# Contradicting Norms of Secession in the Balkans

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"**The Crushed Velvet Divorce: Contradicting Norms of Secession in the Balkans**"

Since the industrial era and the post-Napoleonic world order, ethno-nationalism has been a potent force in international and domestic politics. Gradually, norms have developed favouring a right of self determination for national groups seeking self-government. In the past one hundred years or so this right to self-determination has become increasingly restricted, ostensibly due to concerns for stability and to prevent a descent into an unlimited right of self-determination, fracturing the world into small nation-states. The application of this norm, however, has not been entirely consistent. The importance of these norms for establishing international law cannot be understated as these issues play a prominent role in the politics of many countries, including those in the developed world. Their implications for global stability and prosperity mean that consensus on secession and the norms governing it are likely to be fiercely contested issues.

In this paper I will analyse the development of the norm of self-determination and right to secession over the past century and examine where support for the institutionalisation of these norms has come from. I will begin with an overview of secessionist movements in Bosnia-Hercegovina and Kosovo during the Yugoslav wars. I will then trace the development of secession norms by examining various international agreements and customary international law and scholarly work on the subject. More importantly, I will examine those circumstances under which this norm has been violated. Using the example of the dissolution of Yugoslavia, I will show the uneven application of this principle in reference to the secessionist aspirations of the Serbian province of Kosovo and the Republika Srpska entity of Bosnia-Hercegovina. Finally, I will seek to explain this discrepancy through the change of identity the United States has undergone in the post-Cold War world.

Norms certainly do emerge and have a measureable impact on state behaviour; even when they violate these norms they seek to justify this action- a *de facto* recognition of the norm. This paper, however, will argue that they do not restrict the freedom of action of states with the power to act unilaterally, or impose their views on less powerful states. In the end, norms are only as effective and inviolable as those with the power to flout them want them to be.

The unravelling of the Yugoslav federation in the early 1990s set off a chain of secessionist claims within the individual republics. After Bosnia's declaration of independence and subsequent recognition in April 1992, the Serb portions of the country, which steadfastly refused to remain within an independent Bosnia without substantial autonomy or independence, declared the existence of Republika Srpska, leading to a conflict for control over the territory (Pakovic, 2000). Throughout this time Republika Srpska paramilitary forces, through a campaign of ethnic cleansing and armed conquest, gained control over large swaths of the territory of Bosnia-Herzegovina, establishing itself as a *de facto* state (Fawn & Richmond, 2009, 206). The Serbs believed this would ensure their independence as the balance of forces within the country favoured them, while the Muslims were unable to dislodge the Serbs from territories they had conquered. Contrary to its previous actions with regard to Yugoslavia, the United States and Europe were intent on preserving the territorial integrity of Bosnia and preserving it as a united state (Ibid, 215). After a military intervention forced the Serbs to the negotiating table, a peace agreement was reached in the winter of 1995. The Dayton Agreement preserved the unity of Bosnia-Herzegovina by keeping Republika Srpska within Bosnia

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as a second entity of the new state, along with the Croat-Muslim Federation of Bosnia-Herzegovina (Pavkovic, 2000). This agreement has persisted to the present day, though tensions between Serbs and the federation with regards to the autonomy of the former remain (Zahar, 2004).

This tension has been further exacerbated by recent developments in Kosovo. Kosovo had a long history of autonomy within Yugoslavia as an autonomous province of Serbia. This privileged status was revoked in 1987 during Milosevic's attempts to unify Serbia with its two autonomous provinces, Kosovo and Vojvodina (Pakovic, 187). Conflict between Belgrade and Albanian leaders in Kosovo led to a declaration of independence in 1991 by the latter, which did not garner international recognition. Serbian negotiations on the future status of Kosovo were not forthcoming and tensions between Albanian paramilitary groups and Serbian police resulted in open fighting and a US-led NATO intervention, which resulted in the removal of Serb forces from the province and an international force introduced to the province in their place (Pavlakovic & Ramet, 2004, 86). The province became, in essence, an "international protectorate" with its status to be decided at a future date (Ibid. 92). In February of 2008, however, Kosovo unilaterally declared its independence and was quickly recognised by many Western states, contrary to many established norms and international law.

