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‘A House Divided Against Itself Cannot Stand’: the European Community’s Management of the Collapse of Yugoslavia

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ABSTRACT

The break-up of Yugoslavia in 1991 was a classic case in which the interpretation of self-determination led to new thinking about state recognition and identities. What, then, are the lessons from the Yugoslavia case for Ireland? The EC management of the crisis had two dimensions: a political one, The Hague Peace Conference, and a legal one, the European Communities Conference on Yugoslavia Arbitration Commission. In fact, these two dimensions acted in contradiction to each other. The EC’s political strand was disrupted by differing perceptions within member states of strategic interests. The Arbitration Commission, however, interpreted self-determination in a principled manner

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that balanced democracy with the protection of national minorities. A similar balancing act is evident in the Good Friday Agreement by its recognising of multiple national identities and citizenships on the island of Ireland, and that is a good foundation for any rebalancing of principles required for reunification.

INTRODUCTION

The debates over the reunification of Ireland can be better informed through a sound understanding of recent test cases for theories of secession, and the international management of conflict involving ethnic nationalism, separatism and the meaning of self-determination. The break-up of Yugoslavia in 1991 is seen as the ‘controversial modern classic’ among the three major cases of secession in which the interpretation of self-determination has led to a new pattern of creativity in international law facilitating new state identities and relationships.¹ The secessionist crisis in Yugoslavia led to the bloodiest conflict in Europe since the Second World War. It challenged fundamental principles of the international order, particularly the territorial integrity of states, non-use of force and non-intervention principles, and, later in the crisis, issues concerning human rights, minority protections, and the laws and norms of war. The role of the European Community (EC) (as it then was) was pivotal in the international management of this crisis. It is likely that in a future Irish reunification scenario the EU would also play a central role. What, then, are the lessons to be learned from the Yugoslavia case for Ireland?

The EC management of the crisis had two main dimensions: a political and diplomatic one, The Hague Peace Conference, and a judicial/legal one, the European Communities Conference on Yugoslavia Arbitration Commission (which came to be known as the ‘Badinter Committee’, or the ‘Badinter–Herzog Committee’ in Germany). These two dimensions were intended to be complementary but, in fact, acted in contradiction to each other. The Peace Conference aimed to retain Yugoslavia as an integral but loosely confederalised state. In contrast, the first decision of the Arbitration Commission, Opinion No. 1, in late November 1991 completely undermined the political/diplomatic strand by declaring Yugoslavia to be ‘in a process

¹ The other two cases of significance are the 1975 International Court of Justice Western Sahara advisory opinion and the 1995 ICJ judgment in East Timor (Portugal v. Australia). See Karen Knop, *Diversity and self-determination in international law* (Cambridge, 2002), 109–10, 167.

of dissolution', thereby legally advising the recognition of secessions. The analysis that follows first explains the conjuncture whereby the EC and its format for the political coordination of its member states (often referred to as 'the Twelve'), formally termed European Political Cooperation, came to the fore as the key international organisation managing this secessionist crisis. The contradictions in the EC's strands for managing the crisis are then examined. The argument developed here is that while the EC's political/diplomatic strand was racked by member state infighting over how to manage the crisis, not untypical of other European foreign policy disputes, the Arbitration Commission found creative (some might say unusual) interpretations of the international law on self-determination that favoured secession and the collapse of Yugoslavia, and thereby strengthened the political case for the recognition of secession.

Academic opinion on the EC's role in the crisis is divided. Glaurdić, focusing on the political process, believes that the EC did not sufficiently support Slovenian and Croatian self-determination early on because the EC was 'paralysed' in the summer of 1991 by its own internal divisions on Yugoslavia, reflecting deeper anxieties arising from tensions between France, Britain and Germany over German unification, the process of European integration, and fears of a new, more assertive Germany in Mitteleuropa.² Others stress the principles at stake. It is argued that the EC failed to adhere to the established international principle, enshrined in the Helsinki Accords, of the territorial integrity of states, and that the EC policy shift towards supporting the independence of Slovenia and Croatia caused the collapse of Yugoslavia and led directly to the outbreak of war in Bosnia-Herzegovina in the spring of 1992.³

For Hannum, one of the leading scholars of self-determination, the EC's approach in Yugoslavia confirms the predominance of geopolitical and strategic considerations and interests over the legal criteria for secession.⁴ It reified the 'historical accident of administrative borders drawn by an undemocratic government', ignored ethnic issues, and was based on 'no discernible criteria other than the desire of some territorially based population to secede'. The principle that borders should not be altered except by mutual agreement was, Hannum suggested, contradicted by

² Josip Glaurdić, *The hour of Europe: Western powers and the breakup of Yugoslavia* (New Haven, CT, 2011), 174–81.

³ Predrag Simic, 'The OSCE and the Federal Republic of Yugoslavia', in Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg (ed.), *OSCE yearbook 1997* (Baden-Baden, 1998), 77–86.

⁴ Hurst Hannum, 'Rethinking self-determination', *Virginia Journal of International Law* 34 (1) (2011), 1–69: 49.

the very act of recognising secessionist states.⁵ For Knop, in contrast, the EC approach was a balancing act, whereby secessions were recognised if based on democratic government, and provisions for the protection of minorities.⁶ The latter perspective may be the most pertinent lesson for the case of Ireland.

THE CONJUNCTURE

In 1991 the EC was a relatively weakly coordinated body, in particular in foreign policy, a domain where power resided with the member states. An apocryphal remark attributed to Henry Kissinger—‘Who do I call if I want to speak to Europe?’—was and is often cited by European leaders yearning for Europe to speak with one voice. It was not, however, only a matter of what powers and ‘competences’ resided where. The European Communities included its European Political Cooperation institutions (Council of Ministers, the European Parliament). These institutions were characterised by a fundamental lack of coherence in shared foreign policy interests: a flaw that would dog the EC and EU for decades. Foreign policy was/is the policy area where Christopher Hill’s so-called ‘capability–expectations gap’ (the gap between the EU’s external capabilities and the high expectations placed on it) is most evident.

