



**PILLAR IV
EUROPEAN UNION AND INTEGRATION**

The European Union's Normative Role in the Dissolution of the Ex-Yugoslavia: An Underestimated Contribution

By Klodiana Beshku (Ph. D)

*Lecturer at the Department of Political Sciences,
University of Tirana.*

I. ABSTRACT

The European Community/Union has been an important factor in the dissolution of the Ex-Yugoslavia, even though this affirmation has raised many critics and debates. This paper tries to re-evaluate this role in an actual perspective, after nearly quarter a century from the beginning of the conflict. The article defends the idea that, despite of the smacks of the European Community/European Union to prevent the disruption of ethnic hatreds in the territory of the ex-Yugoslavia, it has given a prominent contribution in other directions, less explored previously. The paper deals with “what has been done” not with what “has not been done” from the part of the European Community/Union in the first phase of the dissolution of the Ex-Yugoslavia (1990-1993). It defends two main little explored arguments: That EC/EU behaved as a soft power *par excellence* by taking part in the conflict as a credible negotiator and as a normative power *in primis* by contributing in the international level in changing the concepts of “population” and “entity” of a state through the norms produced during 1990-1993.

This evaluation is realized through the constructive liberal approach in the framework of the International Relations, combined with a geopolitical description of the panorama of the events and a revision of the documents in the Archives of the European Union in Florence and the Bulletins of the European Community of that period. The paper tries to see in a different light the reasons for the European opposition to the dissolution of the ex-Yugoslavia at the beginning, taking in account the economic ties with that country, the state of the Foreign Policy within the EC in that period and the geopolitical world situation, all together considered as “limits” posed to the EC/EU ability of action in the beginning of the dissolution of the Ex-Yugoslavia.

KEY WORDS: *European Community, dissolution of Ex-Yugoslavia, recognition of new states, international norms, normative power*

ABBREVIATIONS:

BiH	Bosnia and Herzegovina
CFSP	Common Foreign and Security Policy
CFSP	Common Foreign and Security Policy
EBRD	European Bank for Reconstruction and Development
EC	European Community



ECU	European Currency Unite
EIB	European Investment Bank
EP	European Parliament
EPC	European Political Cooperation
EU	European Union
WB	Western Balkans

II. INTRODUCTION

The role of the European Community in the disaggregation¹ of the ex-Yugoslavia has been largely criticized with the argument that its *policy-makers* were not fully aware of the ethnic problems concerning the Yugoslav reality. The dissolution of the ex-Yugoslavia was the first armed conflict that the European Community had to deal with “at its doors” since its constitution, in a moment when the framework of a Common Foreign and Security Policy was being discussed in its *ambience*².

It is very interesting how the concept of “self-determination” and *uti possidetis* (non-changing of the borders) has been applied to the Yugoslav reality, contrarily with a moment when Germany was unifying. Thus, the doctrine of “self-determination” was creating “disaggregation” in some territories and “integration” in some others. The recognition of the new Republics coming out from the ex-Yugoslavia was continuously submitted to the principle of the safeguard of the minority rights with the aim to balance this situation and to avoid the creation of the “ethnically pure” countries which would have “jeopardized” the Western Balkans and create never-ending conflicts. The conclusion given by Noel Malcolm in this regard³, stating that “*who arrived first in an ethnic territory*” had not the right to claim it, sounded truer than ever before in a region where fluxes of populations have been in perpetual mobility for centuries. Even though a quarter century has passed from that period, it is still a matter of current importance the fact that the recognition of the new states and the juridical basis that the EC⁴ created in this direction may be still valid as international norms, nevertheless they have been interpreted according the national interests of the single states throughout the nearly three decades. This affirmation forms the hypothesis of this article according to which, the European Union⁵ is an able normative power, but because of the fact it does not impose by force its solutions, the norms it produces are subject to interpretation of the national states or to the will of the great powers.

¹ The term “disaggregation”, together with the terms “split”, “tear off”, “divide”etc., have been avoided from the EC in the question of the ex-Yugoslavia, preferring the term “dissolution” instead.

² Thiébauld J., 1994, “La Commission d’arbitrage pour la Paix en Yougoslavie présidé par Robert Badinter (Août 1991 – Janvier 1992)”, in Thuan C., Fenet A., (Eds.), *Mutations Internationales et évolutions des normes*, Amiens Cedex: Presses Universitaire de France.

³ Malcolm N., 1999. *Storia del Kosovo. Dalle origini ai nostri giorni*. Milano: Bompiani, pg. 53.

⁴ EC is used for European Community until 1993. Meanwhile EC/EU will be used interchangeably in general throughout the article.

⁵ EU is used for the European Union after the sign of the Maastricht Treaty in 1993 which gave this name to the European Community.

In this regard, the concept of “self-determination” has created some paradoxes in its application in the case of dissolution of the Ex-Yugoslavia. Different scholars have described this paradox as the consequence of an administration power coming from outside which clashes with the idea of the self-determination in a world where self-determination should be considered as deriving from the people’s will⁶. This clash may be understood if the relationship between the “international” and the “national” level is considered in the International Relations: The national interest often deforms the international achievements if they don’t fit the first one. Only in this way it could be possible to understand the smack between the theoretical assumptions and their practical applications in the nowadays conflict solutions, as the case of the Ex-Yugoslavia and the EC during the first phase of the dissolution of the Ex-Yugoslavia demonstrates. Soon after the conflict and especially after the massacre in Srebrenica, the role of the EC/EU has been largely criticized⁷. Let alone the inefficiencies on the ground of the International Community, a little importance has been dedicated from the International Relations scholars to the contribution of the EC/EU in the modification of the international norms and in the pacific search of the solutions in a conflict⁸, meanwhile only a few have managed to realize an equilibrated panorama of the event⁹. This paper tries to pour more water in the fence of those who believe that, to say it with the words of a renowned scholar, “*EC/EU did matter*”¹⁰.