The idea of norms and the development of a standard of expected behaviour within the international community form a large part of constructivist thinking. Constructivism is a relatively new school of thought within international relations. It emerged in the end of the 1980s, pioneered by Nicholas Onuf, Alexander Wendt, and Fredrich Kratochwil (Zehfuss, 2002). Each of these scholars contributed something to what became known in IR schools as Constructivism a term brought into use by Onuf who introduced the term constructivism in his work*World of Our Making* but popularised by Wendt (Ibid, 10). Despite much of the academic work on constructivism, Zehfuss states that "Although constructivism has been defined, explained, assessed and positioned, there is little agreement about what it is" (6).

Constructivism owes much to sociology and a non-rational approach to international relations. Neorealists and Neoliberals see the international system as a given and its actors constrained by it. Constructivists argue instead that "we create our own security dilemmas and competitions by interacting in particular ways with one another so that these outcomes appear inevitable" (Sterling-Folker, 116). This focus on the role of individuals or states in 'constructing' our worlds and all of their affairs is where the theory gets its name. As the state system is constructed of shared cognitive practices which invest our world with a social dimension, human consciousness becomes an important factor in configuring those affairs (Pettman, 2000). The role of people and their part in constructing and interpreting the world we live in is the central focus on constructivist thinking. Ideas such as identity, norms, and language and their role in shaping human interaction are all at the core of constructivist theory. Wendt believes that the social structures that frame our interactions (such as the state, norms, international organisations) are defined by shared understandings, expectations, or knowledge. It is through these shared understandings that material items gain meaning (Wendt, 1995). "Constructivist theorising tries to show how the social structure of a system makes actions possible by constituting the actors with certain identities and interests and material capabilities with certain meanings" (Ibid, 76). It is this social construction of the meaning of material goods that gives them their role in our interactions, and makes 500 French nuclear weapons much less threatening to the United States than five North Korean ones. The social context of the relationship between the actors defines their relationship much more than material capabilities. The continued interaction among nation states over time leads to the development of identities which become entrenched overtime and reinforced by continued interaction.

Another important part of constructivist thinking is the role of norms and culture in shaping and regulating these interactions. Norms are identified as a general standard of appropriate behaviour for actors with a given identity (Finnemore & Sikkink, 891). Finnemore and Sikkink identify two different types of norms: regulative and constructive norms. The former is more concerned with regulating and constraining behaviour, whereas the latter deals with the creation of new actors, interests, or categories of action (Ibid). Norms of secession are a curious blend of the two: while they deal with regulating the practice of secession and when it should be recognised, secession also concerns constructive norms and the creation of a new actor, in this case a state. These norms go through a process of internationalisation. They begin in the domestic sphere and then become international through "norm entrepreneurs" of various kinds (Ibid. 893). Once a 'critical mass' of states subscribes to the norm, there is a 'norm cascade' as the

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norm gains international standing and is adopted by a majority of states. Internalisation of the norm occurs when it becomes a "take-for-granted" fact within the international community and is no longer widely debated (for example, slavery) (Ibid, 896).

Between 1810 and 1950 secession was viewed as a negative right. Once a state declared itself independent it was recognised as such by the international community (Fabry, 2008). Many Balkan states (Greece, Serbia, Bulgaria, and Romania), as well as the Latin American states in the early 1800s after the collapse of the Spanish empire, gained independence in this manner. After the end of the Second World War and the formation of the United Nations, secession had gained a new meaning, and the Wilsonian ideal of self determination of peoples with a duty on the part of the international community to assist was adopted. Secession as a "positive right" became the norm and the question was now whether "an entity had a prior right to independence, rather than whether it is, independent" (Ibid, 57). Since this shift, and with the adoption of resolution 1514, Fabry has indicated that the legitimate candidates for recognition (of a right to secession) have been restricted to colonial territories whose right to independence was blocked, violated, or not yet realised, to constituent units of dissolved states, and to seceding entities that received the consent of their parent states. Unilateral secession, which gave rise to recognition of *de facto* statehood, became illegitimate (Ibid, 59). Secessionist threats outside of this context would not be regarded as legitimate expressions of self-determination (Horowitz, 2003).