The Yugoslav crisis was the first time that the EC⁷ was the leader in conflict management. Yet its efforts were markedly inconsistent, and even shambolic. The EC began by following US policy in the spring and summer of 1991, with the goal of keeping Yugoslavia united and intact as a federal state. Within six months, in late 1991–early 1992, that goal was completely turned on its head, with the Council of Ministers leading a ramshackle charge, with Germany at the fore, to accelerate the break-up of Yugoslavia by recognising the independence of Slovenia and Croatia. In examining the role of agency in the speedy and violent collapse of Yugoslavia we will focus on the external agency, not only the role of states and international institutions but also some of the key personalities involved.

⁵ Hannum, ‘Rethinking self-determination’, 63–9.

⁶ Knop, *Diversity and self-determination in international law*, 187–90.

⁷ Unless otherwise stated, the abbreviation ‘EC’ is used hereafter to refer to decisions taken by the European Political Cooperation institutions, primarily the Council of Ministers, acting on behalf of the Community and its member states.

The secessionist crisis in Yugoslavia escalated during 1990–1 because of several structural and ideational changes. There is a debate over whether there was a strong Yugoslav identity and, if there was, why it failed to mitigate the rising nationalism. If ‘ancient hatreds’ were a plausible explanation for the break-up of Yugoslavia, we must question why these hatreds were not very salient from the late 1940s to the late 1980s. The historical antagonisms of the nations making up the state are often cited as a main part of the explanation for the disintegration, but we should look also to the conjuncture of the late 1980s and early 1990s that allowed national antagonisms to be reinvented.

Explanations for the break-up generally focus on several interacting factors: the death of Tito, who had been an authoritarian force holding the ruling party and the state together, in 1980; economic stagnation and crisis since the late 1970s leading to Western (IMF)-imposed austerity measures in the 1980s and an ideological crisis of the state; the wider destabilising effects of Gorbachev’s reforms in the USSR, leading to the withdrawal of the USSR from Eastern Europe; and the rise of nationalist movements across the region legitimised by democratic elections and under the discursive cover of a ‘return to Europe’.

During 1990, in an East European regional context of imploding ruling communist parties, democratisation and rising nationalism, Yugoslavia’s multinational state began to fracture under pressures for greater decentralisation, and ultimately secession. In Yugoslavia, the ruling party, the League of Communists, effectively dissolved after a bitterly disputed conference in January 1990. Relatively free and fair democratic elections held during 1990 in the Yugoslav republics led to nationalist parties coming to power, while communists rebranded as nationalists retained power in Serbia and Montenegro. As the leading Western theorist of nationalism put it, ethnic nationalist movements were the only countervailing force capable of matching ruling communist parties, and they could be mobilised rapidly. There were many examples from European history when the political institutions of democratising multinational states were brought to a standstill by empowered nationalist movements.⁸ By late 1990 there was constitutional deadlock in Yugoslavia’s federal government. Unilateral independence referendums conducted by Slovenia (December 1990) and Croatia (May 1991), which resulted in overwhelming votes for secession, transformed the internal constitutional crisis into an existential crisis for the state.

⁸ Ernest Gellner, ‘Nationalism and politics in Eastern Europe’, *New Left Review* 1/189, September–October 1991, 127–34.

From an EC perspective the timing of the escalating crisis is significant, as it was one of the immediate precursor developments to the Maastricht Treaty on European economic and political union of February 1992. In its own official narrative about Maastricht, the EU, as the EC became after Maastricht, recognises that the long-drawn-out debates about closer economic and political union in the 1970s and 1980s were supercharged into action by the dramatic events of 1989–91: the end of the Cold War, the collapse of communism, German unification, the remaking of the European security order.⁹

However, while Maastricht was designed to improve foreign policy coordination through a Common Foreign and Security Policy, including the new institutional capacity of the High Representative (the new agent for foreign policy coordination), it would be another decade before these institutions would play a major role in managing European crises (in Macedonia in 2000–1). The crisis of 1991 was managed under the pre-Maastricht arrangements. There was a rotating six-month presidency of the Council of Ministers, no permanent institutional capacity to coordinate a response to a crisis like that in Yugoslavia, deep divisions within the member states over how to respond, and a clear steer from the US, at least in the early stages, that the Western Alliance should adhere to the principle of ‘non-intervention’ in the crisis.

US INDIFFERENCE

In the latter stage of the Cold War, the collapse of Yugoslavia into ethnonational civil wars was one of the potential scenarios considered likely to initiate a wider war in Europe between NATO and the Warsaw Pact.¹⁰ The military scenarios tended to game-play a Soviet intervention in Yugoslavia, followed by a devastating Soviet-led advance into Western Europe that could only be overcome by the massive military capabilities of the US. In light of this background, it was an unexpected development during the collapse of Yugoslavia in 1990–1 when the US administration under President Bush indicated that the Yugoslav crisis was one that did not impinge significantly on US interests, and should be left to the ‘Europeans’ to manage. The pragmatic zeitgeist was best

⁹ European Council, ‘How Maastricht changed Europe’, available at: <https://www.consilium.europa.eu/ro/maastricht-treaty/> (3 January 2025).

¹⁰ One of the most influential accounts of such a crisis was by former British Army general Sir John Hackett. See John Hackett, *The Third World War* (London, 1978). The novel was one of the bestselling books of the decade.

captured by Secretary of State James Baker in 1992 when, in a quip that was to indelibly tarnish his reputation in the US foreign policy community, he spoke indifferently of the Bosnian civil war: 'we do not have a dog in that fight'. The quip left State Department professionals, who were champing at the bit for a US intervention in the Balkans, completely sidelined and dismayed.¹¹

The Bush presidency was characterised by overwhelming pragmatism and caution, as much in international affairs as in any other policy domain. After all, in preparing to run for the presidency in 1987 Bush had shown impatience with policy reflection and broad strategic direction by referring to this as the 'vision thing'.¹² Steely hyperrealist deal-making and lack of strategic vision were attributes that Bush shared with Baker in a close political relationship and personal friendship that stretched over decades. From the post-Gulf War talk of a 'New World Order' and the slogan 'Let Europe be whole, and free'¹³ delivered in the Mainz speech in May 1989, one might have assumed that the Bush administration would develop a strategic agenda of implementation. The administration's instincts, however, were to respond to events rather than directing them. Even during German unification, the US administration was pushed and driven by German policy activism under Chancellor Helmut Kohl.

