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## Procedure for Secession

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*Summary*

This article analyzes possible procedures for political secession. After a literature review of theories of secession, the article presents the main arguments against and for secession. Then, on the basis of “no-fault” theory, this article proposes a procedure for secession. Furthermore, this procedure is empirically tested through analyses of secessions from former Yugoslavia. The main hypothesis is that secession is justified in two cases: first, when secession occurs as a result of consensus of all the main actors, including central government, and, second, when at least two-third majority of population supports secession.

*Key words:* secession, former Yugoslavia, Horowitz, Milošević, Croatia



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Generally speaking, secession is very popular neither among politicians nor among political scientists. According to Huntington “the twentieth century bias against political divorce, that is, secession, is just about as strong as the nineteenth century bias against marital divorce” (Huntington, 1972: vii). It is not difficult to explain why. It is sufficient to recall what happened with Bosnia after secession and it become logical that minority of scientists support secessionism. However, recent history also gives reasons for more favourable treatment of this right. For example, six countries that were established as a result of secessions (Lithuania, Latvia, Estonia, Czech Republic, Slovakia and Slovenia) became new members of EU after successful democ-

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ratification and economic transition. There is no doubt that these countries are better off now than they were before secession. In addition, there is no significant movement in these countries that demands return to previous situation when these countries were part of multiethnic states. In other words, history shows that secession might end with war and terrible human suffering but also with a successful economic and political and economic development of newly established states. Therefore, it is important to investigate, first, whether secession should be allowed, and, second, under which circumstances secession produces desired outcomes. These questions are important not only theoretically but also practically. For example, international community should decide, in the near future, what to do with Kosovo. Should this territory – which is formally still a part of Serbia – be recognized as an independent state? Obviously, very few questions in political science have such important practical value as the question whether secession should be allowed or not.

Before 1991, literature about right on secession was relatively scarce. However, Buchanan's book (1991) sparked a very fruitful debate on this topic. The author articulated so called 'remedial right to secession.' According to the author, secession should be allowed only as a remedy against unjust conquest, exploitation, threat of extermination and threat of cultural extinction (Buchanan, 1991). D. Horowitz is probably the most radical critic of right to secession. According to him, the right to secede should be implemented only in the cases of decolonisation, in the cases when all the main actors agree concerning dissolution of a country, and occasionally by international action (Horowitz, 2003: 12). Concerning the last exception, Horowitz does not explain what should be a precondition for such an international action, but claims that such an action does not require creation of certain rights. Nielsen claims that secession should be granted only for liberal democratic societies (Nielsen, 1998).

In contrast to the theories above, a 'no-fault' theory of secession was articulated.<sup>1</sup> According to this theory, secession should be granted whenever people on certain territory (which is usually a federal unit) express their will to form an independent state. The best way for the expression is referenda. However, majority of authors argue that secession should be granted only when a qualified or supermajority of people express their will for independent state.

<sup>1</sup> See, for example, Philpott, "Self-Determination in Practice," in Moore, ed., 1998: 79-102, Norman, "Domesticating Secession," in Macedo and Buchanan ed., 2003: 193-237, and Beran, "A Democratic Theory of Political Self-Determination for a New World Order," in Lehning (ed.), 1998: 32-59.

From here this article will proceed the following way. First, the main arguments against for secession will be presented. Second, on the basis of ‘no-fault’ theory, a procedure for secession will be proposed. Then, this procedure will be analysed on the basis of a case study of former Yugoslavia. The main conclusion of the article is that secession should be granted always when an overwhelming majority of population (at least two-third majority) demands this right.

### *Arguments against and for secession*

In his recent article, Horowitz (2003) summarizes the most important arguments against secession.

Secession, I shall argue, does not create the homogeneous successor states its proponents often assume will be created. Nor does secession reduce conflict, violence or minority oppression once successor states are established. Guarantees of minority protection in secessionist regions are likely to be illusory: indeed, many secessionist movements have as one of their aims the expulsion or subordination of minorities in the secessionist regions. The very existence of a right to secede, moreover, is likely to dampen efforts at coexistence in the undivided state, including the adoption of federalism or regional autonomy, which might alleviate some of the grievances of putatively secessionist minorities (Horowitz, 2003: 5-6).

