. 13, 1991, at 19.

¹³⁶ The right of self-determination seems at present essentially universally accepted. Many in the international community perceive the right of self-determination as a peremptory norm of international law, or *jus cogens*. See Louis B. Sohn, *The Shaping of International Law*, 8 GA. J. INT'L & COMP. L. 1, 13 (1978); MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW, 4-5 (1988); IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 5 (3d ed. 1979); South West Africa Cases (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 4, 297-98 (July 18) (Tanaka, J., dissenting). United Nations General Assembly Resolution 2625 would seem to grant an undeniable right to a culture to form its own nation. Resolution 2625 maintains:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter . . . [and] the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples

G.A. Res. 2625, U.N. GAOR, 25th Sess., Supp. No. 28 at 121, U.N. Doc. A/8028 (1970).

¹³⁷ The Soviet Constitution guaranteed its republics a right to secede. Constitution (Fundamental Law) of the Union of Soviet Socialist Republics, Art. 72 stated: "Each Union Republic shall retain the right freely to secede from the USSR" See John N. Hazard, *The Union of Soviet Socialist Republics, in XVIII CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* 31 (Albert P. Blaustein & Gisbert H. Flanz eds, 1990) (citing U.S.S.R. CONST., art. 72) (reprinted from NEW TIMES No. 41 (Moscow 1977)). The United States Constitution does not allow secession. See *Texas v. White*, 74 U.S. (7 Wall.) 700, 724-26 (1868) (secession of Texas from the United States was unconstitutional because a state's acceptance of the federal constitution represented a waiver of the right to secede and to self-determination).

¹³⁸ One need only note the horrific consequences of the American Civil War,

The Yugoslavian concept of federalism has not allowed domination by one individual since the death of Tito; instead, today it is a mixture of autonomous rule inside the various republics, and rule by joint committee at the federal level.¹³⁹ This concept of federalism has contributed to the decline of the Yugoslav federation as local republican governments consolidated power.¹⁴⁰ The recent loss of the Soviet Union as an archenemy has also made it more difficult to bring unity within the country.

The weak, decentralized form of government outlined by the Constitution of 1974 has resulted in a withering away of the Yugoslav State, but not in a Marxian sense. The present form of federalism has destroyed any sense of brotherhood between the various "southern Slavs" and has rekindled old nationalistic passions and hatreds.¹⁴¹ In the current Yugoslav climate it would seem preferable if Croatia and Slovenia were allowed to secede peacefully. Even so, this desire for peace does not create a constitutional right of secession under the Yugoslav Constitution.

When reviewing the Yugoslavian Constitution, the phrase "proceeding from the right of every nation to self-determination, including the right to secession" seems to advocate secession generally, thereby implying Yugoslav republics individually possess the right to secede. Even so, this extraordinarily vague phrase¹⁴² in a con-

which was precipitated by the secession efforts of the Southern states. Though these efforts were driven in part by morally reprehensible motives, there are similarities with the Yugoslav crisis of today. In the early and mid-nineteenth century, American states conceived themselves as sovereign nations because they voluntarily joined the United States of America. Croatia and Slovenia feel the same way as the Southern states did in 1860, as they too voluntarily formed the Yugoslav Federation with the other republics.

¹³⁹ See *supra* note 116.

¹⁴⁰ Borowiec, *supra* note 39, at A8; see also *supra* note 55.

¹⁴¹ See *supra* notes 23, 33 & 39.

¹⁴² The clause containing secession language in its entirety reads as follows:

The nations of Yugoslavia, proceeding from the right of every nation to self-determination, including the right to secession, on the basis of their will freely expressed in the common struggle of all nations and nationalities in the National Liberation War and Socialist Revolution, and in conformity with their historical aspirations, aware that further consolidation of their brotherhood and unity is in the common interest, have, together with the nationalities with which they live, united in a federal republic of free and equal nations and nationalities and founded a socialist federal community of working people—the Socialist Federal Republic of Yugoslavia.

YUGO. CONST. of 1974, Basic Principles I, para. 1.

stitution that is known for its attention to minute details leaves wide room for controversy on a right of secession held by member republics. This phrase alone can be explained away all too easily; therefore, if a right to secede is to be found, it must be linked to other constitutional provisions or past constitutional provisions to give this right proper validity. Careful constitutional scrutiny reveals language assisting the legitimacy of secession.

