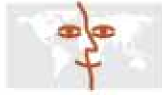

Peace and Crises Management Foundation

Fondation pour la Paix et la Gestion des Crises

PROPOSALS FOR A NEW COMMONWEALTH OF THE REPUBLICS OF EX-YUGOSLAVIA

REVIEWS 2012

BORIS VUKOBRAT

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OF THE REPUBLICS OF EX-YUGOSLAVIA

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FOREWORD

Over the course of the XX century the phenomenon of a closed society was the most apparent to us in Eastern Europe and the USSR (but also, certainly, in China and other countries which were a part of the Socialist bloc). Domination of politics over any other sphere of society and state as a mechanism for the separation of powers, along with a powerful and unyielding-to-change ideology, gave birth to xenophobic societies and brought to the fore resistance to any change in terms of lifestyle and bare survival. This also happened in the Balkans, in all the states which came into existence in the aftermath of the disintegration of Socialist Federative Republic of Yugoslavia (SFRY). The only difference was that had have nationalism of all sorts – Serbian, Croatian, Macedonian, Hungarian, etc., instead of a dominant ideology based on specific development models. This was conducive to a desire on the part of every people, every national group for self-determination by marking out first their respective territories, which larger peoples tied to the creation of their own states and political structures. National leaders emerged riding the crest of a wave of aggressive nationalist endeavour to demarcate the borders of their respective territories and skilfully took advantage of popular discontent to take people into war. Once a bullet was fired, there was no way back.

Political elites in all the Balkan states are not changing even though parliamentary elections are regularly held and the entire executive branch of power is elected. Why is this so? Firstly, some leaders (as in Croatia and Slovenia) have been in power for almost 20 years, which means that these are the leaders who have emerged from the paradigm of national emancipation understood in their interpretation as the liberation of people. This was why they were not capable of changing things, regardless of the fact that, say, Slovenia had already joined the EU, while Croatia was on its path of preparations for accession. Secondly, real elections reflecting the interests of societal groups have not been held in any of the Balkan countries. Instead, political structures at various levels are only shifting, thus creating an illusion that there is both political and social life. Thirdly, politicisation of the society has obscured horizons to such an extent (above all in Serbia) that any other different thought and idea is from the very beginning prevented from being realised as an organisation (be it governmental or nongovernmental) committed to exerting some sort of influence because, by its virtue of being different,

it constitutes a priori a danger which would not fit into the already established "personal ID" of the society (i.e. the ruling political elite). Today, nationalist or those forces originating from the democratic opposition changes are winning the elections, and over the years they have been adjusting to the demands coming from below, flirting with nationalism exclusively for the purpose of winning more votes. Hence, all the political parties (just like elsewhere in Europe and in the world) resemble one another. It seems that the attempt to create civil societies in the Balkans by grafting NGO institutes onto the societal structure has failed to bring expected results.

Modern economy is practically non-existent. These are for the most part corporate societies. Many traditional advantages of the region as a whole and of the individual countries, as well as the once thriving industrial production sector, have been devastated. Few are those who are employed, and there are so many unemployed and inactive people. The states in the region survive thanks, above all, to the prudent private sector in the areas of agriculture and services, and international loans which are for the most part drying up. Corruption has permeated the whole of the society – infesting everyone, from the state leadership to a corner shop. Crime is another face of corruption.

Much of what is happening in the societies of the countries in the region is more or less blurred by governing structures' skilful manipulations of with various types of dangers. These are tested methods which were employed in earlier periods throughout history. If a nation is still under threat from another nation, some large grouping with vested interests or any other external foe, then there are many reasons, and even more mechanisms, for "protection" of the society from such calamities. There is also a mechanism for "protection" from internal dangers originating from those who are prepared to draw attention to flawed actions of the authorities, erratic trend of development, etc. Any criticism, be it internal or external one, is perceived as an attack on integrity. However, this is not only the case with the ruling elite, but, unfortunately, with the society as a whole. The syndrome of fear of changes is deeply rooted in every individual, and in such a situation it is very difficult to find a way for an opening (therein partly lie NGOs' failures as well).

Due to such a closed nature of the society, hardly anyone dares venture into a meaningful analysis and criticism. And it is necessary. Any further delay hinders new opportunities.

Education fares the worst of all. This is not only or exclusively about the fact that necessary reforms have not been implemented, which they have not. At issue here is that the level of education is critically low. This applies to both teaching staff and, as a consequence, younger generations. Youth is utterly uneducated, with few exceptions in percentage points. They do not read because no one is making them read; they cannot speak because they do everything in writing; they, however, cannot write because no one is teaching them how to write since you can copy from others with impunity. And yet, the most dangerous thing is that they are not thinking with their own heads. Most often they are young imitators of all sorts of things, gobbling up everything served before them regardless of what it actually is. They are mostly churning out ready-made formulas as definitive truths. Even though, from the historical viewpoint, rebellion leading to changes has been inherent to young people, the modern youth in the region has no such ambitions. Those who remained awake have very few chances to do something with themselves in such an environment, hence they find a way out most often in the departure from their country.

It seems that culture, i.e. oases within it, is in a somewhat better shape. There are still values in this area which have survived (creative feature films, theatre productions, various festivals, some historical TV series, etc.) and which are nourished by a group of enthusiasts. There is, of course, another face of culture – mass culture which is a mixture of everything, both domestic "inventions" and imported trends. Entertainment, however, is the dominant form of culture.

While all the newly created states are perceived as traditional societies based on a semi-patriarchal family and surviving on the observance of some customs (religious ones, for the most part) and the phenomenon of gathering together, it seems that the collapse of the system of values has prompted a general shift in the attitude towards family and relationships within family. Divorce rates, family violence, prostitution and infanticides are on the rise. Neglect of the dearest ones is becoming increasingly common. These phenomena are not as yet dominant, but the trend is obvious.

Attitude towards faith is another specific characteristic of the societies in the region, regardless of which faith they profess (there is possibly different with regard to the Islamic community). In the early 1990s, religion had a strong influence as a substitute for the ideology which had perished, consisting of a return to old values under the guise of exclusively

national characteristics. In times of crises, as a rule, people seek protection for the Church. In this respect, religion and state were allies.

Stabilisation of the countries in the region requires a comprehensive Programme of reforms. While there is a tendency in place of bringing the parts of the region together, I am of the opinion that it would be better to conduct an analysis and compile a programme for each country on the basis of the results obtained. Why? Too little time has passed since the bad experiences of all sorts of unifications in the Balkans. Today, every independent state on the territory of former Yugoslavia still wishes to affirm its attributes of statehood. Belated process of state-building in the Balkans carries on its shoulders considerable burden in both national and societal terms. This very fact must not be neglected in future efforts to reform individual states (regardless of whether they are members of present-day European clubs).

WHAT CAN BE DONE?

1. ***Reconciliation.*** In Serbia, just like in all the other former Yugoslav republics, it is necessary to come by internal reconciliation – political, religious, interethnic, intellectual and interpersonal reconciliation. Hatred, intolerance, absence of any empathy for others or anything different have been accumulating for years and this has resulted in an unbearable pollution in relationships within the society itself. When people are not listening to one another, they stop talking to one another, and when they stop talking, they start accepting ready-made formula-like stereotypes about those others, and this easily becomes a breeding ground for hatred. Hatred may escalate to such a degree that at some point no one knows anymore why he/she hates that other. The first step in overcoming animosity is the establishment of a dialogue which should be open, analytical and accessible to every citizen, focusing on topics of immediate relevance to everyday life, future and prospects of the country. First it must be said which mistakes have been made, why they have occurred and then hold to account those who have made the mistakes having such a detrimental immediate impact on the development of the country. There are plenty mechanisms as to how and where a dialogue should be conducted – universities, round tables and conferences.
2. ***Education.*** The system of education is in a state of flux. There is neither one's own specific system of education, nor a system tied to the European one. A reform is needed which would be based on

the needs and possibilities of the society. There is an exceptional large number of higher education institutions with doubtful quality of teaching process, diplomas, etc. A stricter system of obligations should be introduced covering all the stages from primary to higher education. Those professions which the country needs at a certain level of development and in which the country has always excelled should be popularised and promoted. Higher education should be guided by national interests which have been established as priorities. Criteria for academic qualifications should be rendered more rigorous. Educational institutions failing to meet the requirements for accreditation and certificates, which they do not for the most part, should be abolished. Qualifications of the teaching staff should be regularly checked.

3. ***Legal regulations.*** Activities of organisations promoting national, religious, political or any other affiliations should be regulated by law (a specific degree of tolerance should be stipulated by law).

4. ***Courts.*** The primary task is to complete the reform of judiciary based on the principles of judicial branch of power in developed democracies

5. ***Regional cooperation.*** Given the region has been the source of greatest problems, the solutions to them are to be found in the regional cooperation. In the meantime, a substantial infrastructure for cooperation has been established, economic in its nature, above all, but it is insufficiently utilised due to political reasons. This is too small a region so that it could develop with all its borders and insurmountable barriers – real or virtual ones. A comprehensive liberalisation of not only commerce, but financial transactions and labour markets would contribute to the economic growth as well as stability, and, ultimately, peace.

These would be the first, short- and medium-term steps to be taken. And then, medium-and long-term national strategies would be set.

I would like the ultimate objective of all these strategies to conform to the words of Mahatma Gandhi, i.e. the slogan with which we are marking the 20th anniversary of our Foundation: ***There is no way to peace, peace is the way.***

Boris VUKOBRAT

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DEMOCRACY

Serbia, just like the majority of newly created states on the territory of the second Yugoslavia and two decades after the formulation of the ***Proposals*** by Boris Vukobrat on the creation of a new commonwealth of independent states, falls into the group of semi-democratic states. The need for advancement of democracy remains, therefore, even today, one of the first principles necessary for the development of these societies and enhancement of their mutual relations.

Half a century's experience with Socialism, which all the post-Yugoslav states passed through, did not favour an easy and swift return to the path of democratic political pluralism. Even the Yugoslav model of Socialism, which was somewhat different from other Socialist countries, did belong essentially to a type of closed societies due to its one-party political and ideological monopoly. That the transition from an authoritarian to a democratic political system is much longer and harder than vice versa is apparent everywhere, particularly in the Balkans.

Why is democracy developing so slowly in these parts? There are many reasons for it, but here, to begin with, those that are probably the most important ones should be singled out.

Firstly, in these parts there has been a serious and long-standing historical deficit of civil and democratic quality. Secondly, and in relation to the previous point, the whole region was plagued with wars and conflicts, particularly in the course of the XX century. Thirdly, and perhaps the most importantly for present-day generations, due to a hard and painful disintegration of the second Yugoslavia in the nineties, many newly created states on this territory are burdened with post-war traumas, still unresolved issue of determining the fate of missing persons, return of refugees, responsibility for war crimes and facing up to the truth about the events in the recent past.

One of the biggest foes of democracy is the rise of ethno-nationalism, which emerged in all Eastern European societies during the transitional period, and which assumed particularly militant and violent forms on the territory of the second Yugoslavia during its tragic disintegration.

The principal aspiration of ethno-nationalist movements in the nineties was the creation of ethnically clean and nationally homogenous states in an area which, throughout history and particularly during the life together in a common state, had become distinctly multicultural and heterogeneous in ethnic, religious and cultural terms.

Except for armed conflicts, which were and still are the biggest enemy of democracy, one of the most serious adversaries of democracy is the authoritarian type of politics. Such a model thrives on not only low level of democratic political culture but also a weak and undeveloped civil society. This particularly applies to Serbia which has not as yet overcome many problems inherited from the nineties.

While the number of nongovernmental organisations has increased considerably, and although the make-up of the civil society sector is indeed more favourable than the average in the general population since young, educated people and women are predominant, the activities of the civil society in Serbia today fall short of the mark set in the nineties. This regression is twofold. On the one hand, after the democratic changes in October 2000, the civil society which had played an important role in the toppling of the authoritarian regime, failed to find a formula for conflict partnerships with pro-democracy governments which would both support democratic reforms and keep a critical stance with respect to the weaknesses of the new political regime. On the other hand, the extreme right-wing clerical-nationalist civil society bloc, which enjoys more or less open support by the right-wing section of the political spectrum, has strengthened.

Two issues are of strategic importance for the advancement of democracy in the region – the issue of democratic formation and capacity of the political class and the issue of quality of political institutions.

Looking at the newly created states on the territory of former Yugoslavia, widespread discontent with the so-called transitional political elites has been present in all them. An exception to this used to be Slovenia, but only up to the point of the global financial crisis outbreak. Discontent with the quality of the political elites was particularly conspicuous for the duration of the second half of the transition process.

The predominant political formula which the political elites in the first decade of transition adhered to was national-patriotic. Popular support

for political elites was commensurate with how successful they were in the formation of new national states. In that period, both the elites and the masses were the least interested in the progress of democracy.

Regardless of how painful the disappearance of the second Yugoslavia was for many, one must accept the fact that the formation of several new states on its territory is in correlation with the general trend of proliferation of new states worldwide. In Europe only, the number of states more than doubled in the XX century. One may rightfully assume that the number of states in the world will continue to grow. Many are the reasons why the number of states worldwide is on the rise, but it seems to me that the most important one is the aspiration of nations to preserve their identity and ensure survival. This was particularly clearly manifested at the end of the XX and the beginning of the XXI century when many ethnic groups felt endangered under the pressure of globalisation. Every ethnic group which succeeds in constituting itself as a nation believes that one's own state is a key prerequisite for the protection of one's own language, culture and customs. Cultural diversity is crucial for the preservation of social diversity and prevention of social entropy, just like biological diversity increases the chances for survival of various species and every individual species. Preservation of the cultural diversity, which represents a great value for any society as well as for the whole humanity, is manifested today in two ways: (a) by formation and "possession" of one's own state (the more homogenous, the better, if possible); and (b) by developing different models of multiculturalism in nationally heterogeneous societies.

It was not until the consolidation of the national states that the issues of democracy and quality of everyday life came to the fore. And these are the fundamental issues by which a modern citizen measures the quality of his/her political community. The global economic and financial crisis also magnified the issue of political elites' ability to deal with it successfully. It turned out that small states were weak and powerless in the face of the onslaught of crisis. What was apparent globally was even more evident in the states which had come into existence on the territory of second Yugoslavia – that there was a serious gap between the gravity of pressing social problems and the ability of political elites to come to grips with them successfully.

The issue of quality of political institutions is crucial for the development of all fledgling democracies in the post-Yugoslav area, including the de-

mocracy in Serbia. The state of political institutions is the Achilles' heel of young democracies. New institutionalism in political sciences offers developed criteria for an assessment of political institutions' democratic qualities.

Rule of law is the first and the most general criterion. The tenets of the rule of law offer the best protection of democracy from arbitrariness of the political authorities. Laws passed by the parliament are enacted without serious discussions, most often by urgent procedure, hence it is no wonder that, after several adopted amendments, they become contradictory in themselves, and even more often inconsistent with regard to other laws and the entirety of the legal order. Citizens and, in particular, commercial legal entities are transacting business under uncertain conditions where they could be exposed at any given moment to a legal action for alleged infringement of a legal regulation popping out of a vast sea of laws and by-laws.

The following important criterion of the democratic quality of political institutions is trust and participation. In any democratic society, the quality of political institutions depends on the breadth and quality of citizen participation. All surveys and insights suggest that the citizens' trust in political institutions is at a very low level. Most citizens look helplessly and sceptically upon the political life and escape to political apathy and abstinence.

Democracies also differ in levels and variances of political options' competitiveness, which in turn depends the most on the given type of party and election system. Competitiveness comes to the fore only in election campaigns when every political option fights all other options, and then, after the election, the formation of a new government lasts for too long due to political horse-trading where anyone may forge a coalition with anyone else. The true winner in the parliamentary election emerges, as a rule, as late as several months after the polls (in this respect the latest elections in Serbia and Slovenia are typical).

An important criterion for the quality of political institutions pertains to the possibility of vertical and horizontal accountability. Related to this is the issue of responsibility of political institutions for performing certain functions. In this regard only first steps are being made.

In addition, some other criteria are of particular importance for the quality of political institutions in immature democracies in the post-Yugoslav area.

As a rule, corruption is rife in young and undeveloped democratic societies. Particularly high is the level of corruption in some sensitive institutional areas such as judiciary, police, health care, education and local self-government.

The following particular criterion is related to the issue of building the capacities of political institutions and the level of competence of those working in these institutions. Way too many vacancies in public life are filled on the grounds of political affiliation.

Also important is the criterion of political institutions' readiness to include those social groups which find themselves, for a variety of reasons, in a much more difficult social position than others.

Openness to the public or transparency is an important characteristic of democratic political institutions. The purpose of the public is not only to act as those institutions' watchdog but also to expand the possibility for citizens to put forth proposals for the improvement of their performance. The more the institutions are open to the public, the bigger the chances are for them to perform their functions better and achieve their goals since the realisation of many of them by and large depends on the citizens' engagement.

Exchange of experiences among states in the post-Yugoslav area with regard to the building of democratic capacities of political institutions helps every one of them raise the level of institutions' optimal functionality, avoid poor organisational-institutional solutions, and enhance possibilities for social learning and institutions' development.

Our societies' destiny is in the hands of the weak and, essentially, poor states. The European integration is helping reduce the weaknesses of political institutions to a degree, but the issue of advancement of the political class and political leadership remains the problem of every individual society. It should not come as a surprise when we ourselves, or our neighbours in the region, are more concerned about some outcomes of parliamentary and presidential elections than the officials in Brussels, Washington D.C. or some other important capital in the world.

On the other hand, the improvement of good neighbourly cooperation is important for not only a more successful economic exchange and economic growth but also the further progress of democracy. Democracy is not only the issue of legal order but the most universal form of social learning where the power of a good example has an impact on the entire region.

I see the relevance of Vukobrat's project, two decades on, in the need, but also, I would add, necessity for the newly created states to establish multiple regional connections with old and new neighbours, as part of different groups and on different grounds. There are several such forms of regional cooperation, both broader and narrower in scope, and one of the important forms of cooperation and interconnecting should take place in the ex-Yugoslav area. Former decades-long life together in a common state, easy understanding of one another, cooperation in the field of culture, openness of young generations to getting to know one another, many shared economic and political interests when compared to all the others – all this lays good foundation for a better and more productive interconnecting of this area in many directions. This would also facilitate the development of democracy in our region.

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RULE OF LAW

ON THE CHARACTER OF THE "RULE OF LAW" AND "LEGAL STATE"

"Legal state" *(Rechtsstaat)* and the "rule of law" are often treated as being related, although they had different concepts and traditions in the European history. In England, Chief Judge Lord Henry de Bracton introduced the rule of law into the legal system in 1235, two decades after *The Great Charter of the Liberties* (*Magna carta libertatum*, 1215). "Legal state" *(Rechtsstaat)* was introduced by Germany in the XIX century and practiced in the XX century.

Henry de Bracton took over from Cicero "that people ought not to be under the rule or autocratic rule of another man but under the rule of law" *(non sub homine sed sub lege)* and added *sub Deus et leges* ("under God and the law"). This principle came to be known as the *Rule of Law.*

The rule of law developed as part of the so-called Anglo-Saxon school of law, whose part is common law whereby a judgment in a case becomes a legal rule ("Case Law") applicable to other cases. The European continental system does not accept court rulings as a source of law. Great legal theorists and chief judges of England disputed the laws and decisions of the Parliament. The rule of law entails wise, rational and just law and permanence of rights and obligations, the idea of continuity and respect for acquired human rights and freedoms.

In Germany, proponents of Enlightenment in the XVIII century endeavoured to introduce "enlightened despotism", and in the XIX century the "legal state" (Rechtsstaat; the term was coined by Robert von Mohl) was introduced which was to replace the so-called police state (Polizeistaat). The support was partly provided by Hegel's philosophy of the state, and Jelinek and Laband were theorists of the legal positivist orientation. The XX century was characterised by authoritarian and totalitarian regimes as well as the imposition of political will and violence. German legal philosopher Gustav Radbruch criticised the Nazi system and ascertained that "if laws reached a certain degree of iniquity, then there would be a plain moral obligation to resist them, moreover they can be refused the character of law" (Gustav Radbruch, *Philosophy of Law*).

The Federal Republic of Germany abolished some elements of the past and established democracy, the Constitutional Court and the judicial control over constitutionality of laws and decisions of supreme bodies, as well as value-based principles of unity, justice and freedom, hence it accepted the system of the rule of law.

The European Union supports the rule of law by a set of legal-philosophical and humanistic categories. It is known that the Western European civilisation rests on two pillars – Christian values and the rule of law. The principle of the rule of law was enshrined in the European Union treaties (1957 Treaty of Rome, 1992 Maastricht Treaty, amended in Amsterdam, Nice and, most recently, in Lisbon 2009).

The Constitution of the Republic of Serbia (2006, articles 1 and 3) states that the Republic of Serbia is "based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values". Article 3 reads as follows: "Rule of law is a fundamental prerequisite for the Constitution which is based on inalienable human rights... and shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of power, independent judiciary and observance of the Constitution and law by the authorities". However, the rule of law and other fundamental principles of the Constitution of the Republic of Serbia are not being implemented.

2. CIVILISATIONAL FOUNDATIONS AND LEGAL - POLITICAL PHILOSOPHY

Law, in principle, has a civilisational role, without a code of conduct, there would be no civilisations. Norms can be religious, moral, customary and later on also legal. The Egyptians were thankful to god Osiris the most for having instructed them in laws. Law consists of norms which have disposition, i.e. order, and the second part is sanction, i.e. a measure which is enforced (punishment or reward) when the disposition is infringed or upheld. There are contradictions between the content of the norms and behaviour arising from the conflict of political will and law (i.e. so-called legal ratio). Philosophers were troubled by the question if orders based on political will, backed by force, could be considered as law, regardless of what nature of the order was, and if holders of public office could be entrusted with great power in the belief that they themselves would impose limitations.

The history of law follows histories of civilisations. Ancient sages understood that the greatest and the most important invention of the human species was – moral-legal law, i.e. the code of conduct (like Brahmanic or Buddhist *dharma* or Greek *nomos¸ νόμος*). Wise rules satisfy human need to have "legal" certainty, order (*nomism*, from Greek *nomos* – law) and respect for human dignity. This characterises *homo sapiens*. Some civilisations are associated with Hammurabi, and others – with leader-sage Moses. Some are associated with reasonable rulers (Manu et al.), and others – with brutes

Moses knew that the integrity of the people and the state was reinforced by short-lived Egyptian monotheism. He saved the Jews from the Egyptian slavery and he knew that he had to give them laws and religion which would ensure their integrity and survival to date. Moses did not exploit the acquired political capital (deliverance) for the sake of his personal power. He was a prototype of a "prophet with a sword", i.e. "an armed prophet". He used the technique of ruling together with his people and chiefs whereby he reached the point of **social contract, popular consent, passage of law, taking an oath** and proclamation of federalism (2. Moses).

Founders of constitutionality made an impact (Lycurgus in Sparta, Solon in Athens). Confucius and Buddha laid out a "golden rule": "Do not do unto others what you would not they should do unto you".

Theories of social contract were developed by Greek sophists as well as the concept of natural law that also protected **human dignity**, which they would **place above the so-called applicable laws** passed by the government. In mythology, the punishment of Prometheus, Antigone and others prompted wise people, in the spirit of natural human rights, to place innocent heroes above the orders given by both gods and rulers. Pericles and Alcibiades had a **dialogue on the quality of law** (this is the so-called elenctics). Citing bad laws of the people's assembly, Alcibiades made Pericles accept what he was denying, because if the laws were bad, then they were not laws at all (Xenophon, *Memories of Socrates*). Thucydides, a commander of a navy detachment in war, wrote in *The History of the Peloponnesian War* that **Athens was not a democracy but under the rule of one man** (Pericles) and about the Athens' atrocities against the inhabitants of an island.

The first philosophers who laid the foundation for the theory of the rule of law were Aristotle and Plato. In *The Republic*, Plato presented an ideal of rulers, wise and endowed with virtues, who did not need laws but who would rule *poleis*, city-states, well thanks to their capabilities. He made a narrow escape from the experience with the verdict of Socrates, the behaviour of Thirty Tyrants and the experience with his students who went on to become the rulers of Greek city-states in Sicily. Plato concluded that the rule by people had to be replaced by the rule of law. In his *Laws*, Plato says: "And when I call the rulers servants or ministers of the law, I give them this name not for the sake of novelty, but because I certainly believe that upon such service or ministry depends the well- or ill-being of the state". Plato says that it is necessary for people to have laws and to live by them, or otherwise, they will be no different from wild beasts. The reason for this is that no man is born with innate ability to apprehend what is useful to people in the life of a state. He points out that the mortal nature of man induces everyone who has achieved unlimited power to use that power with bias, without being held to account by anyone, hence they become reckless and indulge in acquiring personal benefits, constantly seeking pleasure. This was why he wrote that the states ruled by a mortal could not avoid troubles, but that a lot might be achieved if we were to obey immortal nature, referring to law as what our reason gave to us (*Laws*, IV, 7, IX, 13; and IV 6). Similar to Plato's arguments was what Lord Acton said: "Power tends to corrupt and absolute power corrupts absolutely".

Aristotle, a student of Plato, his successor and originator of new ideas, wrote in his *Politics* in favour of the rule of law, which brought justice, a mean, because law is a mean. Says Aristotle: "He who would place the supreme power in mind, would place it in God and the laws; but he who entrusts man with it, gives it to a wild beast, for such his appetites sometimes make him; for passion influences those who are in power, even the very best of men". This was what Aristotle said, and Plato before him, that passion corrupted even the very best of men when in power (III, XVI, 2-4 and 6). There is a dilemma as to how to come by good laws. Aristotle evaluated democracy by the degree in which it respected some general rules because, otherwise, it would become mobocracy or ochlocracy.

At the time of religious wars in France, **theories of social contract** were revived in 1579, in the work *Vindiciae contra tyrannos*. The greatest European theorists founded their theories on different concepts of social contract – Hobbes, Locke and Rousseau.

3. FUNDAMENTAL LEGAL PRINCIPLES AND INSTITUTIONS OF MODERN STATES

Hobbes was a mathematical instructor to the heir to the throne and during the English Civil War he emigrated to Europe, but returned to England after several years when Cromwell was in power. He advocated the authoritarian system in his theory. In 1651 he published Leviathan (the name of a monstrous biblical creature) in which he pointed out that safety of subjects and citizens was the most important goal for the sake of which the state was established, and that its subjects relinquished their rights through a social contract in exchange for safety guaranteed by the sovereign (one person or a group of persons). His student, the son of the beheaded King Charles I, became King Charles II in 1660.

Locke's political philosophy features several categories and ideas/principles. He introduced two social contracts and natural rights of men as the foundation of modern liberal democracy (that the government and power were not the goals unto themselves, but instrumental in protecting human rights and creative potential). He also introduced the ideology of liberalism under the Whig influence; limited government would gain legitimisation through the consent of those whom it governed. Locke propounded the theory about the rule of law, division of power as well as ideas about natural law: that people as reasonable beings might secure peace and coexistence if they respected natural (i.e. comprehended by reason and embraced as equal for all) rights to life, body, freedom and property acquired through labour. Positive (government's) laws had to contribute to this purpose. The government had to be limited by the fact that no body, individual or assembly could wield unlimited power. Locke considered that it was necessary to limit the content of a law, i.e. everything that a political will would want could not be imposed through laws. The modern theory of the rights of man was derived from this body of learning. In Locke's view, wherever law ends, tyranny begins. He listed several characteristics of the law: legislative authority is the supreme authority in every country, but "it is not, nor can possibly be absolutely arbitrary over the lives and fortunes of the people"; it "cannot assume to itself a power to rule by extemporary arbitrary decrees, but is *bound to dispense justice, and decide the rights of the subject by promulgated standing laws and known authorized judges*"; such an authority cannot transfer the power of making laws to any other hands and it is limited because "it was authorised by the society and divine and natural laws... to govern by *promulgated established laws*, not to be varied in

particular cases, but to have one rule for rich and poor, for the favourite at court, and the country man at plough"; then, "*laws* are to be directed to no other end, but the *good of the people*" and "must not *raise taxes* on the property of the people, without the consent of the people". George Mason took over from Locke the rights and freedoms and included them in the "Bill of Rights", which was appended to the Constitution of Virginia (12 June 1776). About a month later, Thomas Jefferson presented to the Congress the "Declaration of Independence" (4 July 1776), the rationale for independence, and, pointed out, from Locke's concepts, the equality of all people, freedom within the limits of the law, where natural were the rights of people to life, liberty and "the pursuit of happiness".