The hands-off approach is most evident in the handling of the two convulsive crises in Europe in the early 1990s, the collapse of the USSR and the collapse of Yugoslavia. International law, most recently restated in the Paris Charter of November 1990, was ambivalent. On the one hand, it held that all states must 'pledge to refrain from the threat or use of force against the territorial integrity or political independence of any State', while on the other, it reaffirmed the 'right to self-determination'.¹⁴ From a political perspective, however, the Bush administration viewed these crises as being interrelated, with the main concern being that a collapse of Yugoslavia into civil war could have spillover effects in making for a much more serious crisis of disintegration in the Soviet Union. US policy was one of cautious non-interventionism,

¹¹ Samantha Power, then a US State Department official, reported that the indifference of the Bush administration demoralised her peers. See Samantha Power, *A Problem from Hell: America and the Age of Genocide* (New York, 2002), 267.

¹² Robert Ajemian, 'Where is the real George Bush? The vice president must now step out from Reagan's shadow', *Time*, 26 January 1987.

¹³ 'A Europe whole and free: remarks to the citizens in Mainz. President George Bush. Rheingoldhalle. Mainz, Federal Republic of Germany, May 31, 1989', available at: <https://usa.usembassy.de/etexts/ga6-890531.htm> (3 January 2025).

¹⁴ *Charter of Paris for a New Europe* (Paris, 1990), 5, available at: <https://www.osce.org/files/f/documents/0/6/39516.pdf> (3 January 2025).

with the goal of preserving the territorial integrity of the USSR and Yugoslavia as integral and stable states. US policy also reflected a profound antipathy to nationalist secessionism in the region, viewing it as a major threat to the new post-Cold War European order. In the summer of 1991, Baker and President Bush made important speeches on these issues, the former during a visit to the Yugoslavian capital, Belgrade, and the latter in Ukraine's capital, Kiev (the so-called 'Chicken Kiev' speech). They framed the US non-interventionist policy with public declarations of antipathy to ethnonational secessionism.

On 21 June, in a series of meetings with Yugoslav leaders, Baker spent about 10 hours in Belgrade. It was his only visit to Yugoslavia. He lectured the gathered leaders against unilateral actions and urged unity. Slovenian president Milan Kucan reported that Baker told him unequivocally that neither the US nor the EC would recognise the independence of Slovenia, Croatia and other Yugoslav republics.¹⁵ In Kiev, on 1 August, Bush told the gathered Ukrainian elite: 'Yet freedom is not the same as independence. Americans will not support those who seek independence in order to replace a far-off tyranny with a local despotism. They will not aid those who promote a suicidal nationalism based upon ethnic hatred.' Bush avowed that the US would not 'meddle in your internal affairs'.¹⁶ The policy was based on a primordialist understanding of history, commonly expressed by Western policy-makers, which held that multinational states like the Soviet Union and Yugoslavia had been created to contain violent primitive nationalisms, and there would be mass murder and ethnic cleansing should these states fall apart. In the case of the Soviet Union there was the additional worry of the fragmentation of control of nuclear weapons.

Given US dominance of the Western Alliance, it is not surprising that the EC initially played a supporting role to the non-interventionist US policy. The EC statement on Yugoslavia of 8 May called for dialogue on a 'democratic and united Yugoslavia'.¹⁷ At this time of transition, the United Nations was still not regarded as a serious institutional contender for crisis

¹⁵ See James Addison Baker and Thomas M. DeFrank, *The politics of diplomacy: revolution, war, and peace, 1989–1992* (New York, 1995); David Hoffman, 'Baker urges Yugoslavs to keep unity', *Washington Post*, 22 June 1991.

¹⁶ President George Bush, 'Remarks to the Supreme Soviet of the Republic of the Ukraine in Kiev, Soviet Union, 1991-08-01', George H.W. Bush Presidential Library and Museum (1991), available at: <https://bush41library.tamu.edu/archives/public-papers/3267> (3 January 2025).

¹⁷ 'Statement concerning Yugoslavia 8 May 1991', *European Political Cooperation Documentation Bulletin*, vol. 7, 1991, European University Institute and Institut für Europäische Politik (eds), Office for Official Publications of the European Communities, Luxembourg (1994), 226 (hereafter cited as *European Political Cooperation Documentation Bulletin*, 1991).

management in Europe as it remained tainted by weakness derived from the legacy of the Cold War. This was evident at the Berlin Meeting of the Conference on Security and Cooperation in Europe (CSCE) Council held on 19–20 June 1991, from where Baker had travelled on to Belgrade.¹⁸ The CSCE summary conclusions made one marginal reference to the United Nations and it did not concern conflict management. Rather, the CSCE adopted a mechanism for consultation and cooperation with regard to emergency situations, which was interpreted as violations of the 10 principles of the Helsinki Final Act (1975), and disruptions ‘endangering peace, security or stability’ (Annex 2). Implementing recommendations from the CSCE Meeting of Experts on Peaceful Settlement of Disputes held in February 1991, the Berlin Meeting established a Dispute Resolution Mechanism and a Conflict Resolution Centre (based in Vienna) to be overseen by the CSCE’s Committee of Senior Officials. It also issued a ‘Statement on the Situation in Yugoslavia’ (Annex 3), which expressed support for the ‘democratic development, unity and territorial integrity of Yugoslavia’. The statement also rejected the use of force and recommended dialogue and negotiation to resolve the crisis ‘in conformity with legal and constitutional procedures’. In a phrase that was echoed by Baker in Belgrade, the ministers reaffirmed the principle of non-interference, stressing in a diplomatic obfuscation that ‘it is only for the peoples of Yugoslavia themselves to decide on the country’s future’.¹⁹ US policy was grounded in a belief that the territorial integrity of Yugoslavia was the best outcome for regional stability, though ideally there would be a reformed, more confederal and possibly more democratic and Western-leaning Yugoslavia. Baker’s negotiating skills were famous. He was known as ‘the man that ran Washington’ when he served as President Reagan’s chief of staff.²⁰ President Bush avowed that Baker’s only weakness was his ‘powder puff’ tennis serve.²¹ Yet US credibility with the secessionist republics was now in tatters. The Western policy of stability seemed to be an encouragement to the Yugoslav National Army to resort to force to hold Yugoslavia together.