In the literature it is also possible to find additional argument – secession is not in accordance with democratic principles because secessionists do not want to accept rule of majority in certain state.<sup>2</sup>

There is one point in which it is relatively to agree with Horowitz. Indeed, when all the main actors agree concerning dissolution of a country, there is really no reason not to accept this dissolution. Czechoslovakia is an excellent example how dissolution may go smoothly when all the main actors do accept dissolution. Furthermore, when all the main actors agree about procedure for dissolution, there is also no reason not to accept it. For example, both Serbia and Monte Negro agreed that secession should be allowed if 55% of voters vote in favour of secession of Monte Negro, providing that at least 50% of voters participate in the referendum. Here, also secession proceeded without serious conflict. However, it is difficult to agree with Horowitz that secession should not be allowed when central government does not consent even if, for example, 99% of people in a federal unit vote in

<sup>2</sup> See, for example, Albot, “The Lincoln Proposition and the Spirit of Secession”, in Lehning (ed.), 1998: 182-207.

favour of secession. Therefore, it is important to evaluate the weight of Horowitz's argument against secession.

Concerning his first argument, it is not clear whether homogeneity is, for Horowitz, a positive attribute of a state or not. If homogeneity is a positive attribute, secession is a positive process, because it usually creates more homogenous countries. If total ethnical homogeneity is not a desirable solution, there is no reason to prohibit right to secession.

With regard to minority rights, it is sure that their position should not necessary improve after secession, that position of minorities *can* worsen, but it unclear why, according to Horowitz, position of minorities is *necessarily* worse in secessionist countries than in multiethnic countries. Experience does not confirm Horowitz's claim. For example, position of minorities in secessionist Monte Negro today is for sure much better than it use to be in multiethnic Yugoslavia. Did USSR better protect minority rights than, for example, Ukraine today? In addition, the very demand for secession shows that minority rights are not properly protected in a certain country (why otherwise secession would be demanded?). So, alternative is either to tolerate violation of minority rights or to take risk and to allow secession, demanding from new established countries protection of minority rights. If alternative is to allow further violation of national and minority rights, as it was the case with Milošević's Yugoslavia during the 1987-99 period, or to accept secession of oppressed nations, it is clear which solution is better. Furthermore, it is much easier to put pressure on newly established countries – that seek international recognition and membership in international organizations – than older ones to protect minority rights. Finally, it is unclear why Horowitz assumes that relatively homogenous countries like, for example, Italy are less able to protect minority rights than multiethnic ones. On the contrary, even in the most stable democracies there is much more problems in multiethnic countries like, for example, UK, Spain or Belgian, than in homogenous countries like Norway.

Concerning conflict and violence, it is sure that secessions were frequently followed by hostilities. However, it is questionable who should be blamed – people who support rightful secession or central governments that want to suppress secessions by killing people? To make a parallel: who should be blamed for violence in dictatorships – people who demand democratisation or dictators who kill those who want democracy? Should democratisation be banned because of possible human suffering that may occur during this process? Similarly, should have been decolonisation – which was actually process of secessionism – banned because many colonial powers used military in order to prevent secession? Furthermore, many secessionist movements occurred as a result of oppression on behalf of government. Ac-

According to D. Philpott (1998) those authors who are against right to secession ignore

a different source of executions, deportations, and war – the denial of self-determination claims by oppressive larger states, which often strengthens separatist movements and leads them to take up arms in the first place. If the Soviet Union had not granted its constitutive republics independence, instead seeking to perpetuate empire, would not the war in Chechnya have been replicated several times over?<sup>3</sup>

Hence, secession is usually response to violence rather than a cause of violence. Indeed, had the Soviet Union used military in order to prevent secessions, who should have been blamed for the violence – the Soviet Union or secessionist republics?