Jean-Jacques Rousseau considered that "general will" *(volonté generale)* entailed absoluteness of people's sovereignty, unlimited laws and unlimited democracy, which might be radical (as it would turn out if Rousseau's ideas were to be realised, as implemented by the Jacobins in the Revolution), but could also be totalitarian (J. Talmon, 1952). In the XVIII century, Hume wrote that democracy was not necessary for social and economic development, but that the rule of law was *conditio sine qua non* for those desirable social achievements, i.e. that this could not be achieved without the rule of law.

The concept of limited government and the rule of law is related to the "division of power", i.e. different branches of power with an emphasis on independent judiciary as a prerequisite for the rule of law. Montesquieu's idea about the "separation of powers" features the idea that "one power (authority) limits another power" *(De l'Esprit des Lois)*. American framers of the Constitution applied the "checks and balances" theory. The 1789 *Declaration of the Rights of Man and of the Citizen*, article 16, reads that "a society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all".

The problem, which plagues democracy, concerning the tyranny by the majority, has been discussed by philosophers from Aristotle to John Stuart Mill. Franz Leopold Neuman stated that the voice of the majority could not make evil into good, but that evil with the support of the majority would become an even greater evil (F. Neumann, *The Democratic and the Authoritarian State*, 1974). This means that consent, participation, popular support and other similar expressions of acceptance and popularity constitute only a necessary but not sufficient precondition for the legitimacy of a government and its laws.

The legal framework of countries emerging from centuries-old authoritarianism must change, "reform", constitutionalise and be built on the foundations recommended by great legal and political thinkers in their analyses advocating the rule of law. Modern democratic political and legal systems are based on such principles.

Topics such as force, arms and coercion are permanently present in discussions on law, politics and society. Power or coercion ensures "validity" of regulations as an important element of law. Political will, if not limited, grows into arbitrariness and self-will and endeavours to use the law for the purpose of expressing its own will and interests. "Realism", which Machiavelli understood, found its followers who were guided by the instinct for gaining and keeping power. Absolutist rulers behaved in such a way. Louis XIV said: "L'Etat, c'est moi". And an old saying in France was: "If the king wants it, it is the law". Leo Strauss said that contemporary scientists in the field of social sciences would do the same as what Machiavelli had been doing publicly going on to argue that if they only-God-know-why chose to follow liberalism instead of commitment to rules, they would be willing to give advice equally to tyrants and to free people. This was what many French revolutionaries, Jacobins and Bonapartists thought privately. Examples of realism are Bismarck's views that "might precedes the right" ("Die Macht geht vor Recht") as well as Stalin's emphasis on Lenin's stance that "the dictatorship of the proletariat is unrestricted by any laws and based on force".

In the XIX century, in addition to the state, the political parties as instruments which were supposed to advance and make democracy possible entrenched themselves. German political sociologist Robert Michels discovered that political parties' leaders in the XX century, even when fighting for democracy, behaved like autocrats or oligarchs, i.e. they would behave as if every party leader could say: "The party, that's me" ("Le Parti c'est Moi"). When they come to power, they turn the rationale and the will of their respective parties into law. This is an abuse of legal forms. The legacy of the partocratic-ideological state has not been overcome. Public administration must become a public service, and the citizens must be protected before its bodies. Criminal law and procedure pertain to the most fundamental rights of man. There is so much sluggishness, vested interests, bias and injustice in judiciary and the practice of law.

On the other hand, the prevailing notion of justice should not only resolve conflict situations among members of the society, but also civilise,

moderate and restrict political will as well as prevent its action under the influence of passion and feelings (i.e. hatred, vengefulness, vanity, greed), and ultimately conform that will to reasonable expectations of members of the society. Independence of judiciary requires a change to judicial law and a series of other measures. This is a presumption of a valid constitution and constitutionality, and, consequently, the rule of law. Important is also moral autonomy and professional ethics in public life.

In many a thing is manifested corruption of the legal and political system and the concentration of power, as well as drastic discrepancy between the constitutional and legal systems in these parts. **Legislative power must be bound by the Constitution and law**, some extralegal or metalegal values. Vertical and social dispersion of authority (and power) which play a role in the achievement of goals under our discussion is important. A lot will **depend on the ruling political culture and the rules of political "fair play"**. Unavoidable is the aspect of man's social life, everyday life.

This is why it is necessary to accept that the position of man is the most important feature of the political and social system. A personality and a citizen cannot be formed without the freedom of social criticism referring to structure, method of work and results yielded by the system of power.

4. ON LEGAL PRINCIPLES AND INSTITUTIONS NECESSARY FOR RULE OF LAW AND REMOVAL OF OBSTACLES TO ITS ESTABLISHMENT

The rule of law entails and requires important rational principles and institutions, i.e. legal and political institutionalisation and constitutionalism, which implies "division of power" and so-called control and equilibrium; independent judiciary as a necessary presumption of the legal rule of law, and this cannot be achieved if courts are under political pressure over "political" issues; constitutional judiciary; there are obstacles and stiff resistance which, if the rule of law were to be promulgated and enshrined in the legislation, might render it ineffective.

Maxims, i.e. sayings, fruits of experience and wisdom, become legal principles. Such legal principles are: *Audiatur et altera pars* ("Hear the other party too"); *Nullum crimen, nulla poena sine lege* ("No crime, no punishment without a previous penal law"); presumption of innocence

(until proven guilty by a court judgment); *In dubio pro reo* (the principle according to which a judgment/ruling cannot be based on something whose veracity/truthfulness is doubted, instead, when in doubt, the decision should be rendered in favour of the accused).

Let us list other principles as well: *Onus probandi* (the burden of proof lies with the person who lays charges); invalidity of *ex post facto* laws, i.e. prohibition of retroactive effect of a law (except when introducing extenuating circumstances for those whom they refer to); the principles according to which laws must be promulgated and published in an appropriate manner; the goal of the rules of procedure is to come to material truth, to enhance rights of man and improve his safety, to ensure legal certainty, reduce arbitrariness in the enforcement of law, etc. The quality of laws is very important (see the dialogue of Alcibiades and Pericles).

Justinian's codification has preserved a vast legal treasure from oblivion. *Digesta* was the most important, consisting of 50 books, 150,000 lines of legal text, and it was compiled over three years under Justinian's supervision. Ulpian's 280 books was the most used source and it is considered that they make up one third of *Digesta*. Emperor himself and many collaborators with extensive knowledge of law worked together on this compilation. Each fragment bears the name of its author. The best-known are sayings are those by famous Ulpian (murdered by the Praetorian Guard in AD 228. He said: "What pleases the prince has the force of law" (*Quidquid principi placuit legis habet vigorem*, Ulpian, *Digesta* I, IV, 1), which reflects succinctly the situation mentioned above. He also said that "law is the science of what is good and just" (*Ius est ars boni et aequi*, Dig. I, I, 1), and gave a more complete designation of the purpose and principles of law: *Honeste vivere, alterum non laedere, suum cuique tribuere – iuris praecepta sunt* ("To live honourably, to harm no one, to give to each his own – these are the precepts of the law", Ulpianus, *Digeste* I, 1, 10, 1).

Lord Chief Justice of England and Wales, John Fortescue, wrote for the instruction of Prince Edward his work *De laudibus legum Angliae (In Praise of the Laws of England)* around 1470, introducing two important legal rules: the first on the "rights of Englishmen" acquired by birth, which he intended to be an applicable criterion in English courts; and, the second, that it would be better if a guilty person escapes punishment than to have an innocent person convicted (this became a legal principle of

the Anglo-Saxon law in England and the United States). This is rarely observed. Fortescue also supported the principle of popular consent as a factor limiting the ruler's power (Fortescue, *De laudibus legum Angliae*, around 1470). In Shakespeare's Henry VI, rebels in those years state their position at the very beginning: "The first thing we do, let's kill all the lawyers".

Universalisation (generalisation) of principles is the characteristic of the rule of law, which entails continuity of acquired rights, permanence and equality of rights and obligations. We are witnessing situations where one group, a party or ideology requests something that it itself is not prepared to grant to others.

Frequent or arbitrary changing of rules introduces legal uncertainty, restricts autonomy of entities governed by law, and is contrary to the rule of law, which also includes today the most important civilisational achievements in the field of protection of man, human rights, institutional and procedural guarantees and rules, whilst the democratic theory requires an adequate participation of citizens and integral parts of the society in terms of direction and passage of laws. They cannot be a mere expression of will, let alone the will of the majority.

For the rule of law, very important is the **procedure**, the prescribed, legally sound and fair procedure in its entirety and in every branch of law in accordance with its specific qualities.

5. WHAT ARE THE PROSPECTS FOR THE "RULE OF LAW" IN OUR CIRCUMSTANCES?

When we were looking into the problems of the legal state and the rule of law in the early eighties on several occasions, we could ascertain that Socialist countries at the time had not as yet even expressed a wish to build states with the rule of law, and we endeavoured to explain why this was so. The then non-acceptance meant that the rule of one party and ideology, along with the instruments employed to maintain and reinforce such a rule (power), took precedence over the rule of law. The highest political bodies of the then Yugoslavia in 1988 qualified "the legal state" as a counter-revolutionary idea.

One of the criteria to determine to what an extent the legal state is present is whether the government is bound, regulated and restricted by law, and whether this has been implemented in practice. The rule of law

means that every authority, even its highest echelons, is subjected to some rules of constitutional-legal nature or rooted and respected customs of a civilised society. In the countries with authoritarian cultures and regimes, this is not the case. Professor Đuro Šušnjić wrote in his work *Dialogue and Tolerance* (1994, p. 148): "The government is a form of power which is accepted by others as legal and just, and which is to be obeyed. The government is power gained through free and secret ballot. In this respect, the parliament holds power. As you can see, in the half a century of our history, we did not have the government but naked demonstrations of power. Instead of a rule of law, we had unlimited power of one political will or autocracy. Today we can see how difficult the transition from autocracy to the rule of law is. We would rather gasp our last breath than relinquish power. If a group of people draft laws to their own liking, then their will is the law". This is still the case, and some important laws are amended several times within a short space of time.

Many a thing must turn for the better. It is necessary to consider the changes to the legal framework of social-economic transformation. We still do not have *Civil Code* in place. The Civil Code was abolished in 1944, and it had been in effect for a hundred years having been first introduced in 1844. Present are the lingering remnants of ideological, bureaucratic, partisan and partocratic mindsets, let alone all the processes related to botched privatisation, plunder of socially-owned assets, corruption, crime and association of mafia with parts of the government.

To enforce the rule of law, in addition to new contents of legal norms, social, political and economic prerequisites must be met, as well as some extralegal (moral and just) criteria of broader scope. All this is hampered due to the fact that our country and other so-called post-Communist states, except for partial exceptions in terms of degree and extent, are characterised by (1) the absence of democratic traditions and institutions; (2) prevalence of patterns of authoritarian political behaviour, authoritarian political culture imbued with national or religious animosities; (3) the fact that in the majority of these countries civil society is yet to develop; (4) many deeply rooted relics of oligarchic and bureaucratic structures and vested interests, still defending themselves using some ideological, religious or national rationalisations cast in new categories but being essentially old schemes. The rule of law will remain a distant future, but it must start to be implemented – now.

To start introducing the rule of law, this may be done both immediately and gradually, but it will be a long process to come to substantial and important changes in this respect. It is necessary to avoid three things in the process of **establishing the rule of law**: (1) development of civil society with developed economy (nongovernmental organisations do not constitute a society); (2) liberal political culture with tolerance and high degree of education; and (3) constitutionalism and liberal democracy.

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PROTECTION OF ETHNIC GROUPS

A serious analysis of war-time events requires consideration of ideological patterns whereby the war becomes acceptable to many as well as of propaganda which renders the war "our cause". Economic, political, geopolitical, social and other causes lurk in the background of war-time options, but they do not make the war a source of moral obligation for many people who are not otherwise inclined to violence. This is precisely why it is important to take into account the pattern of legitimisation which the warmongers always exploit in order to ensure better understanding of the rationale for war. In (post)Yugoslav wars this pattern of justification was undoubtedly set in an ethnic key.

1. The justification for post-Communist wars, including those in the area of former Yugoslavia, arose from the collapse of *ancien régimea* that was conducive to a release of political processes which had been in deep-freeze for decades. And those processes had been originally concentrated (until mid-1940s when they were disrupted) on an ethno-national interpretation of politics, in particular the ethno-national concept of state sovereignty as an important objective. National sovereignty itself denotes a pursuit of exclusion of a part of the population in a state (ethnic minorities) from a fully-fledged participation in political life, as well as an aspiration for *inclusion* of a part of territories which are outside the state borders, but which "at some point in time" did belong to it, or which, by ethnic criteria, "should" belong to it.

1.1. Post-Communist nationalism was, therefore, also the underpinning of wars arising from the disintegration of both the USSR and the SFRY. In order to attempt to, first of all, prevent, and then put a stop to these wars, an alternative, civic concept should have been applied; an endeavour to limit potentially totalitarian tendencies of national sovereignties (and nationalist myths preceding but also accompanying them) should have been made. And this was particularly difficult to achieve, above all, due to obvious majority support of the population for such positions, which, following the political changes, manifested themselves in democratic forms as well. International guarantees for minority rights constituted a part of such an endeavour to limit the fixation on national sovereignty

(typical of the entire post-Communist world). However, this would not suffice. This proved to be so even after the end of the war, in post-war interpretations of the war events.

2. The extended nationalist interpretation of political life – which, moreover, was, over time, repeatedly legitimised in the elections – even led to an official acceptance of restrictions in the application of international war law in many post-Yugoslav states. Such restrictions were reflected in efforts to avoid meting out punishments for perpetrators of war crimes, in parallel with public denial of the principle of command responsibility based on the argument that the atrocities (after a reluctant acknowledgement, several years later, that the crimes had been committed in the first place) had been perpetrated by "civilians in uniforms", but that this had come to pass only "in response to previous, much graver crimes perpetrated by the other side". It was not until after the interventions from abroad had became apparent in everyday life – after years of failed efforts on the part of some nongovernmental organisations,[1] few journalists and even fewer politicians – that the situation (way too slowly and insufficiently radically) started to change, particularly with an increasing influence of the Hague tribunal.

3. Facts point to ethnic cleansing as the underlying crux of the warfare in the nineties – from the shameful role of the Yugoslav People's Army (JNA) in Eastern Croatia (culminating in an armed protection of perpetrators of atrocities in the occupied town of Vukovar), through the formation of Republika Srpska in Bosnia-Herzegovina (related also to the genocide in Srebrenica), to a self-styled final resolution to the "Serb problem" in Croatia in a way which would render it a state without statistically (and even politically) relevant ethnic minorities (within the space of three days, in early August 1995, an exodus of about a hundred and fifty thousand Croatian citizens of Serb ethnicity occurred, facilitated by

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[1] Among rare peacemaking actors on the territory of former Yugoslavia was the Peace and Crises Management Foundation, founded in the spring of 1992 by Boris Vukobrat. Like most other activists, intellectuals and politicians advocating an anti-war approach to the crisis, this foundation also experienced failure due to the very fact that the war (or wars) did break out. Nonetheless, in the long run, the ideas advocated in their efforts to avoid war proved to be particularly important in the painstaking process of demilitarisation of post-Yugoslav societies, and especially in the post-war period. In the context of debate on the position of ethnic minorities, of far-reaching significance was the proposal for "a constitutional law on the rights of ethnic groups (national minorities)", published as part of the Proposals for a New Commonwealth of the Republics of ex-Yugoslavia by B. I. Vukobrat (CopArt, Zug, 1993). Whilst the idea itself to establish a new commonwealth proved to be an illusion, and although some of the specific solutions lost some of their relevance over time, the key concepts from this document have undoubtedly become an integral part of the best applicable solutions in the newly established national states (but some, regrettably, have not yet reached the political agenda).

the collusion among the warring parties – the leaderships of Croatia, "Krajina", Republika Srpska and the Federal Republic of Yugoslavia (FRY), after which hundreds of civilians were murdered in the ensuing weeks).

3.1. All the warring parties employed similar methods on the territory under their respective control: murdering of great numbers of civilians with impunity, blowing up thousands of Serb homes, prisoner camps, symbolic persecution... Subsequent promotions, even decorations for those individuals who participated in murders and persecutions, lead us to a clear conclusion about the nature of the political systems in question

4. Keeping silent about war crimes has a tendency to render the state-of-war psychology permanent, as well as, following the logic of such a state of affairs, to persistently treat the members of ethnic minorities as suspicious, second-rate members of the national political community. The same applies to public, and even official, protests against "criminalisation of our participation in the war" (as if there were a war which was not criminal), i.e. the claims that "questioning the values which our people expressed in the war meant the negation of our state". Ultimately, this is what it is all about – the need, if peace has truly taken hold, for warriors to retire (and to have their 'legends' historically interpreted), which means that the time has come for those people who are capable of taking action in peace-time. If we are to live normal lives at all, it is necessary to pit the values of peaceful existence against the warmongering authority of blood as well as to counter ethnic prejudices, as an important patriotic vehicle, with not only cooperation, but also positive discrimination in the form of preferential treatment of minorities.

5. Such an existence, however, should not be wrongly interpreted along the lines of the "Yugoslav peace" paradigm which, in fact, was no such thing. What was happening between 1945 and 1990 – which, admittedly, in terms of social and other qualities by and large eclipsed the post-Yugoslav practice – was effectively *the freezing of the conflict*. Post-Communist developments – just like spring-time torrents (as murky as they always had been in the previous times) – simply melted the icy coating of the Yugoslav commonwealth which rested on suppressed conflicts (which, for this very reason, no one knew how to cope with). The new reality manifested itself in the full-blown destructiveness of war which, undoubtedly, represented the last stage of the Yugoslav political existence, or, more precisely, the post-Yugoslav phase. The issue of all the issues, which is now on the epochal agenda for debate, is the one

pertaining to the possibility for a genuine post-Yugoslav peace, i.e. the state of affairs which would not only shed light on the causes of earlier conflicts (and the rationale for their acceptability), but would also, finally, allow for a political, social and *Weltanschauung*-based shift in emphasis to an individual and his/her well-being

6. At the end of the history of Yugoslavia, the bonding agent that remained active was precisely the same aspiration which (ninety years earlier) had led to its (original) establishment – the national (but, obviously, also nationalist) craving to hold "your own on your own turf". One of the consequences of the local interpretation of this slogan was the fact that, in the aftermath of the war, all former Yugoslav republics became, to a considerable degree, "ethnically clean" or, as in the case of Bosnia-Herzegovina and Macedonia, internally ethnically divided. The exception to this was Serbia, the one of the former Yugoslav republics from which crucial warmongering initiatives originated (however, in the case of Serbia, Kosovo remains a symbol of unresolved conflicts which are over and over again inter-ethnically interpreted). Multiethnic character of the Yugoslav commonwealth failed to achieve a democratic legitimisation. Post-Yugoslav, ethnically interpreted national states are trying to achieve it now – with difficulty and hesitation.

7. The problem is further complicated by what is yet to be seriously discussed as well as what should be done so as to truly enhance the position of minorities' members in the post-war period. In doing so, in principle, it is necessary to start with the premise that there are two types of groups, and, consequently, two types of minorities in a society. The former are the groupings and minorities by their own choice: political parties, trade unions, clubs, associations... One may become a member of such groups whenever and however one wishes; they may constitute a minority today, but a majority tomorrow. In contrast, the latter are the groups (and minorities) defined by their belonging to a nation, race, sex/gender... In principle, an individual does not leave such a group since, by definition, he/she did not decide to join, but was born into it and is interpreted as such. One cannot cease to be a member of such a group because no one joins it as a member. For most people (with few exceptions) these groups are existentially predetermined and stay with them as an integral part of their identity in both good and bad times.

8. The key in all this is that the relevant political issue should boil down to an effort to render accounts on the position of minorities in a democ-

racy as this is today a part of the universally binding political framework. In the process one should bear in mind the previously established distinction: minorities by membership are something that democracy lives on, and the purpose of democracy lies in the continuous, procedurally ensured alternation of position between majority and minority. The problem occurs with resistant minorities, i.e. the minorities into which one is born. If, in a society, there are, for example, 4.54% of such minority members, they will always remain a minority. They cannot depart from such a position, and they, irrespective of their individual abilities, face a whole series of narrowed-down choices or barriers; some positions will simply not be accessible to them.

9. If we were to take as our starting point that an individual is an elementary minority, given that everyone, at some point, finds him/her-self in the position of a minority, then the programmatic issue of a possible construction of systemic relationships whereby the minority status does not significantly harm social, cultural, political, economic, or any other status of an individual belonging to an ethnic, gender-based or another type of minority which one is born into, is crucial. The paradoxical answer is as follows: this cannot be achieved in a democratic manner because democracy is not structured in favour of, firstly, the resistant minorities, and, then, the ethnic ones. Consistent enforcement of democratic principles is conducive – in this context – to permanent predominance of the majority and/or assimilation. In other words, such minorities may be assisted only by an intervention in the democratic principle referred to as positive discrimination or affirmative action. Thus, the minorities are granted somewhat more rights "per capita" than the majority, thereby enabling them to "survive", i.e. not to be assimilated. Such a situation today in post-Yugoslav national states is difficult to digest for a variety of reasons, partly due to the fact that democracy has been a difficult lesson to learn, albeit in formal terms only. It is, namely, very difficult to convince someone who has barely learnt that democracy is the supreme value that there are also situations in which it cannot resolve problems.

10. Apart from worshipping democracy at the ideological level, another level of the problem is social-psychological and emotional one – associated with traumas caused by a series of conflicts, particularly by those occurring in the past twenty years or so. Ethnic minorities, admittedly, are increasingly shrinking everywhere, but they are still perceived as a

potential threat. The number of people with such a perception is certainly decreasing, but very slowly.

11. Therefrom follows the legal issue as to how to legally protect the rights of minority members, not "only" of minorities as collective entities, but the rights of persons whose collective identity is determined by their belonging to a minority, an ethnic or national group. First of all, it would be certainly difficult to prove that members of one or another ethnic minority in a post-Yugoslav state find themselves, in principle, in a more difficult situation than, say, the unemployed or deaf people. This in itself is an indication of a serious ground settling after tectonic shifts caused by the war and gradual politicisation of crucial social problems.

11.1. Efforts made by ideologists of multiculturalism to prove that ethnic communities are universal, linguistic, cultural and communication-based in their nature and that they have a much broader impact on the life of their members than is the case with, say, deafness, certainly neglect real-life circumstances. In many states, court proceedings have been conducted for years by now in which parents are trying (and at times succeeding) to prevent the insertion of artificial hearing aids in their children's ears, invoking their parental right to raise their children as they see fit in a specific cultural and communication community of people with hearing impairment. Whilst social deprivation is often understood as less permanent and less existentially predetermining feature than collective identities, the most recent surveys of communities suffering from long-term structural unemployment indicate that such a setting gives rise to formation of alternative communities with clear subcultural characteristics.

12. Under current circumstances ethnic communities may still (but increasingly less so) be considered as groups requiring special political protection in comparison to the groups mentioned above, but also the groups with alternative lifestyles, religious minorities, etc. The exception to this is undoubtedly the Roma population. Even more so since its structural discrimination is a common characteristic of practically all EU member countries (hence, this population cannot expect an improvement even after the EU accession). And yet, within this community, different levels of discrimination are also conspicuous. Undoubtedly, women in the Roma community find themselves in a considerably more difficult situation than men; unemployed women are in an even worse situation; single mothers even more so, etc.

13. In contrast to the necessary politicisation of the social context of the problem at hand, post-Yugoslav national states need a radical depoliticisation of the issue of ethnic minorities' position. Namely, they should be disassociated from the political patterns which had led to the war or played a role in it. Only then will the genuine protection of minorities, i.e. of individuals who are existentially predetermined by their minority status, become realistically possible.

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PROHIBITION OF ALL FORMS OF DISCRIMINATION

DISCRIMINATION IN EUROPE AND ITS WESTERN BALKAN REGION[1]

Prohibition of discrimination has been named by the Peace and Crisis Management foundation as a key element in the stabilization process following the disintegration of the former Yugoslavia. In this moment we will look at the contemporary international legal and political developments of this human rights principle, as well as case studies from the EU and Western Balkan's region in the area of discrimination on several grounds. The limited length of this review does not allow a full discussion of all possible grounds of discrimination, or the mechanisms that can be used to challenge discrimination.

Respect for each person's human rights should be a normal part of the life of every human being. But in countries where democracy, human rights and rule of law do not prevail that is unfortunately not the case. The state has power over people and can violate the rights of different groups and individuals, as can powerful non-state actors. The tragedy of the Second World War, in which 10 to 12 million people lost their lives, the Holocaust, and the devastation of almost all of Europe made many people determined that these horrible events should not occur ever again in the history of Europe.

The 1948 **Universal Declaration of Human Rights**, and the other international and European legal human rights instruments and mechanisms which followed, flowed from that determination. There is no hierarchy of human rights; all rights are equally important. The life of one human being cannot be more important or precious than the life of other human beings. Article 1 of the *Universal Declaration of Human Rights* states: "All human beings are born free and equal in dignity and rights. They

[1] The article was originally written in English language.

are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.[2] "This secular legal principle is also affirmed by the *Book of Genesis* 1.27: "So God created mankind in his own image, in the image of God he created them; male and female he created them".[3] In the international human rights documents a core human rights principle is that – as Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms puts it - ***discrimination based on the sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status***[4] is prohibited.

INTERNATIONAL LEGAL FRAMEWORK IN THE AREA OF ANTI-DISCRIMINATION

In very diverse, multicultural and multi religious Europe combating discrimination is one of the most important tasks facing states and civil society. There are many international human rights instruments and mechanisms to enable this task to be carried out.

The United Nations (UN) system has, among others: the 1965 *International Convention on the Elimination of All Forms of Racial Discrimination*; the 1979 *Convention on the Elimination of All Forms of Discrimination against Women*; and the 1989 *Convention on the Rights of the Child*. There are also declarations such as the 1981 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief*, and the 1992 *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. Associated with the Conventions are different committees for the implementation of these complex legal documents. Other important UN mechanisms are rapporteurs, such as the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.[5]

In the legal framework of the Council of Europe (which has 47 member states) there is the 1950 *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950). As noted above, the Convention's

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[2] Universal Declaration of Human Rights, http://donegallpass.org/UNIVERSAL_DECLARATION_OF_HUMAN_RIGHTS.pdf, 08.07.2012.

[3] Holy Bible, New International version, http://www.biblegateway.com/passage/?search=Genesis+1%3A27&version=NIV, 07.07.2012.

[4] European Convention on Human Rights, http://www.hri.org/docs/ECHR50.html, 07.07.2012, Article 14.

[5] Office of the High Commissioner for Human Rights, http://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/IndexSRRacism.aspx,8.07.2012.

Article 14 bans discrimination.[6] The Council of Europe also has another important instrument to protect people from discrimination, the 1995 *Framework Convention for the Protection of National Minorities*. Protecting people from discrimination is also the goal of the Council of Europe's European Commission against Racism and Intolerance.[7]

In the framework of the European Union (EU), the principle of non-discrimination is found in Article 2 of the legally-binding Lisbon Treaty. Article 21 (1) of the Charter of Fundamental Rights of the European Union (2000) also states the principle of non-discrimination.[8] To monitor and protect fundamental rights within the EU's 27 member states, the EU Fundamental Rights Agency (FRA) was created in 2008. (The FRA was previously the European Monitoring Centre for Racism and Xenophobia.) The EU member states are obligated to implement EU directives and transpose them into national legislation. The principle of prohibition of discrimination is to be found in Council Directive 75/117/EEC upholding the principle of equal pay for women and men; Council Directive 76/207/EEC upholding the principle of equal treatment for women and men with respect to access to employment, vocational training and promotion, and working conditions (as amended by Council Directive 2002/73); Council Directive 97/80/EC on the burden of proof in cases of sex discrimination; Directive 2000/78, relating to the general framework for equal treatment in employment and occupation.[9] The principle of non-discrimination on the basis of racial or ethnic origin is stated in Article 2 of Council Directive 2000/43. With regard to indirect discrimination in cases of sex discrimination, Council Directive 97/80/EC of 15 December 1997 regulates the burden of proof which applies.[10] When new states – such as those from the Western Balkans - join the EU,[11] they are obliged to transpose this EU legal framework into their national law.

The Organization for Security and Cooperation in Europe (OSCE – which has 56 participating States) works on the non-discrimination principle in

[6] **Article 14 – Prohibition of discrimination.** The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[7] European Commission against Racism and Intolerance (ECRI), http://www.coe.int/t/dghl/monitoring/ecri/default_EN.asp?

[8] Charter of Fundamental Rights of the European Union (2000/C 364/01), http://www.europarl.europa.eu/charter/pdf/text_en.pdf, 07.07.2012.

