

THE POST-COLD WAR VIEW: INTERNATIONAL RECOGNITION AND THE BREAKUP OF YUGOSLAVIA

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During the Cold War, Yugoslavia represented a political challenge to both the West and the East. Bordering Italy, Austria, Hungary, Romania, Bulgaria, Greece and Albania, the Socialist Federative Republic of Yugoslavia (SFRY) geographically sat on the European fault line where NATO met the areas dominated by the Soviet Union. By the end of WWII, Tito and the Yugoslav Partisans made Yugoslavia the only country in Eastern Europe to liberate itself from Axis occupation. To both superpowers, Tito was a political enigma exerting an astonishing amount of independence during a time period that seemed to be dominated by two spheres of influence. By 1948 Yugoslavia became the first Communist state to break with Stalin, scoring the SFRY an initial grant of \$20 million from the U.S. as well as other aid packages from the west over the next ten years (Crampton 2002, 118). Internationally Tito signed treaties of friendship and cooperation with both NATO and Warsaw Pact neighbors and helped to found the Non-aligned Movement along with President Nasser of Egypt, Premier Nehru of India, and President Sukarno of Indonesia (Crampton 2002, 120).

But by 1991 the Cold War was over and Yugoslavia was in decline. Weakening of the Communist party gave rise to ethnic nationalist parties within the republics. On June 25, 1991 both Slovenia and Croatia declared independence starting the dissolution of Yugoslavia. But unlike during other post-Cold War cases of state dissolution (the Soviet Union and to a lesser extent Czechoslovakia), the international community took a more active role in the dissolution by recognizing the republics of Slovenia, Croatia, and Bosnia-Herzegovina relatively quickly.

This research examines the factors such as past norms, as well as the *uti possidetis* principle, that led to a new post-Cold War view of state recognition and how those factors affected the recognition of the former Yugoslav republics by the European Community and the rest of the world. This will be achieved by first analyzing the previous norms and practices to observe how

the international community has reached the current way in which states are recognized. Then, case studies from the end of the Cold War will be examined in order to put the Yugoslav Republics' recognition into context. Finally, with all of that information collected, we will be able to look at the factors that influenced those Republics' recognition.

The State of the Field of Recognition

In the introduction of his landmark book on international recognition, Sir Hersch Lauterpacht argues that “recognition of States is not a matter governed by law but a question of policy” (Lauterpacht 1947, 1). In fact, Lauterpacht's work still has relevance today because it acknowledges that the international recognition of states has been, since the nineteenth century, and will continue to be, governed by norms and not by rules (Dugard 1987; Lauterpacht 1947; Williams 1929). Yet literature in the vein of Lauterpacht is very sparse. Instead there is a trend within the field to focus on specific case studies, and although these provide an abundance of specific details and data, they lack clarity on the new norms such as the *uti possidetis* principle and admittance into international organizations, that have developed and that now characterize the current field of international recognition.

There is a sizable literature on the breakup of the Soviet Union and the Warsaw Pact which in itself implies the recognition of the new states (Bookman 1994; Mullerson 1993; Stern 1994). There has also been sizeable research on the breakup of Yugoslavia and the recognition of those new states (Buyse and Lawson 2007; Crawford 1996; Thomas 2003; Weller 2008). But what is lacking is any literature to make the connection from Lauterpacht to the modern case studies. This research attempts to fill that void and make those connections. By analyzing both the previous views of recognition and the modern case studies, with special attention being given to the dissolution of Yugoslavia, we can gain a clearer perspective of the current view of recognition, referred to in this research as “the post-Cold War view”.

Pre-Cold War Norms: The Constitutive View

Given that the process of international recognition both within the international community and international organizations is governed by traditions and norms, the development of the Post-Cold War process of recognition that yielded the modern states of Slovenia, Croatia, and Bosnia-Herzegovina (BiH) was fluid and evolutionary. By looking at the evolution that recognition has already gone through, clear connections can be drawn to this

modern process of recognition that yielded the new Yugoslav states. This evolution of recognition throughout the nineteenth and twentieth centuries can be characterized as a struggle between two competing views.