A. Past Constitutional Doctrines and Language from Previous Constitutions Fail to Substantiate a Right of Secession

An explicit textual provision outlining secession under the Yugoslav constitution of 1974 is nonexistent. Similarly nebulous, the 1946 Constitution stated, "Yugoslavia . . . is a community of peoples equal in rights who, on the basis of the right to self-determination, including the right of separation, have expressed their will to live together in a federative state."¹⁴³ cursory inspection of this clause could lead one to determine that secession was not intended as a right to be reserved, but was instead a stepping stone towards a united federation. The fact the people expressed their will to live together would imply that the right of separation was forfeited upon consolidation into the federation.¹⁴⁴ Therefore, self-determination and secession as a basis for the formation of the Yugoslav federation suggests no reservation of those principles as a right, but rather a method by which the freed peoples of Yugoslavia brought themselves together as a nation. Thus, the basic constitutional language inside the 1946 constitution does not lend itself to the theory of a right of secession. Unfortunately, the constitution of 1953 appears no more helpful, and the constitution of 1963 contains the same language as that existing at present.¹⁴⁵ Therefore, in order for a right of secession to be secure, other constitutional phrases, articles, or doctrines must support a right of secession.

B. The Sovereignty of the "Peoples" of Yugoslavia Supplies a Basis for Constitutional Secession

The sovereignty of "the peoples" of Yugoslavia has been the principle providing legitimacy to the Federation since its founding

¹⁴³ See *supra* note 52.

¹⁴⁴ See *supra* note 108.

¹⁴⁵ See THE CONSTITUTION OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA 6 (Petar Mijuskovic trans.) (citing YUGO. CONST. of 1963, Basic Principles I).

by the AVNOJ soon after World War II.¹⁴⁶ The importance of the peoples's power remains acknowledged under the present Yugoslav Constitution, and this power may persist stronger now than in the past.¹⁴⁷ Supposedly, the nations and nationalities of Yugoslavia "realize their sovereign rights."¹⁴⁸ Taking this into account, a viable argument can be made that the "peoples" preserve their rights of self-determination and secession because these "sovereign" rights allowed and provided for the formation of the Federation.¹⁴⁹ Since the various "peoples" can be said to still recognize their sovereignty, including the right of separation or secession, it appears these "peoples" through their republican governments could exercise these rights, thus "realizing" them. Yugoslavia recognizes the rights of other "peoples" outside their borders to self-determination and national independence,¹⁵⁰ therefore it would be hypocrisy to deny these sovereign rights to their own various peoples.

In spite of the fact the "peoples" of Yugoslavia realize their sovereignty including the right of secession, under the constitution these same "peoples" vow to ensure the unity of the political system, thus enabling the unity of the Federation.¹⁵¹ The concept of state unity is a solid principle in Yugoslav constitutional doctrine,¹⁵² and seems to imply the sovereign right of secession has been forfeited by the various "peoples".¹⁵³ Nevertheless, the constitution does not specify which rights the citizens retain, which implies all rights remain accessible. The will of the "peoples" in the several republics has been clearly voiced through the referendums on independence.¹⁵⁴ Thus, the "peoples" of several republics, by showing their will to separate from the federation, "realized" their sovereign right of secession under the constitution, and may properly leave the federation.

¹⁴⁶ See *supra* note 86.

¹⁴⁷ See *supra* notes 50, 75, 76, 84, and 87.

¹⁴⁸ See *supra* note 76.

¹⁴⁹ See *supra* note 142.

¹⁵⁰ The Constitution of 1974 states: "Yugoslavia shall strive . . . for the right of nations to self-determination and national independence, and for their right to wage a liberation war to attain these aims." YUGO. CONST. of 1974, Basic Principles VII, para. 2.

¹⁵¹ See *supra* note 84.

¹⁵² See *supra* note 58.

¹⁵³ See *supra* note 57.

¹⁵⁴ See *supra* notes 4 and 39.