[9] Eurofund http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/nondiscriminationprinciple.htm

[10] Ibid, 07.07.2012.

[11] In 2011 the European Parliament adopted six resolutions raising awareness of the legal challenges of intersectional and multiple discrimination.

its work on "combating all forms of racism, xenophobia, and discrimination, including anti-Semitism, and discrimination against Christians and Muslims".[12]

It is important to note that all Western Balkan states are members of the Council of Europe, the United Nations and the OSCE. This means that the different states' human rights instruments and mechanisms are to be used and implemented within the context of these international legal and political frameworks. These frameworks are likely to be developed further in future. In the context of the EU, the Western Balkan states do not all have the same status. Slovenia is the only EU member at present, with Croatia joining the EU in the second half of 2013. But unfortunately, despite the many international human rights instruments and mechanisms, human rights violations occur on a daily basis in Europe and outside of Europe.

CURRENT CHALLENGES RELATED TO THE PRINCIPLE OF ANTI - DISCRIMINATION EU v. WESTERN BALKANS

Article 2 of the EU's Lisbon Treaty states: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail".[13]

Let us look at some challenges in the area of discrimination within the EU that have attracted attention in 2011 and 2012. These have included instances of discrimination based on gender, disability, and religion or belief.

DISCRIMINATION BASED ON AGE

Year 2012 is the ***EU year for active aging and solidarity between the generations***.[14] According to the findings of a social survey conducted by a British charity working on this issue, discrimination against elderly people is the most widely experienced source of discrimination in Europe.[15]

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[12] Organization for Security and Co-operation in Europe, http://www.osce.org/what/tolerance
[13] Office Journal of the European Union 30.03.2012.
[14] European Year of Active Ageing and Solidarity between generation, http://europa.eu/ey2012/, 07.07.2012.
[15] EU Fundamental Rights Agency Report, Fundamental rights: challenges and achievements in 2011, http://fra.europa.eu/fraWebsite/attachments/FRA-2012_Annual-Report-2011_EN.pdf, 07.07.2012.

More positively, the FRA's 2011 Annual Report noted that the Spanish Supreme Court abolished the law barring people under the age of 30 from applying for jobs connected with the administration of police forces. However, the FRA Annual Report also noted that discrimination in access to employment is most experienced by those aged between 15 and 24, and between 55 and 64.[16]

Outside the EU in Croatia, the Croatian Ombudsman has stated that there is proof of the placement of elderly people without their consent into retirement homes.[17] Young people find it very difficult to get good employment. Many who have employment consider themselves fortunate to have any employment – even employment that is underpaid in relation to their qualifications. This has been especially the case since 2008, when the current severe economic and financial crisis began to make an impact on all parts of Europe. In Croatia during 2011 there were 147 cases related to the issue of discrimination in the field of employment.[18]

The people of the Western Balkans have been living in an economic and financial crisis for the last 20 years. To deal with poverty and social exclusion, the proposed social market economy model of the Lisbon Treaty is highly necessary, as more than 20 million EU citizens are on the edge of extreme poverty. To respond to this challenge, the EU strategy 2020[19] has set five targets: employment, the EU's GDP, climate change/energy, education, and poverty and social exclusion.[20] This strategy is intended to combating poverty and reform the social welfare system so that citizens should not be discriminated against on the basis of their social status. As poverty is ongoing, civil society organizations also are working on the eradication of poverty as well social inclusion. Those who are poor are usually marginalized and have lost their voice in society. Therefore, the European society needs to work even harder to hear the voice of those who have become voiceless. In particular, such voices must be heard in decision making processes which concern them. In this regard special attention should be paid to women and children as particularly vulnerable groups.

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[16] Ibid, 07.07.2012.
[17] Ibid, str. 143.
[18] Croatian Ombudsman's Report on Discrimination in 2011, p.10, http://www.ombudsman.hr/dodaci/Izvješće%20o%20pojavama%20diskriminacije%20za%202011.pdf,, 08.07.2012, str. 10.
[19] Europe 2020 targets, http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/targets/index_en.htm, 17.06.2012.
[20] Ibid, 07.07.2012.

DISCRIMINATION BASED ON RELIGION OR BELIEF

Discrimination based on religion or belief is another challenge, as people belonging to Jewish, Muslim, Christian and other religious communities still experience discrimination inside and outside Europe because of their beliefs. How can we ensure that the dignity of all people – whatever their religion or belief – is respected? Today unfortunately, there is less and less space for religion to act in the public sphere. Wearing some religious symbols in public remains a problem and is prohibited by law in several EU countries. Wearing of burqas in public is forbidden by law in France and Belgium, and Netherlands and Italy were and are still discussing this type of legal ban in their National Parliaments. One important case in the European Court which confirmed the permissibility of crucifixes in public classrooms was the case Lautsi v. Italy.[21] Here it is interesting to note that the Italian Protestant Federation in this case supported Lautsi in opposing crucifixes within classrooms.[22]

In the Balkan region, freedom of religion or belief still remains a challenging issue. The ab-sence of a law regulating Church – state relations Montenegro remains a problem that Monte-negrin government is trying to solve. In the Former Yugoslav Republic of Macedonia (FYROM) there is a politically-motivated prosecution of the Archbishop of the Orthodox Ohrid Archbishopric, Jovan Vranesovski, who represents a minority Church. In Serbia, the Baptist Church is dissatisfied with the registration procedure of the Ministry of Religious Af-fairs, as they do not have the same status as the seven designated traditional Churches and religious communities. For Churches and religious communities in Croatia one of the most im-portant challenges is property rights, as they were deprived of property during the communist past.[23] The Serbian Orthodox Church and the Jewish Community in Croatia have stated that in the last 10 years minimal progress has been made in this regard.

DISCRIMINATION BASED ON RACE OR ETHNICITY

Another remaining European challenge is racial and ethnic discrimination. In 2011 Anders Behring Breivik killed 77 people and wounded 242 people because of his deep racial and ethnic hatred of non-white

[21] Grand Chamber, Case of Lautsi and others v. Italy (application no. 30814/06) Judgment Strasbourg.

[22] http://csc.ceceurope.org/fileadmin/filer/csc/Human_Rights/Human_Rights_Library/Crusifix_Italian_Protestant_Federation.pdf, 23.06.2012.

[23] Croatian Ombudsman's Report on Discrimination in 2011, p. 42, http://www.ombudsman.hr/dodaci/Izvješće%20o%20pojavama%20diskriminacije%20za%202011.pdf

people and extreme religious intolerance.[24] Data on violence against minority groups in Europe can often be incomplete, making it difficult to quantify the challenge. Discrimination based on religious grounds and discrimination based on ethic grounds are often very closely connected. Children of minority groups can experience discrimination in the school environment or aggressive bullying. A strong government integration policy is needed in order to address gaps between wider society and discriminated groups. Government action supporting reconciliation – for example in deeply divided societies such as Northern Ireland – is also necessary. This can be politically controversial. For example, in 2011 the British Prime Minister, David Cameron, and the then French President, Nicolas Sarkozy, publicly stated that multiculturalism policy has failed in Europe. In the Balkan region discrimination based on race and ethnicity also exists. However, the region has the advantage of a common linguistic heritage as a strong common denominator. Problems also remain in relation to respecting people's freedom of choice in accepting another religion, belief or non-belief system. It seems that more time is needed for people in the Balkan region to realize that its diversity can serve as an internationally-recognized regional strength, instead of being seen internationally as a source of conflict.

The European Court for Human Rights in Strasbourg in 2009 decided in favour of the plaintiffs in the case of *Sejdić and Finci v. Bosnia and Herzegovina*.[25] The plaintiffs requested that discrimination based on ethnic origin in the Constitution be removed, as this allowed the President and Parliament to be only composed of only Serbians, Bosnians and Croats. This excluded others such as Jews, Roma and other ethnic minorities from running for leadership positions. The decision has not yet been implemented.[26] In Croatia after the Balkan wars the return of Serbs to their homes remains obstructed. Human Rights Watch noted that: "Despite the announcement of a plan to compensate Croatian Serbs stripped of property rights during the war from 1991-1995, Serbs faced continued obstacles reintegrating back into Croatia".[27] The report stated that only 226 applications were approved from a total of 7.742 to government-sponsored housing programs for returnees. 60% were

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[24] EU Fundamental Rights Agency Report, Fundamental rights: challenges and achievements in 2011 Fundamental Rights Agency Report, p. 155, http://fra.europa.eu/fraWebsite/attachments/FRA-2012_Annual-Report-2011_EN.pdf
[25] Human Rights and Democracy in the world: report on EU action in 2011, p. 142.
[26] World Report on Human Rights for 2012, Human Rights Watch, p. 431.
[27] Ibid, p. 436.

of Serbian nationality.[28] It is important to mention that the report of the European External Action Service (EEAS) stated that Foreign Ministers of Bosnia and Herzegovina, Croatia, Montenegro and Serbia stated in Belgrade that "they will convene a donor conference to finance a joint refugee program on housing worth 584 million Euros".[29] The EEAS specially monitors the policies of employment of minorities in Croatia.[30] In Serbia according to the Ombudsman's report[31] protection of the identity of national minorities and their security is better in the Province of Vojvodina than in Serbia in the case of Albanians, Bosniaks, Bulgarians, Vlachs, Greeks, Roma and others. In Kosovo people are discriminated on the base of their ethnicity, and daily conflicts among Serbs and Albanians remain unfortunately a reality. In 2011 in Serbia, there were 221 criminal proceedings based on the violations of the rights of national minorities, 51 cases being initiated by private individuals.[32] Those cases were related mainly to the use of language in official contexts, as well as discrimination based on ethnicity or gender by public officials, according to the Serbian Ombudsman's report for 2011.

In the area of discrimination of minorities such as Roma, so called "visible minorities", the problem seems to be unsolved in many European countries. Therefore the EU has adopted the European ***Framework for national Roma Integration Strategies up to 2020***,[33] which should facilitate Roma inclusion through national polices of the EU member states and provide financial support for the most socially marginalized European citizens. This Framework has four targets: education, employment, health and housing. Roma daily face intolerance, discrimination, social exclusion, obstacles to access to housing, health care, and violent evictions. This issue is complicated, as shown by the expulsion of Roma of Romanian and Bulgarian citizenship in 2010 from France.

Violations of the rights of Roma remain a challenge in the Western Balkan region. The readmission of Roma to Kosovo from Germany, who fled during the 1990s from former Yugoslavia, continued in 2011. It should be stated that these Roma have lived in Western Europe for a long time and their children were born in the EU countries. It is often the case that

[28] Ibid, p. 436.
[29] Human Rights and Democracy in the world: report on EU action in 2011, p. 134.
[30] Ibid, p. 136.
[31] Protector of Citizens, 2011 ANNUAL REPORT, Belgrade 2011, p. 41.
[32] Ibid, str. 43.
[33] An EU Framework for National Roma Integration Strategies up to 2020, , http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf

these children do not speak the Serbian or Albanian language. Ability to speak these languages would facilitate their faster integration into society and prevent further social exclusion. The language issue also causes difficulties in access to health services. In Bosnia and Herzegovina, Roma children still attend school less than those of other ethnicities. In its World Report on Human Rights for 2012, Human Rights Watch stated: "99% unemployment rate for Roma in Bosnia in 2011 meant even those who completed school had virtually no chance of finding work".[34] The report notes that: "Bosnia continue to host Roma, Ashkali and Egyptians from Kosovo under temporary protected status".[35] In Serbia[36] there are about 6500 Roma who do not have birth certificates. To solve this problem, the Serbian Government has adopted a strategy and action plan for the improvement of Roma status. In Montenegro, the Roma are along with people with disabilities, the most discriminated minorities.[37]

DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES

In the area of disability, according to the European Disability Forum, there are 80 million Europeans who struggle for free movement together with their families, as well as to find jobs. This Forum advocates that the EU should in the making of polices related to economic growth, take into account people with disabilities. There is also the problem of reactions to people with disabilities which are not visible and of accessibility.[38] The Forum notes that those who are the most vulnerable should not pay for the financial mismanagement of others which has led to Europe's current economic crisis.

In the Western Balkan region this problem also exists. For example, the Montenegrin government does not have a strategy for solving the issue of housing of people with disabilities.[39]

DISCRIMINATION BASED ON GENDER

In this short amount of space it has not been possible to analyze problems of discrimination deeply, or how these problems can be solved. However, the issue of equal pay for equal work between women and

[34] World Report on Human Rights for 2012, Human Rights Watch p. 431.
[35] Ibid, p. 433.
[36] Izveštaj Zaštitnika građana u Srbiji za 2011. godinu, str. 42.
[37] Izveštaj Zaštitnika ljudskih prava i sloboda u Republici Crnoj Gori za 2011. godinu, str. 115.
[38] The European Disability Forum
http://www.edf-feph.org/Page_Generale.asp?DocID=13854&thebloc=13856 17.06. 2012.
[39] Annual Report of the Montenegrin Ombudsman for 2011, Podgorica, March 2012, p. 121.

man still remains an issue in Europe and the Western Balkans - especially in the non-state sector. In this regard, legislation which to regulate the equality between men and women needs to be reinforced especially in those regions where a negative cultural attitude towards women remains. Unfortunately the cultural advantage in favour of men is still very strongly present in the Western Balkan region. In Montenegro, discrimination based on gender is visible though the election process. Out of 17 members of the government covering 16 Ministries, only two women hold the position of Minister.[40] The issue of discrimination of people with different sexual orientation remains the challenge in the EU as well in the Western Balkans region.

What could be done to combat the discrimination in diverse Europe and its Balkan's region?

1. Civil society could advocate for the implementation of anti-discrimination legislation and its establishments in states where it does not still exist.
2. Civil society needs a higher level of knowledge in the area of human rights education with the emphasis on the international human rights instruments and mechanisms.
3. In the long term human rights education should become part of the school curriculum and enable a human rights culture to become a part of people's daily lives.
4. Churches, religious communities and civil society need to join together in combating discrimination on all grounds and to make more common initiatives on the local, national, regional and European level.
5. European states would need to harmonize their legislation with the respective international human rights standards.
6. States need to collect reliable data on human rights violations and instances of discrimination, and encourage citizens to report such violations.
7. European states should establish a social market economy which promotes social justice and combats discrimination related to the social status of individuals and groups, as well promotes the social inclusion of socially marginalized and vulnerable groups.

[40] Ibid, p. 117.

8. States need to bring forward measures to promote access to public life and facilities of disabled people and their families. The high financial costs of this can prevent states fulfilling international standards, and this should be addressed.
9. National Intuitions, courts and equality bodies should recognize the phenomenon of multiple discrimination which still does not have distinct legal status.

CONCLUSION

There are already existing international legal and political frameworks for combating discrimination on all grounds, not only those noted in this review. Despite challenges as the legislation in the human rights field develops the question of its implementation remains. States in Europe including the Western Balkan region must fully implement their international human rights obligations towards individuals and groups. The question of discrimination remains an issue within the EU, even though these states have many more financial, institutional and legal means for implementation than the states from the Western Balkans region.

If we want to change the daily reality for people and its nations in Europe and its Western Balkans, we need to create a human rights culture for everybody and help European citizens to understand how to use their own rights in societies where human rights, the rule of law and democracy prevails. Each European citizen must work for the fulfilment of the rights of all citizens. It is our call and our duty as citizens and believers!

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DECENTRALISATION AND REGIONALISATION

Countries which broke from the Communist system at the end of the last century faced the necessity of state and nation building. Where the process of state and nation building was protracted, as in former Yugoslavia, the rejection of Communism was not conducive to democratisation but consolidation of populist authoritarianism. Therefore, original tendencies towards concentration and centralisation of power from the late 1980s gathered momentum in the times of war and as part of authoritarian regimes, particularly in Croatia and Serbia. Instead of former broad Socialist decentralisation, districts were established as an extended arm of the state in a system of deconcentrated power. Abolition of autonomy as part of re-centralisation of the political system and suppression of provinces' autonomy and local self-governments, dissolution of regional inter-municipal communities, obstruction of local municipal self-governments along with considerable restrictions imposed on their competences, and, finally, additional dispossession of local self-governments' assets in 1995, resulted in Serbia in the most comprehensive centralisation in comparison to any other former Yugoslav republic. (By adopting the Assets Owned by the Republic of Serbia Act, the republic became the holder of the entire assets of cities and municipalities, which effectively hindered economic entrepreneurship, impeded foreign investments and set back economic growth of cities and municipalities.)

It was not until the political changes in Croatia and Serbia in the year 2000 that the reforms were undertaken paving the way for democratisation and democratic consolidation, but only after the removal of the authoritarian system of power and the launch of an all-embracing democratisation process did it become clear that decentralisation based on subsidiarity principle was an important democratisation factor. Direct EU incentives and expected course of these societies' reforms aimed at bringing them closer to the EU had a strong impact on such developments, including territorial organisation of power and decentralisation coupled with local autonomy development. Decentralisation in Macedonia officially started on 1 July 2005, when most powers were

devolved from the central government to the local level. In Slovenia, the process had started earlier – in 1993, when the Local Self-Government Act and the Local Election Act had been passed, followed fifteen years later by the second phase of decentralisation. In Montenegro, the decentralisation process was launched after gaining independence and is still in its infancy. Today we already have plenty of similarities in local self-government systems in the former Yugoslav republics with regard to the institutional framework featuring length of term of office, scope and type of competences, system for financing local self-governments, but there are also considerable differences related to local self-government functions, position of municipalities vis-à-vis central government, financing and supervision. All these countries are still relatively highly centralised. Whilst centralised organisation in the years after the formation of independent states was understandable, at present, two decades on, centralisation is frustrating development in each and every ex-Yugoslav republic. This is why the resumption of substantial decentralisation process is a necessary prerequisite for further democratisation of the society and the state.

Discussion on decentralisation was stepped up with the inclusion of the issue of regionalisation. In Serbia, the drawing-up of several draft constitutions in the period between 2001 and 2005, featuring ideas on decentralisation and regionalisation with several models of single and multiple-tier, symmetrical and asymmetrical decentralisation, as well as more recent demands for regionalisation coming from various urban centres, contributed to such a discussion. Regrettably, a window of opportunity for the establishment of a framework for substantial decentralisation, which presented itself in the process of adoption of the 2006 Constitution, was missed.

Current situation with political systems in former Yugoslav republics regarding territorial organisation of power and decentralisation is much better than it was in the nineties, but is still unsatisfactory given the small progress achieved in the past ten years or so. Competences of the state and the central government are still excessive; relations between the state and local authorities are not partner-like but hierarchical; no regional autonomy whatsoever has been established; substantial reform of local self-government has not been achieved; local public administration's capacity has been only slightly improved, but it has not been enabled to carry out further reforms and, in particular, to render itself more effective and capable of raising funds for local initiatives and efficiency.

Undoubtedly, there is a need for a serious decentralisation and regionalisation. These processes must rest on several fundamental principles.

Transition from authoritarianism to liberal democracy and from command economy to market economy is closely related to the transformation of a centralised community into a decentralised one. Thereby, decentralisation manifests itself as a process serving the purpose of democratisation and liberalisation, and such a transformation entails parallel implementation of democratisation, decentralisation and deregulation.

Examples of three successfully democratised countries, following shorter or longer periods of centralised autocratic government (Germany and Italy in the aftermath of World War II and Spain after the abolition of Francoism in the seventies) show that democratisation in those countries, as well as economic liberalisation, i.e. deregulation, was implemented in conjunction with decentralisation. Decentralisation represents a very complicated process in strategic terms which needs to be well-designed and adequately deployed. Lengths of time which were required in successfully decentralised countries from the point when the decision on decentralisation was made to its implementation and establishment of a decentralised system testify to the complexity of such an enterprise: in Poland – nine years, in Czech Republic – seven, in Hungary – eight, in Spain – as many as 16 years, and in Italy – over 20 years.

Bearing in mind these experiences and drawing some relevant conclusions therefrom, we may single out several principles which should guide us in the territorial re-organisation of power towards decentralisation and regionalisation based on the subsidiarity principle. Pragmatism in approach prompts the introduction of the *dispositive principle* for various degrees of autonomy depending on the aspiration for autonomy and governance capacities. In this respect, this is both a creative and procedural model since it presents an opportunity to establish autonomies in the process which would match realistic aspirations, needs, wishes and possibilities, economic and governance capacities of local communities. Therefore, definitive structure should not be imposed. Instead, only a constitutional framework should be put in place within which an autonomy may be established. In some places there is a greater demand for more autonomy of municipalities, and in others there is a demand for autonomous regions, and they should be met concurrently, relying on the already achieved degree of the existing autonomies.

There are four fundamental principles which the territorial reconstruction of a state must apply so that the implementation of decentralisation and regionalisation could be deemed successful. The first is the *principle of democracy* which entails wide participation of citizens at the lower levels of territorial organisation in the form of small "schools of democracy", which would render citizens responsible and politically competent participants in the decision-making. The second is the *principle of subsidiarity* which entails that a unit of government at a higher and broader level of power should not take over the tasks which a unit of government at a lower and narrower level wants and can do on its own. Thus, a greater efficiency in the implementation of decisions is achieved since they are made where the impact is the most immediate. The *principle of economic* rationality entails assuming entrepreneurial responsibility for one's own destiny on the part of all levels of government and all territorial communities. The one who bears the (both beneficial and detrimental) consequences of a decision and who is the most immediately affected by it should also take and carry out these decisions. Finally, the *principle of liberalism* entails a limited state, i.e. the least possible degree of state regulation, regardless of the level at which such a regulation is enforced, be it central government or the authorities in autonomous territorial communities. It also entails liberal subsidiarity, i.e. public institutions should not take upon themselves what private agencies *want* and *can* do.

Namely, self-containment, mandatory and uniform nature of solutions may result in the establishment of a wide network of autonomies which will fail to perform their primary function, and this may compromise the idea itself in the same way in which this happened in former Yugoslavia. Not all the municipalities should be interested in all the competences. They might perhaps find some competences more attractive as they would be able to reap some benefits from them, whilst others might not seem so attractive as they would only incur losses. Citizens must be able to see the benefits stemming from association, and if the municipalities *freely* make their choice, selecting what they are capable of performing from a constitutionally defined maximum of available competences and a minimum of the content of autonomy, and organise themselves within broader or narrower communities of territorial autonomy (regions), then they will certainly perform such functions *more efficiently* as opposed to mandatory obligations for which they are neither ready, nor competent. Municipalities will surely not master competencies if they are overburdened with powers for which they lack either expertise or interest and

capability to exercise them. Therefore, more voluntariness is required in the process of creating territorial autonomies where municipalities and regions should be granted more *freedom of choice*.

For this very reason, when selecting a specific concept of decentralisation and regionalisation, the starting point should be two fundamental principles: the *dispositive principle*, envisaging various degrees of autonomy pursuant to needs, interests and wishes of municipalities for a lower or higher level of association; and the *principle of openness* of constitutional solutions whereby the system is allowed to define itself as it develops. A definitive structure should not be imposed. Only a constitutional framework should be provided as part of which various levels of autonomy may be established. Such a constitutional regulation of the primary form of regional autonomy should specify: 1) *maximum scope of competences,* 2) *minimum* content of an autonomy; and 3) *procedures* for establishing an autonomy. Such an openness must be, of course, limited by a certain number of constitutional norms stipulating the procedure for establishment of a regional autonomy along with a clear residual clause in favour of the central government.

In this manner the initiative for launching the process of gaining autonomy is left to the municipalities seeking to form a region, thereby giving priority to those who are taking over the responsibility, relying on the explicit preferences of citizens in those municipalities and their local decision-making. Only the citizens "locally" and their municipalities know what is in their best interest, only they can estimate their economic capabilities and governance capacities as well as readiness for taking on the responsibility for their own position, which in turn would satisfy the combination of the four above-mentioned principles.

This requires decentralisation based on the principle of subsidiarity, in terms of both the principle of (territorial) organisation of power and the principle of (associative) organisation of society, meaning "as much society as possible, as much state as necessary", which makes it structurally close to the civil-societal paradigm and the liberal ideal of a minimal state. In this manner this horizontal dimension of subsidiarity combines with the vertical dimension according to which a larger community (say, the state) should solely take on the tasks that an individual or a smaller community (family, municipality, region) cannot carry out, which entails the principle of primacy of the most capable levels of action and accountability.

Decentralisation is, therefore, an important and far-reaching process with substantial effects on the entire political, economic, social and cultural life in a state. Advantages of a decentralised state and beneficial impact of decentralisation on democracy, let alone arguments in favour of decentralisation, need not even be discussed here. However, decentralisation and regionalisation may also pose a *problem*, an equation with many unknowns, given that serious and complex efforts are required for more-or-less comprehensive reshaping of the entire societal and state structure, very easily resulting in an unintended and abundant fallout from this exercise. Some of the possible problems are insufficient administrative preparedness and incompetence at lower organisational levels, poor governance capability and possible dissipation of resources, but also a proliferation of irresponsible bureaucracy, and, consequently, a failure to achieve the intended results.

Experiences of other states show that the process of decentralisation is never achieved in its entirety, but represents a permanent institutional adjustment in the direction of wider decentralisation. At issue here is a pragmatic adjustment rather than a commitment to fixed models. Hence, the understanding and projection of decentralisation and regionalisation as an *obligation* in terms of *obliging* municipalities to organise themselves within regions as well as the constitutional stipulation of *equal* competences and *uniformity* in the internal organisation of regions and municipalities should be avoided. If this were the case, decentralisation ceases to be the right of citizens to self-organisation and produces a series of problems. Finally, one should bear in mind the poor capacities of our municipalities, their poverty, excessive expectations from the central government and their habit of relying on "top-to-bottom" initiatives, which is something that may change for the better only gradually and only if municipalities and future regions are allowed to *estimate themselves* their financial, entrepreneurial and governance capabilities.

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PERSONAL FREEDOM

PREFACE

A civil war destroyed Yugoslavia twenty years ago. It was as if the worst nightmare of all those who had feared the collapse of Yugoslavia after Tito's departure came true; it was like 1941 revisited. People who had no connections to politics whatsoever were persecuted and murdered in their villages and towns, where they had lived peacefully until several months earlier, only because of their nationality. Most media outlets, staffed with eligible journalists and those who quickly made every effort to become ones, readily used the possibilities of newly acquired freedom to transform themselves into warmongering propaganda machines. A large share of the intellectual elite either kept silent or enthusiastically rallied round political causes which were – and they should have seen it before anybody else – morally unacceptable, and, in practical terms, on the grounds of the accumulated XX century experience, detrimental to their own people and the state, and effectively belonged to the turn of the XIX to the XX century. Leadership of the Yugoslav People's Army (JNA), which had been preparing over the previous 45 years for the defence against an external aggression, proved to be no match for political manoeuvres of Slobodan Milošević which were tearing the country apart from the inside. JNA allowed itself to be instrumentalised and abused by the politician who kept talking about Yugoslavia, but whose actions led to the conflicts "of which neither the armed ones could be ruled out".

Of course, there were people who had moral integrity and personal courage to oppose widespread madness. Their calls for common sense, their condemnation of war and proposals as to how to avoid it, and then how to put a halt to it, at a time when narrow-minded nationalism, animosity and hatred were desirable forms of patriotism, were looked upon, in the most benign cases, as Don Quixotian utopias.

Among such Don Quixotian utopias were the efforts and endeavours by Boris Vukobrat, shaping up the establishment of the Peace and Crises Management Foundation, and partly presented in a booklet entitled *Proposals for a New Commonwealth of the Republics of ex-Yugoslavia*,

written in 1992 and published in 1993. Today, twenty years on, these Proposals seem reasonable, understandable in themselves and they impose the following question: had they been accepted at the time, how many human lives would have been saved, how many calamities and sufferings would have been avoided? Judging by some of its predictions, say: "after the end of the war, those responsible would be put on trial in an international court whose judgement handed down to extremists would remove collective guilt from the people", at the time when there was no such a court in sight, the Proposals proved to be less utopian than "realpolitik" of the then ruling politicians who looked down on such proposals and predictions sneeringly and contemptuously, and yet many of them ended up in the dock of such an international court established precisely to prosecute them.

Peace, Freedom and Prosperity, which is in the title of Vukobrat's Proposals, always sound slightly utopian. Just like ideals which have been infringed and betrayed countless times. This does not diminish their value, quite the contrary. Experience shows that it is a hardly attainable goal, that the building of a state administrative structure whose actions would be guided by these fundamental principles and which would be democratic is something that requires a combination of high ethical principles, persistence and knowledge. .

Proposals lay out at the very beginning nine fundamental principles of a new commonwealth. Twenty years on, there is no new commonwealth of those states in place and everything suggests that a form of association will be more likely achieved in the future through the EU membership. Many other predictions and propositions from the Proposals proved to be far-sighted, but much more time and many more stray paths than necessary were required for their fulfilment, and yet this, along with the consequences, could have been avoided.