Horowitz argues that right to secede dampens adoption of federalism. However, just opposite is the true. Right to secede may increase chances for adoption of federalism. For example, proposal of the Constitution of European Union explicitly claims, in article I-60, “any member state may decide to withdraw from the Union in accordance with its own constitutional requirements.”<sup>4</sup> There is no doubt that, without this provision, it would be impossible to ratify the Constitution. Only if nations voluntarily join a federation – knowing that they may withdraw from it – federation can be an acceptable solution for multiethnic countries. In other words, right to secede fosters rather than dampens adoption of federalism. After all, if a nation prefers independence to federation, federation is not an optimal solution.

The least persuasive of all the arguments that Horowitz offers is the following. “Since most secessionist movements will be resisted by central governments and most secessionists receive insufficient foreign military assistance to success it is likely to increase ultimately fruitless secessionist warfare” (Horowitz, 2003: 6). Let us assume that somebody says that divorce should not be allowed because it is very likely that women would be beaten in this case, adding that it is very likely that nobody would want to help beaten women. Would such an argument be acceptable? And what is a difference between argument that secession should not be allowed because central government is likely to kill many people who demands secession and argument that possible physical violence is impediment for right to divorce. The very fact that central government is willing to kill people in order to prevent their will, expressed in a democratic form like referenda, is the crucial argument that certain ethnic group should try to find solution outside such a country. For example, some Croats were against secession from Yugoslavia. How-

<sup>3</sup> Daniel Philpott, “Self-Determination in Practice,” in Moore, ed., 1998: 92.

<sup>4</sup> [http://www.unizar.es/euroconstitucion/library/constitution\\_29.10.04/part\\_I\\_EN.pdf](http://www.unizar.es/euroconstitucion/library/constitution_29.10.04/part_I_EN.pdf)

ever, when, Yugoslav military started to attack on Croatia, wanting to prevent secession, even those people who were initially in favour of unity accepted the project of independent Croatia. In addition, Slovenia and Croatia showed that secessionist warfare could be fruitful. So, in contrast to Horowitz's argument, only peaceful means for protection of unity can be accepted in a multiethnic country. If central government decides to use force in order to prevent democratically expressed will for secession it should be only an additional argument in favour of international recognition of secessionist countries. Slovenian and Croatian case show that recognition of secessionist countries was an appropriate decision of international community that prevented escalation of violence in these two countries.

It is unclear from Horowitz's argument why even decolonisation was an acceptable process. This process did not produce homogeneous states, it did not solve problems of minority protection and violence frequently occurred when former countries became independent states. Logical consequence of Horowitz's arguments is that, for example, the USA must not have separated from the UK. If above mentioned arguments against secession were valid, India, with its all but homogeneous structure, would still be a part of the UK, Algeria a part of France and Indonesia a part of Netherlands. Of course, it is possible to argue that colonies did have right to secede because people felt oppressed by colonial rulers. However, in this case is unclear why Lithuanians, who felt oppressed by Russia, did not have right on secession without Russian consent. Or, let us assume that USSR, after occupying Poland at the end of the WWII, proclaimed Poland to be a part of Russia (as it used to be before WWI). Would it mean that Poland in this case would not have had right to struggle for independence without consent from Moscow? In other words, according to Horowitz, the best tactics for aggressors and dictators is to be stubborn, because territorial gains would be sanctioned forever. Horowitz arguments could be a powerful tool for aggressors and dictators.

From the analyses above it is clear that it is difficult to accept Horowitz's radical rejection of almost any secessionist demand. Therefore, it is important to analyse less strict anti-secessionist theories. Should secession be allowed only as a remedy against unjust conquest, exploitation, threat of extermination and threat of cultural extinction, as Buchanan proposes? W. Norman provides very strong argument against such a criterion

Secessionist and unionists are likely to disagree about what kinds of incident or events can give just cause to secede, about whether such events can give just cause to secede, about whether they have been or could be rectified by measures short of secession, about whether any particular violations were significant enough, and so on.<sup>5</sup>

<sup>5</sup> Norman, "Domesticating Secession", in Macedo and Buchanan ed., 2003: 200.