In regard of the first question of the self-determination concept herewith discussed, there is another point which should be taken into consideration. According to the largely accepted International Law, the requisites for the automatic recognition of the new state are:

- a. The effectiveness of its government;
- b. Its independence;
- c. It should not constitute a threat to peace and international security;
- d. The fact that it must have the consensus of its people through free elections and should not violate human rights¹¹.

⁶ De Schoutheete, De Tervarent Ph., 1997. The Creation of the Common Foreign and Security Policy in Regelsberger E., de Schoutheete de Tervarent Ph., Wessels W., eds. *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, London: Lynne Rienner, pp: 41-62.

⁷ See Pond E., 2006. *Endgame in the Balkans, Regime Change, European Style*. Washington DC: Brooking Institution Press, Hayden M., 2013. *From Yugoslavia to the western Balkans. Study of a European disunion 1991-2011*. Leiden-Boston: Brill, Bennet Ch., 1995. *Yugoslav bloody collapse. Causes, Course and Consequences*, New York: University Press Washington Square and Gallagher T., 2003. *The Balkans after the Cold War: From Tyranny to Tragedy*, London: Routledge.

⁸ See Lucarelli S., 2000. *Europe and the Breakup of Yugoslavia. A political failure in search of a scholarly explanation*, Hague: Kluwer Law International and Mahncke D., Ambos A., Reynolds Ch., 2004. *European foreign policy: from rhetoric to reality?*, Brussels: Presses Inter universitaires Europeennes.

⁹ See Ramet S. P., 2005. *Thinking about Yugoslavia. Scholarly debates about Yugoslav break up and the wars in Bosnia and Kosovo*, Cambridge: Cambridge University Press and Caplan R., 2007. *Europe and the Recognition of New States in Yugoslavia*, Cambridge: Cambridge University Press.

¹⁰ Lucarelli S., 2000. *Europe and the Breakup of Yugoslavia. A political failure in search of a scholarly explanation*, Hague: Kluwer Law International, pg: 229.

¹¹ These principles are expressed in the Chart of the United Nations, Chapter II.



An expert in this field, professor of International Law, Benedetto Conforti, has stated that the requisites contained in the two Declarations of Brussels of 16th December 1991¹² regarding the independence of the Republics coming out the Ex-Yugoslavia were, in fact, exaggerated and that they could not be based in practice. According to Conforti, these principles have never been translated into international norms for the simple fact that the States, even if agreeing on these principles, diverge (mostly for political reasons) on their existence in each single case¹³. As a matter of fact, the key values listed from the Badinter Commission¹⁴ such as the *self-determination* of the people and the *non-changing of the borders* will apply strictly in the cases of Bosnia-Herzegovina and Kosovo¹⁵. A more positive interpretation will be applied to Slovenia and Croatia, nevertheless of the Krajina issue of the latter and their independence will be soon recognized because of the German influence, as we will try to argue further in this article.

For the second question, the one of the right of entities or minorities, it is very interesting the prospective coming from a French constitutionalist, Alain Pellet¹⁶. He supports the idea that the Badinter Commission, without a precise reference, has related the principle of “self-determination of people”¹⁷ to the “right of the minorities”. This confirms, according to him, that the concept of “people” is not homogenous anymore and it does not refer absolutely to the “whole population of a state, but to different ‘linguistic communities’, ‘ethnic communities’ or ‘religious’ ones”¹⁸. This new concept has been translated in “*new imperative norms that condition all the subjects of the International Law and that one day they may be implied in order to protect the rights of the Gagauz or Chechens without invoking the dissolution of Moldavia or Russia*”¹⁹. The idea could be nowadays extended to protecting the rights of Kurds without the need of the dissolution from Turkey and the rights of Crimean people without the need of Russia to keep the Crimean Peninsula occupied. This principle, emerged from the ideals of the European

¹² There is an entire session dedicated to these Declarations in the following part of this article.

¹³ Conforti B., 2002. *Diritto Internazionale*, Napoli: Editoriale Scientifica, pp: 18-19.

¹⁴ The Badinter Commission was composed of experts in law from different EU countries called with the aim to build their views based on purely legal and not political grounds on the recognition of the Republics coming out from the Ex-Yugoslavia. Robert Badinter, the head of the Commission, was a well-known French constitutionalist. The Badinter Commission together with the Peace Conference on Ex-Yugoslavia were two organs ad hoc created by the EC in order to give a juridical back up to the dissolution of the Ex-Yugoslavia.

¹⁵ BiH did not give sufficient guarantee for the status of the Bosnian-Croatian and Serbian-Croatian entity forming the Republic because of the lack of the organization of a referendum concerning its independence and the region of Krajina (a Serbian Bosnian majority region) will never be supported to a secede from BiH. It will be recognized Republic only in 1992 but that will cause a long ethnic conflict in the country. Kosovo was retained part of Serbia nevertheless it was an autonomous region with the right of representation at the Presidency of Yugoslavia since the Constitution of 1974 had entered into force in the country¹⁵. It will never be supported by the EC in its independence from Serbia, until 2008 when it will be supported from the USA in its independence process and the International court of Justice in Hague will proclaim Kosovo a *super partes casus*.

¹⁶ He was member of the Commission on International Law of the United Nations at the beginning of the nineties.

¹⁷ The concept of “people” in the Chart of the United Nations is not defined. “The right to self-determination is extended to all people” without defining the concept and that gives a large possibility for interpretations.

¹⁸ Pellet A., 1993. “The Opinions of the Badinter arbitration Committee. A Second Breath for the Self-Determination of Peoples”, 3 *EJIL*, pp: 178-185.

¹⁹ *ibidem*



Community/Union in the vests of a soft power, can help to avoid armed conflicts in the future and contribute to the so called “preventive diplomacy”.