C. The Right of Option Held By Every Individual Could Lead to the Consummation of Independence By Various Member Republics

Analogous to a right of secession derived from the fact that the various nationalities may realize their sovereign rights is the proposition that a right of secession may be derived through each individual's use of their right of option. The right of option as stated previously is an absolute right,¹⁵⁵ which embodies the option of each citizen to their own self-determination, and can be seen as an absolute right of personal freedom.¹⁵⁶ This individual right exercised uniformly by large segments of a republican population could be seen to materialize into a right of revolution. The agreement among the populace of a republic to separate from the federation may be seen as a massive exercise of an individual's right of option. This mass choice of individual political reality in conformity with personal internal determinations¹⁵⁷ is demonstrated by the overwhelming approval of the numerous referendums on independence.¹⁵⁸ The possibility of such a far reaching exercise of power through every individual's right of option seems possible since freedom and rights guaranteed under the constitution cannot be restricted.¹⁵⁹

In spite of the possibility of a right of secession derived through the exercise of an individual's right of option, this possibility remains highly unlikely due to each individual's conflicting duty of loyalty.¹⁶⁰ The constitution requires citizens to use personal freedoms in a manner which does not disrupt the democratic order established by the constitution nor endanger the independence of the Federation.¹⁶¹ Thus, although the right of option is one that appears subject to no restrictions, Article 203 of the present constitution appears to have an overriding effect. Accordingly, secession of several member-republics through the mass use of the right of option could be a counter-constitutional use of that right.

However, close examination of Article 203 reveals "the mode of realization of individual freedoms and rights may only be regulated

¹⁵⁵ See *supra* note 96 and accompanying text.

¹⁵⁶ See *supra* note 100. This right would be subject to the criminal laws of the land.

¹⁵⁷ See *supra* text accompanying notes 98-100.

¹⁵⁸ See *supra* notes 4 and 39.

¹⁵⁹ See *supra* note 85.

¹⁶⁰ See *supra* note 92 and accompanying text.

¹⁶¹ See YUGO. CONST. of 1974, art. 203.

by statute.”¹⁶² At present, there appears to be no statutory restrictions upon the right of option. Therefore, in spite of an individual’s express duty of loyalty to the federation, an individual could realize his or her own personal convictions concerning secession through a general referendum without fear of negative consequences resulting from an unconstitutional use of personal freedom.

D. Republican Governments May Regulate the Field of Secession as the Federal Government, Through Idleness, Has Abandoned Its Regulation

The collective head of State and the Federal Executive Council of Yugoslavia confirm that a right to secede under the constitution exists.¹⁶³ This right would presumably have to be interpreted by the federal government considering the notion of Yugoslav federalism. Nevertheless, no formula exists in the Yugoslavian Constitution for secession nor has the Federal Assembly provided guidelines.¹⁶⁴ The Federal Executive Council has, however, mandated a policy for constitutional secession,¹⁶⁵ and this formula exists as the only federal method for legal secession.¹⁶⁶ The Slovenian and Croatian declarations have not fulfilled FEC requirements,¹⁶⁷ and constitute unilateral acts of secession, thereby making their secession illegal according to the federal government.¹⁶⁸ Since these potential breaches of constitutional requirements can be seen as an immediate and direct threat to the existence of the Yugoslav Federation,¹⁶⁹ the President of the Federation could use military force to ensure confirmation of constitutional mandates.¹⁷⁰ Thus, considering the formula for secession provided by the Federal Executive Council, the positions of Slovenia and Croatia appear tenuous.

¹⁶² *Id.*

¹⁶³ See *supra* notes 115 and accompanying text, 119 and 121.

¹⁶⁴ See *supra* notes 109, 122-24 and accompanying text.

¹⁶⁵ See *supra* note 119.

¹⁶⁶ See *supra* notes 116-21 and accompanying text.

¹⁶⁷ See *supra* note 4.

¹⁶⁸ See *supra* note 115.

¹⁶⁹ See *supra* text accompanying notes 92-93.

¹⁷⁰ The “duty of loyalty” was arguably breached because the rebel republics could be viewed as having made themselves enemies of the Federation. Also, under Article 240 of the constitution, military force could be used to maintain the territorial integrity of the Federation. See YUGO. CONST. of 1974, art. 240. This constitutional clause seems to be the one invoked when the Yugoslav army invaded Slovenia soon after its secession.