To illustrate, leading scholars in Serbia argued that Croatia and Slovenia exploited Serbia in former Yugoslavia. In contrast, Croatian and Slovenian economic experts claimed just opposite – that Serbia exploited these two republics.<sup>6</sup> At the beginning of the war, Croats and Bosnians argued that they faced extinction on behalf of Serbs, and Serbs argued just opposite. All sides justified secessionist movements by threat of extinction. Differences in opinions among experts for this region outside Yugoslavia were barely narrower than opinions among experts inside Yugoslavia.<sup>7</sup> Finally, at that time, the leading world's politicians also had very different opinions about rightness of secession of Slovenia, Croatia, Bosnia and Herzegovina and Macedonia. Therefore, there is no better way to decide whether a territory is rightfully part of a multiethnic state than to ask the very people whether they are voluntarily inside a part of such a country. In other words, decision about secession should be based on referenda about secession, rather than on subjective judgments of international bureaucrats.

It is important to address also Nilsen's (1998) theory that claims that secession should be granted only for liberal democratic societies. First, liberal democracies were rather consequences than prerequisites of secessions. USA became liberal democracy after secession; many former colonies without any liberal experience, for example India, gradually become liberal democracies. The same process also occurred in Eastern Europe at the recent time. Therefore it is difficult to agree with Nielsen's claim that

our thinking about ... secession should be significantly different when we are talking about [liberal democracies] than when we are talking about the nations of the former Soviet Union, the former Yugoslavia, or of much of Africa and the Indian subcontinent where often the nationalisms in questions are what Carol Prager has aptly called barbarous nationalism (Nielsen, 1998: 254).

To illustrate, the Civil War in the USA was much more barbarous than secession of Baltic Republics from the USSR.<sup>8</sup> Indeed, after Vietnam and Iraq it is very difficult to assess which nationalism is barbarous, and where we can find the most liberal societies. Nielsen claims that USA, UK and Canada are not former Yugoslavia. A cynical response to this statement can be that, indeed, Slovenia does not have Abu Graib and Guantanamo; there is no dispute in Slovenia about regularity of elections; Slovenian police can

<sup>6</sup> See Stallaerts, "The Disintegration of Yugoslav Intellectual Community," in Coppeters and Huyseune ed., 2002: 141-58.

<sup>7</sup> Compare, for example, Thomas, 2003: 3-39, who completely supports Serbian prospective about causes of dissolution of Yugoslavia with Cigar, 1995, who put all the blames on Serbia.

<sup>8</sup> 620,000 Americans were killed during the Civil War; see Ostrowski in Gordon (ed.), 1998: 155.

hold someone in custody only for 48 hours, and nobody is allowed for wire-tapping without permission of a Court. The point is that, concerning secession, we should have unique criteria for all the states in the world rather than special provisions for “civilised nations”.

Finally, it is also important to address Lincoln’s argument that secession should not be allowed because it would annual rule of majority.<sup>9</sup> Dahl formulated this argument on the following way: “Granting [the right to secession] would make a state, or any coercive organization impossible (or at any rate illegitimate), since any group facing coercion on any matter could demand and through secession gain autonomy. In effect, anarchism would be legitimised” (Dahl, 1989: 196). First thing that should be noted is that in great majority of cases secession did not occur against will of majority but rather against will of a dictator(ship). Fourteen republics seceded from the USSR, which was a dictatorship, four republics seceded from Yugoslavia (after the first democratic elections), which was a dictatorship, and colonies seceded from colonial powers that established dictatorial systems in their colonies. Furthermore, rule of majority is not always in accordance with democratic principles. For example, by the year 2000, majority of people in Serbia supported S. Milošević, a person who was indicted as a war criminal. The strongest opposition leader was V. Šešelj, another inmate at the International Tribunal in Hague. So, what should have Albanian national minority in Kosovo done: to obey rule of majority or to secede from a country in which majority of population voted for war criminals?