¹⁸ *Final Document of the First Meeting of the CSCE Council of Ministers, Berlin, 19–20 June 1991*, available at: <https://www.osce.org/files/f/documents/5/1/40234.pdf> (3 January 2025).

¹⁹ *Report of the CSCE Meeting of Experts on Peaceful Settlement of Disputes, Valletta, 8 February 1991*, available at: <https://www.osce.org/files/f/documents/7/d/30115.pdf> (3 January 2025).

²⁰ Peter Baker and Susan Glasser, *The man who ran Washington* (New York, 2020).

²¹ ‘George H.W. Bush interview by Jean Becker, 19 February 2009, James A. Baker III Oral History Collection, 1991–2016, Princeton University Library, available at: https://findingaids.princeton.edu/catalog/MC212_c0004 (3 January 2025).

Just four days later, on 25 June 1991, in a coordinated action, the leaderships of Slovenia and Croatia showed their disdain for Baker, the US and the CSCE by declaring their independence. Clearly, Baker's long years of service as a Houston lawyer and Washington insider did not prepare him for the intransigence of Balkan nationalists. The retreat of the US from the escalating Yugoslavia crisis was not driven only by Baker's frustration with the Yugoslav leaders; also, his eyes were on a much bigger prize—the peace process in the Middle East. With hindsight Baker explained the hand-over of the problem to the 'Europeans' in these terms: 'It was time to make the Europeans step up to the plate and show that they could act as a unified power' and 'Yugoslavia was as good a first test as any'.²²

THE EC'S FIRST TEST

Publicly, the US justified the abdication of leadership by pointing to the much greater stake of the EC in a peaceful outcome to the crisis, and to the significant economic and political leverage held by the EC over Yugoslavia. The EC's trade and investment ties with Yugoslavia had grown since the signing of the Cooperation Agreement between the two parties in April 1980 (to some 20 times the level of the US's). Germany had most at stake from a political and economic collapse of Yugoslavia. Germany was Yugoslavia's largest trading partner. Western banks were owed about \$7 billion, with Deutsche Bank most exposed. About 700,000 Yugoslavs, mostly Slovenes and Croats, were already migrant workers in Germany. A violent conflict in Yugoslavia threatened to crash the Yugoslavian economy and make those temporary migrants more permanent, as well as causing a mass displacement of people into EC member states.

As the task of managing the crisis in Yugoslavia was passed deliberately by the US to the Europeans, in effect, this meant that Baker was passing what he termed a 'powder keg situation' to one of his closest diplomatic allies in Europe: Hans Dietrich Genscher, the foreign minister of Germany. Genscher was/is widely seen as a key architect of German unification. In 1991, he was the chairman of the CSCE and consequently was in the pivotal position to play a decisive role in determining how the crisis would be managed, given the range of instruments recently approved by the CSCE summit in Berlin for conflict prevention and management. The EC's Council of Ministers, then

²² Baker and DeFrank (1995), 637.

under the Luxembourg presidency but soon to transition to the Dutch presidency, worked with Genscher to ensure that it would be the leading player in the management of the crisis and in demonstrating its capacity for common action.

The CSCE/EC had to adapt to a fast-changing situation on the ground in Yugoslavia, while operating with a set of new and untested conflict management mechanisms. Urgency was in order, as the secessions of Slovenia and Croatia led almost immediately to violent confrontations with the Serb-dominated Yugoslav National Army (the so-called '10-day war') and the immediate task was to achieve a ceasefire and a return to negotiations. The Luxembourg presidency invoked the newly established emergency situations mechanisms of the CSCE. Genscher also activated the Committee of Senior Officials (COSO) of the CSCE. At this time the CSCE had an embryonic administrative capacity. Its secretariat had only recently been opened in Prague. Disbursements from member states were slow. The first director of the secretariat, Swedish diplomat Nils Eliasson, had to take out a substantial bank loan in his own name to finance the numerous scheduled meetings, additional meetings and emergency meetings. At that time, the CSCE did not even have an internationally recognised legal personality.²³ An emergency CSCE summit held in Prague on 4 July endorsed the EC as the mediating party for Yugoslavia.

In fact, from the Council of Ministers meeting of 28–29 June onwards, the EC as a whole quickly coalesced around four main dimensions to its conflict management of the crisis. First, a ministerial troika was established to engage in negotiations. This was composed of the foreign ministers of the outgoing, incoming and next in succession for the presidency of the Council of Ministers: Luxembourg, Netherlands, Portugal. The troika travelled twice to Yugoslavia in late June and early July, and sent an observer mission, in unsuccessful attempts to achieve a permanent ceasefire and a return to negotiations. Over the next months there would be at least a dozen ceasefires. The problem lay not with EC efforts, but with recalcitrant and uncompromising nationalists in Yugoslavia. Secondly, EC economic and political leverage was applied. An EC-initiated and later UN-mandated arms embargo was imposed (which in practice hit the secessionist republics hardest), and about \$3 billion worth of Western assistance and about Ecu900 million in loans from the European

²³ OSCE, 'Birth of the OSCE Secretariat – the first director of the CSCE looks back at how it all started', 22 March 2021, available at: <https://www.osce.org/secretariat/481894> (3 January 2025).