Fortunately for Slovenia and Croatia, it has been agreed by numerous federal and republican authorities that the present Constitution guarantees a right to secession, and this right appears to have been created with the formation of the Yugoslavian state in 1918.¹⁷¹ The history of the Yugoslav nation is marked by the voluntary association of the numerous republics into one federal state,¹⁷² therefore it would not be so unusual for a voluntary disassociation of the federation.

Article 206 of the Yugoslav Constitution, which requires conformity of the republics' individual constitutions to the federal constitution, is inapplicable to the constitutional right of secession since no federal constitutional article exists as to this right. The constitutions of the republics and provinces are not based on and do not emulate the federal constitution.¹⁷³ Furthermore, because the federal constitution has not defined the right of secession, it follows that the republics may fill the federal void by providing for constitutionally valid means for secession via written amendments in republican constitutions.¹⁷⁴

The proclamations of the Federal Executive Council¹⁷⁵ on the method and requirements for constitutional secession do not operate as Yugoslavian constitutional law because the Federation's jurisdiction is limited only to regulation of specific areas outlined in the constitution,¹⁷⁶ and the FEC's power is limited to enforcing laws created by the Federal Assembly,¹⁷⁷ not creating laws. The Yugoslavian constitution also requires that areas of direct control by the federal government not be expanded unless by constitutional amendment,¹⁷⁸ thereby implying the Federal Assembly would have to amend the constitution to bring this field within federal domain.

As stated before, it could be argued that the innate "duty of loyalty" would deny any republican administration of the right to secede since this act is essentially rebellion against the Federation.¹⁷⁹

¹⁷¹ See *Premier Ante Markovic Presents Government Report on Crisis*, BRIT. BROADCASTING CORP., June 24, 1991, available in LEXIS, Nexis Library, Int'l File.

¹⁷² The second session of the AVNOJ expressed this sentiment. See generally HONDIUS, *supra* note 30, at 121-37.

¹⁷³ See *supra* note 128 and accompanying text.

¹⁷⁴ See Petrović, *supra* note 55, at 224-37; see also *supra* notes 64-66 and accompanying text.

¹⁷⁵ See *supra* note 119.

¹⁷⁶ See Petrović, *supra* note 55, at 223-37; see also *supra* note 67.

¹⁷⁷ See *supra* note 116.

¹⁷⁸ Petrović, *supra* note 55, at 230.

¹⁷⁹ See *supra* text accompanying notes 91-95.

It is also widely held that the realm of federal power reaches beyond the explicit constitutional authorities granted in the constitution,¹⁸⁰ thus possibly leaving the right to regulate secession in federal hands in spite of express constitutional supremacy. Both these concepts, while interesting, are clearly fallacious. The "duty of loyalty" has been essentially codified in the federal constitution,¹⁸¹ and the right of secession has not been stipulated as an act of aggression against the Federation in the constitution. Also, the constitution clearly commands the federal government to stay within the bounds of the constitution in implementing its power.¹⁸² Therefore, the republics under Article 273 may regulate this federally abandoned field, especially considering no explicit authority to regulate this field exists for the federal government. Inasmuch as an argument may be made that the "duty of loyalty" overrides the right of secession, it can be easily disposed of because under Yugoslav doctrine innate constitutional rights must be seen to have equal footing. Thus, any right of secession under the Yugoslav Constitution appears properly regulated by republican constitutional reforms.

E. Recent Serbian Actions in Kosovo and Vojvodina Can Be Seen As A Threat to Constitutional Protection, and Such Aggression and Disregard for Constitutional Provisions Can Be Seen to Have Destroyed Constitutional Validity Necessitating Various Republican Governments to Protect Their Citizens Through Secession

Lastly, Croatia and Slovenia may claim that their entrance into the Socialist Federal Republic of Yugoslavia is dissolved by the recent actions and breaches of constitutional provisions by Serbia.¹⁸³ Serbia has violated the constitution in various ways since the late 1980's, but in particular the disintegration of the autonomous provinces of Kosovo and Vojvodina has profound magnitude.¹⁸⁴ Those acts by the Serbian Republic breach the very foundation on which Yugoslavia is founded.¹⁸⁵ Since the federal government of Yugoslavia failed to fulfill

¹⁸⁰ See Petrović, *supra* note 55, at 24.