However, should secession also be allowed from a country that is perfectly democratic, a country that accepts minority and individual rights, but in which majority of people is against secession of a part of that country? For example, in 1905, majority of people in Sweden (that was composed of that what is today Sweden and Norway) was probably against secession of Norway. Nevertheless, in Norway, 368,208 people voted for secession and only 272 people voted against secession! (Ostrowski, 1998: 183). Should have Sweden, in this case, sent military force in order to secure rule of majority, i.e. to prevent secession? The answer is definitely no because, as J. Raskin has written, “governmental legitimacy depends upon the affirmative consent of those who are governed” (Raskin, 1993: 1444) Similarly, according to Orentlicher,

international law no longer abides colonization or forcible annexation. But if these forms of non-consensual rule cannot be reconciled with principles inherent in the right of self-determination, surely those same principles are challenged by a state’s continued assertion

<sup>9</sup> See Abott, in Lehning (ed.), 1998: 182-207 and Ostrowski, 1998: 155-90.

of sovereignty over a defined population that has unambiguously rejected its authority.<sup>10</sup>

### *Procedure for secession*

From the analysis above it is obvious that weight of argument goes in favour of right to secede. At the end, secessions do occur regularly. The world community of states has increased from 30 in 1945 to around 200 countries in 2006. This means that, on average, 2-3 new secessions occur yearly. Therefore, the appropriate question is not whether secession should be allowed but under which conditions. For as only a minority in certain unit supports secession, it is obvious that secession is not justified.

Secession usually occurs either as a result of decision by a representative body or as a result of referenda about secession. Authors who support secession usually argue in favour of referenda, as the best tool for expression of voters' opinion about secession. For example, Buchanan (1991) thinks that three-quarter majority should be required (Buchanan, 1991: 100). Norman (1998) argues in favour of majority of registered voters.<sup>11</sup> Weinstock (2001) also support supermajority without specifying which percentage should support secession (Weinstock, 2001: 197). In fact, only Beran (1998) does not demand any supermajority for secession.<sup>12</sup> So, which majority should be required for secession – simple, majority of all voters, two-third majority of those who voted, two-third majority of all the voters, three-quarter majority of those who voted or three-fourth majority of all the voters? This article argues that the best procedure is to demand two-third majority of all the voters. The reason for this procedure is the following. Modern democracies demand supermajority for the change of constitution. Since secession of a territory changes constitutional arrangement of a country, it is completely justified to demand supermajority. Moreover, secession influences constitutional arrangement even more than, for example, a change from semipresidentialism to parliamentarism. Therefore, it is not acceptable to secede on the basis of simple majority of votes cast. In contrast, secession procedure should be even more demanding than for a change of political system. Hence, although many countries enable changes of constitution without referenda, secession without expression of will of population is less preferable a solution. But why two-third majority of all the voters should be demanded? Why not two-third majority of votes cast, or even three-third majority of all the voters.

<sup>10</sup> Orentlicher, *International Responses to Separatist Claims*, in Macedo and Buchanan, 2003: 26.

<sup>11</sup> See, Norman in Moore ed., 1998: 54.

<sup>12</sup> See, Beran, in Lehning (ed.), 1998: 38.

This article argues in favour of two-third majority on the basis of experience of secessions from former Yugoslavia. In three republics that had two-third majority in referenda, political development after secession shows that secession was probably the best choice. The fourth republic, Bosnia and Herzegovina, did not achieved two-third majority, and political development after secession has not proved by now that secession was the best solution. The only exception was Montenegro, as already mentioned above, where less than fifty percent of all voters voted in favour of secession but secession still proceeded relatively smoothly. However, in this case dissolution occurred on the basis of procedure arranged on the basis of an agreement of both republics. Of course, it is difficult to defend a principle on the basis of investigation of only one region. However, it is possible to argue that political processes in the former Yugoslavia suggest the above-mentioned super-majority. The next section will explain this issue in more details.