The first, the constitutive view, was the most prominent view in the nineteenth century. Referred to as “orthodox” by Lauterpacht, this view deduces “the legal existence of new states from the will of those already established” (Lauterpacht 1947, 38). This view gives specific powers to the already established states. With the power of recognition of a state, and thus creating a state, they also had the ability to withhold recognition. This was seen as the natural right of a state, in line with the overall system of law at the time. As Lauterpacht explains, “Rules of international law are created by the consent of states. Accordingly, a subject of international law comes into being simultaneously with, but not before, the conclusion of the first agreement as expressed by the treaty of recognition or its equivalent” (Lauterpacht 1947, 39). Although from an optimistic standpoint the constitutive view assumes a concert of states, working in unison to create new states, both in the nineteenth century and the present day we can observe that is rarely the case.

One example of the constitutive view in action was the recognition of the Spanish-American colonies in the first half of the nineteenth century. As early as 1819 the United States opened talks on recognition with Argentina as well as other South American states with the stipulation that “no special privileges of indefinite duration should be granted to Spain” (Lauterpacht 1947, 33). This implies a total disconnect from the mother state, equaling an independent government and effective authority, which are two of the three commonly held conditions for an independent state’s existence. But by 1825 Spain had lost most authority over her colonies in Central and South America yet still refused to recognize the former colonies now proclaiming independence. In a dispatch on March 25, 1825 from George Canning of Britain to Spain, Canning proposes the British recognition of the states and the justification of such broad recognition of so many states.

“If the former of these alternatives—the total irresponsibility of unrecognized States be too absurd to be maintained, and if the latter—the treatment of their inhabitants as pirates and outlaws be too monstrous to be applied, for an indefinite length of time, to a large portion of the habitable globe, no other choice remained for Great Britain or for any country having intercourse with the Spanish American Provinces, but

to recognize in due time their political existence as States, and thus to bring them within the pale of those rights and duties which civilized nations are bound mutually to respect, and are entitled reciprocally to claim from each other”(quoted in Fischer 1929, 909-915).

Canning claims that it is the duty of Britain, as well as any other states having any kind of relations with the Spanish American Provinces, to formally recognize them to bring them “within the pale of those rights and duties which civilized nations are bound to respect.” This means that recognition within the constitutive view in the nineteenth century was an insurance policy since laws could in theory not be observed by unrecognized states.

As implied in Canning’s dispatch, the constitutive view works best when the majority of the European Great Powers recognize states in concert with each other. Such is the case with arguably one of the first instances of using international organization as a means of recognition, the Treaty of Paris in 1856. It was here that the concert of Europe consisting of England, France, Austria, Prussia, Russia and Sardinia formally recognized the Ottoman Empire, or as referred to in the document as the Sublime Port, as “admitted to participate in the advantages of the public law and system of Europe”(Williams 1929, 59). With the absence of bilateral agreements between the Concert of Europe members and the Ottoman Empire with regards to legal recognition, this instance is the first use of an International Organization for the purpose of recognition. This is important because this trend of using international organizations to coordinate recognition policies is one that will continue through the twentieth century up until the former Yugoslav republics’ application for UN member status, making this a central component of the Post-Cold War view of recognition.

Pre-Cold War Norms: The Declaratory View

The second view, the declaratory view, factored prominently in the views of twentieth century liberalism and the idea of national self-determination. Although in principle it has been around much longer, in practice it came about after World War I. Simply put, the declaratory view is the view that once a state meets the basic qualifications to become a state, it inherently has all of the legal rights of the other states; recognition is merely a formality. In legal terms Lauterpacht explains that within the declaratory view of recognition, “a state exists as a subject of international rights and duties- as soon as it ‘exists’ as a fact, i.e. as soon as it fulfills the conditions of statehood as laid down in international law. Recognition merely declares the existence

of that fact” (Lauterpacht 1947, 41). This by very definition contradicts the constitutive view in that the power to legally create a new state lies with the people’s ability to build legitimate and functioning governmental bodies. Through the declaratory view, not only do the established states lose the ability to create states by way of their blessing of diplomatic relations, they also do not have the ability to deny the creation of a state.