Investment Bank were frozen. The economic sanctions threatened to accelerate the breakdown of the Yugoslav economy and precipitate a default on repayments of some \$17 billion of foreign loans due in 1991.²⁴

By early July 1991, the debate within the EC had developed in several new directions. There were increasing public calls in many European countries for recognition of Slovenian and Croatian independence. The debate was particularly fervent in Germany, which had only recently experienced its own crisis of self-determination and where a cross-party consensus was strengthening around the idea of supporting the break-up of Yugoslavia. The EC discussed a proposal for some form of military intervention to impose a ceasefire. Irrespective of the questionable legality of such an intervention, the fundamental problem in this regard was the structural weakness and incoherence of the institutions of European Political Cooperation. Under whose aegis would such a force be organised?²⁵ Britain was accused of a 'pro-Serb bias' in leading the opposition to the organisation of a Western European Union military force.²⁶ Certainly, the UK feared getting bogged down in another historically rooted sectarian conflict like Northern Ireland, but where the protagonists were vastly better armed, and there was profound British Euroscepticism on anything leading to improved institutionalisation of foreign policy coordination in the EC, and any form of military coordination that would rival NATO.

The EC rapidly began to backtrack from support for the territorial integrity of Yugoslavia to a position of accepting that Yugoslavia was in ruins. Milan Kucan apparently told Genscher: 'The broken jug cannot be put together again.'²⁷ It was the beginning of a policy shift that would end with German, followed by EC, recognition of the secession of Slovenia and Croatia in December 1991 and January 1992. The discursive shift in the EC's declarations was immediate once it took the lead in managing the crisis. On 5 July a statement from an extraordinary European Political Community ministerial meeting in The Hague spoke of the 'fact that in Yugoslavia all parties concerned accept the reality that a new situation has arisen'. The subtext was that all the major actors in Yugoslavia now accepted that Yugoslavia would break up, and the question was how this would be managed.

²⁴ Wolfgang Munchau, 'Aid freeze may force Yugoslavia to default', *The Times*, 6 August 1991.

²⁵ Quentin Peel, Robert Mauthner and George Graham, 'Peace force is urged for Yugoslavia', *Financial Times*, 1 August 1991, 16.

²⁶ Glaurdić, 222.

²⁷ 'Yugoslavia breaks', *The Times*, 3 July 1991.

The statement was framed in a new formula. It spoke of the need for ‘dialogue without preconditions between all parties on the future of Yugoslavia’, which should be based on the principles enshrined in the Helsinki Final Act and the Paris Charter for a new Europe, which would respect ‘the right of peoples to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States (Charter of Paris)’. Mantras that would be repeated over the next months were that minority rights must be protected and borders could not be changed by force.²⁸ A follow-up meeting between the troika and Yugoslav leaders in Brioni on 7 July agreed a ceasefire and affirmed that the EC was to be the facilitator of negotiations between the parties, as well as agreeing the modalities of a CSCE monitoring mission.

The third and fourth dimensions of the EC’s conflict management approach are key in explaining how the policy shift from respecting the territorial integrity of Yugoslavia to recognising unilateral secession was engineered, and they are The Hague Peace Conference and the Badinter Committee respectively. It was hoped that the Brioni Agreement would pull Yugoslavia back from the edge of the abyss of civil war, but it failed. The violent conflict continued as different parties attempted to stake out and secure ethnic control of territory. By early August 1991 the EC began to discuss the establishment of a peace conference, and this initiative was agreed at the extraordinary European Political Community ministerial meeting concerning Yugoslavia on 27 August. By then, Europe was in turmoil. There had been a failed coup d’état against Gorbachev in the USSR, which resulted in the marginalisation of the Soviet government by Russia’s leader, Boris Yeltsin, who subsequently pushed for a speedy dissolution of the USSR. The EC adjusted rapidly to this change of circumstances and recognised the independence of the Baltic States, or, to be more precise, the restoration of the sovereignty of those states. It also decided to convene a peace conference on Yugoslavia, involving all the main political actors from the EC (the president of the Council of Ministers, and representatives of the member states and the Commission), and also a legal ‘arbitration procedure’ to resolve questions of international law.²⁹ The Arbitration Commission would be composed of five members: two to be

²⁸ ‘Statement by an extraordinary EPC Ministerial Meeting concerning Yugoslavia, 5 July 1991’, and ‘Joint declaration of the Brioni meeting on the Yugoslav crisis, 7 July 1991’, *European Political Cooperation Documentation Bulletin* (1991), 333–8.

²⁹ ‘Statement by an extraordinary EPC Ministerial Meeting concerning Yugoslavia, 27 August 1991’, *European Political Cooperation Documentation Bulletin* (1991), 389–90.

appointed unanimously by the federal presidency of Yugoslavia, and three by the EC and its member states. In the absence of agreement on the members to be appointed by the federal presidency, they were to be designated by the three members appointed by the EC. The Arbitration Commission was required to give its decisions within two months. In the absence of participation at the peace conference by the Yugoslav parties, the EC threatened further unspecified 'international action'. The personalities of the two men chosen to head the new EC instruments—Lord Peter Carrington (UK) and Robert Badinter (France)—were to have a critical bearing on the outcome of the EC's conflict management over the next four months.

CONTESTATION BETWEEN THE EC'S POLITICAL AND LEGAL INSTRUMENTS

The International Conference on Yugoslavia opened at the Peace Palace in The Hague on 7 September 1991, chaired by Carrington. In September–October as civil war escalated, Carrington set about developing his own plan for resolving the conflict. He later blamed a betrayal by Germany for wrecking his efforts, as by pressuring for a pre-emptive EC recognition, it had 'torpedoed' the peace conference, rendering further negotiations pointless.³⁰ He also spoke derisively about Badinter's legal opinions: 'that Frenchman? He was not very helpful.'³¹ In late November, the Badinter Commission issued its Opinion No. 1 declaring Yugoslavia to be 'in a process of dissolution', thereby rendering pointless the diplomatic effort to keep it as a single state (see below). By December, under immense German pressure, the Council of Ministers decided to collectively recognise the independence of Slovenia and Croatia by 15 January. In fact, Germany did not wait for the common decision, and unilaterally recognised the two states on 23 December.

Carrington was one of Britain's most experienced politicians, a hereditary peer and a scion of its Establishment (Eton, Sandhurst, the Grenadier Guards). He had had a distinguished military career, held several key ministerial positions in UK Conservative governments in the 1970s and 1980s and had a reputation as a successful negotiator. As secretary of defence he had been instrumental in sanctioning the torture of prisoners in Northern Ireland

³⁰ Laura Silber and Allan Little, *The death of Yugoslavia* (London, 1996), 220.