Requirement for a qualified majority of population in referenda is possible to defend also on the basis of political realism. If only a slight majority of population supports secession, military action on behalf of central government has very favourable odds for success. However, if a very high percentage of population – for example, ninety percent – supports secession than it is not only immoral but also, most likely, fruitless to prevent secession by force. Therefore, referenda on secession and demand for supermajority enable both side – secessionist and antisecessionist – a realistic assessment about odds for success. In a way, a referendum is counting of potential number of bayonets on secessionist and anti-secessionist side. Example of Iraq shows that it is very difficult, even for the strongest superpower, to control a country that does not want foreign troops. Similarly, if central government wants to prevent secession by force, people would start to perceive central governments forces as occupying forces and would start to resist occupation militarily. People in Croatia and Slovenia did not have any better opinion about Yugoslav National Army, after it started military action against secession of these two republics, than Russians had about German troops on their soil during the WWII. At the end, these two republics – in which overwhelming majority supported secession – defended themselves from military intervention on behalf of central government.

On the other hand, if a significant majority opposes secession, anti-secessionist troops have advantage, because they may count on military supply on behalf of central government. In other words, if there is not enough support for secession, secessionist may give up or postpone demand for independence. In contrast, when an overwhelming majority supports secession, central government may – if it is willing to act rationally – accept secession and try do develop friendly relationship with the newly established country. Scandinavian countries are a good example for such a rational approach toward secession.

The second important question that should be addressed is whether it should be the lowest threshold in number of population at certain region that may demand secession. If this provision does not exist, it would mean that, for example, a group of neighbours may demand an independent state. Independent statehood provides many privileges (for example, vote in the General Assembly of the UN) and duties (for example, to open embassies in other countries). Therefore, it is logical to demand certain threshold in order one unit to be recognized as an independent state. Probably the best lower limit would be 100,000 inhabitants. A higher limit would not be acceptable because many small countries function very well. For example, country with the highest GDP per capita in the world, Luxemburg, has only 450,000 inhabitants.<sup>13</sup> A lower limit than 100,000 inhabitants would also not be appropriate – due to the reasons explained above – except under special circumstances.<sup>14</sup>

To conclude, secession should be allowed when cost of suppressing secession is higher than cost of allowing secession. In concrete terms, it means that secession should be allowed when an overwhelming majority (at least two-third of all the voters) supports secession. This conclusion will be now empirically tested on a case study of secessions from former Yugoslavia.

### *Case study: Secessions from former Yugoslavia*

It is interesting that Milošević, the main perpetrator of wars on the territory of former Yugoslavia, used exactly Horowitz's arguments for his military attacks on other nations in former Yugoslavia. Milošević argued, during the entire 1987-1999 period, that he only wants to prevent the cracked foundations of the right to secede. However, historical facts were the following.

First, secession of four republics was in accordance with Yugoslav' constitution. Article 1 of the Yugoslav Constitution (1974) stated: "The 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 [*italics added*]." Second, constitutions of the republics also granted right to secession. Third, leadership of seceding republics had electoral legitimacy based on fair elections. In Macedonia, a coalition of two leftist parties won elections. In Croatia, Slovenia

<sup>13</sup> The World Bank, *World Development Report 2006: Equity and Development*, (New York: Oxford University Press, 2005), 300.

<sup>14</sup> Special cases could be same historical reasons (for example, Andorra, Monaco, etc.) or geographical position, especially when islands demand independent statehood (for example, Bermuda, Cayman Islands, etc.).

and Bosnia and Herzegovina oppositional parties won elections. Communist parties in these republics accepted electoral results and transferred power to the winners. In contrast, federal institutions did not have any electoral legitimacy. The communist party, which held power for fourthly six years, appointed politicians in federal institutions. In other words, it was a war between old communist elite, which tried to prevent secession, and new democratically elected elites that defended right to secession. Furthermore, in Croatia, Slovenia and Macedonia more than two-third of citizens supported secession. In Croatia 88.2% of all the eligible voters supported independence. The same figure was 86% in Slovenia and 74% in Macedonia.<sup>15</sup> These data show that secession of these republics was not only legal but also legitimate. Only in Bosnia and Herzegovina support for secession was less than two-third (63%) (Woodward, 1995: 218). These data show that a majority of people in Yugoslavia was for dissolution of this country. This means that Lincoln's argument against secession cannot be applied in the case of former Yugoslavia. Finally, the Badinter Commission, established by the European Union and composed of 5 judges from Constitutional Courts of West European Countries, confirmed the legality of secessions.<sup>16</sup>