This view is most often associated with the creation of the European states from the ashes of the Ottoman Empire and Austria-Hungary following World War I. After the war, states emerged “with a definite territory, where it’s authority is exercised, with an orderly people who, before the foundation of the new state, were members of a state which was an international person” (Williams 1929, 56). It was here that states like the first Yugoslavia and Czechoslovakia organized themselves as legitimate governments with little Great Power influence. It is on the basis of the declaratory view that Czechoslovakia declares that it first entered into existence during the revolution of October 28, 1918 when the Czechoslovak National Committee assumed control of the territory and its peoples, and not with the signing of the Peace Treaties which formally recognized the new state of Czechoslovakia as separate and independent from Austria-Hungary (Lauterpacht 1947, 43).

With the emergence of the declaratory view of recognition, three basic conditions of statehood were developed through accepted practice. Since the declaratory view assumes that a legitimately organized government of people can be a state, these three conditions make up the core of the declaratory view. The first condition, an independent government, pertains to a new state being independent of the parent state, but also any other state. This also includes the creation of satellite states. (Lauterpacht 1947, 28) Lauterpacht uses the independent Croatia created as a satellite state for Germany during WWII as an example, but a more relevant example would be the Republika Srpska within Bosnia, the Republic of the Serbian Krajina within Croatia and the Serbs within Northern Kosovo. Within the declarative view, such regions could not be declared independent because of the strong political pull of Serbia.

The second condition of statehood is effective authority or in the words of Lauterpacht, “a sufficient degree of internal stability as expressed in the functioning of a government enjoying the habitual obedience of the bulk of the population” (Lauterpacht 1947, 28). Such a condition was what led the U.S. and Britain to recognize the independence of Finland on May 3, 1919 after a government was set up that was accepted by the people (Lauterpacht

1947, 29). Once again it can be argued that a large portion of the population was not loyal to the Federal government of Bosnia at the time of independence. The final condition, the physical or military counterpart to the second condition, is the existence of a defined territory. This condition implies the necessity of concrete borders. It is on this condition the central government of the SFRY argued that the “new states” of Croatia and Bosnia-Herzegovina did not have borders in terms of international law, especially the borders with Serbia which are internal by nature and not well defined (Yugoslavia through Documents 1994, 484).

By looking at past norms and practices we can observe that the recognitions of the initial breakaway republics of Croatia, Slovenia, and BiH during the breakup of the SFRY are a direct break from both the constitutive and declaratory methods of recognition. With the exception of Slovenia (although its borders with neighbors were disputed and unsettled well into the 2000’s), the republics barely met the three conditions of state existence laid out within the declaratory view. Croatia had disputed borders with Slovenia and Serbia as well as the Serbian Krajina region that was effectively out of Zagreb’s control. Meanwhile, Bosnia struggled to establish a central government before recognition and 74 percent of land within the republic’s territory was out of control of the central government in Sarajevo (Thomas 2003, 28). It was also clear that the constitutive view could not be applied because the international community had little sway over the situation on the ground. If the international community recognizes a state and then it falls apart upon recognition, as was the case in Bosnia, the argument is weak that an outside force created a state.

Instead, we see evidence of a new norm within the field of recognition. This new post-Cold War view of recognition sees the breakup of political blocks like the Soviet Union and Yugoslavia as needing a “hands off” approach from the international community. Instead of driving the creation of a state, the forming of new governments and the redrawing of boundaries for stability in the vein of the constitutive and declaratory views, the post-Cold war view emphasizes the carrying over of previously established federal units into statehood. By looking at the new precedents of recognition set during the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia, we can see strong evidence that the international community recognized the initial breakaway republics of Slovenia, Croatia, and BiH within a new post-Cold War view.