³¹ Glaurdić, *The hour of Europe*, 260.

in 1971–2.³² He regarded the Northern Ireland conflict as ‘the greatest nagging sore’, expressed admiration for the British Army’s internal policing skills, and viewed Bloody Sunday as a ‘pretty restrained effort’ by the army. He was impatient with foreign critical observations about Britain’s role in Ireland. It was a sectarian conflict that had many similarities with the Balkans, but it was dismissed by Carrington as ‘criminality masquerading as nationalism’.³³

The Northern Ireland episode in Carrington’s career suggested that, irrespective of the suave exterior, he would pursue British interests at all costs. As foreign secretary under Margaret Thatcher, he had presided over the Lancaster House talks in London in late 1979, which led to a landmark agreement ending white rule in Rhodesia and creating a democratic Zimbabwe (at least initially), thereby saving the British Commonwealth from collapse. He later resigned following Argentina’s invasion of the Falklands/Malvinas in April 1982.

Carrington’s career was resuscitated when, with US backing, he became secretary-general of NATO (1984–88). He was now catapulted out of retirement to chair the peace conference, no doubt at the behest of the British Conservative government seeking a trusted and experienced hand to manage the negotiations. The conflicts in Northern Ireland and Rhodesia both were regarded as stalemates in which a settlement seemed inconceivable. Carrington’s reputation, however, rested on his role in the latter. His arrogant self-deprecation, typical of his social class, was evident in how Carrington spoke of his new appointment. He claimed to know little about Yugoslavia, and that he had been picked by the Council of Ministers because the foreign ministers knew him personally from his time at the head of NATO. Moreover, Carrington claimed, unlike with Rhodesia, where vital British interests were at stake, Britain had no interests in Yugoslavia and ‘a British conference chairman can act with complete objectivity’ [*sic*].³⁴

In contrast to Carrington, the Arbitration Commission could only pronounce publicly when asked by Carrington to give an opinion. He would not do that until 20 November, and in its Opinion No. 1 the Arbitration Commission would seal the fate of Yugoslavia—discussed below. In the

³² See the so-called ‘Rees memo’ revealed by an RTÉ documentary (*The Torture Files*) and discussed in ‘British government authorised use of torture methods in NI in early 1970s’, *BBC*, 5 June 2014, available at: <https://www.bbc.com/news/uk-northern-ireland-27714715> (3 January 2025).

³³ Peter Alexander Rupert Carrington, *Reflecting on things past: the memoirs of Peter Lord Carrington* (New York, 1988), 247–9.

³⁴ Hella Pick, ‘Lord Carrington poses as amateur on Yugoslavia’, *The Guardian*, 7 September 1991.

meantime, while Carrington pursued a deal, the judges discussed international law on self-determination and secession, and in particular how these had developed during decolonisation. The commission was composed of the heads of the constitutional courts of France (Robert Badinter, commission chair), Germany (Roman Herzog), Italy (Aldo Corasaniti), Spain (Francisco Tomás y Valiente) and Belgium (Irène Pétry). The Yugoslavs could not agree on their two members, so the three judges appointed by the EC chose their colleagues. All of the judges were or had been highly politically active in the party politics of their respective countries. Two of these countries (Germany, Belgium) are federal states, and two are national autonomies (Spain, Italy). On first principles, one might expect that such a commission would be sympathetic to the territorial integrity of states, especially federal states. The papers of the commission are not public, so we can only speculate about its decision-making, but it would be a reasonable assumption that strong political influences were exercised on it. Badinter and Herzog were confidants and political allies of French President François Mitterrand and German Chancellor Helmut Kohl respectively.

The EC's goal for the conference was peace, but how this was to be achieved was open-ended. The Dutch president-in-office of the Council of Ministers, Henri van den Broek, told the participants that the conference should seek 'arrangements that ensure peaceful accommodation of the conflicting aspirations of the Yugoslav peoples. No option for solution should be excluded beforehand but the Conference should allow itself to be guided by the following principles: no unilateral change of borders by force; protection for the rights of all in Yugoslavia; and full account to be taken of all legitimate concerns and legitimate aspirations.'³⁵ Yugoslavia's six republics had borders drawn as administrative-political exercises by the ruling communist leadership. These borders were now being discussed as inviolable international state-like frontiers. The republics were patchworks of minority-populated areas. Which principles would be considered most legitimate: the principle of ethnic/national self-determination across boundaries, or the principle of the inviolability of borders, and self-determination within existing borders? There were many ambiguities here, not least of which was that Yugoslavia's borders had been de facto changed by the forceful assertion of secession by Slovenia and Croatia, and then by further declarations of independence by

³⁵ 'Mr [Hans] van den Broek, Statement at the Conference on Yugoslavia, 7 September 1991', *European Political Cooperation Documentation Bulletin* (1991), 395.

Macedonia on 8 September and Bosnia-Herzegovina on 15 October 1991. In a very un-Lincoln-like position, the EC was asserting that secession could be asserted by force or the threat of force, but that force could not be used to contain secession. One ambiguity was further clarified by the EC shortly afterwards: 'respect for the rights of all who live in Yugoslavia, including minorities'.³⁶ The status of minorities was to prove to be a major stumbling block for peace.

A working document prepared by Lord Carrington with the Yugoslav delegations, titled 'Arrangements for a General Settlement to the Yugoslav Crisis', was approved by the Council of Ministers meeting on 18 October. Carrington's position was that nothing was agreed until everything was agreed, and he was operating on the basis that the EC would not recognise the independence of any breakaway republic until there was a solution to the whole problem. The plan proposed an EC model for Yugoslavia: six sovereign states within the existing borders in a loose political and economic, perhaps confederal, union known as Yugoslavia. There would be special status and autonomy for minorities and security guarantees. Serb-majority areas in Croatia would have the right to fly the Serbian flag, have Serbian as well as Croatian nationality, elect their own legislative assembly and administer a regional police force and judiciary.³⁷ Sanctions and a UN-backed oil embargo would be imposed on anybody not accepting the plan. Acceptance would be incentivised by massive EC aid flows. As Carrington put it, the states could associate as much or as little as they wished 'à la carte'.³⁸ It was the first time that the Serbs had publicly agreed to recognise the independence of the republics. The agreement collapsed, however, over the details on minority territorial rights, and Serb demands for 'free states' within Croatia in areas where the c.600,000 ethnic Serbs were the majority.