One of the fundamental principles in the *Proposals*, which is spoken about more further in the text, is the *Principle of Personal Freedom*. Presented in six sentences, its basic thesis is: "Personal freedom is inseparable from economic freedom; without material security, freedom is an illusion."

At the time, when political systems, whose essential characteristics were absence of freedom of political choice and freedom of entrepreneurship, were crumbling one after another, such an assessment was self-evident

and generally accepted. Developments in the past twenty years, particularly in the countries undergoing transition, suggest, in my view, caution and point to a somewhat complex relationship between personal and economic freedom.

Analysis and discussion of those proposals seen through the prism of experience of the time past may prove to be a precious contribution to a better understanding of the principle which the *Proposals* speak about. They remain as a testimony, one of the rare glints of light which remained glowing in the proverbial Balkan tavern when all the lights went out.

PRINCIPLE OF PERSONAL FREEDOM

About forty years ago, I came across a book by Jawaharlal Nehru – a collection of letters which he had written from prison to his daughter Indira. These were short essays about historical events, various philosophical movements, science and economy, and fundamental human aspirations. Nehru had written them endeavouring to contribute to the education of his daughter. He most certainly contributed to my education. I was reading them at the time when some texts vibrated in resonance with my still-not-fully-developed views. I mostly forgot the content of some of the letters, but the rationality of arguments, absence of any bigotry, resentment or hatred, but imposing and unwavering faith in justice and freedom have lingered on in my memory. The letters from prison had been written by a wise and, above all, free man.

Unlike the notions in natural sciences or mathematics, which are discussed within the framework of existing theories and which tolerate not contradictory interpretations,[1] everybody has an intuitive idea about personal freedom, and some are so different that, at first sight, they seem incompatible.

There is a view that personal freedom is, above all, internal freedom, freedom of mind. That a truly free man is free irrespective of his environment. Many historical examples may be cited, but the majority of people will also come up with examples from their own experiences which, most often in negative terms, corroborate the thesis. For politicians, temporary power ceases to be the means for achieving designated objectives

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[1] Results which are at odds with theoretical predictions and antinomies are also accumulating over time within the framework of individual theories in natural sciences. Efforts to resolve emerging contradictions typically lead to new theories.

but becomes in itself an obsessive goal which tramples internal freedom and turns a man into an addict like a junkie or a gambler. Tycoons who, looking from the outside and judging by the choices available to them but not to an average citizen, seem to be enjoying unlimited personal freedom are becoming slaves of greed and their personal interests degenerate focusing solely on amassing personal wealth. Freedom of mind in terms of freedom from customary human vices such as selfishness, envy, greed, hatred… is an ideal which the majority of global religions attribute to their mythical characters, the mediators between the divine and the human, such as Buddha, Jesus or Mohammed. In reality, freedom of mind is related to one's own choice to adhere to moral principles applicable to both oneself and others, to self-discipline, strictness with respect to one's own self, and tolerance and empathy for others; this is more of a road than a state of mind.

For most people the notion of personal freedom is linked to the type and intensity of limitations imposed from the outside by the social and/or natural environment. Freedom therein is proportional to the possibility of choice – to what a degree we can take our own free decisions. Fierce philosophical debates with conflicting views over this very first premise – whether we possess at all free will which enables us to make a choice – have been raging for centuries (in fact, since antiquity and also in civilisations which did not have any mutual contacts).

A prevailing stance, which has been corroborated by different arguments in different times, is that free will is entirely or for the most part our illusion.[2] This may be true, but this can be said equally or to a greater degree of the majority of human instincts and traits. That religious beliefs are an illusion stemming from a feeling of helplessness before disinterested nature and innate fear of death, that the sense of national identity is based on an illusion about common ancestry, that love or friendship are only different manifestations of the instinct for the preservation of species... This does not diminish their importance for human existence, whose importance itself, from a "cosmological" point of view, is most likely an illusion.

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[2] Arguments range from the religious – that our actions are predetermined by God's will which is the only free will (e.g. M. Luther), logical – that the veracity of future events is determined by the veracity of present-day events (e.g. Aristotle), to physical (e.g. Laplace or S. Hawking in The Grand Design: "Because the human brain is composed of particles, and their behaviour is governed by the laws of nature, free will is just an illusion" and biological ones – that our behaviour is determined by genetic heritage and environment. The most recent neurological researches related to free will show that our brains initiate preliminary activities required for our decision as much as 10 seconds before we actually become aware of it.

However, the choice to build internal freedom or the unresolved physical-metaphysical question about the existence of free will do not translate into autism and insensitivity to external injustices and lack of freedom. These injustices and lack of freedom are typically clearer and more specific than the positive definition of personal freedom (whose strict boundaries cannot be drawn), and they point to a clear choice at the level of emotions.

In one his letters-essays (supposedly about freedom; I forgot the content and lost the book, but I remember the quotation), Nehru started with a verse from a Shelley's poem:[3]

> *What is freedom? - ye can tell*
> *That which slavery is, too well -*

Human history appears to be a never-ending series of conflicts, plunders and enslavements of the weak within one's own state and as part of conquests, intertwined[4] with attempts to institutionalise cooperation which has always presupposed the recognition of some rights and freedoms. Aspiration to freedom and equality is thus unambiguously manifested in those who have been enslaved and discriminated against, and, irrespective of race and civilisations, such aspirations may be seen as fundamental human traits,[5] given that "truths are obvious *per se*". Something that has been proved to be so by countless "examples" and on the basis of which they are employed as starting points for constructing theories (of the human society); something like axioms.

All social transformations striving for the creation of a juster and freer society start from the existing injustices and lack of freedom, and, consistently, the notion of personal freedom for them is clear and unambiguous – the abolition of limitations imposed externally which are seen as lack of freedom and injustice.

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[3] The Internet is a great thing. After googling it a bit, I found that this was a verse from P. B. Shelley's poem The Masque of Anarchy

[4] If we are to follow over a longer historical period the interaction of conflicts, which are inevitable in the conditions of limited resources, and cooperation, which, to say the least, is a path towards greater prosperity, the argument that the conflict resolution is increasingly getting closer in percentage points to agreed settlements is not entirely without foundation. It seems to me that we had particularly bad luck with the disintegration of Yugoslavia.

[5] That the aspiration to freedom is a fundamental human characteristic does not mean that it is only human. Many animals have such an impulse which suggests its genetic source. Departure from safety of one's own "herd" at the time of sexual maturity, mingling with other members of the species, finding new "pastures and hunting grounds" – are all undoubtedly beneficial to the species, while the behaviour which is of benefit to the species has a tendency to shape itself up as part of the genetic heritage. Our occasional craving for "wandering far away", propensity of young people for travelling for travel's sake, strong human need to have the freedom of choice – all this could be sublimated expressions of the same deep impulse.

Aspiration to freedom may, under a powerful autocracy or tyranny, be suppressed for a long time, tucked away like live coals underneath the ashes, visible only in rare argumented criticisms of imposed non-freedoms, the criticisms for which a strong conviction and physical courage are required because they often bring about unpleasant consequences for those voicing such criticisms. However, when the conditions are met, repression caves in and suppressed discontent may well flare up bolstered by a surprisingly massive popular support and often with unbridled intensity.

The penultimate example of such a precipitate revolutionary change on the world scene took place in 1989-1991 in a series of European countries, which had been, ever since World War II, to a larger or smaller extent, under the rule of the USSR, as well as in the USSR itself and in Yugoslavia. All these countries, despite mutual differences, had one common denominator – the one-party political system and command economy controlled by the state. There was no freedom of choice in either politics or entrepreneurship. Turbulent changes which occurred in those countries strongly indicate that one-party political systems cannot cope with the human need for a free choice in matters which should obviously fall into the category of personal freedom. The most tumultuous and, indeed, the most tragic consequences of this – in terms of freedom and justice – positive change, in principle, came to pass, paradoxically, where the degree of political and economic freedoms was the highest and where a peaceful transformation had already started – in Yugoslavia.

This was nothing new and one could predict that at the time when the old government was crumbling while the new forms of government did not establish themselves, in an atmosphere of general uncertainty and insecurity, parties and movements with populist and hawkish political agendas would emerge to further stir up this insecurity and fears as well as skilfully use them to their own advantage. Thus, e.g. Leszek Kołakowski in his article *Uncertainties of a Democratic Age*, written in 1989, singled out, among permanent threats to democracy, "the growth of malignant nationalism worldwide which is propagating superiority of one's own nation and hatred towards others, seeking reasons to expand to the territories of others and placing national values above human rights".

American journalist Art Buchwald once wrote that Socialism modelled after the ideas of Marx brothers was developing in Yugoslavia. After its collapse, it seemed as if democracy and market economy being intro-

duced in the newly created states were modelled after a "horror" story by W. Jacobs *The Monkey's Paw* in which wishes were granted but in a way which made you want you had never made a wish at all. Political pluralism and free elections, that "celebration of democracy", brought nationalist parties to power with priorities completely at odds with the ideal of a free and democratic society committed to peace. Leaderships of such parties in Croatia and Serbia had done nothing to prevent the armed conflict, but had considerably contributed to its outbreak. The only thing that they managed to agree on was how to satisfy their petty imperialist appetites at the expense of Bosnia-Herzegovina. Personnel in judiciary and members of staff in editorial rooms of the most influential media were being replaced by those eligible in terms of their party and national affiliations. The transition to market economy boiled down for the most part to an all-out plunder of socially-owned assets and lay-offs of workers who had created those assets by their labour. All of this enjoyed considerable support of the electorate and was awarded with election victories in the past ten years. For such autocracies enjoying popular support, a new term was coined – "democrature".

It took twenty years, several bloody local wars, hundreds of thousands of violent deaths and two million refugees so that some of those states could reach a position where they could have been, with a little bit of luck, like the Czech Republic or Slovakia, only several years after the start of democratic changes. Aspiration to freedom is a part of human nature, but how to keep the attained level of freedom and turn it into a standard below which the society would not want to go, how to build a state which will gradually enhance both safety and personal freedom of an individual – these things need to be learnt.[6]

Twenty years after the start of this "democratic transition" of Eastern and Southeastern European countries, a new "surge towards freedom" occurred in dormant, long-standing autocracies in Arab countries of Northern Africa and Middle East –the Arab Spring of 2011. In some of these countries the changes were relatively peaceful and brought more freedom and democracy to the citizens, but some sank into bloody civil wars which constituted a fertile ground for radical political options (and not for complicated democratic structures and procedures), hence the likely outcomes range between theocratic dictatorships and parliamentary democracies.

[6] Trend in the world, see Appendix, provides arguments for a moderate optimism.

In the late eighties and early nineties, many considered market economy as a *conditio sine qua non* for personal liberties of an individual and the democratisation of a society. The events, particularly those in past several years, have shown that this relationship is more complex, that the free market controlled solely by competition has its own laws which need not be and are often not compatible with the principle that one's freedom cannot be enjoyed at the expense of the freedom of others.

Freedom to critically contemplate generally accepted truths, which would threaten, if this were not so, to become dogmas, either imposed or within our own selves, in this world where "the only constant is change", is an important component of personal freedom.

For example, the Constitution of the United States (Second Amendment) stipulates as one of the fundamental freedoms – the freedom to keep and bear arms. At the time when it was drafted (the late XVIII century), all the countries from which the American immigrants arrived were feudal monarchies with serfdom system where keeping and bearing arms was a symbol of a free man. Today, such a right, which the weapons manufacturers readily invoke, seems more like a potential threat to freedom and safety of American citizens than an instrument which would help protect that freedom.

Higher level of social security and more responsible attitude to nature "which we have borrowed from our grandchildren" are only some of the variables to be included in making a judgment on the desirable degree of freedom for some to keep getting rich without control and for others to remain unemployed and poor.

Our own personal freedom is a combination of internal freedom, freedom of choice and freedom from institutions, above all, the state, created by the people in a certain time, as a product of their visions, knowledge and prejudices, which we endeavour to improve by trial-and-error method so that it could serve as a guardian of freedom and security. There is no guarantee for success, but, this perhaps is the essence of personal freedom – that a free man takes his own decisions and takes on responsibility for them.

APPENDIX 1

GLOBAL TRENDS IN FREEDOM*

Year under review	Free countries	Partly free countries	Not free countries
2012	87 = 45%	60 = 31%	48 = 24%
2001	85 = 44%	59 = 31%	48 = 25%
1991	76 = 42%	65 = 35%	42 = 23%
1981	54 = 33%	47 = 28%	64 = 39%

In 2012, 3.02 billion people live in the countries which are designated as free, 1.50 billion people live in partly free countries, and 2.45 billion people live in the countries which are designated as not free.

(*Data from the ***Freedom of the World report***, Freedom House)

APPENDIX 2

STATUS OF POLITICAL AND CIVIL LIBERTIES IN INDEPENDENT STATES

The first numerical rating represents a degree of political freedoms and the second represents a degree of civil liberties. Freedom ratings: Free (1.0 to 2.5), Partly Free (3.0 to 5.0) and Not Free (5.5 – 7.0). Political (lack of) freedoms rating is based on the evaluation of equality before the law and the right to a fair trial, voting rights and free elections, (lack of) freedom of association. Civil (lack of) liberties rating is based on the evaluation of (lack of) freedom of speech and writing, (lack of) freedom of movement, (lack of) freedom of religion, (lack of) freedom from any form of discrimination

1. **Afghanistan**, Not Free 6 6
2. **Albania***, Partly Free 3 3
3. **Algeria**, Not Free 6 5
4. **Andorra***, Free 1 1
5. **Angola**, Not Free 6 5
6. **Antigua and Barbuda***, Free 3 2
7. **Argentina***, Free 2 2
8. **Armenia**, Partly Free 6 4
9. **Australia***, Free 1 1
10. **Austria***, Free 1 1
11. **Azerbaijan**, Not Free 6 5
12. **Bahamas***, Free 1 1
13. **Bahrain**, Not Free 6 6
14. **Bangladesh***, Partly Free 3 4
15. **Barbados***, Free 1 1
16. **Belarus**, Not Free 7 6
17. **Belgium***, Free 1 1
18. **Belize***, Free 1 2
19. **Benin***, Free 2 2
20. **Bhutan**, Partly Free 4 5
21. **Bolivia***, Partly Free 3 3
22. **Bosnia and Herzegovina***, Partly Free 4 3
23. **Botswana***, Free 3 2
24. **Brasil***, Free 2 2
25. **Brunei**, Not Free 6 5

26. **Bulgaria***, Free 2 2
27. **Burkina Faso**, Partly Free 5 3
28. **Burma**, Not Free 7 6
29. **Burundi**, Partly Free 5 5
30. **Cambodia**, Not Free 6 5
31. **Cameroon**, Not Free 6 6
32. **Canada***, Free 1 1
33. **Cape Verde***, Free 1 1
34. **Central African Republic**, Partly Free 5 5
35. **Chad**, Not Free 7 6
36. **Chile***, Free 1 1
37. **China**, Not Free 7 6
38. **Columbia***, Partly Free 3 4
39. **Comoros***, Partly Free 3 4
40. **Congo (Brazzaville)**, Not Free 6 5
41. **Congo (Kinshasa)**, Not Free 6 6
42. **Costarica***, Free 1 1
43. **Côte d'Ivoire**, Not Free 6 6
44. **Croatia***, Free 1 2
45. **Cuba**, Not Free 7 6
46. **Cyprus***, Free 1 1
47. **Czech Republic***, Free 1 1
48. **Denmark***, Free 1 1
49. **Djibouti**, Not Free 6 5
50. **Dominica***, Free 1 1
51. **Dominican Republic***, Free 2 2
52. **East Timor***, Partly Free 3 4
53. **Ecuador***, Partly Free 3 3
54. **Egypt**, Not Free 6 5
55. **El Salvador***, Free 2 3
56. **Equatorial Guinea**, Not Free 7 7
57. **Eritrea**, Not Free 7 7
58. **Estonia***, Free 1 1
59. **Ethiopia**, Not Free 6 6
60. **Fiji**, Partly Free 6 4
61. **Finland***, Free 1 1
62. **France***, Free 1 1
63. **Gabon**, Not Free 6 5
64. **Gambia**, Not Free 6 5
65. **Georgia**, Partly Free 4 3
66. **Germany***, Free 1 1
67. **Ghana***, Free 1 2
68. **Greece***, Free 2 2
69. **Grenada***, Free 1 2
70. **Guatemala***, Partly Free 3 4
71. **Guinea**, Partly Free 5 5
72. **Guinea-Bissau**, Partly Free 4 4
73. **Guyana***, Free 2 3
74. **Haiti**, Partly Free 4 5
75. **Honduras**, Partly Free 4 4
76. **Hungary***, Free 1 2
77. **Iceland***, Free 1 1
78. **India***, Free 2 3
79. **Indonesia***, Free 2 3
80. **Iran**, Not Free 6 6
81. **Iraq**, Not Free 5 6
82. **Ireland***, Free 1 1
83. **Israel***, Free 1 2
84. **Italy***, Free 1 1
85. **Jamaica***, Free 2 3
86. **Japan***, Free 1 2
87. **Jordan**, Not Free 6 5
88. **Kazakhstan**, Not Free 6 5
89. **Kenya**, Partly Free 4 3
90. **Kiribati***, Free 1 1
91. **Kosovo**, Partly Free 5 4
92. **Kuwait**, Partly Free 4 5
93. **Kirgistan**, Partly Free 5 5
94. **Laos**, Not Free 7 6
95. **Latvia***, Free 2 2
96. **Lebanon**, Partly Free 5 4
97. **Lesotho***, Partly Free 3 3
98. **Liberia***, Partly Free 3 4
99. **Libya**, Not Free 7 6
100. **Lichtenstein***, Free 1 1
101. **Lithuania***, Free 1 1
102. **Luxembourg***, Free 1 1
103. **Macedonija***, Partly Free 3 3
104. **Madagascar**, Partly Free 6 4
105. **Malawi***, Partly Free 3 4
106. **Malesia**, Partly Free 4 4
107. **Maldivi***, Partly Free 3 4
108. **Mali***, Free 2 3
109. **Malta***, Free 1 1
110. **Marshall Islands***, Free 1 1

111. **Mauritania**, Not Free 6 5
112. **Mauritius***, Free 1 2
113. **Mexico***, Partly Free 3 3
114. **Micronesia***, Free 1 1
115. **Moldova***, Partly Free 3 3
116. **Monaco***, Free 2 1
117. **Mongolia***, Free 2 2
118. **Montenegro***, Free 3 2
119. **Morocco**, Partly Free 5 4
120. **Mozambique**, Partly Free 4 3
121. **Namibia**, Free 2 2
122. **Nauru***, Free 1 1
123. **Nepal**, Partly Free 4 4
124. **Netherlands***, Free 1 1
125. **New Zealand***, Free 1 1
126. **Nicaragua**, Partly Free 5 4
127. **Niger***, Partly Free 3 4
128. **Nigeria**, Partly Free 4 4
129. **North Korea**, Not Free 7 7
130. **Norway***, Free 1 1
131. **Oman**, Not Free 6 5
132. **Pakistan**, Partly Free 4 5
133. **Palau***, Free 1 1
134. **Panama***, Free 1 2
135. **Papua New Guinea***, Partly Free 4 3
136. **Paraguay***, Partly Free 3 3
137. **Peru***, Free 2 3
138. **Philippines***, Partly Free 3 3
139. **Poland***, Free 1 1
140. **Portugal***, Free 1 1
141. **Qatar**, Not Free 6 5
142. **Romania***, Free 2 2
143. **Russia**, Not Free 6 5
144. **Ruanda**, Not Free 6 5
145. **Saint Kitts and Nevis***, Free 1 1
146. **Saint Lucia*. Free 1 1**
147. **Saint Vincent and Grenadines***, Free 1 1
148. **Samoa***, Free 2 2
149. **San Marino***, Free 1 1
150. **São Tomé and Príncipe***, Free 2 2
151. **Saudi Arabia**, Not Free 7 7
152. **Senegal***, Partly Free 3 3
153. **Serbia***, Free 2 2
154. **Seychelles***, Partly Free 3 3
155. **Sierra Leone***, Partly Free 3 3
156. **Singapore**, Partly Free 4 4
157. **Slovakia***, Free 1 1
158. **Slovenia***, Free 1 1
159. **Solomon Islands**, Partly Free 4 3
160. **Somalia**, Not Free 7 7
161. **South Africa***, Free 2 2
162. **South Korea***, Free 1 2
163. **South Sudan**, Not Free 6 5
164. **Spain***, Free 1 1
165. **Sri Lanka**, Partly Free 5 4
166. **Sudan**, Not Free 7 7
167. **Suriname***, Free 2 2
168. **Swaziland**, Not Free 7 5
170. **Switzerland***, Free 1 1
171. **Syria**, Not Free 7 7
172. **Taiwan***, Free 1 2
173. **Tajikistan**, Not Free 6 5
174. **Tanzania***, Partly Free 3 3
175. **Thailand***, Partly Free 4 4
176. **Togo**, Partly Free 5 4
177. **Tonga***, Partly Free 3 3
178. **Trinidad and Tobago***, Free 2 2
179. **Tunis***, Partly Free 3 4
180. **Turkey***, Partly Free 3 3
181. **Turkmenistan**, Not Free 7 7
182. **Tuvalu***, Free 1 1
183. **Uganda**, Partly Free 5 4
184. **Ukraina***, Partly Free 4 3
185. **United Arab Emirates**, Not Free 6 6
186. **United Kingdom***, Free 1 1
187. **United States***, Free 1 1
188. **Urugvay***, Free 1 1
189. **Uzbekistan**, Not Free 7 7
190. **Vanuatu***, Free 2 2
191. **Venezuela**, Partly Free 5 5
192. **Vietnam**, Not Free 7 5
193. **Yemen**, Not Free 6 6
194. **Zambia***, Partly Free 3 4
195. **Zimbabwe**, Not Free 6 6

* Multi-party democracy

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BORDER INVIOLABILITY

TWENTY YEARS AFTER THE PROPOSAL FOR A NEW COMMONWEALTH OF THE REPUBLICS OF EX-YUGOSLAVIA

INTRODUCTION

The proposal put forward by Boris Vukobrat for a New Commonwealth of ex-Yugoslav Republics, developed in cooperation with a group of experts consisting of Elisabeth Kopp, Jean-François Aubert, Aloïs Riklin, Kurt Rothschild and Vojislav Stanovčić, from September 1992, rested on the belief that, in the aftermath of the war, former republics would establish a "new commonwealth" of states.

The author, whilst he himself stated that many would find the proposal to be utopian, holds/held the view that "human, political, economic, and strategic considerations lead us to pose a question about a model which might allow for the organisation of the Yugoslav area in the future. This model should ensure life together in peace, freedom and economic prosperity for the peoples of former Yugoslavia, whilst taking into account their cultural, linguistic, religious and other diversity."[1]

Among its underlying principles, the said vision of the establishment of the "new commonwealth" stipulates the principle of inviolability of frontiers[2] of newly founded and internationally recognised republics/states which may be changed solely through application of the rules of international law and by respecting the will of populations of individual states. Otherwise, any change to the frontiers by force would represent a potential source of conflict.

Today, almost twenty years since the inception of the said Proposal and the end of wars in former Yugoslavia, the principle of inviolability of frontiers and, generally, the idea of establishing a "new commonwealth" is a challenge enough to ask the following questions:

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[1] Proposals by Boris I. Vukobrat, "PEACE, FREEDOM AND PROSPERITY OF YUGOSLAV PEOPLES", available at http://www.fondmir.com/predlozi_knjiga_yu.html#mir

[2] Principle No. 7 in the Proposal.

1. Who makes demands to change frontiers?
2. How did international legal entities define the frontiers on the territory of former Yugoslavia?
3. Why have the newly established states not concluded mutual frontier agreements?

ISSUE OF SELF-DETERMINATION OF PEOPLES: WHO MAKES DEMANDS TO CHANGE FRONTIERS?

The United Nations Charter stipulates the right to self-determination of peoples,[3] but it does not lay down rules nor does it provide guidelines as to the enforcement of the right to self-determination. Some authors[4] believe that the right to self-determination possesses two aspects – internal and external one. The internal aspect of the right to self-determination implies the right of every citizen to hold public office, thereby determining his/her political status. The external aspect implies the right of peoples to opt freely for a political status. According to Kiss, the right to self-determination also implies:

- the right to manage national resources (or is by necessity accompanied by this right),
- the right to determine economic and social system, and
- the right of the people to self-determination, whilst the state is the holder of the right to independence.[5]

In reply to the question posed by the Chairman of the Peace Conference on Yugoslavia in relation to the issue raised by Serbia as to "whether the Serb population from Croatia and Bosnia-Herzegovina, as a constitutive people of Yugoslavia, is entitled to self-determination", Badinter Commission[6] established that "in its current state of development, the international law does not specify all the consequences of the right to self-determination."

Different groups (ethnic, linguistic, religious... groups) within a state have the right, under the international law, to recognition of their identity, and the states are required to ensure the respect for the rights of minorities on their territories. The right to self-determination[7] is a principle which

[3] Article 1 (2) of the UN Charter.
[4] Jasna Bakšić Muftić, Sistem ljudskih prava (System of Human Rights), Sarajevo, 2002, p. 248.
[5] Ibid.
[6] The Arbitration Commission of the Peace Conference on Yugoslavia was set up in the Hague in 1991. The decisions of the Arbitration Commission have the same legal force as international court judgements.

serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes.[8]

States are thus obliged by a categorical norm of the international law which may and should be applied in all other cases of the same kind. Such an understanding entails the enforcement of the right to protection of individual groups within a state, without the possibility to put forward demands for change of frontiers which, if it would come to pass, would inevitably imperil the sovereignty of states, thereby violating their territorial integrity.

ISSUE OF INVIOLABILITY OF FRONTIERS: HOW DID INTERNATIONAL LEGAL ENTITIES DEFINE THE FRONTIERS ON THE TERRITORY OF FORMER YUGOSLAVIA?

As stated above, the invoking of the right to self-determination should not have consequences for the territorial integrity of the states concerned. Set out in this way, the said principle guarantees, in fact, that the state frontiers remain as they are, i.e. that the states remain within the internationally recognised frontiers.

With regard to the territory of former Yugoslavia, the fundamental principle followed is the respect for boundaries of former republics which existed at the time of declaring independence according to the principle of *uti possidetis iuris*. The *uti possidetis* principle has been declared – albeit firstly recognised whilst resolving the problem of decolonisation in America and Africa – as a general principle of the international law and an expression of the respect for former boundaries in case of succession of states. In the case of Burkina Faso vs. Mali, the International Court of Justice found that "...[*uti possidetis*] is a principle of general scope, logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power".[9]

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[7] A reference to the right to self-determination as established by international covenants.
[8] See Opinion No. 2 of the Badinter Commission.
[9] Vladimir Đ. Degan, Međunarodno pravo (International Law), Rijeka, 2006, p. 590.

Hence, the principle of maintaining the territorial integrity of states is set out as a prerequisite for maintaining international stability.

In response to Serbia's question "whether the internal boundaries between Croatia and Serbia and between Bosnia-Herzegovina and Serbia can be regarded as frontiers in terms of public international law", the Badinter Commission[10] found that Yugoslavia was in the process of breaking up and that the answer to the question before it would necessarily be given in the context of a fluid and changing situation and had to be therefore founded on the principles and rules of public international law. In this respect, the issue of frontiers of Yugoslav republics was resolved in accordance with the criteria stated hereafter. External frontiers must be respected in all cases in line with the principles stated in the United Nations Charter,[11] in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States[12] and in the Helsinki Final Act[13] as well as the Vienna Convention on the international law of treaties.[14]

Demarcation lines between Croatia and Serbia, and between Serbia and Bosnia-Herzegovina, or, possibly, among other neighbouring independent states, may be altered only by way of a free and mutual agreement. Unless otherwise agreed, previous boundaries assume the character of frontiers protected by international law. This is the conclusion stemming from the principle of respect for territorial *status quo* and, in particular, the *uti possidetis iuris* principle. This principle was all the more easier to apply between the republics since the Constitution of the Socialist Federative Republic of Yugoslavia stipulated that "boundaries between the republics may be changed only on the basis of their mutual agreement, and, if this concerns the boundaries of autonomous provinces - their consent is also required".[15] It is necessary to point out that the republics of former Yugoslavia also accepted the conditions from the Declaration on *Guidelines for Recognition of New States in Eastern Europe and in the Soviet Union* of 16 December 1991 on the "respect for inviola-

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[10] See Opinion No. 3 of the Badinter Commission.
[11] Article 2 of the UN Charter.
[12] UN General Assembly Resolution 2625 (XXV).
[13] The Final Act of the Conference on Security and Cooperation in Europe reads as follows: "The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State."
[14] Article 11, Vienna Convention.
[15] Article 5, Constitution of SFRY.

bility of all frontiers which can only be changed by peaceful means and by common agreement".