Uti Possidetis and Recognition

Within Opinion No. 2 of the Badinter Arbitration Commission of the Peace Conference on Yugoslavia published on January 11, 1992, the Commission declared that “the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise”(Yugoslavia Through Documents 1994, 474). This principle of *uti possidetis* has become the foundation for the post-Cold War view of recognition. *Uti possidetis, ita possidetis*, meaning “have what you have had”, was a norm that originally was used to govern the decolonization of South America in the nineteenth century and Africa during the twentieth century. (Mullerson 1993, 486) This principle implies that when a state that was once part of a larger body becomes independent (i.e. a territory secedes from a state) the previously held administrative internal boundaries can legally become external boundaries of the new independent state. On December 14, 1960 the United Nations General Assembly passed Resolution 1514(XV) granting independence to colonial countries and peoples. (Dugard 1987, 64) From 1960 to roughly 1974 with Portugal being late to the game, the countries of Europe made a dash to give up their colonial empires and quickly transition those territories into functioning states with UN membership. The increase in UN membership in 1960 was something never witnessed before in any international organization. In 1960 alone, seventeen new states were admitted into the UN and officially recognized as independent by the international community whereas in three years prior to the passing of resolution 1514(XV) only seven states were admitted with recognition (Dugard 1987, 65).

During the rapid decolonization of Africa, Asia, the Middle East and Oceania the *uti possidetis* principle seemed to be the most efficient means of the geographical creation of new states. Under this principle, colonial administrative boundaries and the systems used to regulate those boundaries were used as a starting point to set up new governments. Very rarely did these administrative boundaries match up with ethnic, cultural, or nationalist boundaries but that never mattered before because they were internal, not external, borders. During decolonization *uti possidetis* was widely practiced, but it did not become institutionalized until the International Court of Justice ruled that the *uti possidetis* principle can be logically applied to the achievement of independence in its Decision on the Frontier Dispute between Burkina Faso and Mali on December 22, 1986 (Mullerson 1993, 486). This decision was cited by the Badinter Arbitration Commission as

justification to uphold the borders of the newly created Croatia and Bosnia-Herzegovina, demonstrating this principle's worldwide impact (Yugoslavia Through Documents 1994, 480).

The Breakup of the Soviet Union and Recognition

The breakup of the Soviet Union was a turning point for the international system of recognition. The comparatively peaceful breakup of a multi-ethnic superpower cemented the *uti possidetis* as the new standard of recognition. Looking at the historic core of Russia, it would seem unthinkable that Ukraine and Belarus would ever be separated from Russia. In fact, according to Russian scholars, most of the Russia that we know today was not fully acquired until the eighteenth century, making the Ukraine and Belarus traditionally more "Russian" than today's "Russian Federation" (Stern 1994, 43). But the fact that Chechens and the peoples of the North Caucasus, the Tatars of Central Asia, and the aboriginal peoples of Siberia are part of today's Russian Federation but not the Eastern Slavs of Belarus and Ukraine can be directly attributed to the *uti possidetis* principle and its strict adherence to administrative boundaries.

A prime example of the post-Cold War view is that of the creation of an independent Ukraine. With administrative borders drawn around the Ukrainian ethnicity, the republic still had large Russian minorities. The Crimea for example, with a majority Russian population was transferred from Russia to the Ukrainian Republic by Khrushchev in 1954 (Thomas 2003, 24). The fact that Crimea was retained by Ukraine in 1991 is a testament to the *uti possidetis* principle (Mullerson 1993, 486). Another case of both the international community and the new states adhering to the *uti possidetis* principle is that of Soviet Central Asia. The boundaries of Tajikistan and Uzbekistan were drawn by Stalin to deliberately weaken both republics so as to more easily keep them in check. Because of this, large Uzbek populations were left in both republics and the historically significant Tajik cities of Tashkent and Samarkand were transferred to Uzbekistan. (Thomas 2003, 26) Yet during the breakup, when Tajik and Uzbek internal administrative lines became external borders overnight, any renegotiation of borders would have been against the norm and would have possibly ended in violence, as occurred during the breakup of Yugoslavia when the administrative borders of the republics were challenged.