Political development after secession might also be a criterion for evaluation of justifiability of secession. So, was secession of Slovenia, Croatia, Macedonia and Bosnia and Herzegovina, according to this criterion, a mistake? Was international recognition of these new states – forced mainly on behalf of Germany – a mistake? In the cases of first three republics the answer is definitely no. For seventy-two years Yugoslavia was a very quarrelsome country, and almost entire time it was a dictatorship. In contrast, Slovenia is today a member of the EU and Croatia is an official candidate for the membership in the EU. Macedonia is also on the way to join the EU. All these countries are now consolidated democracies. Therefore, they do not have reasons to peaty for seceding from Serbia, a country in which Milošević's ascender in power, Stambolić, was assassinated; his follower in power, Đinđić, was assassinated; leader of independent journalism, Čuruvia, was assassinated; Milošević's right hand for covered operation in Croatia and BH, Arkan, was assassinated; President of "the third Yugoslavia", Milošević, died in jail in Hague; former President of Serbia, Milutinović is in jail in Hague; leader of opposition, Šešelj is in jail in Hague; military Joint Chief of Staff is in jail in Hague; and notorious Mladić, general who was re-

<sup>15</sup> See, Cohen, "Ending the War and Securing Peace in former Yugoslavia", in Meštrović (ed.), 1996: 47, note 19.

<sup>16</sup> Mesic, 1994: 315. According to Horowitz, decision of Badinter Commission was "ill considered." However, their decision was based, as explained above, on provisions in both federal constitution and constitutions of the republics. In other words, Horowitz argues that judges should have not decided on the basis of laws.

sponsible for atrocities in B and H hides in Serbia and until recently received his salary from the Serbian government. Until a short time ago, he even did not have reasons to hide because government refused to extradite him to Hague.

In addition, there was only one republic that decided, in the 1992 referendum, to stay united with Serbia. So, Serbia had opportunity to show to Monte Negro that Slovenia, Croatia, Macedonia and Bosnia and Herzegovina made mistakes seceding from Yugoslavia, and it had opportunity to show that these republics would be better of staying in federation. However, recently, even Monte Negro seceded from the remnants of Yugoslavia. Kosovo too is on its way of independence, and there it can be expected that Albanians (90 percent of population) would vote for independence. Albanian population in Kosovo certainly does not have nostalgia for Yugoslavia. These recent events show that those units that stayed in Yugoslavia made mistake rather than republics that seceded.

The only republic for which it is questionable whether it was wise to secede is BH. This country experienced terrible loses in human life during the war and even today this country can function only as an international protectorate. Why Bosnia was exception? There were many reasons for Bosnian tragedy. This country was completely disarmed before secession. In contrast, those who were against secession of Bosnia from Yugoslavia were armed to the teeth. Furthermore, international community imposed arms embargo, which severely damaged pro-Bosnian troops. Moreover, international community made many mistakes during the war in this country. Western country did not want to help Bosnian government militarily up to the very end of the war. All these mistakes had very important influence on tragedy in Bosnia. However, internal problems of this country were decisive. Serbs, which constituted 31% of population, firmly rejected idea of Bosnian independence. Croats did support secession of Bosnia from Yugoslavia, but many of them supported secession of municipalities with Croatian majority from Bosnia and unification of these municipalities with Croatia. Only Bosniaks firmly supported Bosnian secession and territorial integrity. However, they were only a plurality of population (39.5 percent) (Goldstein, 1999: 240). In other words, destiny of Bosnia was different because population of this country did not overwhelmingly supported secession, as it was the case with Slovenia, Croatia and Macedonia.