The plan did not deliver what Serbia's president, Slobodan Milošević, had promised: 'all Serbs in one state'. Other republics were also reluctant, suspecting a British plot to recreate Yugoslavia. As the war continued, multiple ceasefires were broken, and with Carrington's Plan in limbo, the EC discourse began to reflect more on its lack of potent leverage. By November 1991, even Carrington and other EC leaders, including Genscher, were calling on the UN Security Council to step up its engagement, in particular

³⁶ 'Statement by an extraordinary EPC Ministerial Meeting concerning Yugoslavia, 19 September 1991', *European Political Cooperation Documentation Bulletin* (1991), 425.

³⁷ 'EC plan: an association of "sovereign and independent republics"', Agence France Presse, Paris, 18 October 1991.

³⁸ Silber and Little, *The death of Yugoslavia*, 210.

by imposing sanctions. It was a sign of the weakness of the EC's leverage when UN Secretary-General Javier Pérez de Cuéllar and his special envoy on Yugoslavia, the experienced US foreign policy hand Cyrus Vance, began to become more proactive in discussing a UN peacekeeping mission. The reality was that only the US had the military power to impose a solution, and it was determined to avoid getting drawn in to what it considered to be a quagmire.

Serbia's other reservation about his plan, according to Carrington, was that his starting point was legally wrong. The plan was framed around the idea of sovereign republics, in essence ignoring the existence of Yugoslavia as a sovereign state. The problem, Serbia argued, was unilateral secessionist acts and the plan would 'abolish Yugoslavia'. For the EC, however, the problem was Serbia's intransigence, and it now gave Serbia an ultimatum to agree a deal within one month; otherwise the EC would recognise Slovenia and Croatia. It was the responsibility of the Arbitration Commission to give legal opinions on these issues to Carrington. Inexplicably, it was only some two and a half months into the peace conference, on 20 November 1991, that Carrington submitted questions to the Badinter Committee. He did so at a time when the peace process seemed to be imploding, and, apparently, at the request of Milošević.³⁹ There were three questions: the first was from Carrington, and the other two were posed by Serbia. How the Badinter Committee answered those questions settled the fate of Yugoslavia.

Carrington's question concerned the fundamental legal issue at stake. Serbia, he noted, considered that the republics that had declared themselves sovereign or independent had seceded from the state of Yugoslavia, which Serbia insisted continued to exist. The other republics, in contrast, did not consider this an issue of secession but of the 'disintegration or breaking-up' of the state as the result of the 'concurring will of a number of Republics'. All six republics should have the right to be successor states to Yugoslavia. The Arbitration Commission replied with its Opinion No. 1 just nine days later, on 29 November. In its deliberations it treated Yugoslavia as a question of decolonisation and determined that, as in decolonisation, the sanctity of existing borders was paramount (the legal principle of *uti possidetis juris*) and they could only be changed by agreement. Thus, existing territoriality at the moment of secession trumped ethnic or national self-determination.⁴⁰ The

³⁹ Glaurdić, *The hour of Europe*, 259.

⁴⁰ The questions and Opinion, and some notes, are available in the papers of Francisco Tomás y Valiente in the archive of the Spanish Constitutional Court, available at: <https://archivo.tribunalconstitucional.es/sia/> (3 January 2025). Ironically, he was a fervent opponent of further empowerment of the autonomies in Spain and was assassinated by ETA in 1995.

Opinion unequivocally stated that Yugoslavia '*est engagée dans un processus de dissolution*' ('Yugoslavia is engaged in a process of dissolution').

Several reasons were advanced in support of the Opinion: four republics had freely expressed their will for independence in referenda; the composition and functioning of the federal organs was no longer operable (notably in terms of representativeness), including the federal presidency, the federal council and executive, the constitutional court and the federal army; and the violent conflict over several months demonstrated that the federal government and republics were powerless to enact successive ceasefire accords agreed with the EC and UN.

The Opinion concluded that the republics must resolve the problems of succession in a manner that conforms to the principles and rules of international law, in particular, in respect of human rights, and the rights of peoples and minorities. It was for the republics to freely choose their forms of association and democratic institutions. A process of dissolution might, of course, be reversible, but neither the Arbitration Commission nor the EC more widely interpreted the Opinion in any other way than to justify secession.

The Badinter Committee Opinions 2 and 3 addressing the two Serbian questions were given in January 1992. The questions asked whether Serbs in Croatia and Bosnia-Herzegovina were a constituent nation and had the right to self-determination, and whether the demarcation borders of the republics were valid borders under international law. Opinions 2 and 3 declared that only the constituent republics had the right to self-determination and statehood under the Yugoslav Constitution of 1974, and also, more importantly, they affirmed that international legal precedent grounded in decolonisation and other cases was based on the principle of *uti possidetis juris*.

Opinion 1 accelerated two major developments. Firstly, it killed the Peace Conference. This was an unwelcome decision for France and the UK, who were invested in the peace process. We must assume that Badinter acted independently. Herzog, however, was working in tandem with German demands for recognition. The decision greatly favoured the German position. There was no point in continuing with the conference once independence was pronounced legally sound. It was for the new states to make their own arrangements on the core issues. As Carrington put it: 'the only incentive we had to get anybody to agree to anything was the ultimate recognition of their independence. Otherwise there was no carrot.'⁴¹ The Badinter Committee, he

⁴¹ Silber and Little, *The death of Yugoslavia*, 222.

claimed, 'Just threw it away, just like that'. Carrington did not have much respect for lawyers or international law. Secondly, Opinion 1 came at a critical moment in the crisis. The war had escalated in Croatia and Bosnia-Herzegovina, while Serbia was dithering over the Carrington Plan, intimidated by the threat of not just EC/CSCE action against it, but also UN actions. The Opinion confirmed to Milošević that the EC had 'abolished' Yugoslavia and now the goal should be to carve out by war as much territory for the Serbs as possible. It was not the end of peace efforts, including by Carrington. There would be more violence and more peace plans in 1992 and beyond. It was, however, the end of the Socialist Federal Republic of Yugoslavia.