III. THE ECONOMIC, JURIDICAL AND POLITICAL LIMITS OF THE EUROPEAN COMMUNITY IN DEALING WITH THE YUGOSLAV CONFLICT AT THE BEGINNING OF THE NINETIES

When the Yugoslav conflict erupted in the 1990s, the European Community was engaged in building a Common Foreign and Security Policy, thus, the management of the conflict from a regional power perspective was, needless to say, very difficult in the framework of the EPC²⁰. The international situation was precipitating, as well. France was busy in diplomatic negotiations trying to reach the withdrawing of the Iraqi military troops from Kuwait. Great Britain was backing the American position in Iraq, a position which was opposite to that of France. The disaggregation of the URSS²¹ and of the ex-Yugoslavia was going in the opposite direction with the unification of the two German Republics and the EC was insisting on the preservation of the constitutional limits and on avoiding the use of violence for changing the frontiers in the Ex-Yugoslavia. Except of the German unification, another challenge was the integration of the German Democratic Republic within the European Community, the necessity to formulate an adequate European policy towards the new democracies of the Central and Eastern Europe and the necessity to accelerate the process of the European integration between the twelve²². There was also turmoil coming from the Balkans with Albania, Bulgaria and Romania opting out from communist dictatorships meanwhile the puzzle of the ex-Yugoslavia was disrupting in many pieces.

These emerging conflicts shaped the background in which some of the member states of the CE strongly formed their beliefs towards the Balkans. The representatives of member states in the European Community found it difficult in properly perceiving the exploding situation in the Ex-Yugoslavia. These difficulties which were transformed into serious limits may be grouped in three main directions that could help to explain the gap between the EC’s perceptions from the

²⁰ Negotiations within the member states were taking part in December 1990 for the future Summit of Maastricht of 1992. The existing “European Political Cooperation (EPC)” framework, based since 1970 on the informal consultations of member states and on a moral responsibility between them was being transformed into a “Common Foreign and Security Policy (CFSP)” based on a *supra-governmental* approach. This transformation aimed a certain degree of unanimity between members in the Council of Ministers and less influence by the other institutions. The political unanimity will gain *de jure* in 1993 with the Treaty of Maastricht but will be applied *de facto* only a few times during the nineties.

²¹ The situation in the URSS was not quite. There will be a *coup d’état* in August 1991 that will change the direction of the events. Also, the situation in Kosovo will not be quite in that period. The troupes of JNA (Yugoslav National Army) will be sent in the Kosovo territory with the pretext that the Serb minority was being violated. In fact, the myth that the dissolution of Yugoslavia began in Slovenia and Croatia must be reshaped considering that the first problems of the future disaggregation began in Kosovo, having already the Kosovo’s people organized a protest for “Kosova Republikë” on 24 January 1989. Mass demonstrations and violent clashes between Albanian of Kosovo and the Serb police went on for all 1989 and the spring of 1990.

²² Bulletin EC 5-1990, section 2.3.1. There were twelve countries part of the European Community in 1990: Belgium, Germany, France, Italy, Luxembourg, Netherlands, Denmark, Ireland, United Kingdom, Greece, Spain and Portugal.



tower and the reality on the ground of the precipitating situation in the Ex-Yugoslavia. Let's further explore these limits.

The Economic limits

The first economic treaty between the European Economic Community was signed in 1970. From that time until the 1990s, the Ex-Yugoslavia has always been a privileged country within the European Community by becoming the first country from the Balkans exporting to the EC²³. The dissolution of the ex-Yugoslavia began in a moment in which the European Community was opening the negotiations for the signing of a new treaty with the Ex-Yugoslavia meanwhile some billions of ECU were already invested in the country through the EBI and the previous treaties²⁴. Furthermore, the EC member states considered Ex-Yugoslavia as an important ally for its openness towards Central and Eastern European Countries. They had for so long appreciated the non-allied position of the ex-Yugoslavia in the international level, so it was hard to accept its division from a moment into another. The unity of ex-Yugoslavia was considered as an important tribute to a world divided into the Eastern and Western blocks.

These factors influenced the European Community member states to initially stand for the preservation of the Yugoslav Unity in the beginning of the nineties, but they weren't the only one. In fact, the financial loans given to the ex-Yugoslavia from 1976 to 1990 through EBI amounted to nearly 1 milliard of ECU²⁵, an important amount of investment. In the documents of the Archives of the EU of Florence, in Italy, it seemed clear that the major part of the investments of the EC in the Ex-Yugoslavia was focused in the field of transports and pan-European corridors, facts which demonstrate that the ex-Yugoslavia was considered by the EC as an important country of transit to Greece²⁶, at that time already member of the EC. There was also the left hand parties within the European Community which were pushing for the preservation of the Yugoslav unity, considering the country as the symbol of Tito's politics of the "Yugoslavian way to the socialism", meanwhile the right hand was putting the question in a different prospective by pushing for the dissolution under the Soviet Republics' example: According to their arguments, it was not worth trying to preserve a federal government which was not even elected directly from the Yugoslav people²⁷.

²³ The figures on the exports of the Eastern Countries of 1989, including Yugoslavia, Eurostat, Archives of the European Union of Florence, Fund GJLA 264. The exports towards the EC amounted of 35% of the total of Yugoslavia, more than of Poland (28,9%), of Hungary (25,6%), of Czechoslovakia (18,2%), of Romania (17,6%) and of Bulgaria (4,6%).

²⁴ Bulletin EC 12-1984, section 2.2.26, Bulletin EC 5-1983, Bulletin EC 2-1984, section 2.2.25, Bulletin EC 3-1983, section 2.2.32.

²⁵ Title GU L 41 of 14.2.1983 and Title GU L 56 of 3.3.1983, Bulletin EC 4-1983, section 2.2.28.

²⁶ The total is the approximate amount of all the loans present at the Bulletins of EC from 1975 to 1991.

²⁷ Pirjevec J., 2001. *Le guerre jugoslave 1991- 1999*, Torino: Giulio Einaudi Editore, pg. 35.