In its advisory opinion as regards the accordance with international law of the unilateral declaration of independence in respect of Kosovo, the International Court of Justice established, citing the said UN General Assembly Declaration, that "the countries shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state". This Resolution goes on to list different obligations of states with respect to refraining from violations of territorial integrity of other sovereign states. Thus, the scope of the principle of territorial integrity is restricted to the sphere of inter-state relations.

In addition, in reply to the questions posed by some participants in the proceedings citing the Security Council resolutions whereby declarations of independence of Southern Rhodesia,[16] Northern Cyprus[17] and Republika Srpska[18] were condemned, the Court stated that in all these cases the Security Council passed its decisions taking into account each specific situation that existed at the time of declaration of independence, and that the illegality of the said declarations of independence did not result from their unilaterality but the fact that they were related to the illegal use of force or other outrageous violations of norms of general international law, particularly those of imperative character *(ius cogensa)*. In the case of Kosovo, the Security Council never took such a position which enabled the Court to conclude that there was no general prohibition by the Security Council in respect of unilateral declarations of independence.[19]

However, the principle of inviolability of frontiers should not be understood in absolute terms since stability need not necessarily mean untouchability. Although states are prohibited from changing frontiers by use of force, they can do so by means of voluntary mutual agreements.

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[16] Security Council Resolution 216 (1965) and 217 (1965).
[17] Security Council Resolution 541 (1983).
[18] Security Council Resolution 787 (1992).
[19] Advisory opinion on the accordance with international law of the unilateral declaration of independence in respect of Kosovo, dostupno na: http://www.icj-cij.org/docket/files/141/15987.pdf

FINAL CONSIDERATIONS: WHY DO NEWLY ESTABLISHED STATES NOT HAVE IN PLACE SIGNED FRONTIER AGREEMENTS?

To answer the question as to why the newly established states on the territory of former Yugoslavia still do not have in place signed frontier agreements is not that simple.

Reasons for this should, perhaps, be sought in the still predominant concept of associating a nation with a territory, which is visible in the example of Bosnia-Herzegovina. An additional argument to corroborate the statement above lies in the fact that newly introduced internal (administrative) boundaries[20] mark out areas which are predominantly populated by a certain group or people in the aftermath of the war. In practice, in this manner the internal boundaries are established as "hard" borders which "successfully" partition territories and peoples often complicating even the simplest of communications.[21] In contrast to this, external (international) frontiers become "porous", i.e. "soft", especially with regard to neighbouring countries. Such porous frontiers may present an additional problem in terms of protection and security of not only the states concerned but also other states. To illustrate the point we should say that one of the EU requirements for visa liberalisation for Bosnia-Herzegovina was successful border control.[22]

We may say that the situation is no better regarding recognition and delineation of external frontiers of newly established states on the territory of former Yugoslavia. Even though the former Yugoslav republics have embraced the so-called AVNOJ boundaries, as a generally accepted principle, many believe that neighbouring states are controlling parts of their territories which has given rise to a series of frontier disputes, hence at present we have a greater number of frontier disputes than the number of signed frontier agreements. Disputes between Slovenia and Croatia, Croatia and Serbia, Croatia and Bosnia-Herzegovina, etc. are typ-

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[20] The Parties may adjust the inter-entity boundary line only by mutual consent. See Annex 2 to the Dayton Peace Accords.

[21] See, for example, the agreement between the Federation of Bosnia-Herzegovina and the Republika Srpska on the establishment of the joint railway corporation as part of the transport corporation, available at http://www.vozi.org/index.php?option=com_content&view=article&id=3853:sporazum-izmeu-federacije-bosne-i-hercegovine-i-republike-srpske-o-uspostavljanju-zajednike-eljeznike-javne-korporacije-kao-djela-transportne-korporacije&catid=28:propisi-federacije-bih&Itemid=38.

[22] Technical requirements for visa liberalisation entailed the fulfilment of the following sets of conditions: security of documents, illegal immigration including readmission, public order and security, and external relations and fundamental rights.

ically cited to illustrate the point. Regretfully, the states have not thus far shown enough wisdom and courage to independently resolve frontier disputes and it is therefore to be assumed that the solution to these disputes will be referred to international courts or arbitration commissions.

The accession of Croatia – in anticipation of the entry of other Western Balkan countries into the European Union – raises a general issue of the significance of frontiers, i.e. the demarcation of individual territories. In case of full enforcement of the principle of unhindered flow of goods, services and people, and the future entry into the Schengen Area, the issue of frontiers among the Western Balkan states would be de facto rendered irrelevant and this would ultimately enable all the groups/ peoples to live in a common area which in many ways is functioning as a territory of one state.

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INTEGRATION INTO EUROPE

INTRODUCTION

The fundamental objective of this article is to give a contribution to the clarification of the Integration into Europe principle, as articulated in the *Proposals for a New Commonwealth of the Republics of ex-Yugoslavia,* published by the Peace and Crises Management Foundation in 1992, from present-day perspective. The process of this region's integration into Europe is an extraordinarily comprehensive process. It consists of at least three segments of the European integration, i.e. in the fields of politics, security and economy. This article is focusing on an analysis of what has been achieved thus far in the process of these countries' economic integration in the EU.

Following a brief Introduction, the text features two more chapters. The second chapter will present in brief the principle of Integration into Europe, as one of the nine fundamental principles which, according to the authors of the Proposals for a New Commonwealth of the Republics of ex-Yugoslavia, this commonwealth should be based on. That chapter presents how this principle was articulated in the Proposals themselves as well as how it was elaborated in one of his Proposals (Appendix N° 6) which is relevant to this area. The third chapter analyses the process of former Yugoslav republics' integration into the EU thus far and places it in the context of integration of other countries undergoing transition in the same structure.

ARTICULATION OF PRINCIPLE IN PROPOSALS AND ITS ELABORATION IN APPENDIX NO. 6

Principle, as articulated in the Proposals

In the foreword to the *Proposals for a New Commonwealth of the Republics of ex-Yugoslavia*, published in 1992 by the Peace and Crises Management Foundation, its Chairman wrote that "there are no quick and reliable answers to the questions raised today by the Yugoslav drama, but there is at least one that Europe may offer to our peoples, the victims of war – to integrate, without delay, the republics emerging from the collapse of former Yugoslavia into the European Economic Area as a link connecting

Southeast Europe with Western Europe. This may be achieved, without upsetting the institutional structure of the twelve member countries of the European Community, by way of extending the free movement of people, goods and capital to all the former Yugoslav Republics".

This passage clearly highlights the conviction of the authors of the *Proposals* that the economic future of former Yugoslav republics lies in their economic integration into the European Union. In this context, it is understandable that the inclusion in the European economic integration is defined as one of the nine fundamental principles for the development of countries in the region. The Principle N° 8 stipulates that the integration of the new commonwealth into Europe cannot be effected solely by signing international agreements. The process "entails alignment of the political and economic system of the new commonwealth with those of the European institutions (the Council of Europe, the Conference on Security and Cooperation in Europe, the European Convention on Human Rights, the European Community). When regions, states and the commonwealth adopt constitutions in conformity with the principles described above; when they establish their own political and judicial bodies; and when every political level of power assumes its respective responsibility for the system as a whole, the path of integration into Europe will be open".

Closely related to the inclusion of ex-Yugoslav republics into the European Union is also the principle according to which the new commonwealth should rest on the principles of market economy (Principle N° 9). Or as the authors put it: "Market economy has not only demonstrated its efficiency compared to economic systems based on central planning and collectivisation, but it is also an essential requirement for integration of the future commonwealth of ex-Yugoslav republics into the European Community".

Appendix N° 6

Appendix No. 6 of the *Proposals for a New Commonwealth of the Republics of ex-Yugoslavia* – which bears the title *Integration of Former Yugoslavia into Europe* – lays out in more detail the expected inclusion of the countries in the region into Euro-Atlantic integrations.

The starting premise of the authors of the Proposals was that the future of Europe was uncertain, hence the process of Yugoslavia's re-organisation would lead to changes in Europe itself. "One may assume, however,

that the main structures of present-day Europe will remain intact, and these are as follows: the Conference on Security and Cooperation in Europe, NATO, the Council of Europe, and the European Community. Furthermore, one may assume that the state will continue to be the key element of these fundamental structures rather than regions or associations of states". The authors went to say that "the integration of Yugoslavia into Europe will take time. It will not happen overnight, but gradually. It will be, clearly, a long-term process. Different speeds of integration of the former Yugoslav republics are conceivable".

Authors of the *Appendix N° 6* identified the following steps for full inclusion of the countries in the region into Euro-Atlantic integrations. These are as follows:

- Step I: International recognition of new states on the territory of former Yugoslavia;
- Step II: Admission of the countries to the Conference on Security and Cooperation in Europe;
- Step III: Admission of the countries to the Council for Cooperation with NATO;
- Step IV: Admission to the Council of Europe;
- Step V: Ratification of the European Convention on Human Rights;
- Step VI: Agreements on association between the European Community and the states based on the model of other Eastern European countries;
- Step VII: Accession to the European Economic Area;
- Step VIII: Accession to the European Community.

The authors of this *Appendix* also argued that "it is hardly possible to by-pass any of these steps" as well as that "focusing exclusively on the EC membership would be as illusory as the hope of a 'rescue' from the outside". Consequently, the authors obviously considered the membership in the most important international political structures, such as the Conference on Security and Cooperation in Europe and the Council of Europe, as a prerequisite for strengthening economic cooperation with Western Europe and subsequent membership in the EU as the ultimate objective.

PROCESS OF REGION'S INTEGRATION INTO THE EUROPEAN UNION IN PAST 20 YEARS

First Big EU Enlargement to Countries in Transition

In the late 1980s, the Berlin Wall came tumbling down which was a precursor to great political and economic changes in the Eastern part of the continent which had been characterised up to that point by a one-party system, while the economy had been based on more-or-less centralised-planning system. Western democratic countries, including the EU members, supported the process which came to be known transition in a variety of ways. In political terms, the transition entailed the process of transformation of the one-party system into democracy, and, in economic terms, the transition meant the transformation of the central planning system into market economy.

In the very early stage of transition, the EU started concluding the Association Agreements, later renamed the Europe Agreements, with the countries in transition, first with Poland, Hungary and Czechoslovakia, and then, in the following years, with the Baltic countries, Bulgaria, Romania and Slovenia. Formally, these were international agreements on the basis of which EU member countries were opening up their markets, without reciprocity, for the majority of goods from the signatory country which in turn would pledge its commitment to economic reforms directed towards market economy as well reforms in its political system focusing on democracy and human rights. Association Agreements were accompanied by financial and technical assistance, which was called *Phare* in the first phase, and its primary objective was to support and step up the process of transition towards democracy and market economy

Practically, in all the countries in transition, the EU membership was set as one of the strategic economic and political goals by the new democratic governments. However, Association Agreements did provide a preliminary institutional framework for integration of those countries in the EU, but they did not certainly represent a guarantee for membership. Political pressure on the EU member countries to make up their mind regarding the way in which they saw the strengthening of institutional links with the Central and Eastern European countries was growing. One of the options could be their inclusion in the European Economic Area, but without full integration into the EU, whereas another option would

be to include them in the European Economic Area, and perhaps later – in the EU, as stipulated in the *Appendix Nº 6*. The third option was direct integration of the countries in the region into the EU.

Looking back today, what was *de facto* applied was the third option. At the European Council meeting in Copenhagen in June 1993, the EU member countries articulated for the first time the formal criteria which a candidate country had to meet in order to qualify for the EU membership. Why did the member countries think that they needed to establish formal criteria for the EU membership precisely at the time when Central and Eastern European countries were knocking at their doors, and not at the time when countries like Greece, Spain or Portugal were joining the EU? There are many reasons for this, but the following two are the most important. First, by accepting the countries in transition, the EU would bring into the fold for the first time the countries which had had only several years earlier a completely different political and economic system compared to that of the member countries. Formal conditions for membership would, therefore, have to ensure timely adjustment of candidate countries, hence before accession, to political and economic characteristics of the member countries. Secondly, it was realistic at the time to expect that a large number of countries in transition would seek accession to the EU meaning that the next enlargement would be much bigger than any enlargement up to that point. In such a context, the EU member countries came to a conclusion that it would be necessary to have at least to some extent formalised criteria on the basis of which assessment of a country's readiness to join the EU would be made.

The Copenhagen set of criteria for accession to the EU consist of four basic criteria. The first is the so-called "political criterion" according to which a country is required to have established democracy and the rule of law, as well as that human and minority rights are respected. The following two criteria are "economic" and they entail the establishment of market economy as well as its capability to fend off competition pressures of the European common market which the candidate country would face upon its accession to the EU. Finally, the fourth is the so-called "legal-institutional criterion" according to which a candidate country should be capable of taking on obligations stemming from *acquis communitaire*, i.e. the common legal order of the EU members. The European Commission regularly monitors the fulfilment of all these criteria for each candidate country at an annual basis.

It is well-known that the first 10 countries in transition,[1] i.e. Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Romania, Slovakia and Slovenia, started their negotiations on the EU membership in 1997 and 1998. The negotiations were structured into 31 negotiating chapters – where each chapter covered a part of the acquis. Practically, until the very end, these negotiations had been set in the convoy formation. The membership negotiations were concluded with all the countries, except for Bulgaria and Romania, in December 2002 at the European Council meeting in Copenhagen. Those eight countries became new EU members in May 2004, whereas Bulgaria and Romania joined the EU in January 2007. The literature often speaks of the EU-10/ EU-12 group of new member countries.

Institutional Framework for Integration of Former Yugoslav Republics into the European Union

Slovenia is one the ex-Yugoslav republics which has completed the process of its integration into the European Union as part of its "great eastern enlargement".

All the other countries from the territory of former Yugoslavia started this process with significant delay due to the political situation characterised by armed conflicts in the wake of disintegration of the former Socialist Federative Republic of Yugoslavia (SFRY). Stabilisation of political situation in the late 1990s finally enabled these countries to step up the transition process, which was accompanied by the launch of the EU integration process as well. The turning point was the summit in Zagreb in 2000 where a vision of tighter integration of the Western Balkan countries[2] into the EU was introduced. In exchange for economic and political reforms, regional cooperation and respect for democratic standards and international obligations, the countries in the region were offered a prospect of EU membership. At the European Council summit in Thessaloniki in 2003, heads of state and prime ministers of EU member countries also adopted an official position on the prospect of the countries in the region for EU membership once they met the necessary requirements. Such a decision was the result of two sets of reasons. The former related to economic interests of the member countries, similar to those pertaining to the first eastern enlargement of the EU. One should clearly point

[1] Negotiations on EU membership started simultaneously with another two non-transition countries, i.e. Cyprus and Malta.

[2] The concept encompasses all the countries on the territory of former Yugoslavia, except for Slovenia, plus Albania.

out that the region was considerably undeveloped at the time, hence it had a substantial potential for economic growth. The latter, perhaps even more important at the time, was political and geostrategic. The prospect of EU membership and other Euro-Atlantic integrations was supposed to be instrumental in achieving the ambition to stabilise traditionally very sensitive and turbulent part of the European continent. In this context, the argument concerning *damage-control* function of the EU integration process should not be neglected.

In institutional terms, the process of EU integration for the countries in the region started with the signing of a new generation of Association Treaties called Stabilisation and Association Agreements (SAA). This is a type of agreement which, in terms of content, comprises everything that used to be a part of the earlier European Agreements, and it also requires the countries in the region to strengthen their regional cooperation. Such an additional political aspect to this generation of association agreements should be considered in the context of political developments in the region in the late 1990s. The first country to sign the SAA was Macedonia in April 2001. Croatia followed in its footsteps several months later. The remaining three ex-Yugoslav republics signed the SAA much later – Montenegro in 2007, and Serbia and Bosnia-Herzegovina as late as 2008. Kosovo is the only state on the territory of former Yugoslavia which has not signed the SAA and it has not even started negotiating for political reasons. Similarly to the countries which had signed European Agreements, the countries in the region which signed the SAA were also simultaneously granted access to Pre-accession Funds of the European Union.[3] For the duration of the multi-annual financial perspective of the EU for the 2000-2006 period, these Funds were referred to as CARDS, but were renamed IPA for the duration of the current financial perspective of the EU for the 2007-2013 period.

In most of the old member countries, the 2004 "great eastern enlargement" was by and large seen as a success, and as such provided an impetus for stepping up the EU integration processes in the Western Balkan countries. However, an unexpected turn of events in 2005 dramatically altered this positive climate vis-à-vis subsequent EU enlargements. The key reason for such a change of heart were negative results in the French and Dutch referenda on the European constitution. Such an outcome reflected growing concern that the influx of workers from new mem-

[3] Kosovo has also been granted access to the EU Pre-accession Funds even though it has not signed the SAA.

ber countries would further aggravate the problem of unemployment in the old member states as well as the so-called enlargement fatigue. Willingness to show solidarity with the new member countries was being eroded to a degree in the old EU member countries. A conviction that new member countries were introducing de facto unfair competition on the European common market was gaining strength. Ultimately, the populations of the old member countries began displaying their increasing discontent over the way in which they had been consulted regarding the EU eastern enlargement. The Eurobarometer in July 2006 showed an extraordinary slump in popular support for subsequent EU enlargements in comparison to the previous year.

"Enlargement fatigue", which was clearly reflected in the results of public opinion polls, was certainly not overlooked by politicians. In France, for example, the Constitution has been amended so that all future enlargements of the EU will require a popular consent to be expressed in a referendum (after Croatia's accession to the EU). In many other countries, the issue of EU's "absorption capacity" has been placed high up on the political agenda. Conspicuously negative attitude towards Turkey's EU membership in some countries, as well as the problems with the implementation of *acquis* in some new member states, particularly in Bulgaria and Romania, have all contributed to a decreasing appetite of old member countries for further EU enlargements.

Changed political situation in the member countries was reflected already in 2006 in a considerably revised EU strategy for the Western Balkans. Contrary to pro-active, pro-enlargement strategy from Thessaloniki in 2003, this new strategy was clearly indicative of dampening enthusiasm in the EU member states vis-à-vis admission of new countries. The fundamental political position according to which "Western Balkan countries will join the EU once they fulfil necessary requirements" remained unchanged though, but crucial was a substantially altered interpretation of the latter part of this sentence speaking about "fulfilment of requirements". Fulfilment of conditions for EU membership had been interpreted with plenty of benevolence by the old member countries during the talks which resulted in the "great eastern enlargement" in 2004, but this was the consequence of a very positive political climate for inclusion of the Central and Eastern European countries into the EU as well as of a convoy-type of negotiations. However, since 2005, the "fulfilment of conditions" has been interpreted in a much more restrictive

manner. Experiences of Croatia in the negotiations on EU membership as well as the experiences of all other countries in the region, which still have not started their respective negotiations, in their transition from one phase of pre-accession process to the next one, clearly corroborate such a change in attitude.

Pre-Accession Process: EU-10/EU-12 versus Croatia

As stated above, the new EU strategy for the Western Balkans manifests generally reduced appetite of the member countries for fast accession of new countries. Pursuant to the new strategy, the "fulfilment of necessary requirements" for membership is to be assessed on the basis of more numerous and more detailed criteria and benchmarks. This applies to both the process of integration over the course of the EU membership negotiations and the activities which candidate countries must carry out prior to the start of the negotiations themselves.

As regards the talks on EU membership, there are many differences between the negotiations involving EU-10/EU-12 group of countries and the Croatian talks with the EU (Turkey is also involved in the negotiation process). A common characteristic shared by all these differences may be summed up in one common denominator – namely, a candidate country is facing more conditions placed on its path towards the EU. In the passages below, I will list several crucial differences with regard to the methodology of negotiations themselves.

Firstly, based on the experiences with accession negotiations of EU-10/EU-12 countries and the fulfilment of criteria by some of its new members, the EU has become stricter in requiring candidate countries to fulfil all they promise during their negotiations. While legislative alignment was often sufficient, the EU now requires candidate countries to provide proof of having implemented the newly-adopted legislation and other regulations. New benchmarks are being introduced to make the entire EU accession process – particularly the accession negotiations within that context – more thorough, obliging candidate countries to undertake the necessary reforms as early as possible in the accession process. While, during negotiations with EU-10/EU-12, candidate countries were *de facto* conditioned exclusively with benchmarks for completing negotiations under each chapter, Croatia was faced not only with benchmarks for closing individual negotiation chapters, but also with standards that must be met for opening them.

Secondly, the so-called screening process, as the first phase of negotiations – in effect a process of vetting the legislative alignment of a candidate country with the EU law by areas, termed negotiation chapters – was, in the case of Croatia, more structured and thus substantially more significant than the same phase of negotiations for EU-10/EU-12 countries. As opposed to negotiations with this group of candidate countries, where the screening process was above all a technical requirement ending in the signing of minutes, the new screening concept applied for the first time in negotiations with Croatia (and Turkey) is more structured. The *screening process* for each negotiation chapter can end in the articulation of certain benchmarks, where member countries consider this necessary, and these benchmarks must be met by the candidate country as a precondition for opening negotiations under that particular chapter.

Thirdly, the new role of the *screening process* means that true negotiations in effect begin at an earlier stage than had been the case before. Unlike negotiations with EU-12/EU-12 countries, where the *screening process* had constituted a sort of preparatory effort for negotiations and where the candidate country began articulating its negotiating positions only after the *screening* was complete, the current screening concept requires the candidate country to be ready to enter into actual negotiations as early as that stage. In practice, this means that the candidate country should already have a rather clear picture of its negotiating positions for each individual negotiation chapter at the time screening begins under that chapter. Any lack of readiness on the part of the candidate country for actual negotiations at this early stage can result in the imposition of more and stricter benchmarks by member states as a precondition for the formal opening of negotiations under that chapter.

Fourthly, changes were made to the order in which negotiation chapters were opened in Croatia's EU accession negotiations. While the negotiations of EU-10/EU-12 countries, and, to some extent, those with Croatia, were guided by the principle of first opening chapters with "easier" contents and leaving the "hard" chapters for later, this approach is now changing. The suggestion that negotiations could be opened with Montenegro clearly stipulated that the most difficult and politically sensitive chapters would be opened first. The rationale behind this is that it would give the candidate country more time to establish a legal framework and institutions needed for its efficient implementation, as well as

that the candidate country could be given an opportunity to achieve a credible track record in those areas

And, fifthly, experiences of Western Balkan countries with the EU accession process to date clearly show that the key issue in the early stages is the fulfilment of "political criteria" as defined in 1993 in Copenhagen. Numerous examples could be found bearing out the fact that meeting these criteria is crucial for a candidate country's association with the EU, in particular during the phase immediately preceding the opening of accession negotiations. To provide but a few examples: Macedonia has seen its road towards European integration blocked because of its failure to meet political criteria, in its case reflected in its dispute with Greece regarding the country's official name. Croatia was unable to start EU accession negotiations until it met political criteria, which for it meant cooperation with the Hague Tribunal. Montenegro is another case in point. It received as many as seven benchmarks as conditions for opening negotiations, and got the green light only after meeting them all to a satisfactory degree. The remaining Copenhagen criteria – the two "economic criteria" and the "judicial and institutional criteria" – gain in relative weight only when the candidate country begins formal EU accession negotiations.

Where are the Former Yugoslav Republics Now in the EU Integration Process?

Slovenia has been a full member of the European Union since 2004.[4]

Croatia has successfully completed its membership negotiations with the EU in June 2012, and it is a realistic expectation that it will become the second country from the territory of former Yugoslavia to join the European Union in July 2013, following the completion of the ratification process in all the member countries and the European Parliament.

Montenegro was granted the official candidate status for EU membership at the European Council meeting in December 2010, and in June 2012 a conclusion was reached to start negotiations on this country's accession to the EU. The screening process, i.e. the first phase of the negotiations, will be launched in the autumn this year.

[4] In January 2007, Slovenia joined the Eurozone member and it also became a part of the Schengen Area in December 2007

Macedonia was granted the official candidate status for EU membership at the European Council meeting as far back as 2005, but due to the Greek veto prompted by the dispute over the official name of this country, this body of the European Union has not as yet given a green light for the start of this country's EU membership negotiations.

Finally, unlike the three ex-Yugoslav republics mentioned above, Bosnia-Herzegovina still has the status of a potential candidate for EU membership. The continuation of this country's European integration process is substantially dependent on the establishment of sound state structures required for the fulfilment of the Copenhagen criteria, particularly the criterion requiring a candidate country to be capable of assuming obligations stemming from the *acquis*.

Similarly to Bosnia-Herzegovina, Kosovo enjoys the status of a potential candidate for EU accession and it is a country which has not even started establishing institutional relations with the EU for political reasons. The process of this country's integration into the EU depends by and large on the solving of political issues, such as unresolved relationship with Serbia and reluctance on the part of several EU member countries to recognise its independence.

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MARKET ECONOMY

INTRODUCTION

Liberalisation and privatisation are necessary conditions for improved functioning of the markets. However, policies are still needed to achieve public goals, but also to correct for market failures which can be quite pervasive in the process of the introduction of market economy. In addition, the policy making institutions and the policy makers themselves may be ill equipped for the job given the statist system they are coming from. As a consequence, large and pervasive government failures are to be expected in the process of the introduction of market economies. This has certainly been the case in the post-Yugoslav countries. Here, the diverse experience in liberalization and privatization will be discussed first (for more details see Gligorov 1998, 2004); then, diverse policy approaches will be looked at; following that the effects of the crisis will be assessed; and finally the policy mistakes and tasks will be analysed, which will also serve as a conclusion to this short note.

INTRODUCING MARKETS

In Central and East European transition economies, liberalisation preceded privatisation due to extreme system of regulation that existed there. However, in the post-Yugoslav countries privatisation more often than not came ahead of further liberalisation because there were significant elements of market economy even before of the collapse of the socialist system (Gligorov 2004). In fact, because of the disintegration of the country and the nationalistic motivation of the secessions, markets in most countries put under state control and gradual freeing of the markets often came with the growing share of private ownership in these economies. In addition, freer foreign trade, though not within the former country, also played a role, though the introduction of new currencies and the need to stabilise them did put a limit to the spread of the role of the various markets (for more details see Gligorov 2012).

Privatization was undertaken with the aim of the new ownership remaining mostly domestic. The methods and the timings were different, but the countries that privatised the first, e.g. Slovenia, Croatia,

and Macedonia, limited foreign participation in one way or another. Slovenia excluded foreigners almost completely, Croatia aimed at creating a national capitalist class, and Macedonia favoured management buy-outs. Later on, Serbia also favoured local entrepreneurs, except in the banking sector, while the developments in Montenegro and Bosnia and Herzegovina were more complicated. But their liberalisations of markets were impeded by external constraints and violent conflicts. In any case, initial introduction of market economy was somewhat limited while privatisation was mostly seen as a means for redistribution of wealth rather than as an instrument for increased legality and efficiency. Indeed, it supported gross illegalities and had negative consequences for efficiency and stability.

In most countries, second transition was needed. In some of them this followed after a programme of stabilisation was put in place, as a rule somewhere around 1994. The one in Serbia and Montenegro (still under the name of Yugoslavia), failed in about a year and another bout of stabilisation was needed in Serbia after the political change in 2000-2001. Montenegro chose to adopt the German mark as official currency and then the euro. Similarly, Bosnia and Herzegovina was able to stabilise with the introduction of a currency board regime based on the German mark and then on euro. The stabilisation in Macedonia and Croatia has been sustained also with the peg to the German mark and then to euro. Eventually, Kosovo adopted euro after it used the German mark as its preferred currency. With stabilisation, the introduction of freer foreign trade and later of free trade agreements with the European Union (EU) became possible. The EU pressured the Balkan countries to cooperate regionally and was instrumental in spreading first bilateral free trade agreements and then a regional free trade area that goes by the name of CEFTA.

External trade liberalisation in turn supported internal freeing of markets and gradually administrative controls of prices were diminished, though they are still far from being insignificant in a number of countries. Perhaps the most important development was in the financial markets where the initial stress on nationally owned banks gave way to strong increase in international participation. As a rule, that happened after a financial crisis, or in some case of a couple of them. In most cases, government tried to bail out and save the domestic banking sector and invited foreign banks to take them over only after those attempts proved to be failures. Thus, financial markets are foreign owned to an

unprecedented degree. Slovenia was one exception, but that might be over in this current crisis.