Finally, it should be added the case study of former Yugoslavia also does not support Buchanan's theory that secession should be granted only as remedial right and only on the basis of at least three-quarter support for secession. In Macedonia, support for secession was below that threshold. However, secession of this republic occurred relatively peacefully.

So, what we can conclude about secession on the basis of the analysis in this article? The most important conclusion is that numbers matters. Secession should be always allowed when at least two-third majority of total population supports secession. In this case secession is morally and legally justified and militarily feasible. If support for secession is lower, it might be better to find alternative solutions. In this case, some sort of consociational democracy could be a preferable solution, especially in the cases where ethnic groups are intermingled. Finally, secession is also an acceptable solution when all the main actors agree about the procedure for secession, even in the case when support for secession is less than two-third, as it was the case with the secession of, for example, Slovakia and Montenegro.

### References

- Albot, Philip, 1998: *The Lincoln Proposition and the Spirit of Secession*, in Lehning (ed.), (1998), pp, 182-207.
- Beran, Harry, *A Democratic Theory of Political Self-Determination for a New World Order*, in Lehning (ed.), 1998.
- Buchanan, Allen, 1991: *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*, Westview Press, Boulder
- Cigar, Norman, 1995: *Genocide in Bosnia: The Policy of "Ethnic Cleansing"*, Texas A&M University Press, College Station
- Cohen, Philip J., 1996: *Ending the War and Securing Peace in former Yugoslavia*, in Stjepan Meštrović (ed.), *Genocide after Emotion: The Postemotional Balkan War*, Routledge, London and New York
- Coppieters, Bruno and Huyseune, Michel (ed.), 2002: *Secession, History and the Social Sciences*, VUB Brussels University Press, Brussels, Belgium
- Dahl, Robert, 1989: *Democracy and Its Critics*, Yale University Press, New Haven
- Goldstein, Ivo, 1999: *Croatia: A History*, C. Hurst & Co, London
- Gordon, David, (ed.), 1998: *Secession, State and Liberty*, Transaction Publishers, London
- Horowitz, Donald, 2003: The Cracked Foundation of the Right to Secede, *Journal of Democracy* 14:2 (2003), 12.
- Huntington, Samuel P, 1972: "Foreword" to Eric A. Nordlinger, *Conflict Regulation in Divided Societies*, Occasional Papers in International Affairs, Cambridge, MA, Centre for International Affairs, Harvard University
- Lehning, Percy B. (ed.), 1998: *Theories of Secession*, Routledge, London
- Macedo, Stephen and Buchanan, Allen, (ed.) 2003.: *Secession and Self-Determination*, New York University Press, New York
- Mesić, Stjepan, 1994: *Kako je srušena Jugoslavija*, Mislavpress, Zagreb

- Moore, Margaret, (ed.), 1998: *National Self-Determination and Secession*, Oxford University Press, New York
- Nilsen, Kai, 1998: Liberal Nationalism, Liberal Democracies, and Secession, *University of Toronto Law Journal* 48
- Orentlicher, Diane F., 2003: *International Responses to Separatist Claims*, in Macedo and Buchanan, (2003), 26.
- Raskin, Jamin, 1993: Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage, *University of Pennsylvania Law Review* 141
- Robert Stallaerts, 2002: *The Disintegration of Yugoslav Intellectual Community*, VUB Brussels University Press, Brussels, Belgium
- The World Bank, 2005: *World Development Report 2006: Equity and Development*, Oxford University Press, New York
- Thomas, Raju G. C., (ed.), 2003: *Yugoslavia unravelled: sovereignty, self-determination, intervention*, Lexington Books, Lanham, Maryland
- Weinstock, Daniel, 2001: Constitutionalizing the Right to Secede, *The Journal of Political Philosophy* 9:2
- Woodward, Susan L., 1995: *Balkan Tragedy: Chaos and Dissolution after the Cold War*, The Brookings Institution, Washington D. C.