²⁷ The Presidency of the Socialist republic of Yugoslavia, after 1974, was composed of 9 members, eight elected by each republic of the Ex-Yugoslavia and its autonomous provinces (Kosovo and Vojvodina) and the ninth president of the Presidium of the League of Communists of Yugoslavia. The government was not elected directly from the people, but from the Communist Parties of each entity. Moreover, the last presidency of 1989 began to reflect all the internal crisis of the Ex-Yugoslavia, culminating in the obstacles towards Stipe Mesić, the pro-secession Croat candidate.

On the other hand, the EC member states were aware that they represented a model of Western consolidated democracies towards the Eastern and Central European countries, which regarded EC as a model to aspire²⁸. In this fermenting situation, the members of the EC pushed for the founding of the European Bank for Reconstruction and Development, at the beginning of 1991, according to an idea expressed by the French president François Mitterrand during the plenum session of the European Parliament of Strasbourg, on 25th October 1989²⁹, with the aim to support at any cost the emerging states of the Eastern communist regimes. The EBRD was built “to create a new post-cold War era in Eastern and central Europe furthering progress towards ‘market-oriented economy and the promotion of private and entrepreneurial initiative’”³⁰. In this atmosphere, even the approach to the ex-Yugoslavia reality started to slowly change.

The juridical limits

As it was mentioned in this paper, at the beginning of the nineties, the EC lacked proper juridical and institutional mechanisms for the realization of a united action in the Foreign Policy. The existent mechanism deriving from the European Political Cooperation (EPC) did not oblige the member states to arrive in a unique voice for their decisions but only incited them to consider the positions of the other members. The framework of the Unique Act “was a moral obligation, without any juridical imperative”³¹. It will be only with the treaty of Maastricht ratified in 1993, that a special pilaster including Foreign Policy and Security will be created. Such policy was attributed to the European Council through an intergovernmental logic, leaving to the European Commission only the right of initiative. The Maastricht Treaty stated that, besides the coordination of the reciprocal positions contained within the EPC framework, the member states should implement together all the necessary actions to realize important common interests. Though the principle of unanimity remained, it forecasted the possibility of sanctions for those members states which were not inclined in the common decisions of the European Councils³².

This complex situation had started since the end of 1990 in the last European Council of Rome of 14th-15th December which posed the basis for the future intergovernmental conferences and a major cooperation between the state members for the creation of the CFSP³³. In this occasion the concept of “mutual vital interest” was presented through a letter of objection from France and Germany, according to which, the future Common Foreign and Security Policy was to be built only “on some mutual questions of interest”³⁴. As it can easily be deduced, when the Yugoslav

²⁸ Caplan R., 2007. *Europe and the Recognition of New States in Yugoslavia*, Cambridge: Cambridge University Press, pg. 120.

²⁹ Bulletin EC 5-1990.

³⁰ <http://www.ebrd.com/who-we-are/history-of-the-ebrd.html>, last checked in June 2017.

³¹ Milo P., 2002. *Bashkimi Evropian. Ideja, integrimi, identiteti, e ardhmja*, Tirana: Albpaper, pp: 146-151.

³² Clementi M., 2004. *L'Europa e il mondo. La politica estera, di sicurezza e di difesa europea*, Bologna: Il Mulino, pp. 104-108.

³³ De Schoutheete, De Tervarent Ph., 1997. The Creation of the Common Foreign and Security Policy in Regelsberger E., de Schoutheete de Tervarent Ph., Wessels W., eds. *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, London: Lynne Rienner, pp. 41-62.

³⁴ This concept has been presented from the president of the European Commission’s speech, Jacques Delors, held in front of the European Parliament in January 1990 in Delors J., 1992. *Le Nouveau Concert Européen*, Paris: Odile Jacob.

conflict erupted, the European Community was engaged on building a Common Foreign and Security Policy and the management of the conflict from a regional power perspective was, needless to say, very difficult in the framework of the EPC.

In fact, as it was already trying to be figured out in this article, in various studies dealing with the European Community/Union, it is often underestimated the fact that when the Yugoslav conflict split up, the EC was under the EPC framework and it was dealing with the negotiations for building the future CFSP pillar³⁵. In this regard, the situation was not an advantage for the EC in proper managing its approach towards the crisis of the Ex-Yugoslavia. As Javier Solana had put it³⁶, “*a few could have said that the new born CFSP would have had such a difficult ‘baptism’ in the region*”³⁷. In any case, it is important to point out that even with these juridical limits, the European Community/Union has managed to realize some very important normative initiatives towards the Ex-Yugoslavia.

The political limits

The European Community was limited because of the international state of things, as well, in the beginning of 1990. It was busy dealing with the Gulf crisis³⁸, the opening towards the Central and Eastern European Countries and the ratifying of the third financial protocol with the ex-Yugoslavia. In this atmosphere, the European Parliament, as in many other conflicts, demonstrated to be, to some extent, in the frontline. The EP was trying to submit the question of the peaceful resolution of the situation in Kosovo, to the ratifying of the Third Financial Protocol with the Ex-Yugoslavia, through a resolution adopted in May 1990³⁹. The European Parliament was far ahead of the diplomatic strategies of the time with this Resolution which was proclaiming that the Republics of the ex-Yugoslavia and the autonomous provinces (Kosovo and Vojvodina) should have the right “*to freely deliberate on their future, in a peaceful and democratic manner, by preserving their boundaries*”⁴⁰. It was first the European Parliament which suggested a different constitutional context for the ex-Yugoslavia. From then on, all the juridical acts of the European Community that would be produced for the dissolution of the Ex-Yugoslavia would be in vanguard of the political situation in the region, in merit of the EP’s ability to openly discuss the questions.