The recognition of the Baltic states of Estonia, Latvia, and Lithuania present a special case through the post-Cold War lens of recognition. After

fighting against the opinions of the U.S. for de facto recognition in 1920, when the Baltic States had wrested power from Tsarist Russia during the revolution (Lauterpacht 1947, 11), the states were occupied by the Soviet Union at the beginning of WWII. After the breakup of the Soviet Union, the Baltic States did not fight for new recognition, they instead fought to have their 1920 recognition reinstated. But despite a return to their independent status, the modifications to their borders during the occupation were kept due in part to the *uti possidetis* principle. Since *uti possidetis* requires borders to be kept as they were “at the moment of independence,” the Baltic States were politically restored to their 1920’s status, but were forced to retain their Soviet Administrative borders as external borders (Mullerson 1993, 487). For the Baltic States we see *uti possidetis* being applied to their very unique situation. This clearly shows that this principle was being applied as the standard policy with regards to all former Soviet Republics, despite any miscellaneous circumstances.

The Case of Czechoslovakia

By analyzing the dissolution of Czechoslovakia in 1993, we can obtain good insight into the nature of recognition after the breakup of the Soviet Union and how that relates to the breakup of Yugoslavia. Czechoslovakia and Yugoslavia were similar in a variety of ways: both were created from the ashes of empires after WWI, both were federations with federal units divided by ethnicity, and both were communist states (Bookman 1994, 183). Yet, there was a large difference in the degree of ethnic homogeneity between the two states, and prominent scholars agree that is what caused the Czechoslovak dissolution to be peaceful and the Yugoslav dissolution to be bloody (Bookman 1994, 184). As shown in table I, the degree of ethnic homogeneity of the two constituent pieces of Czechoslovakia, the Czech Republic and Slovakia, made it very easy to divide the country without the need for large movements of populations or special agreements for large minority populations. Whereas if we look at Bosnia, where no single ethnicity had a majority, or Croatia and the “New Yugoslavia” that had substantial ethnic minorities, it is clear the Yugoslav Republics were more prone to problems at the onset of dissolution.

Table I Principal Nationalities in the Successor States of Yugoslavia and Czechoslovakia (in Percent)

State	Principal Nationalities
Czech Republic	{ Czechs (81) Moravians (13) Slovaks (3)
Slovakia	{ Slovaks (86) Hungarians (11) Czechs (1)
Slovenia	{ Slovenes (91) Croats (2.9)
Croatia	{ Croats (75) Serbs (12)
New Yugoslavia	{ Serbs (63) Albanians (13.5) Montenegrians (5.5)
Bosnia-Herzegovina	{ Slavic Muslims (39) Serbs (32) Croats (18)
Macedonia	{ Macedonians (67) Albanians (20)

Table 1: (Bookman 1994, 184)

Probably the most important point to make about the dissolution of Czechoslovakia is with regards to how the international community handled the recognition of the new states of the Czech Republic and Slovakia. Like the breakup of the Soviet Union, the breakup of Czechoslovakia was a mostly domestic issue directed from the central government. Personal property, legal contracts, division of land, division of federal funds etc... were all figured out before any diplomatic recognition from the international community took place. With agreements and legal settlements from the inside, recognition of these new states was extremely uncontroversial both politically and legally. Stability resulted from the Czechoslovak dissolution because the ethnicities could effectively “keep what they have had” as far as territory was concerned with little to no grievances, and the international community let the federation sort out the dissolution before recognition took place. In Yugoslavia, however, neither of those two conditions took place.

Recognition and the Dissolution of Yugoslavia

On June 25, 1991 the Yugoslav Republics of Slovenia and Croatia jointly declared independence. Pushed by both domestic and external pressures,

the German government unilaterally recognized the two republics on December 23, 1991. Prior to the unilateral German recognition, the talk of premature recognition by Germany as early as two days after independence on June 27 caused the European Community (EC) to take a more involved approach to stabilize the situation in Yugoslavia (Crawford 1996, 493). The European body tasked with formulating the EC's policy towards the war in Yugoslavia was the Arbitration Commission of the Peace Conference on Yugoslavia, also called the Badinter Arbitration Commission. In a series of ten published opinions, they laid the groundwork for how Europe would deal with Yugoslavia, specifically dealing with recognition of the Republics.