Opinion 1 removed the political constraints from the EC member states that had been keenest to recognise the independence of Slovenia and Croatia, principally Germany. Throughout November Germany's leadership had been warned off pre-emptive recognition by the US and the UN secretary-general, largely due to Carrington's requests. Genscher made almost daily pronouncements on the need for recognition. A reasonable assumption is that the German leadership was kept informed of the deliberations of the Arbitration Commission by Kohl's ally Roman Herzog. On 27 November, two days before the Arbitration Commission issued its Opinion 1, Chancellor Kohl warned the Bundestag that 'time has run out' and there would have to be an EC decision on the recognition of new states in Yugoslavia 'before Christmas'.⁴² It was a de facto German ultimatum to the EC, and was timed to exploit the issue of EC solidarity so central to the Maastricht Treaty. Recognition of an independent Slovenia and Croatia would clear the way for legal arms supplies to counter the Yugoslav Army, and would also strengthen the case for foreign intervention as the war would become an inter-state war.

The changed international environment given the collapse of the Soviet Union also had a significant effect on EC policy on Yugoslavia. The EC first established a common position on a set of guidelines for the recognition of the new successor states to the USSR, which was then applied to the recognition of Slovenia and Croatia. The main elements of the guidelines required: respect for the Charter of the United Nations and the commitments in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights; guarantees for the rights of ethnic and national groups and minorities in accordance with the framework

⁴² Deutscher Bundestag Stenographischer Bericht, Plenarprotokoll 12/60 Sitzung, Bonn, Mittwoch, 27 November 1991, 5015, available at: <https://dserver.bundestag.de/btp/12/12060.pdf> (3 January 2025).

of the CSCE; and respect for the inviolability of all frontiers, which could only be changed by peaceful means and by common agreement.⁴³ It was in light of establishing the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union that the EC then applied these, at the same meeting, to Yugoslavia's republics. The EC member states agreed unanimously⁴⁴ to recognise the independence of all the Yugoslav republics fulfilling certain conditions, principally those in the guidelines, but also including others such as protecting the human rights and rights of national or ethnic groups (as recommended by the Badinter Committee), and continued participation in the peace conference.

The implementation of the decision was fixed for 15 January 1992 to give time for the Arbitration Commission to certify compliance with the conditions.⁴⁵ On 19 December the German cabinet met and, in discussing the EC decision, it was decided to unilaterally publicly announce on 23 December Germany's recognition of Slovenia and Croatia and that diplomatic ties were to be established.

CONCLUSION

The collapse of Yugoslavia in 1991 brutally revealed the complexities and inconsistencies of the international management of secession. It also showed the ongoing fundamental weakness of the then EC in coordinating a common position in foreign policy. Reflecting in later years, Genscher argued that 'recognition brought peace', and he stressed defensively that the recognitions were a unanimous EC decision and not a 'solo action' by Germany.⁴⁶ Had Germany defused the powder keg or fanned the flames of war? The recognition of an independent Slovenia and Croatia was the first significant act of a common European foreign policy. It was at the time, and is today, seen as a foreign

⁴³ 'Statement by an extraordinary EPC Ministerial Meeting concerning the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", 16 December 1991', *European Political Cooperation Documentation Bulletin* (1991), 769–70.

⁴⁴ The UK was reluctant and supported Carrington's goal of delaying recognition until a broad agreement could be reached. It did, however, sign up to the common position. See Douglas Hurd, 'Averting a Balkan tragedy', *The Times*, 3 December 1991.

⁴⁵ 'Statement by an extraordinary EPC Ministerial Meeting concerning Yugoslavia', 16 December 1991, *European Political Cooperation Documentation Bulletin* (1991), 770.

⁴⁶ 'Recognition brought peace', interview with Hans-Dietrich Genscher, *Deutsche Welle*, 25 June 2011, available at: <https://www.dw.com/en/recognizing-slovenia-croatia-brought-peace-genscher-says/a-15182463> (3 January 2025).

policy triumph for Germany. However, the combination of recognitions from the Badinter Committee and from the EC left the Carrington-chaired Peace Conference defunct, and that was the last chance for a peace process covering the totality of issues. Subsequent developments in the 'former' Yugoslavia demonstrated that recognitions did not bring peace. The wars did not end in December 1991; rather the region experienced four more years of war in Croatia and Bosnia-Herzegovina, with the UN, not the EC, assuming the leading role, until a US-led effort produced the Dayton Accords in 1995. There would be a NATO war in 1999 against Serbia over Kosovo, the subsequent independence of which contradicted the balancing act of the Arbitration Commission's opinions. It was not until the ethnic conflict in Macedonia in 2000–1 that the EU's High Representative for the Common Foreign and Security Policy, Javier Solana, would play a leading mediating role.

While the process of managing the break-up of Yugoslavia was shaped by perceptions of strategic interests, we should not lose sight of the EC's efforts to establish important democratic principles in the recognition of new states. In addition, one of the most significant contributions of the Arbitration Commission was to advance a new geometry of identity by decoupling ethnic identity or nationality from state citizenship, and elevating the values of democracy and pluralism legally required of the new states to constrain the potential excesses of ethnic nationalism.⁴⁷ The balancing of demos and ethnos principles reflected developments then under way in the EC itself post-Maastricht as it transformed into the European Union. The Good Friday Agreement (1998) embodied a similar balancing act and even took it a step further by recognising multiple national identities and citizenships on the island of Ireland. In that sense, Ireland has a good foundation for any rebalancing required from reunification.

⁴⁷ Alain Pellet, 'The opinions of the Badinter Arbitration Commission: a second breath for the self-determination of peoples', *European Journal of International Law* 2 (1992), 178–85: 180.