Perhaps the least reformed has been the labour market (Landesman et al. 2008). Though in most countries the indicators of labour market flexibility have been improving steadily, with only few reversions, e.g. in Serbia, there are still significant distortions and limited regional labour mobility (Vidovic et al. 2011). The issue of labour market flexibility is dwarfed by the low levels of employment and high unemployment rates that are persistent indicating that there is something seriously wrong not only with the labour markets, but with the way other markets function and with the formulation and implementation of economic policies.

All in all, after two or so decades, market economy albeit a rather distorted one has become dominant in the post-Yugoslav region and in the Balkans as a whole

CHOOSING POLICIES

The effects of the two or so decades of transition and the introduction of markets in the post-Yugoslav countries have not been stellar. Before the crisis, Slovenia was arguably the best performing transition economy in Europe, but even in its case the overall growth of production and income was not impressive (Gligorov 2011). However, things have turned quite negative during the crisis and much of those gains have been wiped out. In addition, recovery is delayed and it may prove to be slow in the next few years.

Developments in other countries have been quite disappointing and the last three years of crisis have not helped. These outcomes are in part due to the policy choices made. Perhaps the main indicator of the overall policy stance is high and often widening external imbalance. Slovenia joined the club of countries with significant foreign trade and current account deficits, while all the other countries have gotten used to quite big trade deficits, with imports of goods covering exports by 50% or less. In general, the policies chosen have led to rather weak and small tradable sectors and low levels of exports of goods. In the coastal areas export of services has been compensating for the weaknesses in the industrial production and even in agriculture, but that has not been sufficient to balance current accounts and thus growing foreign debts.

The striking feature of this whole region is low industrial production. In fact, even in the case of Slovenia, industrial production has not increased by the same or similar rate as the overall production, while it has grown much faster in the Central European countries in transition. This has put the whole region at a disadvantage in the current crisis because there is a need to grow out of it through exports, but the supply of exportable goods is rather low and the prospects for growth in the medium term is rather pessimistic.

For the most part, the responsibility lies on the policies chosen by successive governments. Generally, the real exchange rate has had the tendency to appreciate and that has proved to be hard to reverse even in the cases where exchange rates were managed, which basically means Slovenia and Serbia. The former was successful until the convergence and the adoption of euro, while the latter has allowed large real appreciations of the dinar only periodically resorting to devaluations. In other countries domestic currencies are fixed to the euro at as a rule overvalued levels of exchange rate.

In addition to that, incomes have tended to grow faster than productivity, with exception of Macedonia. That has led to problems with fiscal deficits and public debt, primarily after the eruption of the crisis. More important is the increase of private debt in most countries, which has increased consumption, together with significant misallocation of investments. So, the region is faced with collapsing corporate sectors and strong squeeze on all types of consumption. It is fair to say that it will take years to adjust the public and financial balances and to restructure the production.

STATES AND MARKETS

The crisis has renewed the debate about the role of the state and about the deficiencies of the liberal trading regime and the importance of private ownership. There is general misunderstanding in the public in the region about the amount of institutional and policy space that a small open economy, such as populates the Balkans, actually has. In addition, the demand that the state does more and comes to the rescue disregards the fact that the fiscal space of these states is rather limited and in some cases probably nonexistent. Indeed, similarly to the situation in the 1980s, the public sector and the fiscal authority are facing insurmountable financial problems. The crisis has brought home the mistakes made

in good times when nothing was done to increase the production for exports. In the crisis, private consumption is declining and investments are plummeting while the budgets are overburdened with social transfers and debts. So, there is not much that the states can do except speed up the privatization of whatever assets they still have command over and introduce structural reforms, which will lead to lower public spending and more competition in most markets.

In addition, there is increased interest in regional cooperation, but this is progressing slowly due to unresolved political and social problems. It is clear that CEFTA was pushed through with the idea that it will present a much larger market to prospective investors from the region or from abroad. It makes sense that access to regional markets would play a role in the decision to invest in industry or infrastructure or energy. This would prove advantageous in the time of crisis also, because all these countries separately present too high of a risk for investors. In an integrated economic area, risks could be smaller because they could be diversified. However, there has been little progress in regional cooperation and the region is going to be even smaller when Croatia joins the EU in mid-next year. It will essentially consist of Serbia and Bosnia and Herzegovina, with all the political and other problems that they share.

The countervailing influence should come from the EU because all countries are in one way or the other involved in the process of accession to the EU. The process is, unfortunately, slow and with hurdles that will be difficult to get over. So, the illiberal character of the regional markets together with crumbling states may be too much to sustain workable market economies in most of these countries. The current crisis threatens to lead to a prolonged stagnation, similar to the one in the 1980s. Political and social challenges of such an outcome may prove overwhelming

THE THIRD TRANSITION

The way out of the crisis and onto sustainable growth depends on the increased production of goods and services for export and on the policies that support such a development. The region is facing a third transition that should be characterised by greater reliance on well functioning markets, on much more efficient institutions, and on appropriate policies. The short term risk is that the policies will target an increase of domestic consumption and interventions into the markets rather than aim at further liberalization and regional cooperation. This is because most of

these economies have remained rather closed due to the first two transitions that were rather more concerned with the redistribution of wealth than with the development of market economies. Also, in good times, rather wrong policies were implemented that led to underdevelopment and over indebtedness. Finally, regional cooperation and integration have been low. These legacies need to be reversed now.

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PROPOSALS

FOR A NEW COMMONWEALTH OF THE REPUBLICS OF EX-YUGOSLAVIA

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With the participation of a group of experts composed of:

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The Proposals presented herein were formulated by the Peace and Crisis Management Foundation. Created in Switzerland in the spring of 1992, this institution’s purpose is to study the situation of the countries of Central Europe in order to propose concrete solutions to the problems posed by the transition from totalitarianism to democracy and from collectivism to a free-market economy.

FOREWORD

The war ravaging my country, Yugoslavia, will not last forever. One day the arms will be silent, peace will reign, and life will return to the devastated towns and villages. And on that day it will be necessary for the Republics of the former Yugoslav Federation to learn to coexist once again.

The proposals that I present here in the name of the Peace and Crisis Management Foundation do not claim to settle the innumerable problems that the people and their leaders will face at that moment. Their purpose is to establish a framework general enough to serve as a basis for political dialogue but precise enough to approach the totality of the questions that must imperatively be resolved.

There are no quick and sure answers to the questions raised today by the Yugoslav drama. But there is at least one that Europe can bring to the peoples who have been the victims of this war: it consists in integrating, without delay, the Republics born of the break-up of Yugoslavia into the European Economic Area, in recognizing them as the link which unites South-East Europe with Western Europe. This is possible without overturning the institutional edifice constructed by the twelve member countries of the European Community as soon as one extends the free circulation of people, goods, and capital to all the Yugoslav Republics.

It is absolutely essential that voices be raised immediately to propose to the peoples involved a peaceful means to resolving the conflict. Thus, we have drawn up a general political program -the Proposals which form the first part of this book- and have submitted them to a group of internationally renowned experts -the Documents which make up the second part of this work.

I know very well that our project cannot serve as the basis for the political and economic reorganization of the Yugoslav territory as long as the war continues. But I also know that it is not necessary to hope in order to tackle a problem and I firmly believe that the moment has come to offer our peoples a reasonable hope.

Boris Vukobrat

BORIS VUKOBRAT

PROPOSALS

The Republics of ex-Yugoslavia can and must form in the future a Commonwealth based on the respect of the Human Rights, democracy, the state of law, and the protection of the rights of the peoples. They must also adopt the principles of the market economy and become an integral part of Europe.

The precipitated recognition by the European Community and the United States of certain Republics of ex-Yugoslavia while the question of the minorities had not been settled is one of the principal causes of the current situation in the Balkans. The nationalism which belongs for the most part to the past in Western Europe but remains very strong in the countries of Central Europe, has provoked, under the leadership of unscrupulous politicians, one of the most atrocious wars seen in Europe since World War II. The division of ex-Yugoslavia into in dependant Republics cannot be a long-term solution because the new States cannot survive either politically or economically, but also because their frontiers are, in part, arbitrary and because the problem of the coexistence of the ethnic groups has not been resolved. The States born of ex-Yugoslavia thus have every interest in having their relations institutionalized within an organized entity.

The international community cannot content itself to watch the governments of certain of the new States -notably Serbia and Croatia- trample the fundamental principles of Human Rights and the international rules laid down for the resolution of conflicts; it can do so all the less in that the Yugoslav conflict is taking place in a region of geographic and economic importance and this conflict risks spreading to other regions.

The primary goal of the efforts of the international community is to end the war and to provide humanitarian aid to the victims. But a return to peace is impossible unless, after the end of the fighting, those responsible are judged by an International Court.

Human, political, economic, and strategic considerations lead us to pose the question of the model which might, in the future, permit a new organization of the Yugoslav territory. This model must assure the peoples of ex-Yugoslavia peaceful cohabitation, freedom, and economic pros-

perity while taking into account their cultural, linguistic, and religious diversity.

To attain these goals I propose the formation of a new Commonwealth a Commonwealth which will be created progressively through the free consent of the States and which will be based, like the States themselves and the Regions, on the fundamental values of the modern democracies while taking very careful account of the various Yugoslav differences.

I am well aware that such an approach will be considered utopian while war still ravages Bosnia-Herzegovina and threatens to spread to Kosovo and Macedonia. But I would remind the reader that Jean Monnet conceived the European Community in the middle of World War II, at a time when no one would have dared speak of a future reconciliation between Germany and the countries it was aggressing.

It is quite evident that our Proposals are not formulated for the immediate present but for the future; it is equally as evident that it will be necessary to give time a chance to heal the wounds. But nothing changes the fact that the future of the Republics of ex-Yugoslavia is based on the creation of a new Commonwealth.

FUNDAMENTAL PRINCIPLES FOR A NEW COMMONWEALTH

1. The Yugoslav peoples must be able to freely decide their destiny and their form of government. They are victims of the violence exercised by authoritarian and nationalistic governments; it is not they but their leaders who wanted war. The Yugoslav peoples ardently desire peace, liberty, and self-determination -that is to say democracy; democracy is indeed the basic principle upon which should rest the new Commonwealth.

2. The second principle is that of a state of law. Indeed, the protection of the individual cannot be fully guaranteed except in a state of law where the acts of the public powers are subordinate to the law, where those who hold the public power are subject to democratic control, and where an independent judiciary assures the respect of the law. The organization of the State must, to my mind, be founded on the essential principle of the separation of powers

   The foundations of a state of law are the liberty, the dignity, and the protection of the individual; they are laid down in international conventions and in most of the Constitutions of the European States.

They must also become the norm in the Constitutions of the States of the new Commonwealth.

3. Up to the present, the protection of individual rights has held the place of privilege in political thought. But the Yugoslav example shows just how important the problem of the protection of ethnic groups is and how much it requires concrete solutions. The third principle upon which the new Commonwealth will be constructed will be, therefore, the protection of the ethnic groups. Democratic structures, decentralization and separation of powers, and protection of the individual under the Universal Declaration of Human Rights are not sufficient to protect the rights of these groups; these rights must be established in the Constitutions of all the political levels.
4. The fourth principle that I propose as a basis of the new Commonwealth is the prohibition of all discrimination. All men must be equal before the law and none should suffer from discrimination because of his religion, his language, his color, or his culture.
5. The fifth principle is the decentralization of power. The closer the citizens are to the process of the resolution of problems, the better they exercise their democratic rights and the faster problems are resolved. All state and regional organizations of the new Commonwealth must, therefore, be founded on the principle of subordination. The decentralization of power will render aggression more difficult and will lead to better protection of the minorities; the application of the principle of subordination will strengthen and consolidate the position of the Regions.
6. The sixth principle is that of individual liberty, which is inseparable from economic liberty. Only private property and free enterprise, united with social responsibility, can lead to a durable improvement and stabilization of the economy. Without a minimum of material security liberty is an illusion. In order for economic prosperity to return, and with it, the confidence of foreign nations, there must be a stable political order; but political stability is not possible unless it is based on individual responsibility and initiative. Economic liberty must therefore also be set down as a fundamental principle in the different Constitutions.
7. The frontiers of the States, such as they have been recognized by the international organizations, cannot be modified except in application of international public law and in the respect of the will of the

population concerned. This seventh principle must also be laid down in the fundamental text of the new Commonwealth.

8. The eighth principle is the integration of the Commonwealth into Europe. This progressive integration can only be carried out by the conclusion of international treaties; it also supposes that the political and economic system of the New Commonwealth rests on the European institutions (the Council of Europe, the European Conference on Security and Cooperation, the European Convention on Human Rights, the European Community). This implies that the Regions, the States, and the Commonwealth have Constitutions based on the principles which have just been described, as well as the corresponding political and judicial bodies. Each political level must, however, assume its responsibilities in relation to the system as a whole.
9. The ninth and last principle upon which the new Commonwealth must repose is that of the market economy. It has not only demonstrated its efficacy compared with economic systems based on central planning and collectivization, but it is also an essential condition for integrating the future Commonwealth of Yugoslav Republics into the European Community.

THE REGIONS

The fundamental entities of the new Commonwealth shall be the Regions.

These regions shall have jurisdiction in all matters which have not been delegated to the States or to the Commonwealth. The application of the principle of subordination means that tasks cannot be confided to an authority at a higher political level unless the authority at the lower level is incapable of carrying them out, or if the difficulty of the task in question requires that an authority of a higher level take charge. In the political domains which might lead to legislative competition -for example energy policy, environmental protection, the economy, or transportation policy- the superior authority must only establish the general principles in guideline laws.

The frontiers between the Regions shall no longer be set arbitrarily. Aside from the language, history, geographic position, and culture, the economic relations shall be taken into consideration in order that the

Regions may develop in a harmonious manner. It is equally of importance that the inhabitants identify with the new Regions; it will therefore be highly desirable that the Regions not be founded on ethnic criteria, but rather that the different ethnic groups become accustomed to cohabitating peacefully as they did in the past.

The number of Regions shall be sufficiently numerous to take into account their natural diversity. But the existence of each of them must be as unbeatably justifiable on the economic level as is that of Istria, Herzegovina, Dalmatia, or Kosovo. All of them must result from a consensus of their own citizens, who shall be called upon to decide their geographic boundaries.

The Regions must be created on the democratic model. Each of them shall establish a Constitution founded on the nine principles set down in the preceding chapter; this Constitution shall take effect upon approval by a majority of the citizens.

The Regions themselves will fix their political organization; they will have the right to collect taxes destined to cover their expenses; and they will decide, in application of the principle of subordination, the extent of communal autonomy. Each commune must have at least one popularly elected body.

The Regions shall designate in particular their Parliament by means of free and universal elections. This Parliament will control the activity of the government and the administration; it will establish the budget, approve the accounts, and adopt the laws falling within its domain of jurisdiction.

The Regions shall decide the form of their government. They will notably be free to choose a parliamentary or collegial system. The Constitution must decree laws that guarantee the independence of the courts.

THE STATES

The States must also fix their organization within the framework of the principles which have just been set down.

The Parliament of each of them must be elected by universal and secret suffrage. It is made up of two Chambers, one of which must represent the people (National Assembly), and the other the Regions (Senate). The States determine the jurisdictions of the Chambers. The electoral system

and the length of the term of the senators are fixed by the Regions, but the Senate must, like the National Assembly, be elected through the system of proportional vote. The Constitution must contain rules destined to guarantee the protection of the minorities and the independence of the courts; in addition, the States form the Constitutional Courts. Each Constitution must, furthermore, fix the principles of Constitutional revision, as well as the principles necessary for conventions among the States. The States will ensure that the different Regions are represented equitably in the government.

The people approve the Constitution and choose their representatives. The States have the power to submit to the people, by referendum, different questions. They have the right to collect the taxes necessary to cover their expenses; these levies may take the form of taxes on individuals, on legal entities, or on Added Value. A part of these resources shall be used for the equalization of tax revenues among the Regions.

The States exercise a power of oversight upon the Regions, settle the conflicts which might arise among them and are an instance of appeal against decisions of the courts and administrations of the Regions. The States coordinate the establishment and functioning of the hospitals and of higher education. They assist and coordinate the forces of the regional police.

THE COMMONWEALTH

Collaboration among the States is indispensable. Only the future will tell whether from this collaboration a new entity in the form of a Confederation or a Federal State can be born. But we propose here the formation of a Commonwealth, which, based on treaties or a constitution, will settle the questions which cannot be handled effectively by the States or which, settled by one State, might do harm either to another State or to the Commonwealth as a whole.

For political reasons the delegation of jurisdictions to the Commonwealth can only take place gradually. In the interests of maintaining a state of law, the following jurisdictions could, in our opinions, be delegated to the Commonwealth:

» foreign policy and the representation of the States in international organizations,
» defense and public safety policy,

» monetary policy,
» the formation of a Supreme Court and of a Constitutional Court.

The delegations of power that we are suggesting here are only indicative, the jurisdictions delegated to the Commonwealth being by definition those on which the Republics themselves will have agreed; they will concern first of all the institutions created to manage the free trade zone and the customs union and will be realized in a progressive fashion, rather like that which permitted the construction of the Common Market, then the EEC, and finally the European Community. Let me add that it will doubtless be indispensable to set up at the beginning an "a' la carte" system for the delegation of jurisdictions which might concern only certain States, but which could be extended to all of them as the circumstances permit.

The new entity constituted by the States of ex-Yugoslavia shall ask to become a member of the European Community, because the EC will be one of the best protections against internal and external dangers that it can find. Furthermore, the Commonwealth shall sign, as soon as is possible, the European Convention of Human Rights. In this manner internal peace will be assured in Yugoslav territory and the protection of the individual will be guaranteed on the international level. These objectives shall figure in the preamble of the Constitution.

A NEW ECONOMIC ORDER

Individual liberty, in modern societies, is inseparable from economic liberty. Thus, economic liberty must become the basis of the Yugoslav economy.

The centrally-planned economy killed personal initiative and ruined all countries inspired by it. To reestablish the economic health of the country, it would be appropriate, therefore, to progressively institute a true free-market economy in all the Republics of ex-Yugoslavia. I do not mean by that that all enterprises must be instantly privatized, but that the principles of free competition should be respected throughout the Republics; I also mean that government-owned enterprises, when they remain such, should be managed and should behave like private enterprises.

The State shall limit itself to creating guideline laws so that private initiative may develop without limitations or useless regulations. The point of

departure and the basis of economic liberty shall be private property; Low taxation of the revenues and profits of enterprises will stimulate private initiative, just as low inheritance taxes will allow the formation of private capital which, in turn, will facilitate the formation of a veritable capacity of investment.

Foreign enterprises shall be able to benefit from conditions as favorable as those of Yugoslav enterprises. Obviously, economic liberty also signifies the right to found labor unions and to belong to them. Government-owned enterprises and the public services will be progressively privatized; this will be done at a pace compatible with the re-establishment of the economy of the States, which has been completely disrupted by the war. A part of the capital of these enterprises and public services will be set aside for the workers in order that they participate in the profits in addition to their pay.

Yugoslavia is not a poor country; its natural resources are considerable; its agriculture and its tourism, as well as its privileged geographic position are important assets that the country should exploit.

Before World War II the country exported its agricultural products, in particular corn and beef; but today several States import these products. The first step toward improving the agricultural sector consists in permitting the farmers to exercise their activity freely; liberty alone not being sufficient to modernize agriculture, it will be necessary to grant the needed material aid to permit them to equip their farms with modern matériel.

The Yugoslav countryside is, furthermore, of unquestionable value for tourism. But tourism cannot prosper unless there is free circulation among the Regions and the States. They must, however, assure that private initiative does not destroy the nature and the countryside's, as is too often the case in Old Europe.

The development of the economy and of tourism requires numerous and safe means of communication. Roads, highways, railways, ports, airports, and means of telecommunications are essential for the growth of interior and exterior exchanges. The Regions and the States will thus have to assure the establishment of this infrastructure.

In general, it will be necessary to settle all the problems brought about by the confiscation by the State of property which belonged to private parties before the Communist era:

- As concerns agriculture, compensation will be made to those whose lands were confiscated; this will be accompanied by the immediate freeing of the sale and purchase of agricultural lands;
- As concerns industry, commerce, and banking, all nationalized after World War II, compensation in the form of shares or bonds will be offered to the rightful claimants;
- As concerns real estate confiscated by the State, it will be appropriate to return to the former owners their deeds while protecting the renters so that they not suffer wrongs as a result of this measure. More generally, all the real estate sector will be privatized as has already been done in Slovenia.

In parallel with the development of the economy it will be necessary to assure social policy. Without social peace, no economy can exist, especially in a country coming out of a war and in need of even greater cohesion than another country.

Finally, even if the Commonwealth receives aid from its European partners, it will need foreign capital to finance its economic development. But the confidence of foreign investors cannot be obtained unless the political situation is politically stable and the conditions favorable to economic development are created by the States. Personally, I hope that Yugoslavs living abroad will intervene to favor the growth and development of their country.

CONCLUSION: THE NEW COMMONWEALTH IS A NECESSITY

Historical, economic, political, and cultural reasons must lead to close collaboration among the Republics. The blueprint that I propose here respects equally individual interests and those of the peoples.

The principles lying at the base of the new Yugoslav Commonwealth shall be, I repeat, democracy - a state of law, justice, peace, work, order, and the market economy. These are precisely the values upon which rests modern civilization.

My proposals will probably arouse strong opposition from the political leaders who are currently in control, for they limit these leaders' power.

In the blueprint that I present here power will be distributed, on the one hand, toward the bottom, the Regions, and on the other, toward the top, the new Commonwealth. I am convinced that this is the right solution.

The question of the political feasibility of this distribution of power is an essential question. The course which offers the greatest chance for success would be a realization by stages, beginning by treaties between two or several States and concerning economic collaboration; starting from free-trade zones, monetary unions, and customs unions, one could slowly but surely arrive at a real political collaboration. From a realistic point of view, it is to my mind the only course envisage able.

In theory, it would also be possible to have the blueprint of a constitution drawn up by a group of experts, then to have elected - under international supervision - a Constituent Assembly to finalize this proposed constitution and to submit it to the people and to the States. But, because of the independence of the different Yugoslav States this second course of action seems to me difficult to follow.

The proposals which precede have been purposely expressed in general terms. The reader will find each problem discussed in more detail in the Documents which follow and which are the result of efforts carried out by a group of international experts over the last twelve months.

What is important is that a broad discussion take place and that these Proposals be developed so that the peoples of ex-Yugoslavia find once again courage and hope.

For the moment, my Proposals might seem like illusions. But one day, I repeat, the arms will be silent.

The more these ideas are spread, the more the pressure exerted by the peoples upon the political leaders for them to stop this senseless war will increase, and the more peace will become possible.

Since the utopias of yesterday have become today's reality - the European Community - why shouldn't the hopes of today become the reality of tomorrow?

II DOCUMENTS

ELIZABET KOP
LAWYER IN ZURICH. FORMER MEMBER OF THE SWISS PARLIAMENT (1979-1984). HEAD OF THE FEDERAL DEPARTMENT OF JUSTICE AND OF THE POLICE (1984-1989).

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PROFESSOR KURT ROTHSCHILD
PROFESSOR EMERITUS OF ECONOMICS OF THE UNIVERSITY OF LINZ (AUSTRIA). FORMER RECTOR OF THE UNIVERSITY OF GLASGOW (1940-1947). HEAD OF RESEARCH AT THE INSTITUTE OF ECONOMIC RESEARCH OF VIENNA (1947-1966).

PROFESSOR VOJISLAV STANOVČIĆ
PROFESSOR OR POLITICAL SCIENCE AT THE UNIVERSITY OF BELGRADE (SINCE 1968). CORRESPONDING MEMBER OF THE SERBIAN ACADEMY OF ARTS AND SCIENCES. AUTHOR OF "FEDERALISM/CONFEDERALISM" (1986).

DOCUMENT N° 1

DRAFT DECLARATION OF THE FUNDAMENTAL RIGHTS OF THE YUGOSLAV COMMONWEALTH

Article 1

Human dignity is inviolable.

Torture and inhumane or degrading treatment is absolutely forbidden.

Article 2

Men and women are equal before the law.

No one shall be subject to prejudice nor gain advantage from the fact of his birth, his sex, his race, his language, his ethnic origin, his cultural adherence, or his social status, nor from his religious, philosophical, or political beliefs.

Article 3

Personal liberty is guaranteed.

Every person has the right to life, the inviolability of his body and mind, and the liberty of movement.

The death penalty is abolished.

Article 4

No one may be deprived of his liberty of movement except in the cases and according to the forms provided for by law.

Any person arrested or interned must be immediately informed - in a language he understands- of the reason for his arrest or internment and of his rights. He has the right to request immediately the assistance of legal counsel of his choice.

He may demand to appear - within twenty-four hours - before a court, which will rule without delay on whether to provisionally uphold the measures taken against him or to free him.

If the charge is upheld, the person detained may demand that his case be tried rapidly. In the lack of a rapid trial the accused must be released.

Article 5

Any person deprived of liberty must be treated humanely and must not be humiliated or harassed.

Article 6

The home is inviolable.

Every person has the right to have his private life respected and his correspondence and telecommunications kept secret.

Personal searches, searches of premises, and other intrusions into the private domain cannot be carried out except upon order of a court or, in the case of an emergency, by another authority designated by law.

Article 7

Every person may consult the information and files concerning him and can demand that they be corrected if they are incorrect, or destroyed if they serve no purpose.

Article 8

Any person who addresses himself to the administration or to the courts or who is the object of any administrative or judicial action has the right to have his case settled within a reasonable period. He has the right to be heard before any decision concerning him is made. He can, in particular, examine all pieces of the file that has been put together concerning his case. He has the right to know the reasons justifying the decision made.

If his case presents difficulties, he has the right to be assisted by legal counsel of his choice.

Article 9

No person may be removed from the jurisdiction of his rightful judge.

Exceptional tribunals are prohibited.

Article 10

No person can be the object of an unfavorable decision through the application of a law that was not yet in effect at the time of the events upon which the decision is based.

Article 11

All persons are presumed innocent until guilt has been established by due process.

Article 12

All persons may freely choose and profess their religion or philosophical convictions.

No one can be forced, for whatever reason, to perform a religious act or to belong to a religious association.

Article 13

The liberty of communication is guaranteed.

All persons shall have the right to express their opinions and their feelings by speech, writing, image, or sound or any other means, and to receive those of others.

All persons may seek information through sources generally accessible to the public.

The law provides for the diversity of the written and broadcast press, notably by taking measures against concentrations and the abuse of dominant positions.

Article 14

Education and scientific research, as well as artistic activity, shall be freely exercised.

Article 15

All persons may freely hold meetings or create associations; no one may be forced to participate in them. Meetings held in public places may not be prohibited or subject to restrictions unless they pose a serious threat to public order or to the interest of the other users.

Article 16

Every person has the right to address petitions to the authorities. The petition may be individual or collective.

The appropriate authority must answer within a reasonable period.

Article 17

Citizens exercise their political rights freely, without interference by the authorities. The financing of the elections and popular votes shall be regulated by law.

Article 18

The right to property is guaranteed.

Restrictions on property which are of an expropriatory nature shall give right to frill indemnification. Public collectivities may own the property necessary for the exercise of their activities.

Article 19

Every person has the right to choose and to freely exercise an economic activity, alone or in association with others.

Public collectivities may exercise, in cooperation with individuals or as a monopoly, the activities necessary to society in the event the private sector cannot assume them satisfactorily.

Article 20

All persons belonging to one of the member Republics of the Commonwealth have the right to settle in any place in their territories, to move to another place, or to leave the Commonwealth and to return to it.

Article 21

Fundamental laws bind all the public authorities.

Except for political rights and the freedom to settle at will, they apply equally to foreigners and to those native to the member Republics of the Commonwealth.

Article 22

Legislation and jurisprudence shall ensure the respect of the fundamental rights in relations between individuals when the analogy is possible.

He who exercises his own fundamental rights must respect the fundamental rights of others.

Article 23

The fundamental rights may be limited by law. The limitation must be justified by a preponderant public interest. It must not be more restrictive than justified by the interest which requires it.

The essence of the fundamental rights remains intangible.

Article 24

No exception may be made, for whatever reason of public interest, to the rights guaranteed by Articles 1, 4 II, 5, 9, 10, 11, and 12 II.

Article 25

Any person whose fundamental rights are violated shall be able to go before the courts and claim reparations.

The conformity of laws to the present Declaration may be examined by the judiciary.

A BRIEF SUMMARY OF MOTIVES

This draft Declaration is a distillation of what is found in recent Constitutions and in international legal instruments. For this reason we do not go into a detailed commentary of them.

The draft is intentionally short: indeed, the concretization of the fundamental rights depends on practice, notably on legislation and jurisprudence. We would remind the reader that in France, in Germany, and in the United States, the guarantee of fundamental rights takes up only a score of articles.