The European Integration process proclaimed by the European Community towards to Central and Eastern Europe was generating some enthusiasm in the countries of the ex-Yugoslavia. The assumption of Paul Taylor according to which “*the irony which stands in the basis of the*

³⁵ Geoffrey Edwards, “The Potential and Limits of the CFSP: The Yugoslav Example” in Elfriede Regelsberger, Philippe de Schoutete de Tervarent, Wolfgang Wessels (eds), *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, London, Lynne Rienner, 1997, pp: 173-194.

³⁶ It was Javier Solana, at the time, the Secretary General of the European Council of the European Union and High Representative of the Common Foreign and Security Policy.

³⁷ Gori L., 2007. *L’Unione Europea e i Balcani Occidentali. La prospettiva europea della regione (1996 – 2007)*, Catanzaro: Rubbettino, pg. 6.

³⁸ An extraordinary Reunion was held on the occasion in Luxembourg and Brussels in January 1991, Bulletin EC 1/2-1991.

³⁹ Bulletin EC 3-1991, Resolution adopted in March 15, 1991, title GU C 106 of 22.04.1991.

⁴⁰ *Ibidem*.



International Relations and the consolidated democracies is that they generate enthusiasm while the threat for the fragmentation is exploding”, was revealing⁴¹. In a period when the end of the ideologies and the end of the cold war was being celebrated, it was impossible for the European Community member state politicians to forecast the Yugoslav tragedy and the explosion of its ethnic conflicts.

IV. THE EUROPEAN COMMUNITY AND THE RECOGNITION OF THE EMERGENT REPUBLICS OF THE EX-YUGOSLAVIA: WHY “YES” TO THE INDEPENDENCE OF SLOVENIA, CROATIA AND MACEDONIA AND “NO” TO THAT OF BOSNIA-HERZEGOVINA AND KOSOVO?

In the European debates of the period, the discussions were focused around two principles: the principle of “territorial integrity” *versus* the principle of “self-determination”. Probably the EC countries did not expect the strong nationalistic claims from the post-communist Republics of the Ex-Yugoslavia, therefore they tried not to overestimate them in the name of the stability in the region. In this framework, they continued to insist on the concept of the “non-forced changing of borders” in order to avoid the destabilization of the Balkan area⁴², no matter what happened on the ground.

The EC managed to produce two Declarations presented from the Foreign Ministers of the member states which were approved in Brussels on 16th December 1991⁴³. In the first Declaration, the member states expressed their will to recognize the new States formed in the region if they demonstrated to accept some core principles such as: Respect for the Charter of the United Nations, the Helsinki Final Act and the CSCE Charter of Paris, in particular the Human Rights underlined in the Charter of Paris; Respect for the principle of the rights of the minority, the non-changing of the frontiers and the engagement to solve pacifically the conflicts in the region. A large space was dedicated to the principle of *uti possidetis* (non-forced change of borders) which regarded the conservation of the pre-existent borders, a rule which was based in the Helsinki Declaration of 1975⁴⁴. The declaration was the only one through which the Eastern European countries and the Western ones could base their cooperation, in the framework of the Conference on Security and Cooperation in Europe (CSCE) and the Charter of Paris as the only common treaty where the Eastern and Western countries in Europe had adhered before 1990. The principle of the “non-forced change of borders” was extracted from the Chart of Helsinki and will be strongly repeated throughout the conflict, in order to stress the opposition of the EC to the politics of the *faits accomplis*⁴⁵ that could probably be put in act by the states coming out from the Ex-Yugoslavia.

⁴¹ Taylor P., 1993. *International Organization in the Modern World*, London, New York: Pinter, p. 82.

⁴² Thiébault J., 1994. La Commission d'arbitrage pour la Paix en Yougoslavie présidé par Robert Badinter (Août 1991 – Janvier 1992), in Thuan C., Fenet A., (Eds.), *Mutations Internationales et évolutions des normes*, Amiens Cedex: Presses Universitaire de France.

⁴³ Bulletin EC 12-1991, section 1.4.6. A complete text of the Common Declaration on Yugoslavia of 17th December 1991.

⁴⁴ Staničić M., 2005. Croatian Policy Towards Bosnia-Herzegovina in Reiter E., Iureković P., ed., *Bosnien und Herzegovina Europas Balkanpolitik auf dem Pruefstand*, Baden Baden: Nomos, pg: 38.

⁴⁵ Genscher H., 1995. *Erinnerungen*, Berlin: Siedler, pg. 39.



In the second Declaration, all the Republics of the ex-Yugoslavia were invited to present a demand for the Recognition within 23rd of December 1991, on the condition that the first Declaration should be accepted. The EC members engaged themselves to recognize the new States beginning from 15th of January 1991, if it was so suggested from the arbitrage body of the Badinter Commission. In the end, the second Declaration reserved a part to the future Yugoslav Republic (considering with this name the Republic of Serbia and Montenegro as the remaining part of the ex-Yugoslavia) stating that: “*The Community and the member States ask the Yugoslav Republic to engage itself, before being recognized, to give constitutional and political guarantees, in order to reassure that it does not have any territorial claims towards a neighbor country, member of the CE, and will never intake campaigns of hostile political propaganda, included the recourse to denominations that might imply territorial claims*”⁴⁶. As a result, the Republics that managed to handle the demand in time and were taken in consideration from the Badinter Commission were: Slovenia, Croatia, Macedonia and Bosnia-Herzegovina. Only the first three were recognized immediately in the next months from the member states of the European Community, independently that “*in the case of Croatia a reservation was made in relation to the rights of minorities*”⁴⁷. The request for recognition made by Bosnia-Herzegovina was, in the absence of a referendum, refused. The immediate recognition would be subject of scholarly and political debate which continues even nowadays. The recognition of Bosnia and Herzegovina was postponed because of the lack of a referendum. Kosovo’s independence was refused in the Arbitrage Commission’s opinions⁴⁸ in respect of the *uti possidetis* principle, even though it had formally organized a referendum on its independence in September 1991.