¹⁸¹ See *supra* note 92.

¹⁸² See Petrović, *supra* note 55, at 223-37; see also *supra* note 67.

¹⁸³ See *supra* notes 41-43 and accompanying text.

¹⁸⁴ See *supra* note 43.

¹⁸⁵ Equality among the different nationalities living in Yugoslavia is a basic principle underlying the Yugoslav Constitution of 1974. See *supra* notes 60, 75, 86, 89, and 98.

one of its most important duties—i.e., protecting the legality of the constitution¹⁸⁶ which recognizes the existence of Kosovo and Vojvodina¹⁸⁷ it can be considered that nothing in the constitution is venerated including the integrity of Slovenia and Croatia. This may justify secession from the Federation as the constitutional right of equal rights among the ethnic groups can be considered destroyed.¹⁸⁸

F. In Spite of Apparent Republican Constitutional Authority to Regulate Secession, Separation Attempts May Be Unconstitutional upon Alternative Grounds

When a republic's method of constitutional secession¹⁸⁹ in some way violates the Yugoslav Constitution in some collateral way, the secession might be held unconstitutional on that ground. For example, Article 5 of the Yugoslav Constitution requires the borders of the Yugoslav Federation not be changed without the agreement of all the republics and autonomous provinces.¹⁹⁰ Therefore, it would seem to require all other republics to grant a particular republic permission to secede since secession of one violates the borders of the Yugoslav Federation. Even so, it could be argued that this article could be overcome so long as the particular republic leaving the Federation claims no territory outside its present borders. Thus, Croatian secession could be seen as not violating borders and, therefore, con-

¹⁸⁶ See *supra* note 61.

¹⁸⁷ See *supra* notes 50 and 53.

¹⁸⁸ Another breach of the constitution by Serbia was the refusal to accept the Croatian choice as President of the Federation. The strange system of revolving presidents from the different republics on a yearly basis was voided when the Serbian government refused to allow the Croatian choice as President take his rightful position. This violation of the constitution may be seen as an act of Serbian domination over the other republics of Yugoslavia thereby creating a right to secede under the Yugoslav Constitution. See *supra* notes 6, 89, and 114.

¹⁸⁹ The new Croatian Constitution guarantees substantial rights to its citizens, and could not be seen to violate the Yugoslav federal constitution on human rights grounds. See *supra* notes 132-33.

¹⁹⁰ Article 5 of the Constitution of 1974 in part provides:

The territory of a Republic may not be altered without the consent of that Republic, and the territory of an Autonomous province [sic]—without consent of that Autonomous Province

. . . .
Boundaries between the Republics may only be altered on the basis of mutual agreement, and if the boundary of an Autonomous province [sic] is involved—also on the basis of the latter's agreement.

YUGO. CONST. of 1974, art. 5. See also *supra* notes 95 and 104 and accompanying text.

stitutional as long as the present borders between the republics were respected, whereas Croatian claims to Bosnian territory would violate Article 5 and thereby make an otherwise constitutional Croatian declaration unconstitutional. Thus, Article 5 can be construed as prohibiting either external boundary changes by foreign states, or unilateral internal boundary changes between the republics. Similarly, any federal claims of unnecessary destruction of the economic equilibrium of the Federation would be clearly artificial as the republics have directed local economies substantially for some time.¹⁹¹

IV. CONCLUSION

Europe's federalization into an expanded European community consisting of small ethnic states may be preferable to the empires and massive nation states of old. Nevertheless, practical limits must be drawn on ethnic and cultural autonomy. Certain chaos will reign if every minute ethnic dissimilarity is allowed to obtain sovereignty. The constitutional right to secede, as seen from Yugoslavia, can be clouded and treacherous. Because the right to secession raises fundamental and emotional issues, caution should be entertained before considering unilateral acts of secession, especially considering the changed climate of East European politics. Even so, in the case of Yugoslav republics, several constitutionally valid arguments remain available for those republics wishing to peacefully secede from the Yugoslav Federation. Recognition of this right by Western European nations will obviously authenticate and expedite the efforts of Croatia and Slovenia, and others that may follow.

Ben Bagwell

¹⁹¹ See *supra* notes 55-56.