The Declaration is conceived as an act of the Yugoslav Commonwealth, resulting from a union of the Republics. It therefore supposes the conclusion of a treaty among the Republics or the adoption of a Constitution of the Commonwealth. It links the institutions of the Commonwealth, as well as those of the Republics which are members of it and those of the regions which make them up.

Naturally, the Constitutions of the Republics may also contain guarantees of the fundamental rights. As concerns the protection of the individual, these guarantees may go beyond those contained in the draft of the Declaration of the Commonwealth.

DOCUMENT Nº 2

DRAFT OF A CONSTITUTIONAL LAW ON THE RIGHTS OF ETHNIC MINORITIES

PART I: GENERAL PROVISIONS

Article 1

The rights of national, ethnic, religious, and linguistic groups, as well as the rights of individuals belonging to these groups (minorities), are guaranteed and shall be protected by this Law and shall be based on the Constitution and International Law.

Article 2

The term "ethnic group" (national minority) shall mean a group which is smaller in number than the rest of the population of the Region or Republic whose population has different national, ethnic, religious, or linguistic features, and whose members wish to safeguard their identity, culture, religion, traditions, or language.

Article 3

Any activity which would violate the rights of ethnic groups as guaranteed by this Law, the Constitution, or International Law shall be prohibited.

Article 4

In exercising their rights, ethnic groups, as well as individuals belonging to those groups, shall be subject to only such limitations as are laid down by the Constitution for the purpose of guaranteeing due recognition of and respect for the rights and freedoms of others and meeting the just requirements of morality and public order.

The rights and freedoms guaranteed by this Law may in no case be exercised contrary to the purposes and principles of the United Nations, or to violate the freedoms and fundamental rights of man and the citizen guaranteed by the Constitution, to stir up national, ethnic, racial, or religious hatred or intolerance, or to encourage the commission of crimes.

Article 5

Each citizen shall have the choice to belong to an ethnic group, and no disadvantage may result from the exercise of this choice.

This right of choice shall apply in the case of marriage between persons of different national or ethnic groups.

Article 6

The principles and rights provided by this Law shall also apply in areas where members of the majority or the largest single group of the Region or Republic are numerically inferior to one or more other national or ethnic groups in that area.

PART II: RIGHTS AND FREEDOMS OF ETHNIC GROUPS

Article 7

Any person belonging to any ethnic group (minority) shall have the right to enjoy, without any distinction or discrimination, the same rights as any other citizen.

Any form of discrimination based on national, ethnic, religious, racial, or linguistic identity shall be forbidden.

The Republic (Region) shall have no right to enact laws which would be contrary to the principle of nondiscrimination.

The adoption of measures favoring a minority or persons belonging to minority groups aimed at developing those groups or individuals and at promoting their equality with the rest of the population of the Republic (Region), taking into account their specific conditions, shall be considered as an act of discrimination.

Article 8

The ethnic (national) groups shall have the right:

» to the safeguard, respect, expression, and development of their national, ethnic, religious, and linguistic identity; and to maintain and develop their culture in all its aspects, which would particularly include the freedom of culture, information, religion, of opinion and expression of the press, of communication, of education, of creativity in the fields of arts, sciences, and literature;
» to use their language and writing freely, in public as well as in private;
» to establish and promote their own educational, cultural, and religious institutions, organizations, and associations;
» to profess and practice their religion;
» to establish and maintain free contacts among themselves within their country as well as contacts across frontiers with citizens of other

states with whom they share a common ethnic national origin, cultural heritage, or religious beliefs.

Article 9

The Republic (Region) shall protect ethnic groups (national minorities) against any activity capable of threatening their existence and/or identity.

Regions and Republics shall refrain from pursuing or encouraging policies aimed at the assimilation of ethnic groups or aimed at intentionally modifying the proportions of the population in the regions inhabited by ethnic groups.

Any act or activity organized by the Region or the State (Republic) and having as a goal the forceful change of the proportion of the population in an area shall be considered as contrary to this Law and as threatening the existence and identity of any groups affected.

Article 10

Signs or elements of identity shall not be forcibly changed or imposed contrary to the will of the respective ethnic group.

Symbols of identity (name of the group, personal names of members, flags, coats of arms, hymns, costumes) shall be freely used unless they seriously offend another group or internationally recognized standards.

When displaying their flags or using anthems and/or other symbols, national (ethnic) groups must at the same time display or use the national flag and other corresponding symbols of the State (Republic) of which they are a member.

Article 11

Ethnic groups shall have the right to organize the education of their children in schools which they establish, finance, and manage along general rules concerning programs and teaching standards, but within a framework broad enough to include the respective groups' history, language, and cultural tradition.

In such cases, the Republics shall have the right to prescribe that the official language or languages also be taught in such schools.

The teaching of ethnic groups' languages would be financially supported by the Regions/Republics in accordance with established needs and means available.

The minimum sums allocated to the schools of ethnic groups shall be equal to the amounts collected from these groups as taxes for elementary and secondary education.

Article 12

Whenever an ethnic group makes up a substantial percentage of the population of the Republic/Region or a local district, its members shall have the right, in so far as is possible, to speak and write in their own language to the political, administrative, and judicial authorities of the respective Region/district or, where appropriate, of the Republic. Authorities in the respective areas shall have the corresponding obligation.

Whenever the conditions of the preceding paragraph are fulfilled, obligatory schooling in state schools shall include the study of their mother tongue for pupils of an ethnic group. In so far as is possible, all or a part of schooling shall be given in the mother tongue of pupils belonging to an ethnic group.

A certain percentage (30%?) of history, literature, and similar courses would be made up of material proper to the minority and, if possible, taught by teachers from the minority concerned.

The teaching of an ethnic group's language shall be financially supported by the Regions/Republics in accordance with established needs and means available.

Article 13

Ethnic groups shall have the right to protect, establish, organize, and manage their own cultural institutions in order to express, preserve, and develop their cultural identity and tradition. In particular, such groups shall have the right to express themselves, to receive and to issue information and ideas through their own means of communication.

Persons belonging to an ethnic group shall have the right to freely express their cultural identity in all its aspects, free of any attempt at assimilation against their will.

Article 14

Different ethnic educational and cultural institutions, depending on the size of the group and other circumstances, shall be organized and managed on the principle of minority self-rule in matters of education (the creation and management of elementary and, where feasible, second-

ary schools) and culture, or a degree of self-organization and participation in running the schools and cultural institutions shall be provided for.

The extent of financial and other obligations of the State or the support of the State concerning activities in this Article shall depend on the size of the group and other conditions.

The financing of activities dealt with in this Article shall be the responsibility of the members of the minority, based on the principle that such financing shall be at least equal to the percentage of taxes collected for the purpose of organizing and maintaining cultural activities. These sums shall be allocated to entities belonging to the ethnic groups which would manage and dispose of these funds for specified purposes (cultural programs, television, press, museums, etc).

These programs will be subsidized according to the size of the minority and available resources.

Alternative to Articles 11-14

Ethnic groups shall have the right to cultural autonomy. In any Region or district where an ethnic group makes up a local majority, such group shall enjoy the right of territorial cultural autonomy which shall imply self-administration by members of the group, directly or through elected representatives, in matters dealing with education, cultural institutions, hospitals, health protection, and similar public services.

Where members of an ethnic group live in diaspora, they shall enjoy the autonomy to create the institutions mentioned in the preceding passage and manage their own educational, cultural, and health-services institutions in order to express, preserve, and develop their own traditions and cultural identity.

(To ensure the financing of these activities the provisions in Articles 11-14 shall be implemented or autonomous taxing power shall be given to bodies exercising the rights of cultural autonomy)

Article 15

Ethnic groups constituting religious minorities, as well as persons belonging to such minorities, shall have the right to exercise their religion or belief, in public or in private, in worship, teaching, practice, or observance, in the manner usually practiced by believers or religious communities.

PART III: PARTICIPATION OF ETHNIC GROUPS IN GOVERNMENT

Article 16

The Republics and Regions shall favor the effective participation of ethnic groups, directly or through their elected representatives, in public affairs, and particularly in decisions affecting the Region where they live or in matters affecting them.

The Republics and Regions shall favor and implement the delegation of authority to lower levels with an aim to promoting democracy and the participation of ethnic groups in managing government and society.

Article 17

The Republic and the Regions shall favor self management in educational and cultural matters and in local affairs by the ethnic groups wherever an ethnic group is majoritary or numerically significant as a distinct group in the community. All forms of local laws for minorities or of broad (cantonal) regional autonomy shall be favored.

Article 18

Each ethnic group shall have a National (Ethnic) Council consisting of representatives elected by members of the respective groups in the Region and in the Republic, with an aim to coordinating voluntary activities of group members and to initiating proposals and solutions regarding the situation of the group and regional/republican policy concerning the group.If the members of the group find it useful and appropriate, a group can elect such a Council at the level of the Association (Commonwealth) as a whole.

National Councils cannot take decisions which would infringe upon human rights and freedoms of citizens or personal rights of individuals belonging to ethnic groups, or oblige members of the group unless they assent to such decisions of their own free will.

Article 19

In order to have adequate representation of ethnic groups in the Assembly of Regions and the Republic, an electoral system shall be established on the principle of proportional representation.

If an ethnic group makes up a certain percentage of the population in the Region or Republic, but is too small to win a seat in the Assembly,

such group shall get one seat in the Assembly of the Region and the Republic, which will be filled by elections organized to elect the representative of the group.

Article 20

In the second Chamber (Senate) of the Parliament of the Regions, ethnic groups shall be represented in accordance with a principle which shall combine the principle of proportional representation with the principle of equal representation.

In the Senate of the Republic, Regions as well as ethnic groups will be represented on the basis of the electoral law which shall be enacted as a result of common agreement.

Article 21

Representatives of the ethnic groups in the Senate of the Region or Republic shall have a veto power over decisions which could threaten the existence or identity of the ethnic group they represent.

PART IV: SAFEGUARDS AND PROTECTION MACHINERY

Article 22

Any ethnic group, or person belonging to such a group, whose rights set forth in this Constitutional Law are violated, shall have an effective indemnity before the authorities of the Region and the Republic.

Article 23

Republics which join the Commonwealth shall ratify the Optional Protocol to the International Covenant on Civil and Political Rights, shall submit themselves to the procedure provided for by the Protocol, and assume the obligation to implement decisions of the Committee on Human Rights established by the provisions of the Protocol.

Article 24

The Court of Human Rights shall be established in each Republic in the Commonwealth. It shall have the jurisdiction to consider appeals of citizens against decisions of ordinary courts when their rights as citizens or persons belonging to ethnic groups are violated by decisions of lower courts.

The Constitutional Law shall clearly establish the organization, election of judges, jurisdiction, and procedure of the Court of Human Rights.

Article 25

The Parliament of the Republic shall establish the Council for Inter-Ethnic Relations to supervise the implementation of laws and policy regarding ethnic groups' rights.

Article 26

Each of the Republics and the Commonwealth shall have a Constitutional Court, which in its jurisdiction shall have an ex officio obligation and the right, on request of authorized persons or concerned parties, to make decisions on the unconstitutionality of laws and by-laws.

Matters of human rights brought before the Constitutional Courts shall be treated with priority and the adequate procedure shall be provided by law.

Article 27

For each ethnic group, in the Region or in the Republic, there shall be established an Ombudsman from among persons belonging to such group and elected by its members.

The right and duty of the ombudsman shall be to act as the advocate of the ethnic group whenever the group's rights are violated. The ombudsman shall be authorized to make proposals to the legislature and to the executive concerning the protection of ethnic group rights, and to bring cases before the Constitutional Court of the Republic or the Commonwealth (Association).

Article 28

Republics and Regions, in so far as possible, shall take into account ethnic groups when dividing the territory into political and administrative sub-divisions or constituencies.

Article 29

Constitutional decrees and laws shall guarantee social, economic, political, and cultural pluralism and an autonomous civil and open society as important conditions for unity and as safeguards of human rights and the rights of ethnic groups.

Article 30

Members of ethnic groups shall be included in governmental bodies at all levels in numbers which are at least proportional to the size of the group in relation to the population as a whole.

POST FACE

The content of this Draft of a Constitutional Law is designed to be adopted as a Constitutional Agreement (Compact) of all contracting parties: the Regions, the Republics, and the Commonwealth. Their legislative bodies should enact a corresponding Constitutional Law for each constituent unit.

In proposing this Constitutional Law, it is considered that the territory of ex-Yugoslavia is multi-ethnic, i.e. multi-national, multi-religious, multilingual, and multi-cultural; that ethnic groups contribute to the cultural richness and diversity which should be preserved; and that the goal of the Agreement on Association is to provide a constitutional, legal, economic, and political framework for greater cooperation, a peaceful life, and the security of all citizens and ethnic groups.

Considering that appropriate regulation of the rights of ethnic groups and of procedures ensuring their protection and their realization is essential for peace and security, for democracy, freedom, and work in the region, this Proposal has taken full account of international law and the intentions of the ECSC conferences, as well as of expert studies of problems related to the consociation and governing of multi-ethnic societies. It takes into particular account the goals of the Charter of the United Nations to save succeeding generations from the scourge of war, to reaffirm faith in fundamental rights, to practice tolerance and live together in peace with one another as good neighbors. It also mentions the Universal Declaration of Human Rights as a common standard for all peoples and nations, based on the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace, and on the understanding that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. It also mentions Article 27 of the International Covenant on Civil and Political Rights, which provides that in those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use their own language; it also refers to the provisions in Article 1 which affirm that all peoples have a right to self-determination; to Article VII of the Helsinki (ECSC) Agreement, which calls for participating States to recognize and respect the rights of individuals alone or in community with others; to the ECSC follow-up

Copenhagen Conference, which provides that persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group, and confirms that the participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law with an independent judiciary; that persons belonging to minority groups shall be guaranteed fundamental freedoms without any discrimination and flill equality with other citizens; that the States are obliged to protect the ethnic, cultural, linguistic, and religious identity of national minorities on their territory and to create the necessary conditions for the promotion of that identity.

It also mentions the Charter of Paris for a New Europe (1990) which, stating that democracy is the best safeguard of freedom of expression, tolerance of all groups in a society, and equality of opportunity for each individual, stresses that democracy is a necessary but not sufficient means to ensure the rights of groups and confirms that it is widely recognized that in the absence of special measures, it is not possible to protect minority rights through the traditional means of protecting individual rights.

It also refers to the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, which proclaims that genocide, whether committed in time of peace or in time of war, is a crime under international law, which contracting parties undertake to prevent and punish.

It equally mentions the International Convention on the Elimination of All Forms of Racial Discrimination; the Declaration of the Rights of the Child; the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe in its entirety; the Concluding Document of the ECSC Vienna Conference, in which participating States confirm their commitment to the principle of self-determination of peoples, to strictly and effectively observing the principle of the territorial integrity of states, and to taking effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religious belief, to foster a climate of mutual tolerance and respect, and to protect and create conditions for the promotion of the ethnic, cultural, linguistic, and religious identity of national minorities on their territory.

November 8, 1992
Prepared by Vojislav Stanovčić

DOCUMENT N° 3

DRAFT CONSTITUTION FOR A REGIONALLY-STRUCTURED REPUBLIC

Important note this draft deals with a Republic as a component of the future Commonwealth and not with the Commonwealth itself; whether the latter will be based on a treaty or a Constitution is still unknown.

PART I: GENERAL DISPOSITIONS

Article 1

The (...) is a democratic and social Republic.

It respects human dignity and guarantees men and women's legal equality, irrespective of language, religion, culture, or ethnic group.

In particular, it protects minorities.

Article 2

The sovereignty of the Republic rests with the people who exercise their rights through their representatives and referendum votes concerning revisions of the Constitution. Suffrage is universal, free, equal and secret.

Article 3

The Republic is made up of Regions.

The Regions are organized according to the principles of democracy and exercise the powers necessary to asserting themselves and developing their uniqueness, in compliance with the provisions of the present Constitution.

Article 4

Political parties cooperate in the shaping and expression of suffrage. They have the right to associate and petition freely. Their organization and activity must respect the principle of democracy.

Article 5

Laws must comply with the Constitution. Any legislative act must comply with the laws and the Constitution.

Individuals and authorities must respect the legal system of the Republic.

Article 6

Arms, flags, anthem.

Article 7

The first official language of the Republic is (...). The Regions are allowed to have official regional languages. A law of the Republic will define the rules governing the use of official regional languages when dea3ling with the authorities of the Republic.

Article 8

The capital of the Republic is (...)

PART II: FUNDAMENTAL RIGHTS

Omitted: many documents relating to this subject can currently be found. Indeed, the group of experts has drafted a "Declaration of the Fundamental Rights of the Commonwealth" in Document No 1, whose object is to guarantee a minimum respect of fundamental rights in every member Republic of the Commonwealth.

PART III: MINORITY RIGHTS

Article 1

Those considered as minorities are persons or groups of persons, nationals of the Republic, who do not occupy a dominant position and are different because of their language, religion, culture, or ethnic group, from the majority of the population living in the territory of the Republic, of a Region, of an administrative precinct or of a community.

Minorities retain their rights even if the rest of the population is also formed by minorities.

Article 2

Persons belonging to a minority are entitled to individual protection.

Every minority is entitled to collective protection when it has a certain number of individuals. A law of the Republic will determine this number.

A. Individual protection

Article 3

Persons belonging to a minority have the same rights as the rest of the population.

Article 4

They are entitled to freely express, preserve, and develop their uniqueness and to be protected against any attempt at forced assimilation.

In particular, in common with the other members of the minority to which they belong, they are entitled to their own cultural life, to practice and profess their own religion, and to use their own language.

B. Collective protection

Article 5

In the territories where they are numerically important, minorities are entitled to the institutions reflecting their uniqueness.

In particular, linguistic (or religious) minorities are entitled to schools where the teaching is conducted in their language (or in compliance with their religious beliefs), as well as to a written press, and their own radio and television progams.

The financing of minority institutions is regulated by a law of the Republic.

Article 6

Each numerically strong minority must appoint a council responsible for representing the said minority according to its own rules.

The council is duly consulted by the public authorities each time the latter plans to take measures concerning the minority the council represents.

The councils of minorities appointed by virtue of this article have the authority to bring suit for violations of individual or collective rights of minorities.

PART IV: THE POLITICAL ORGANISATION OF THE REPUBLIC

A. The Parliament

Article 1

The Parliament of the Republic is made up of two Chambers:

- » The National Assembly
- » The Senate

Article 2

150 members form the National Assembly. Seats are apportioned to the regions proportionately to their population in residence.

The members of the National Assembly are elected by direct universal suffrage according to the system of proportional representation, calculated on the basis of the population of the whole Republic.

All persons of (...) nationality, over eighteen, residing in the territory of the Republic, are entitled to vote and to be elected, except for those persons who have been deprived of their political rights for mental incapacity.

Article 3

The National Assembly is elected for a four-year term. The following elections must be held during the before last month of the fourth year. When the National Assembly is dissolved before the end of its legal term, elections must be held no less than twenty and no more than forty days after the dissolution was announced.

The National Assembly takes office within the month following the elections. The powers of the former assembly cease the day the new assembly takes office.

Article 4

The Senate is composed of five members per Region.

In each Region the senators are elected by direct universal suffrage according to the system of proportional representation. Electoral procedure and the length of their term is determined by the law of the Region.

Article 5

National Assembly holds its ordinary sessions at least twice a year, on the third Monday in January and the third Monday in September.

An extraordinary session can be convened upon special request either by the Government or by one third of the members of either Chamber.

Article 6

No person can be member of both Chambers at the same time.

Article 7

Members of the National Assembly vote without instructions.

Article 8

The status of the members of the National Assembly is regulated by law.

Article 9

The following items in particular come under the jurisdiction of the the National Assembly:

- Passing of laws;
- Allocating of funds, approving the budget, and receiving the accounts of the state;
- Approving of international treaties;
- Close monitoring of government and administration activities;
- Fulfilling of all duties assigned to it by law.

The National Assembly reviews the Constitution according to law.

Article 10

Every member of the National Assembly, every senator, the Government of the Republic, as well as the National Assembly of each Region, can propose laws.

Article 11

The two Chambers deliberate separately.

Article 12

With the exception of specific constitutional rules to the contrary, in each Chamber decisions are carried by a majority of the voting members present.

Article 13

As a rule, the sessions of the two Chambers are open to the public.

Article 14

In case of persisting disagreement between the two Chambers after a second reading, a joint Commission with equal representation from both Assemblies will be appointed to formulate a compromise.

If the proposal does not meet with the approval of both Chambers, the final decision rests with the National Assembly, which can ratify either its previous decision, the Senate's proposal, or the compromise. Failing this, the whole proposal is to be considered as rejected.

B. The President of the Republic

Article 15

The President of the Republic is elected by the National Assembly and the Senate during a joint session. The election is carried by a majority of the voting members present. If no candidate is elected after the third round, for each of the following rounds in turn each candidate having received the least votes is eliminated.

In case of a tied vote, whether for the election or elimination of a candidate, the vote will be decided by a drawing of lots.

Article 16

The President is elected for a five-year term. He can be re-elected only once.

Article 17

The following items come under the jurisdiction of the President of the Republic:

» Appointment of the Prime Minister after the latter's election by the National Assembly;
» Appointment and recall of the other members of Government upon proposal by the Prime Minister;
» Upon request by the Prime Minister, dissolving of the National Assembly except for the case dealt with in Article 20;
» Representing the Republic when dealing with foreign powers; signing and ratification of international treaties; accreditation and reception of ambassadors;
» Promulgation, proclamation and ratification of laws;
» Appointment of judges and civil servants unless the Constitution or a law stipulates otherwise;
» Granting of pardons;
» Carrying out of all other duties assigned to him by law.

Article 18

Presidential decisions must be countersigned by the Prime Minister or another member of Government except for the case dealt with in Article 20.

C. The Government

Article 19

The Prime Minister and the other Ministers form the Government.

Article 20

The Prime Minister is elected to office by an absolute majority of the members of the National Assembly. If no candidate is elected after the third round, the election is carried by a relative majority, unless the President of the Republic decides to dissolve the National Assembly.

Article 21

The other Ministers are appointed and recalled by the President of the Republic, upon proposal by the Prime Minister.

The Prime Minister chooses the Ministers from different Regions. No more than one third of the Ministers can originate from the same Region.

Article 22

The Prime Minister defines the general direction of government policy.

Article 23

The following items come under the jurisdiction of the Government:

» Determining the goals of state actions within the limits of the Constitution and the law;
» Heading the administration;
» Conducting international policy;
» Making the necessary law enforcement provisions and implementing international treaties;
» Carrying out all the other duties required by law.

The legislative delegation of parliamentary power to the Government is authoritative in the areas defined, under the condition that the law contains the main principles of the delegated regulation.

D. Relations between the National Assembly and the Government

Article 24

The Government is politically accountable to the National Assembly.

Article 25

After consulting the Government, the Prime Minister can at any given moment ask the National Assembly for a vote of confidence. If the vote is not carried in the National Assembly by an absolute majority of its members, the Prime Minister can ask the President of the Republic to dissolve the National Assembly.

Article 26

The National Assembly can only express its lack of confidence in the Prime Minister when an absolute majority of its members elect a new Prime Minister.

Article 27

Except for cases when a member of the National Assembly or a senator asks the National Assembly to take action on specific issues, the questions before the National Assembly are prepared by the Government.

PART V: REGIONS

Article 1

The Republic of (...) is made up of nine Regions.

The borders of the Regions are defined in an appendix to the Constitution.

Article 2

Modification of the territories of the Regions as well as creation of new Regions or elimination of existing Regions is undertaken in compliance with procedure for the revision of the Constitution.

Revision of the Constitution is submitted to previous approval by the people of the territories concerned. Separate elections will be held in each territory. Any decision to separate part of a Region from a Region can be made only by that part of the Region desiring separation.

If the Governments of the concerned Regions agree, a law of the Republic will regulate minor border readjustments.

Article 3

Each Region has its own Constitution.

The regional Constitution and subsequent revisions thereof are submitted to a vote of the people of that Region.

Article 4

Each Region must have a Parliament elected by direct universal suffrage as well as a constituent government that has been democratically appointed.

In each Region, each town must have at least one elected body elected by direct universal suffrage. Townships have the right to self-administration concerning issues pertaining to the local community.

Article 5

The Regions have the power to pass and enforce laws and other legislative provisions. As a rule, the Regions are also responsible for enforcing the laws of the Republic.

Article 6

The following items come under the legislative jurisdiction of the Regions:

- » Regional political organization;
- » The official regional languages;
- » Public education;
- » Culture;
- » Radio and television;
- » Social Security;
- » Sports;
- » Transportation;
- » Energy;
- » Regional planning and development;
- » The protection of nature;
- » Regulating construction;
- » Fire protection;
- » Regulating trade and industry;
- » Aid to the needy;
- » Local taxes;
- » Regional judicial organization;
- » Law enforcement.

A law of the Republic may decide that other areas come under the legislative jurisdiction of the Regions.

Article 7

In those areas where the Regions have legislative jurisdiction according to the Constitution, the Republic can only pass coordinating laws.

Coordinating laws must obey the jurisdiction of the Regions set by the Constitution. They can only contain provisions that are absolutely vital to the needs of the Republic.

Foreign policy, national defense, economic policy, currency, citizenship rights, civil rights, criminal law, labor laws, the public health program and environmental protection come mainly under the jurisdiction of the Republic.

ALTERNATIVE PROPOSAL:

Article 6

Any area that has not been attributed to the Republic in this Constitution comes under the legislative jurisdiction of the Regions.

Article 7

The following items come under the legislative jurisdiction of the Republic:

» Foreign policy;
» National defense;
» Economic policy;
» Currency;
» Citizenship rights;
» Civil rights;
» Criminal law;
» Labor laws;
» Social security;
» Environmental protection;

In other areas, the Republic can only pass coordinating laws.

Coordinating laws must obey the jurisdiction of the Regions. They can only contain the provisions that are vital to the needs of the Republic.

Article 8

The Governments of the Regions are consulted when laws of the Republic are being drafted.

Article 9

When laws of the Republic are constitutional, they override the laws of the Regions.

PART VI: FINANCIAL STRUCTURE

Article 1

The Republic levies an income tax on individuals, a profit tax on legal entities, a value added tax, tariffs, and a special energy tax.

The income tax rate for individuals and the profit tax rate for legal entities shall not be more than 10%.

Article 2

The Regions can levy an income tax on individuals, a profit tax on legal entities, an inheritance and donation tax as well as a tax on motor vehicles.

A law of the Republic may authorize the Regions to levy other taxes.

Article 3

The proceeds from taxes levied by the Republic on the income of individuals and on the profits of legal entities are shared between the Republic and the Regions, at the rate of two thirds and one third respectively.

A law of the Republic, based on the principle of equalization, governs the way the proceeds are shared between the Regions.

Article 4

The taxes levied by the Republic and Regions on the income of individuals and on the profits of legal entities are calculated so as to take into account economic means of taxpayers.

PART VII: JUDICIAL ORGANIZATION

Article 1

Judicial power is granted to judges.

It is wielded by Regional courts and by the courts of the Republic.

The judges are impartial and independent of any political power.

A. The Regional Courts

Article 2

Each Region has its own courts.

The constitution of the courts and their legal procedure are governed by the Constitution and the laws of the Region.

In each Region there are at least two levels of jurisdiction.

Article 3

The Regional Courts enforce the Constitution and the laws of the Republic as well as the Constitution and the laws of the Region.

Article 4

Each Region has a Constitutional Court.

The following items come under the jurisdiction of the Regional Constitutional Court:

- Decisions as to whether a regional law is contrary to the Constitution of the Region;
- Matters in dispute during Regional or Municipal direct universal suffrage elections as well as during senatorial elections;
- Settling jurisdictional disputes between the Parliament and the Government of the Region;
- Other matters that come under its jurisdiction according to the Constitution and the laws of the Region.

Article 5

The constitutionality of a Regional law in terms of the Constitution of the Region is brought before the Regional Constitutional Court by the law enforcement Courts in the case at hand, or else, within a year of ratification of said law, by any individual with a cause worthy of protection or by any town that feels its autonomy has been encroached upon.

A Regional law can have other provisions providing for ways to bring matters before the Regional Constitutional Court.

B. The Courts of the Republic

Article 6

There is a Court of the Republic to guarantee common interpretation of the laws of the Republic.

A law of the Republic can decide that this court will be divided up into special sections, or form different courts for different legal issues.

Article 7

There is a Constitutional Court of the Republic. Eleven members form the Constitutional Court of the Republic. Seven members are elected by The National Assembly, four by the Senate.

The members of the Court are elected for one eight year term.