The first recognition of any right of secession granted by the UN was outlined in General Assembly Resolution 1514, on the granting of independence to colonial peoples or countries. Article 1 reads "immediate steps shall be taken, in Trust and Non-Self Governing Territories or all other territories which have not yet attained independence to transfer all powers to the peoples of these territories…" (UN GA Res. 1514). This, however, is qualified in Article Six which says that "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the United Nations." (Ibid.) These restrictions on secession are further limited by the Charter of the United Nations which in Chapter 1 Article II(1) bases the organisation on the sovereign equality of all its members and in Article II(4) prohibits the use or threat of use of force in international relations. Article II (7) further protects the sovereignty of states by stating that

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII (UN Charter).

Groarke (2004, 110) further elaborates on this point by stating that, within international law, there is no recognition of a right to self determination similar to that in philosophic literature. The majority of states prioritise the right of state sovereignty and non-intervention over any right of secession, and international legal documents support this position. It was under these circumstances that the modern form of the norm of secession began to develop.

Allen Buchanan further elaborates on the right to secession, restricting it even in cases of self-determination, which the UN charter seems to advocate. He believes that secession on the grounds of self determination within a fully sovereign state should be rejected for *all* peoples as this would result in prohibitive "moral" costs (1991, 49). Self-determination should be recourse only for groups needing to protect themselves from the destruction of their culture, literal genocide, or various injustices such as ethnic discrimination, and violations of civil and political rights granted to all other citizens of the state regardless of their ethnicity. This idea has become known as the *remedial*, or *just-cause* theory of secession.

Groarke states that the fundamental principle of any theory of secession is that "sovereignty is limited" (2004, 74). Indeed, secession requires recognition of this fact as in principle it violates the sovereignty of a state by removing part of its territory, presumably against the will of the state. In addition to violation of the norm of state sovereignty, any recognition of a right of secession will usually result in a violation of the principle of non-intervention in a state's internal affairs. This norm of non-intervention has a long history dating back to the origin of the modern state system and the Peace of Westphalia in 1648. More recently it was reaffirmed by various European countries in the Helsinki Agreement of 1975 which states that "The participating states will refrain from any intervention, direct or indirect,

individual or collective, in the internal or external affairs falling within the jurisdiction of another participating state, regardless of their mutual relations"(Helsinki Agreement, VI). The document goes further and says

"They [participating states] will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interests the exercise by another participating State of the rights inherent in its sovereignty and thus secure advantages of any kind. Accordingly, they will, *inter alia*, refrain from direct or indirect assistance to terrorist activities, or to subversive or other activities directed towards the violent overthrow of the regime of another participating state." (Ibid.)

This is but one of many affirmations of the long established principle of non-intervention within international law. Two of the driving forces in the dissolution of the Yugoslav federation, Germany and the United States, were both parties to the Helsinki Agreement and bound by its terms of non-interference and respect for non-interference and the territorial integrity of other signatories.

There are other objections that have been raised to secession which focus on internal matters of the state and human security, strengthening the norm of non-intervention and territorial integrity of sovereign states. One of these was raised by Abraham Lincoln, and further articulated by later works on secession. At the time of the American Civil War, Wellman quotes Lincoln as saying "If a minority will secede, rather than submit, they make a precedent which, in turn, will divide and ruin them; for a minority of their own number will secede from the majority whenever a minority refuses to be controlled by such a minority" (2005, 67). The undermining of democracy and the will to cooperate presents a compelling argument against secession. Furthermore, there are risks to other states when a right to secede is recognised. If such a right does exist, then it presents a clear danger to states with concentrated minorities. They could demand some form of autonomy on their own. As states are, according to Horowitz, averse about devolution, the likely response to any secessionist movements in light of a recognised right of secession will be violent repression (2003). The alternative would be the inevitable devolution of central power to minority regions, weakening the state and potentially leading to secession regardless and making the idea of such an experiment too costly for the state to entertain.