The relations between the member states of the EC and the countries emerging from the Ex-Yugoslavia became completely different in 1991 compared to 1990. First, the CE was not anymore searching to preserve at any cost the unity of the ex-Yugoslavia. The behavior of the EC had started to change since Slovenia had organized a referendum for its independence in 23rd of December 1990, followed by the Croatian one, in 19th March 1991. The Croatian referendum was followed by the auto-proclamation of the independence of Krajina, a province inhabited by a Serbian majority within the Croatian territory. The Serbs of Krajina, as proud “*descendants of the Serbs volunteers who had fight for the Austro-Hungarian Empire against the ottomans*”⁴⁹ had clearly expressed their will to proclaim the independence of their province in order not to remain as a Serbian minority in an independent Croatian state. Their will and the support from Serbia to it, would become subject of many war conflicts and political consequences in the future, since this was the first case where the principle of self-determination was crashed with the one of the *uti possidetis* in the Ex-Yugoslavia. Similar situations will follow in Bosnia-Herzegovina with the question of the Republika Srpska and the case of Kosovo.

⁴⁶ Bulletin EC 12-1991, section 1.4.6. A complete text of the Common Declaration on Yugoslavia of 17th December 1991

⁴⁷ Pellet A., “The opinions of the Badinter’s Arbitration Committee. A second breath for the Self-determination of people, 3 EJIL, 1992, in <http://ejil.org/pdfs/3/1/1175.pdf>, last checked in June 2017.

⁴⁸ *ibidem*.

⁴⁹ Oliver I., 2005. *War & Peace in The Balkans. The Diplomacy of Conclit in the Former Yugoslavia*. London: I.B. Tauris, pg :9.

The opinion on Kosovo was a negative one. Some scholars thought that the *avis* was a political one for the fact that Kosovo resembled to the question of Krajina by that time⁵⁰, although Kosovo had nothing to do with Krajina, since, differently from Krajina, Kosovo was an autonomous province with the right to the presidency in the federative Yugoslavia. Nevertheless, still remained the fact that some member states, especially Germany, feared the secession of Krajina in case they would have supported the independence of Kosovo in that precise moment⁵¹. This consideration can further help in better delineate the ambiguous German behavior in that period.

The Badinter Commission⁵² recommended the diplomatic recognition for Slovenia and Macedonia, while leaving under suspense the question of Croatia and Bosnia Herzegovina, in fact, both countries where the ethnic-conflicts would explode. According to the commission's work, the first two Republics possessed all the requisites for the international recognition because they did not present "*any territorial claim towards the neighboring countries*"⁵³. Croatia, instead, was not proclaiming a precise defense of the Serb minority in its future Constitution therefore the recognition of this state was put under the condition to fulfill this gap. Bosnia and Herzegovina⁵⁴ was considered as a mixed Republic composed by 40% of Bosnian Muslims, 32 % of Serbs and 19% of Croats. In this case, it should had asked each of the communities within its territory through a referendum before submitting the independence request⁵⁵. The same principle, though, was not applied to the FYR of Macedonia which was composed by nearly 25% of Albanians, presuming that Albanians of FYR of Macedonia were not a constituting entity, but a minority.

Germany and Austria would be the first states to publicly recognize the independence of Slovenia and Croatia on 19th of December 1991, just three days after the Reunion of Brussels, where the two declarations on the conditions for the future recognition of the new states were presented. The end of 1991 was paving the way for another Reunion of the European Council in Maastricht, which was supposed to delineate the coming Treaty of Maastricht. An historical compromise took part at the previous one in Brussels for opening the way for the Maastricht

⁵⁰ Troebst S., 1998. *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998*, ECMI (European Center of Minority Issues): Working Paper no. 1, May, pg. 48.

⁵¹ Libal M., 1997. *Limits of Persuasion. Germany and the Yugoslav Crisis, 1991-1992*, Westport CT: Praeger; D'Ottavio G., 2004. La Repubblica federale tedesca e l'integrazione europea: le conseguenze della caduta del Muro di Berlino sul processo di unificazione europea, *Ventesimo Secolo*, anno III, Ottobre.

⁵² The suggestions and the Recommendation of the Badinter Commission will furtherly be taken in account from the Reunion of Brussels of 16th December 1991, as it is shown forward.

⁵³ Opinions 4-10 of the Badinter Commission stating this are reproduced in Türk D., "Recognition of states: a comment", 4 EJIL, 1996, pp: 66-71.

⁵⁴ The reaction of the Parliament of Bosnia Herzegovina was immediate, though it was abandoned from the supporters of Karadžić. It decided on 25th of January 1992 to organize the referendum suggested from the European Community, in a moment when the JNA (Yugoslav National Army) was dislocated in a considerable measure in the Bosnian territory, signing the beginning of one of the worst ethnic wars in the European territory.

⁵⁵ Thiébault J., 1994. La Commission d'arbitrage pour la Paix en Yougoslavie présidé par Robert Badinter (Août 1991 – Janvier 1992), in Thuan C., Fenet A., (Eds.), *Mutations Internationales et évolutions des normes*, Amiens Cedex: Presses Universitaire de France.



Treaty. In order to reassure the success of the Reunion, it was the canceller Kohl who guaranteed that the Council “*was not going to discuss on the Yugoslavian issue which had monopolized the Reunion of the last June, on the condition to allow the recognition of Slovenia and Croatia within the next week to come*”, as reported by Simon Alterman, a Reuters’ journalist who witnessed the events⁵⁶. In the end, “*all the High Representatives of the states put their names on the new Treaty and the twelve of them declared to be happy about that*”, stated Alterman⁵⁷. Through this act, they had just indirectly given a green light to the conflictual dissolution of the Ex-Yugoslavia.