Article 8

The following items come under the jurisdiction of the Constitutional Court:

- Decisions as to whether a Regional Constitution or law is contrary to the law of the Republic;

- Decisions as to whether a law of the Republic is unconstitutional;
- Matters in dispute during elections for the National Assembly, referendums relating to the Constitution, or local referendums relating to territorial alterations of the Regions;
- Settling of jurisdictional disputes between the different bodies of the Republic established by the Constitution;
- Matters governed by the laws of the Republic.

Article 9

The constitutionality of a Regional law or Constitution in terms of the law of the Republic is brought before the Constitutional Court of the Republic by the law enforcement courts in the case at hand, or at any given time by the Government of the Republic, or by any person with a cause worthy of protection within a year of ratification of said law.

The constitutionality of a law of the Republic in terms of the Constitution is brought before the Constitutional Court of the Republic by the law enforcement courts in the case at hand, or at any given time by the Government of a Region, or by any person with a cause worthy of protection within a year of ratification of said law.

A law of the Republic can decide that there are other ways of bringing matters before the Constitutional Court of the Republic.

PART VIII: REVISION OF THE CONSTITUTION

Article 1

The Constitution can be partially or totally reviewed at any given time.

Article 2

The revision can be initiated by twenty deputies of the National Assembly, ten senators, the Government of the Republic, as well as by the Parliament of each Region.

Article 3

The new Constitution or the new constitutional provisions must be passed, in exactly the same terms, by a majority of the members the National Assembly and of the Senate.

Article 4

The new Constitution or the new constitutional provisions are submitted to the vote of the people and of the Regions.

Any person of (...) nationality who is over eighteen and a resident of the territory of the Republic, is entitled to vote unless he has had his political rights repealed because of mental incapacity.

If a partial revision includes different matters, each one must be voted upon separately.

Article 5

The new Constitution or the new constitutional provisions are passed if they are ratified by a voting majority of the whole Republic as well as a voting majority in a majority of the Regions.

A BRIEF STATEMENT EXPLAINING THE GROUNDS FOR THE PROPOSAL

As was explained above, this proposal is a broad outline of the Constitution of a Republic. We are not dealing with a Commonwealth of Republics whose base could be an international treaty rather than a Constitution.

The proposal is only a draft. Even the article on fundamental rights has been omitted because we felt that it was not the issue, and also because there exist a great many models that could fire the imagination and easily fill the gap. Indeed, a group of experts, at the Commonwealth level, have drafted a proposal entitled the "Declaration of Fundamental Rights", which is a 'minimal' statement so to speak, that would apply to the Commonwealth itself and to all the member Republics of the Commonwealth.

The draft is based on the general principles common to most of the existing Constitutions, and on three major political ideas: the protection of minority groups, regionalism, and a parliamentary regime, which is clearly preferable to a presidential regime. Notice that the directorial regime in Switzerland would also be worth looking into. The decision not to do so was mainly because we thought it was inappropriate; we deemed that a Swiss national should not be the one to suggest a Swiss solution to a Yugoslav problem.

The general principles (Part I) do not call for any special remarks. The formulations have been taken from different Constitutions, and more specifically from the 1949 German and 1958 French Constitutions. The first Part heralds the protection of minority groups (Article 1, III) and regionalism (Article 3) in particular.

Fundamental rights come immediately after (Part II). We have already explained why the proposal does not have a draft. One of the questions that will have to be solved later will be whether it is suitable to guarantee social rights in the same way as fundamental rights. We do not think it would be wise to do so because the analogy between the two is deceptive. It would be better to propose "social rights" as goals or as duties set for the Republic and the Regions.

On the question of the protection of minority groups (Part III): we have attempted to define minority groups on the basis of a wide range of international studies (the work of Mrs. Pircher, Mr. Capotorti, Mr. Ermacora, Mr. Benoit-Rohmer and Mr. Bokatola, for instance) while acknowledging that the concept varies according to circumstances, and therefore is very difficult to put in writing in a legal document. (page 85)

Mr. Stanovčić's remarkable report shows that a distinction should be made between the protection of the individual and the protection of the group.

Individual protection begins with respecting fundamental rights. But we have added (Article 4) a few extra guarantees that can be found in the provisions of the December 1966 United Nations Pact on Civil and Political Rights (Article 27), and in the report by the commission of ECSC experts that met in Geneva in July 1991, specifically the protection of minority groups against the policies of forced assimilation.

Group protection is characterized by acknowledging the right of minority groups to have special institutions, such as schools (Article 5); as well as granting the group the right to file suit in court (Article 6, III).

These constitutional provisions should obviously not hinder the signing of international treaties that will ensure increased protection of all minority groups. Submitting the Republic to international control also presupposes that a treaty has been ratified.

Regarding the political regime (Part IV): the draft proposes the setting up of parliamentary regime similar to the German one (see Articles 63, 67 and 68 of the Fundamental Law of Bonn in particular), but it proposes a two Chamber system similar to the American or the Swiss one (Article 7), that is to say with a Senate rather than a Bundesrat. For both assemblies, we would advise that the elections be held on the basis of proportional representation (Article 2, II and 4, II) for this would protect

minority groups more effectively, especially if the group is scattered. Representation in the National Assembly is based on the Republic as a whole and Senatorial representation on the Region.

Concerning relations between the National Assembly and the Senate, we have given the National Assembly the casting vote (Article 14, II). This is justified, we believe, by the type of parliamentary regime proposed, since the Government is responsible to the National Assembly and not to the Senate (Article 24 to 26) (this is also the French solution). Only revision of the Constitution requires the agreement of both Chambers.

The President of the Republic is head of state in a parliamentary regime (after the German Bundespresident model). Indeed, we are convinced that an American or even French-style presidential regime is not suitable for Republics that are as mixed as those that form ex-Yugoslavia.

The Prime Minister is the prominent figure of the regime, but the proportional composition of the National Assembly and the (probable) necessity of basing the Government on a coalition will prevent him from exercising a quasi-dictatorship, as often happens in the two-party system.

Concerning the Regions (Part V): this is the major innovation of the proposal, that was inspired by Mr. Vukobrat's idea. Regionalisation is one of the main tools for protecting minorities. We refer here to the special remark on this issue and that is dealt with in Document No.4.

Obviously, the success of the undertaking will depend on the way the Regions are divided up, and on their new borders (Article 1, II). Carving up the regions is an extremely delicate operation, which a foreigner has little to say about. We must be aware of the fact that even if it is done in such a way to turn certain national minorities into regional majorities, the formation of new minorities within the Regions is unavoidable. That is why the general rules laid out in Part III are important.

Concerning the balance of powers, we suggest two systems: mainly jurisdictional powers from top to bottom, which is different from the system governing the United States, Germany, and Switzerland. We chose this solution because the Regions do not yet exist, they still remain to be defined, whereas the Republic does exist. Normal procedure is therefore to start with the Republic and then attribute jurisdictions to the Regions. But it can be observed that there are many broad jurisdictions attributed

to the Regions (Article 6) that are guaranteed by the Constitution and therefore do not only depend on law. Last there is a jurisdiction that protects the regions under the stipulations of Part VII.

We thought it useful, even though logically it was not necessary, to list the main jurisdictions of the Republic (Article 7, III) as examples. In these areas the result is that the delegation of power to the Regions (according to Article 6,11) is only possible on secondary points.

Furthermore, we have presented an alternative proposal based on the American method.

The financial regime (Part VI) is dealt with from the point of view of regional structure. The point is to divide up fiscal jurisdictions between the Republics and the Regions, and to share certain proceeds from taxes levied by the Republic among them.

Both the Republic and the Regions, the latter having overriding jurisdiction, have the jurisdiction to levy a direct tax. The direct tax levied by the Republic is mainly geared toward ensuring some form of equalization between the Regions. But a ceiling rate has been fixed by the Constitution so as to protect the competing jurisdictions of the Regions.

The judicial organization (Part VII) was inspired by German as well as by Swiss law, in fact. Jurisdictional functions fall mainly to the Regions, including the enforcement of the rights of the Republic. The right of appeal is the only item that comes under the Republic's jurisdiction so as to secure common interpretation of the law of the Republic.

The project proposes a constitutional jurisdiction in the Regions and the Republic (on this point see Articles 93 to 100 of the Fundamental Law of Bonn). It's the Constitutional Court of the Republic's responsibility to enforce the balance of jurisdictional powers between the Republic and the Regions.

The revision of the Constitution (Part VIII) is conducted by the National Assembly (the two Chambers have the same power in this case), provided there is a mandatory popular and Constitutional Court referendum, following the Swiss or Australian model. The proposal does not however consider popular initiative, as it is concerned with avoiding the threat of political agitation.

DOCUMENT Nº 4
ON REGIONALIZATION

It seems evident that the pacification of the Republics of ex-Yugoslavia, as well as the reconstitution of a Yugoslav Commonwealth, must begin with the formation of Regions.

The Regions, as understood by the group of experts, are territorially-based public collectivities created within the territory of the present Republics. It is the entirety of each Republic which is divided into regions. There is no part of the territory of a Republic that does not also belong to a Region; this means that the sum of the territories of the Regions is equal to the totality of the territory of the Republic. Or, to put it in other terms: each point of the territory of the Republic depends on two superposed public collectivities, the Region and the Republic. This coexistence of two powers in the same territory poses the problem, common to all federal structures, of the division of jurisdictions. The Draft Constitution for a Republic, presented by the group of experts in Document No 3, proposes one model for division (as well as a variation).

The Region, as it is presented here, is essentially a political concept. Of course, its division must be done according to multiple criteria based on historical traditions, geography, language, religion, culture, and even the economy. But, once this division has been carried out and as long as it is not modified in the manner provided for by the Constitution, the Region that it determines will form a true political body, a collectivity having numerous jurisdictions, notably legislative, and, to exercise them, authorities which are specific to it, that is to say which it shall designate and organize as it sees fit.

Thus endowed with power and authorities, the Region is anything but an administrative circumscription. It is much more than an economic organization responsible for planning and for distributing financial resources. Indeed, it cannot be confused with a public collectivity that has simply been decentralized. It must, on the contrary, be recognized as having the nature of a State, as is generally the view of the Swiss cantons, or, everything being relative, the German Lander, the Canadian provinces, or the American states.

The number of Regions will obviously be determined by those responsible for determining their boundaries, that is to say the politicians, men

and women, who will contribute to the elaboration of the Constitutions of the Republics, in close cooperation with the local populations. But I suggest here that the number not be too small. With two or three Regions in a Republic conflicts would be inevitable, as certain recent examples clearly demonstrate. It would be better to create at least six or seven, if that can be done in a natural manner.

The creation of Regions will provide a preliminary, if rather approximative, answer to the problem of ethnic minorities, at least when they are not too dispersed. Thus the Serbian minorities concentrated in Croatia, the Croats in Bosnia, or the Albanians in Serbia will have in a very natural manner their Regions. Obviously these Regions, where an ethnic group that is a minority in the Republic will become a local majority, will also include minorities. For example, in the Republic of Croatia, a Region with a Serbian majority will certainly have a Croatian minority and perhaps also a Hungarian minority, etc. As it is impossible to carry out the division of the territory down to the last individual, it will be necessary to establish other, non-territorial, rules of protection. The Draft Constitution for a Republic, presented in Document N° 3, contains those rules which seemed most important to the group of experts.

Let us say once again, in conclusion, that if it is normal that the different ethnic groups of a Republic form themselves into Regions, nothing would be worse for the internal peace of a Republic than limiting the number of Regions to the number of ethnic groups, that is to say creating one Region per ethnic group. Such a division into purely ethnic blocs could not fail to reignite the nationalist conflicts which would lead straight to the break-up of the country. To put it concretely, the division of the Republic of Bosnia-Herzegovina into only three Regions, one for the Moslems, one for the Serbs, and one for the Croats, would lead to a rapid disintegration of the State. In order to last, a federative structure requires a larger number of Regions. For example, several Moslem, Serbian, or Croatian Regions distributed according to more than ethnic criteria alone.

DOCUMENT N° 5
ECONOMIC RECONSTRUCTION

The economic reconstruction of a pacified Yugoslav region will be a difficult and protracted task, not only because of war damage and dislocation, but also because of the time lost in remodelling the economy for its integration into the changing European environment.

Workable strategies partly depend on the form and content of future political arrangements, and on what will be the prevailing influences in the newly-established countries and regions. A willingness to forge close economic cooperation and restore traditional economic ties could provide a firmer basis for every region. Political cooperation may foster economic reconstruction and vice versa. Whereas important political provisions relating to constitutions, democratic institutions, parties, etc. can be implemented fairly quickly, economic recovery and a return to a satisfactory living standard will take much longer.

Experience in other countries has already clearly shown that "big bang" solutions, i.e. the hope of restoring economic growth with a shock treatment consisting of a quick, drastic about-face to free and unregulated markets, is not viable. These solutions may be the cause of serious setbacks leading to dramatic social and political consequences and thereby reducing chances of a future recovery. Apparently, two conflicting solutions should not be confronted, namely big bang vs. gradual strategies. What is required is a mixed strategy. Directional changes toward an internationally open market economy should be undertaken speedily in order to ensure certain important developments, while other measures would be introduced gradually so as to prevent break-downs, and make adjustments economically, socially, and politically acceptable.

The proper timing ("sequencing") of various measures is just as important as the measures themselves. Both measures and timing will depend on circumstances, and may differ from one country, or moment, to the next. Therefore the following remarks can only be regarded as suggestions for the issues that have to be dealt with one way or another. As suggestions, they cannot provide a blueprint for future policies. Fixed plans can only be laid down when there is a given socio-political framework for decision-making. Even then it will be necessary to allow for constant assessments and modifications as new experiences unfold in the new environment.

Scaling down the sky-high inflation and implementing a reliable monetary system are essential requirements for a workable market economy. Various currency reforms (new currency, freezing of saving accounts, price adjustments including a gradual reduction of subsidies, and so on) are necessary to generate the conditions that will lead to a proper allocation of resources and to designing rational investment plans. A monetary reform has to be "credible" to secure the needed confidence in the currency and a return to the practice of saving. Therefore the design and implementation of the reform must be carefully prepared, planned, and controlled by governments in cooperation with a (partially) independent central bank. Nevertheless, inflation must be scaled down carefully so that the economy does not end up in deflationary bottlenecks, thereby depressing public and private investment and hindering the reconstruction process. After this reform, a mildly expansive monetary policy, buttressed by a banking and credit reform, would be advisable.

The monetary reforms and policies of the various regions should be coordinated as soon as possible to promote a high stability of exchange rates between the (partly new) currencies. This will increase the chances of restoring traditional trade relations in the area.

A commission consisting of finance ministers and central bank managers should meet regularly to coordinate monetary and exchange rate policies, which could later lead to fixed exchange rates or a common currency ("dinar bloc") that could eventually merge with the European ECU. A coordinated banking system (with a "Federal Reserve Bank"?) could help the adjustment process.

Concomitant with the monetary reforms, production, trade, incomes, and living standards will have to be restored and their growth encouraged within the European and world economy. This can only be a gradual process over a long period of time. Repairing the infrastructure that was disabled due to the hostilities should be given priority. The prerequisite for economic recovery and efficient industrial specialization in every Region and Republic is to restore the railway, pipeline and telecommunications network. A more efficient organization and coordination of heavy industries and trusts will greatly contribute to this process, since narrow regional outlooks can lead to overlapping and inefficient investments and production programs. Coordinating activities, such as the European Coal and Steel Community actions as well as setting up stock exchanges can lead to viable planning and development structures that will be competitive on the international market.

In view of the many foreseeable shortcomings and difficulties, an immediate switch to a free-market system is not feasible. As was the case for the war-damaged countries after World War II, in this instance during the transition to "normal" conditions it will be necessary to enforce various regulations and to provide mediation.

For a while price control (housing!), subsidies for staple commodities, selective credit policies, interest rates, perhaps some form of rationing, multiple exchange rates, etc., are the various tools that might have to be used to secure extremely urgent priorities, such as reconstructing and modernizing the infrastructure, safeguarding minimum living standards, and so on. All of which will provide a vital basis for subsequent privatization and investment.

In trade and small business, investment can get started fairly easily and quickly, which is not the case for major corporations, industries, and finance.

Future needs must not be neglected during the transition period. Though urgent requirements should get preferred treatment, long term possibilities should also be kept in mind. Structural policy should be geared toward consolidating a viable competitive economy. Thus it becomes advisable to immediately inform subsidized and protected firms that their special advantages will eventually be repealed (either gradually or by a given date), and that from then on they will be frilly exposed to domestic and international competition.

As far as infrastructures and major investment projects are concerned, some coordination (information, guidelines for planning, credit arrangements, etc.) between the different regions should be established at the outset to promote closer trade relations and prevent parallel and redundant business.

Controlling measures will also be an important part of international trade relations during the transition period, irrespective of future (hypothetical) candidacy for EEC membership. Tariffs, import subsidies, currency exchange controls will be mandatory for some time to secure priorities and give new, promising investment projects a chance of survival in heavily competitive markets.

But again, from day one the temporary nature of such measures should be made quite clear so as to prevent businesses that would be doomed at the outset from being set up.

Trade barriers between the regions of ex-Yugoslavia should be removed as soon as possible so that the still viable traditional divisions of labour and trade relations can be restored before it is too late. To a lesser degree this also applies to trade with the former Eastern European countries (CMEA) whose markets may still have some viability. The lack of foreign trade in these regions can be partly overcome by traditional barter and special clearing agreements. But behind it all there must be a gradual yet continuous policy of opening up the economy to world trade to foster the development of an industrial structure enabling the whole region to become a competitive member in the world of industrial nations. To achieve this aim, high priority, both in private and state-owned companies, will have to be given to R&D (research and development) expenditures so as to make good for the lost years and catch up with contemporary standards of technology and marketing. It goes without saying that foreign aid, investment, and know-how has a role to play in this process.

After years of destruction and disintegration, economic reconstruction and cooperation in Yugoslavia is a formidable problem. In view of the natural and human resources of the region (including its members abroad) the task is not impossible, though it might require some time. It is crucial to recognize this as not only an economic problem but also a political one. To achieve economic progress and cooperation in the area, it will not only be necessary to implement certain economic measures in production but also a social policy in order to avoid the threat of social unrest. This is essential to ensure an undisturbed development and a regional policy unfolding in solidarity so that the fruits of cooperative efforts will be shared by all. Thus the quality of political leadership will be a crucial factor for the speed and range of a very difficult transition toward a normal state of affairs and prosperity.

DRAFT ECONOMIC PLAN

FOREWORD

During the changeover to a market economy, the choice of concrete economic measures and their chronological order largely depend on the political structure in the different countries, on the state of the world economy, and on international relations as well as on the accumulated experience drawn from innovative measures already implemented. This

is why it is impossible to draft 'mandatory' plans (either from the point of view of their content or their chronological order). It is therefore essential to foster conditions promoting a flexible economic policy as well as trust.

The following draft represents only a descriptive outline with its most important steps. It is based on the assumption that a real political willingness to cooperate exists among the new Republics (Regions) and in the "Commonwealth".

STEP ONE: FOUNDATION AND RECONSTRUCTION

(a) In the area of monetary matters

- Reduction of inflation.
- Monetary reform.
- Control the increase of the money supply.
- Gradual reduction of the deficit.
- Banking foundations; a basically autonomous issuing bank, a diversified system of trade banks.
- Consolidation of the tax system, and a gradual transition toward state financing through taxes instead of loans, and the creation of currencies .
- Continuous coordinating efforts between the president of the issuing bank and the Minister of Finance when deciding upon monetary measures to ensure reliable accounting in monetary and tax matters.

(b) In the area of the real economy

Priorities:

- Reconstructing destroyed housing as well as production centres in the regions concerned by the war;
- Securing a basic supply of commodities for the population (including the returning refugees); a price support system for staple foods and other basic items gradual liberalization of prices on other items;
- Reconstructing and modernizing the infrastructure (transportation, communication, and so on).

Other measures:

- Maintenance and development of production in promising and competitive areas (internationally); financial aid, plans supporting development, by supplying raw materials, etc;

» Introduction of the principle of bankruptcy for government-owned companies where there is a lack of efficiency and/or a production program doomed to failure;
» Measures to deal with unemployment arising from transition (unemployment benefits, temporary jobs, professional re-training).
» Strengthening of internal "Yugoslav" trade (exchange operations, clearing, use of the dollar as currency of reference and acceptance of the other "Yugoslav" currencies);
» A high degree of privatization, above all in the sector of small businesses and services.

STEP TWO: STABILIZATION

(a) In the area of monetary matters

» Institutionalized cooperation between monetary authorities and the monetary policy of the Republics.
» Development of full monetary convertibility within the Commonwealth and partial convertibility in relation to the rest of the world (convertibility for current transactions including transfer of profit of foreign companies; no convertibility for the transfer of capital).
» Stronger budgetary discipline; reduction of subsidies.
» Special credits, promotion of interests rates, etc. in the domain of investments.

(b) In the area of the real economy

» A ban on all economic fetters within the Commonwealth.
» Buttressing competition between private and state owned companies (freeing state 'managers' from their political connections, developing the private sector, and joint ventures, regulating state-owned and private monopolies, public utilities, opening the doors to foreign powers).
» Modernization of agriculture and industry (research and development) by implementing temporary measures that will enhance ability to compete internationally (structural policy).
» Development of social measures; active policies in the labour market (introducing labour market into the region, professional training, incentives for mobility, unrestricted mobility between the Republics).
» Gradual and parallel adaptation to the common rules of the European Economic Area.

STEP THREE: NORMALIZATION

(a) In the area of monetary matters

» Common currency.
» Full convertibility for ordinary transactions and partial relaxing of the rules governing the circulation of capital.
» Developed banks and credit systems.
» Elimination of foreign schools.

(b) In the area of the real economy

» The Commonwealth becomes a free exchange zone with standardization of major legislation governing the economy (if needed).
» Membership in the EEA or the EEC?

Note: the separation of the document into two areas (monetary and the real economy) relates exclusively to form. For there to be progress it will be necessary to proceed be simultaneously in both areas that are, in fact, closely connected.

DOCUMENT N° 6

THE INTEGRATION OF YUGOSLAVIA INTO EUROPE

The future of Europe is uncertain. Furthermore, Europe will change during the process of the reorganization of Yugoslavia. It is probable, however, that the main structures of present-day Europe will remain intact. These structures are: the European Conference on Security and Cooperation, NATO, the Council of Europe, and the European Community. Furthermore, it is very likely that the States will remain the basic components of these structures, rather than Regions or associations of States.

The integration of Yugoslavia into Europe will take a long time. It will not happen overnight, but will have to take place step by step. It is clearly a long-term process. Different speeds of integration of the Republics of ex-Yugoslavia are conceivable. The current situation is already marked by different degrees of divergence from and rapprochement to Europe.

It will be necessary to pass through the following steps, one after the other, before the Republics of ex-Yugoslavia can achieve full integration into Europe.

STEP ONE:

International recognition of the new Republics created on the territory of ex-Yugoslavia.

Conditions: functioning state structures and settlement of the conflictual questions between Macedonia and Greece.

STEP TWO:

Admission of the Republics to the European Conference on Security and Cooperation.

Conditions: minimal guarantees of a spirit of reconciliation and protection of minorities.

STEP THREE:

Admission of the Republics to the Council of Cooperation of NATO.

Conditions: a cease-fire.

STEP FOUR:

Admission of the Republics to the Council of Europe.

Conditions: States under democratic law.

STEP FIVE:

Ratification of the European Convention on Human Rights, including the question of the right of individual appeal and recognition of the Court of Strasbourg.

STEP SIX:

Contracts of association of the European Community (EC) with the Republics on the model of other States of Eastern Europe (Hungary, Czechoslovakia, Poland).

Conditions: a market economy.

STEP SEVEN:

Admission of the Republics into the European Economic Area.

Conditions: a consolidated market economy.

STEP EIGHT:

Admission of the Republics into the European Community (EC).

Conditions: readiness for the EC, according to the criteria imposed at the time.

It will hardly be possible to by-pass any one of these steps.

The weakening of the powers of state by the Republics through the delegation of certain jurisdictions concerning foreign policy to the Regions or to the "Commonwealth" would have counterproductive effects on the process of integration. Focusing exclusively on the EC would be as illusory as the hope of a "rescue" organized from the outside.

The European integration of the Republics of ex-Yugoslavia must therefore, above all, be a result of their own efforts. They can only expect partial humanitarian aid from the European states and organizations.

DOCUMENT N° 7

PROCESS OF THE CREATION OF A COMMONWEALTH FOR THE REPUBLICS OF EX-YUGOSLAVIA

PHASE	REPUBLICS	YUGOSLAVIA	EUROPE	UN
1	New Constitutions Organization of armed forces of the republics	Cessation of fighting Freeing of prisoners-of-war and interned persons Dissolution of the federal army	International recognition of the Republics Admission of the Republics into the Conference on Security and Cooperation in Europe	UN troops to supervise the cease-fire and humanitarian aid Admission of the Republics to the UN Lifting of sanctions
2	Dissolution of irregular armed forces Return of refugees and deported persons- Punishment of main perpetrators Laws on the protection of minorities Federalization of the republics (Regions, municipalities) Legal Foundations for a market economy with a social orientation	Treaty on the liquidation of the Federal State Treaty on mutual respect of independence, territorial integrity of the Republics Treaty on the peaceful solution of conflicts between republics, including the protection of minorities Free trade zone Customs union	Admission of the Republics to the NATO Council of Coordination Observer status for the Republics in the Council of Europe Aid to reconstruction i.e. through sponsoring between Regions and municipalities International aid for election, protection of minorities, federalization of the Republics	Continued presence of UN troops
3	Democratic states under the rule of law, federalism, protection of minorities, functioning market economy with a social orientation.	Common market treaty	Admission of the Republics into the Council of Europe	Withdrawal, of UN troops

4	Amnesty laws (except for main perpetrators)	Treaty of Confederation	Admission of Republics to the ECHR Partnership Treaties betwen the EC and the Republics Admission of the Republics into the European Economic Area	
5	Stabilization	Federal Constitution	Admission of the Republics into the EC	

III REMARKS BY THE AUTHOR

The experts' Documents given by the experts in the preceding pages and the fundamental texts they have drawn up express in a very concrete way the political and economic blueprint outlined in our Proposals. I believe it necessary, however, to clarify four particularly important points:

1. On the question of the protection of ethnic groups (Document N° 2)
   » It is essential to not use the term "minority" in the future. One of the reasons -and probably the principal one- for conflicts and for the current war Yugoslavia is precisely the fact that the Serbs cannot accept being an "ethnic or national" minority in Bosnia or in Croatia; the same is true for the Croats who do not want to be a "national" or "ethnic" minority in Bosnia, or for the Albanians in Serbia or in Macedonia, or still again the Hungarians in Serbia. It is necessary, therefore, to find a different, innovative approach to define the status of the nationalities that, although being numerically a minority, are constituent elements of the Republics or the Region. This will be equally important in resolving the problems posed by the Russians in Ukraine, in Estonia, in Kazakhstan, etc.
2. On the Constitution of a Regionally -Structured Republic (Document N° 3)
   » It would appropriate to add to this draft Constitution a part devoted to the economic organization of the Republic or the Region. It is evident that in the old democracies based on the market economy, constitutional dispositions for the national economy are superfluous; but in countries undergoing transition, the economic dispositions figuring in the Constitutions must precisely define the role and the place of the different economic actors: individuals, associations, cooperatives, local and regional collectivities, States, etc.
   » The remarks concerning the use of the term minorities are equally valid for Title III of this draft Constitution.
   » It would be desirable for Part VI, which deals with the system of finances, to indicate the bracket within which tax levies by the regions would be made. It is necessary, indeed, to remind the reader that one of the obstacles to direct foreign investment in ex-Yugoslavia was the uncertainty concerning tax levies; this uncertainty did not so much concern the Federation or the Republics as the local collectivities. Without a stable tax policy, there can be no direct investment.

- It would be desirable to make provision for the mode of designation of judges in the chapter on judicial organization (Part VII). It is a matter there of a principle which should figure in the constitutional text in order to avoid any possible and, alas, predictable abuse.

3. On economic reconstruction (Document N° 5)

- There can be no monetary reform in ex-Yugoslavia without foreign assistance (International Monetary Fund, guarantees by foreign governments, aid to commercial bank, etc.).
- Only the States/Republics can have the right to coin money.
- All the commercial barriers between the Republics of ex-Yugoslavia must be abolished in order to permit the free circulation of goods and capital.

4. On the integration of Yugoslavia into Europe (Document N° 6)

- The cease fire and the beginning of a Peace Conference must constitute the starting point; in other words, the sine qua non condition to beginning the process of integrating the new Commonwealth into Europe is the return of peace.
- As to the admission of the Republics to the Council of Cooperation of NATO, it will probably be conditioned on the first results realized by the Peace Conference in Yugoslavia.

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