Horowitz points out the dangers of secession for the ethnic balance within states. The departure of one minority region could easily upset the balance and lead to other regions second guessing their desire to remain in the rump state (Ibid, 57). The circumstances which led to the departure of Bosnia-Hercegovina from the Yugoslav federation can be directly attributable to this situation. Not willing to remain in a rump Yugoslavia dominated by Serbia, the non-Serb population of Bosnia unanimously voted in a referendum to leave the federation, with the encouragement of the United States. The subsequent ethnic cleansing in Bosnia during the civil war is also explained by Horowitz. Secessionist movements against the will of the government almost inevitably end in some form of armed conflict. "Violence", Horowitz argues, "disproportionately attracts people with an interest in aggression. The people willing to take up arms for secession are those who are willing to be brutal with their ethnic enemies and with their own rivals as well. As their advantage grows, new bouts of ethnic cleansing can be expected" (58). In Horowitz's view those who appear to fight in support of secessionist movements are the more violent, aggressive individuals in society. These people will commit crimes against their ethnic enemies, making any recognition of secession rights a prelude to eventual ethnic cleansing by extremist factions on both sides.

With the beginning of secessionist movements within Yugoslavia in 1991, there were varied international responses on how to respond. How would the international community react to claims of the constituent republics for self determination? Initially there was support for the territorial integrity of Yugoslavia. President Bush stated that the "United States will not encourage those who would break the country apart" (Radan, 2002, 160). Similar statements were made by the Secretary of State, who at the same time would not condone the use of force to keep the state together (Ibid). As secession is essentially an internal matter until the seceding state is recognised, any use of force on the part of the Yugoslav National Army (JNA) would be within the scope of the federal government's powers. There is no unilateral right to secession in international law, and any mobilisation against secession on the part of the central government would not be outside the bounds of international law (Norman, 2006, 72). Gale Stokes reiterates this fact when discussing the Badinter Commission set up by the European Community to decide on secession claims from the former Yugoslavia. While it established criteria under which the seceding states should be accorded

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recognition by European states, this was not consistent with international law which "… provides no right of secession, in the name of self-determination, to minorities" (Stokes, 2005, 15).

The main cause of the conflicts that erupted in the former Yugoslavia throughout the 1990s was the *ad hoc* rejection of the principles of territorial integrity and recognition of states (Thomas, 2003, 17). In particular, the recognition of the independence of Bosnia-Herzegovina went against the long-existent Montevideo Convention of 1933 on state recognition. Article 1 of this document states that "The state as a person of international law should possess the following qualifications:(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states" (Montevideo Convention). At the time of recognition the central Bosnian government had very little control over the majority of the territory of the country, which was subject to claims by both Serbia and Croatia. As well, massive refugee flows and internally displaced persons made the population in a constant state of flux. In short, under the terms of the Montevideo Convention, which had been the prevailing norm on state recognition in practice and in international law for the past 60 years, Bosnia-Herzegovina could not yet be recognised as a state as it failed to meet the necessary requirements. This was also echoed by the Badinter Commission's report. Despite this fact, the United States and various other countries recognised its independence, contrary to numerous international agreements and the recommendations of the European Community. It was this proverbial "foreign hand" as Thomas calls it that made the difference between integrity and destruction in Yugoslavia (8).

What implications did this have for the status of Republika Srpska? It was argued by many in the West that the internal administrative boundaries of Yugoslavia's republics, questionable as their origins were, should serve as the new international boundaries of the independent republics. This was the argument provided for keeping Republika Srpska within Bosnia and for ruling out any right of secession for the Serb minorities of Croatia and Bosnia. Thomas shows that there is no precedent or norm for such a position in international law, and in practice the opposite has been true. In both the Irish secession from the UK and the partition of India in 1949 the internal boundaries were not taken as permanent. The provinces of Bengal and Punjab were partitioned between India and Pakistan, resulting in massive refugee flows and massacres on both sides. Likewise, Ireland, under the jurisdiction of the UK at the time of independence, was partitioned with the northern six provinces of Ulster remaining with the UK, according to the wishes of the majority of its inhabitants (20).