Opinion No. 1 of the Badinter Arbitration Commission declares that "the Socialist Federal Republic of Yugoslavia is in the process of dissolution" (Yugoslavia Through Documents 1994, 417). Here they cite Lauterpacht's three conditions of statehood and determine that the remaining republics (Serbia and Montenegro) have no legal claim to "state succession" of the international personality of the SFRY. It is important to note that during the breakup of the Soviet Union the Russian Federation was established as a successor state to the Soviet Union, implying the international community's support for some kind of status quo, but ending the SFRY for good signaled Europe's willingness to build a new, stable group of states out of the ashes of the SFRY.

Although Opinion No. 1 broke with the EC's traditional policy of support for a united and multiethnic Yugoslavia, the two most controversial of the ten opinions, opinions No. 2 and No. 3, are strongly rooted within the post-Cold War view of recognition. Opinion No. 2, as mentioned previously, explicitly states that, "the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise" (Yugoslavia Through Documents 1994, 474). Opinion No. 3 released on the same day refers to *uti possidetis* as a general principle, also that the principle is within Article Five of the SFRY constitution (Yugoslavia Through Documents, 480). It is with these Opinions that Europe accepted the post-Cold War process of recognition and the principle of *uti possidetis*. The problem was that unlike with the Soviet Union, which steered and dictated the terms of its own breakup, the EC was forced to act against the SFRY. While holding on to post-Cold War principles, the EC was acting within the scope of the constitutive view of recognition. In the ethnically diverse Yugoslavia, the EC promoted national self-determination, but only if it did not change administrative borders,

and without a strong governmental force within the SFRY to dictate its own breakup (as was the case of the Soviet Union and Czechoslovakia), the EC had to steer a conflict that it was not ready to handle.

Findings and Conclusions

The post-Cold War view of recognition can be summed up as a mixture of elements from the two previous schools of thought with regards to international recognition (the constitutive and declarative views) combined with the principle of *uti possidetis*. The post-Cold War view recognizes the innate existence of a state that has set up a legitimate government (meeting Lauterpacht's three conditions) in line with the declaratory view, but also recognizes that a successful creation of a state or states must happen from the top down from the parent state or central government, which is in line with the constitutive view. At the same time the post-Cold War view is constricted within the confines of the *uti possidetis* principle which stops multiethnic federal units like the Russian Federation, Ukraine, Uzbekistan, Tajikistan, and Bosnia-Herzegovina from dissolving further after the initial breakup of a federation.

The post-Cold War system is neither peaceful nor stable. The world became very familiar with the bloodbath that occurred in the Republic of Bosnia-Herzegovina when Bosnian Serbs and Bosnian Croats fought to defy the *uti possidetis* principle through ethnic cleansing. Within the former Soviet sphere, Chechnya fought to leave the Russian Federation with little success and the peoples in South Ossetia, Abkhazia, Nagorno-Karabakh, and Transnistria found themselves on the wrong side of administrative boundaries and took up arms to change them. It is curious to think how long it may be before a federation like the Russian Federation or Bosnia-Herzegovina breaks down into its constituent federal pieces mirroring the breakups of the Soviet Union and the SFRY respectively. In theory the *uti possidetis* principle will have to apply but to what extent? How long could such a pattern continue? If *uti possidetis* is supposed to prevent such a downward spiral, does it inherently undo itself? All are valid questions to be answered in the future.

With regards to the Former Yugoslavia the special case of Kosovo must be acknowledged. Although Kosovo is on the brink of a negotiated peace deal for recognition with Serbia, it still broke away from Serbia retaining its administrative borders, which included a large Serbian minority to the north. (Reuters 2013) The *uti possidetis* principle was upheld but recognition

fell apart amongst the international community because Kosovo never was a “federal unit”. In a way, it lacked both legitimacy and administrative capabilities in the eyes of some in the international community. As with many topics relating to both Kosovo, and recognition in general, more research has to be done.

What can be learned from the first three breakaway republics of Yugoslavia: Slovenia, Croatia, and Bosnia-Herzegovina, is that due to the unstable nature of the post-Cold War system of recognition time can only tell the success, or failure, of each country’s independence. Will the new states prosper, or will old tensions and aspirations for independence held down by once artificial administrative lines break free once again?

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