Nowadays, it seems more appropriate to agree with Conversi about his statement that it is wrong to consider Germany as a country which needed to “*gain a comfortable harbor in the Mediterranean through the recognition of Slovenia and Croatia*”. According to another scholar, it is more a “myth” that has accompanied the lack of capacity from the European part to resolve the question⁵⁸. In that time, it seemed more plausible that Germany had acted in the respect of the principle of the self-determination of the people, to justify its freshly achieved unity. In fact, as the ex-Foreign Minister Genscher⁵⁹ had stated, Germany had insisted on the independence of Slovenia and Croatia, to “internationalize” the conflict in case of a Serbian occupation⁶⁰. Only in that case, the United Nations would have interfered in the conflict.

Although the constitution of the Badinter Commission did not have clear juridical basis, it was engaged from Lord Carrington to give its opinion on the Requests of independence of the new states⁶¹. In any case, the Badinter Commission gave an important contribution to the Republics emerging from the Ex-Yugoslavia through its famous “four opinions”, published officially on 14th of January 1991. In these opinions, the Badinter Commission stabilized that the Republics emerging from the Yugoslav federation “were not rebel countries”, but Republics in the real meaning of the word, including them in a context of “dissolution” of the federation, not in a context of a “disaggregation” of it. The pointing out of this difference was very important juridically because only in this way the Recognition of the Republics would have been considered in line with the principles of the independence of “New states” of the United Nations Chart and the Helsinki Chart. Apart from the Badinter Commission, the European Community

⁵⁶ Simon Alterman, “Summit Airs Old British Theme, Dances to New German Tune, Maastricht, Netherlands, Dec. 11, Reuters, Fund AV-156, Archive of the European Union of Florence.

⁵⁷ Simon Alterman, “Who got What from the EC Summit (And at What Price)”, Maastricht, Netherlands, Dec.11, Reuter. Fund AV-156, Archive of the European Union of Florence. The article contains a short résumé of the reached objectives and of the delusions of the leaders participating in the summit: Kohl, Major, Mitterrand, Gonzales, Andreotti, Martens, Santer, Schlueter, Haughey, Mitsotakis, Silva, Lubbers and Delors.

⁵⁸ Thiébauld J., 1994. La Commission d’arbitrage pour la Paix en Yougoslavie présidé par Robert Badinter (Août 1991 – Janvier 1992), in Thuan C., Fenet A., (Eds.), *Mutations Internationales et évolutions des normes*, Amiens Cedex: Presses Universitaire de France, pg: 57.

⁵⁹ In the period of the first phase of the dissolution of the Ex-Yugoslavia, Hans-Dietrich Genscher was the president of the CSCE, one of the most active and important International Organizations of the time as the only organization which gathered Eastern and Western European countries.

⁶⁰ Genscher H., 1995. *Erinnerungen*, Berlin: Siedler, pg: 960.

⁶¹ Pellet A., “The opinions of the Badinter’s Arbitration Committee. A second breath for the Self-determination of people, 3 EJIL, 1992, pp: 178-185, in <http://ejil.org/pdfs/3/1/1175.pdf>, last checked in June 2017.



created another *ad hoc* entity to parallelly give a juridical solution to the Yugoslav question: The Peace Conference for the Ex-Yugoslavia based in Hague and presided by Lord Carrington which will contribute a lot in this direction.

In this atmosphere, the Presidency of the European Community published a common Declaration on the recognition of the Republics emerging from the Ex-Yugoslavia in January 1992, where the recognition of Slovenia and Croatia were proclaimed without taking in account the opinion of the Badinter Commission on Croatia and this opened the door for the recognition of the other Republics, after the adjustments proposed by the EC occurred⁶². The European Parliament followed up in the same direction, stressing the question of the non- changing of the borders through violence and the defense of the minorities⁶³. The only problem seemed to be the fact that the whole area was considered “as a package” and with that, without making any distinction between the different situations on the entities composing the ex-Yugoslavia⁶⁴, but in any case, future agreements that will regulate the post Yugoslav era as Vance-Owen plan, Owen-Stoltenberg plan, Juppé-Kinkel plan, Rambouillet Round, Ohrid Agreement or Ahtisaari’s plan will be based in this EC’s normative regulations of the beginning of the nineties.

V. CONCLUSIONS AND RECOMMENDATIONS

It is interesting the fact that all over the Declarations of the European Community in the beginning of the nineties was used of the term “country”, “state”, “new states” or “republics” instead of “entity” that could have been used. The usage of these terms may be considered as the first signals given from the European Community to the dissolution of the ex-Yugoslavia which reveals the initial hidden aim on the independence of its republics⁶⁵. In the beginning of the process, in a *par condicio* consideration, Krajina and Kosovo were considered as entities within a Republic, the Albanians of Former Republic of Macedonia as a minority, whilst the Bosniaks, Croats and Serbs of Bosnia-Herzegovina as entities forming a Republic. Although these considerations caused many quarrels and misperceptions, the main idea of prevailing the principle of *uti possidetis* over the one of self-determination can be understood in a very complicated and complex process. The EC gave to the whole process the denomination “dissolution” instead of “disintegration” or “secession”⁶⁶ to give the idea of a separated process of dissolution from a core Republic, which was the Republic of Serbia and Montenegro, later considered as “succession state” of the Former Socialist Republic of Yugoslavia (FSRY)⁶⁷ and to defend the lack of use of the “entity” concept, as well.

The development of the events after 1992 did not leave a large space for optimism regarding the juridical or political solutions at the international level, but in any case, some positive precedents

⁶² Bulletin EC ½-1992, section 1.5.10.

⁶³ Bulletin CE ½ - 1992, section 1.4.18. GU C 39 of 17.2.1992.

⁶⁴ Petrussevska T., 2003. Recognition of the Republic of Macedonia. Problems and Persepectives in Milačić S., ed. *La réinvention de l'état. Démocratie politique et ordre juridique en Europe Centrale et Orientale*, Bruxelles: Bruylant, pg. 362.

⁶⁵ *Ibidem*.

⁶⁶ Opinions 1-3 are reproduced in Pellet A., 1993. “The Opinions of the Badinter Arbitration Committee. A Second Breath for the Self-Determination of Peoples”, 3 *EJIL*, pp: 178-185.