In the case of Kosovo, the agreement allowing international forces into the province also reaffirmed the territorial integrity of the Federal Republic of Yugoslavia (FRY) and its current successor, the Republic of Serbia. This was provided for under UN Security Council Resolution 1244. Again, this document promoted the primacy of territorial integrity, with all members agreeing to respect the territorial integrity of the Federal Republic of Yugoslavia (FRY), making specific reference to the Helsinki Agreement, and Annex 2 of the resolution which aimed at an agreement consisting of

"a political process [leading] towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and other countries of the region…" (UN SC Res. 1244)

In spite of this clear affirmation of the territorial integrity of the FRY, on February 8th, 2008 Kosovo, contrary to all established norms of international law, unilaterally declared its independence from Serbia, the legal successor to the FRY, and was subsequently recognised by various western nations including the United States, Germany, Great Britain, France and Canada.

How can we explain this blatant double standard with which Bosnia-Hercegovina and Serbia have been treated? Constructivist ideas of identity and interests shed much light on the behaviour of one of the most important actors in the Yugoslav drama and subsequent intervention in Kosovo. American actions must be taken within the context of their post-Cold War environment—a period of changing priorities and interests for American foreign policy. Krauthhammer believes that with the end of the 1991 Gulf War the unipolarity of the post-Cold War international system should lead to a more robust and interventionist US foreign policy (1990/91). The "triumphalism" that

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followed the "defeat" of the Soviet Union led to less restraints and a need to redefine American identity and foreign policy goals. In the absence of a balancing military power, the US should move from a negative policy of containment, to a positive one of promoting democracy, regional stability, and economic prosperity (Waltz, 2008). Given the volatility of the situation within Yugoslavia, goals of ensuring regional stability could justify intervention in the Balkans. America's new unipolar position and its strong identity as a protector of democracy reinforced these goals of making the world safe for democracy and encouraging its spread, if necessary through armed intervention. Since this time, "U.S. policy-makers have sought to persuade the world to embrace their particular vision of a liberal-capitalist world order" and taken this opportunity to promote human rights and to punish those rejecting its world view (Stivachtis, 2008, 91). This correlation between internal identity and external interests is an important part of Wendt's approach to constructivism (Zehfuss, 15). Democratic ideals and interventionist policy in the US combined to create a US foreign policy focusing on the spread of its own values abroad, especially in the absence of any resistance to its power.

In addition to new post-Cold War interests, the role of norms and international law specifically need to be considered in light of an important fact: even if anarchy is what states make of it, as Wendt believes, there is no overall authority regulating the behaviour of states in the international system. International law as it currently exists is only law in "the weakest sense" as Groarke puts it. "It has a didactic rather than a legal character and leaves the real authority of the international system firmly in the hands of states" (76). The realist belief that international norms "serve only an instrumental purpose and are likely to be enforced or enforceable only by a hegemon" seems to best describe this situation (Slaughter, 1995, 507). While the hegemon "is powerful enough to maintain these rules governing interstate relations" (Stivachtis, 2008) this does not necessarily mean it is bound by them. Norms were enforced by the US in Bosnia-Hercegovina, and then subsequently broken by it in Kosovo, in terms of both the use of force and non-intervention, as well as the territorial integrity of Serbia.

The existence of norms is quite apparent in international relations. They manifest and regulate state behaviour everyday, helping to provide some guideline of acceptable behaviour between states and how they should conduct themselves in their international relations. The effects of norms, however, are inevitably limited and they are not binding, inviolable standards. As the promulgation of American hegemony has led it to become much more active in areas once off-limits, norms are increasingly being challenged and displaced in favour of the interests and desires of this global hegemon. As we have seen throughout the former Yugoslavia, while norms of international law were often used to justify the actions taken there, they were binding only when supported by the United States or its allies. The importance of the issue of secession for states means that this disregard for established norms should not be undertaken lightly, and those breaking these norms should be mindful of the precedent they set for other regions of the world experiencing similar problems.

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