⁶⁷ *ibidem*



were created: The tradition of “arbitrage” that the European Commission created and the emergence of the EC/EU as a diplomatic power and as a normative power were some of them.

This manner of solving the controversies was adopted later in the case of Kosovo’s independence, according to which, the question of Kosovo was put under the opinion of the International Court of Justice in the framework of the United Nations on 8th October 2008, under the Serbian request. The Court was expected to declare whether the unilateral independence of Kosovo was in line with the International Law⁶⁸. The International Court of Justice declared itself in favor of the independence of Kosovo in 2009 considering it a case *sui generis* and opening the way for further international recognitions of the New State.

It is easy to conclude from the panorama of the events analyzed in this paper that even that the EC/EU has not been able to avoid the war of ten days within Slovenia, the war of three months in Croatia and one of the most terrible genocides in Bosnia Herzegovina and in Kosovo, the EC/EU has tried to solve pacifically the question of the dissolution of the Ex-Yugoslavia, respecting the idea of a previous federalism, the mutual collaboration, the non-interference in domestic affairs, the respect for the minorities and the human rights. The EU was “caught off guard in its Foreign Policy and failed to put an end to the bloodshed”⁶⁹, as we tried to argue throughout this paper, but the fact that the European Community has tried from the very beginning to constitute a Peace Conference for the Ex-Yugoslavia bringing together all the parts in conflicts, will constitute a model which will be later repeated in the Dayton Agreement in 1995 and in the Ohrid Agreement in 2001. This model demonstrates once again the European Community’s values which are in line with the principles of “living according to good examples”, “being rational” and “causing less harm possible” that Ian Manners has linked with the concept of “normative power” attributed to the European Community/Union⁷⁰.

It is true that the European Community/Union has never been distinguished as a successful factor in military operations, but it does not imply automatically that it has never had a considerable merit in the delineation of some important principles like the ones concerning the recognition of the new states and the new norms on the respect of human rights in the process of constituting a new state, as it has been tried to argue in this study. Sometimes, the European Community/Union becomes an important factor in the international modeling of the new norms “*simply with its peculiar way of existing in a world made of states and international interstate relations*”⁷¹. In this direction, the European Community/Union has become a very important normative factor exactly because it “*changes the norms, the standards and the provisions for the global politics away from the centrality of the states*”⁷². Richard Caplan, after an accurate study of the role of

⁶⁸ Borgen C. J., 2009. “The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-determination in the Cases of Kosovo and South Ossetia”, *Chicago Journal of International Law*, Vol. 10, n. 1.

⁶⁹ Keil S., Arkan Z., (Eds) 2015. *The EU and Member State Building. European foreign policy in the Western Balkans*, Routledge: New York, p. 23.

⁷⁰ Manners I., 2008. Normative power Europe: a Transdisciplinary approach to European Studies, in Chris Rumford ed. *Handbook of European Studies*, London: Sage.

⁷¹ Manners I., 2008. The Normative Ethics of the European Union, *International Affairs*, 84, No. 1, pg. 65.

⁷² *ibidem*



the EC/EU in the dissolution of the ex-Yugoslavia has concluded that “*there can be no doubt that EC policy has contributed to the further entrenchment of democratic norms in international society*”⁷³.

A contribution of the EC/EU must be attributed to the introduction of the principle of the “respect of the minority” as well, as a primary condition for the diplomatic recognition of a new state. We must not forget that the new generation of the conflicts is more and more characterized from inner-states and civilization-clashes conflicts which often end in violent conflicts and state fragmentation. In some cases, the respect for minorities may be imposed or asked to avoid the secession or fragmentation of the territory. The respect of the minorities together with that of solving of the conflicts without violence, have been two key concepts used by the conditional recognition approach. They were later applied at the Ohrid Framework Agreement which set the basis of the future of Macedonia in 2001 and the recognition of Kosovo as a new state in 2009. In fact, the European Community/Union has never tried to solve the conflicts through military interventions and that it might be considered as the core of its normative power. “*We insist on a changing of the system, not of the regimes*”⁷⁴, has stated one of the Higher Representatives of the European Union, including in this phrase the whole philosophy of the European Union towards the global politics.

In this regard, the role of the European Community/Europe in the conflicts of the Ex-Yugoslavia should not be seen in the sense of what it has not done in order to prevent the catastrophes (lack of military interventions, lack of an univocal position, a slow diplomacy) but in the sense of what it has been able to do (economic pressure under the economic sanctions which have kneeled Serbia and Montenegro in the years of the conflict, elaboration of new international norms, a credible mediator of the parts in conflict, a peace-builder actor). Ian Manners, the major supporter of the constructive approach regarding CE/EU has precisely caught the point by saying that: “*There exists a tentative in analyzing the European politics and its influence in the global politics without asking why the EU is/is not acting*”⁷⁵. In a conclusion, the European Community/Union as a whole, not its single states, may not constitute a powerful actor to solve militarily the conflicts, but it is exactly the lack of this hard power force that makes it a perfect *soft power* actor. This ability upholds the EC/EU to the level of a credible neutral subject in a conflict and an “over all the parts” actor. The example of the EC/EU’s juridical efforts to interpret the dissolution of ex-Yugoslavia, constitutes a good example in this direction: *C’est à dire*, the effort to give a pacific solution to the conflict and the aim to avoid it will constitute the basis for the future of with the so called “*preventive diplomacy*”.

⁷³ Caplan R., 2007. *Europe and the Recognition of New States in Yugoslavia*, Cambridge: Cambridge University Press, pg. 184.

⁷⁴ Solana J., 2006. *Europe’s answers to the global challenges*, the speech was pronounced at the University of Copenhagen, 8th September.

⁷⁵ Manners I., 2008. The Normative Ethics of the European Union, *International Affairs*, 84, No. 1, pg. 65.