To the memory of Ema Pavković and Dragica Radan

Creating New States

Theory and Practice of Secession

ALEKSANDAR PAVKOVIĆ
Macquarie University, Sydney, Australia
with
PETER RADAN
Macquarie University, Sydney, Australia

ASHGATE

Published by
Ashgate Publishing Limited
Gower House
Croft Road
Aldershot
Hampshire GU11 3HR
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington, VT 05401-4405
USA

Ashgate website: http://www.ashgate.com

British Library Cataloguing in Publication Data
Pavković, Aleksandar
Creating new states : theory and practice of secession
1. Secession 2. Self-determination, National
I. Title II. Radan, Peter
320.1'5

Library of Congress Cataloging-in-Publication Data
Pavković, Aleksandar.
Creating new states : theory and practice of secession / by Aleksandar Pavković with Peter Radan.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-7546-7163-3
1. Secession. 2. National state. 3. Self-determination, National. I. Radan, Peter. II. Title.

JC311.P24 2007
320'1'5--dc22

2007005509

ISBN 978-0-7546-7163-3

Printed and bound in Great Britain by TJ International Ltd, Padstow, Cornwall.

Contents

List of Maps

List of Boxes

Introduction

Secession, like many other political phenomena, has been visiting us, via television and internet, in our homes. Thanks to television, we witnessed, in 1990–91, the secession of Lithuania, in 1991 the secession of Croatia and Slovenia, in 1992 the secession of Bosnia and Herzegovina and in 1999–2000 the secession of East Timor as well as many other attempts at secession (such as those of Tamil Tigers in Sri Lanka). More accurately, through television broadcasts we witnessed the violent conflict associated with various attempts at secession, not all of which led to the creation of independent states. Television and, to some extent, the press often gives priority to the events which are characterized by violence and destruction. In addition, most secessions in the past twenty years have been characterized by violent conflict.

Secession, as we shall see in Chapter 1, is a process of withdrawal of a territory and its population from an existing state and the creation of a new state on that territory. In focusing on the violence and conflict associated with secession, the electronic and other media often ignore its wider – political, social and legal – aspects. In fact, when showing us, vividly and from close range, the violence and conflict, television broadcasts and press reports fail even to use the word 'secession'. Thus, we have witnessed much secessionist conflict and violence, without being told that the violence and conflict are associated with attempts at secession, that is, with attempts to create new states out of existing ones. In a sense, we have witnessed a large number of attempts at secessions without knowing what they are.

There are many reasons for this. As we note in Chapter 1, 'secession' is often regarded as a 'dirty' word with negative or pejorative associations. For example, secession is supposed to be an act prohibited in international law, as a breach of the territorial integrity of a state, which is generally harmful to everyone concerned. In order to avoid such negative associations, the word 'secession' in media presentations and in secessionist rhetoric is replaced with a much more positive word, 'independence'. Those peoples or national groups who want to be independent from foreign rule, it is now generally assumed, deserve independence. Fighting for independence is thus a noble and praiseworthy act. In consequence, in the media of the English speaking world – as well as elsewhere – secessionist conflicts have, over the past two decades, often been presented as the brave fight by oppressed peoples for their independence from their oppressors. In a similar way, the fight for independence from colonial powers, during the period of decolonization, was, in the communist- and socialist-controlled media, presented as a just struggle of the oppressed against colonial oppression. In the period from 1947 to 1980, around 90 colonies mostly in Asia, Africa and the Pacific gained independence from European colonial powers and became sovereign states. Among them, to mention only the

largest, were India, Indonesia, Nigeria, Algeria, Angola and Congo. In some cases – such as Indonesia, Algeria and Angola – the independence was granted only after a protracted armed struggle against colonial military forces. The positive image of the fight for independence from the colonial powers has found its parallel in the image of a secessionist conflict as a fight for independence from oppressive foreign rule.

Secession is not quite the same thing as the liberation from colonial rule, usually called 'decolonization'. Decolonization involves granting of independent statehood to a colony which was usually not part of the territory of the metropolitan state and usually separated from that state by a sea or an ocean (which leads to 'the salt water test' of a colony). The race and culture of the majority population of these colonies was different from that of the Europeans who ruled over them. European rule in those colonies was usually maintained by European military forces or by the forces commanded by Europeans. None of these elements were present in the secessions we have witnessed in the past twenty years. Yet the seceding populations in these cases of secession belonged to a national group different from the remaining population of the host state. Thus, to revert to the examples with which we started, Lithuanians, Croats, Slovenes, Bosnian Muslims and East Timorese form national groups different from those which formed the majority of population in the former USSR, former Yugoslavia and Indonesia. In addition, in these three states the commanding military officers who were in control of the territory of those national groups most often belonged not to them but to other national groups.

Yet colonies did not always gain their independence through an armed struggle against the colonial powers. In fact, in most cases of decolonization, in particular of the British colonies, there was no armed conflict with the colonial power. Likewise, some secessions were peaceful: Latvia, Estonia, Macedonia (all in 1991) and Slovakia (in 1993) seceded without any armed conflict or violence. These peaceful secessions were not the subject of extended television or press coverage and thus one could hardly say that we have witnessed them in the same way as we did their violent counterparts. However, unlike decolonization, most secessions in the past century involved some violence or armed conflict. This is why we shall attempt to find out why armed conflict or violence accompanied so many secessions.

The outcome of secession and decolonization is of the same kind: both result in the creation of new states. Another equally important theme of this book is how new states are created through the process of secession. As we have seen, until relatively recently, new states were mainly created through decolonization. There are, however, only very few territories left which are regarded, by the United Nations, as colonies or dependent territories. Since decolonization to all intents and purposes has been completed, at present new states can, in the main, be created either by withdrawing a territory and its population from an existing state or by uniting two or more existing states into a new one. The second way of state creation is unification and the first way is secession. The second way of state creation, unification, is not a topic of this book.

New states can also result from the dissolution of existing states. In most cases of state dissolution in the recent past, the dissolution of a state was a result of the attempts of one (or more) groups living in an existing state to withdraw their territory from the state in question. Dissolution of states was thus almost always preceded and often

caused by secession(s). Although in this book we shall focus primarily on secession, we shall also examine two cases of state dissolution resulting from secessions – the dissolution of the former USSR and of the former Yugoslavia (SFRY).

Our book is meant to provide an introduction to the concept, processes and theories of secession. In the first chapter we attempt to define secession and we discuss other concepts which are used in describing and analysing the processes and theories of secession. The rest of the book is divided in two parts. In the first part we discuss the practice and in the second the theory of secessions. In the second chapter (Part I) we outline the main elements of secession and discuss the goals, ideologies and political methods of secessionist movements, the movements aiming to bring about secession in their respective states. Some secessions are peaceful and some are preceded and followed by mass violence. In the third chapter we outline two peaceful secessions – that of Norway and of Slovakia – and one peaceful attempt at secession – that of Quebec and then examine their potential causes and ways of justifying them. In the fourth chapter we approach in the same way two violent secessions – that of Bangladesh and of Biafra (a secession which was not, ultimately, successful) –and one violent attempt at secession, of Chechnya. In the fifth we discuss a series of secessions in the former USSR and the former Yugoslavia – the secessions in the former were mostly peaceful, those in the latter mostly violent.

In the sixth chapter (Part II) we discuss theories which attempt to explain why and how secessions take place and, in the seventh, we discuss theories which attempt to justify secessions from a moral or political point of view. In the eighth chapter we address the question of the legality of secession in domestic and international law and in the ninth chapter we discuss the benefits and advantages of secession and whether secession will become obsolete in a globalized or borderless world of the future.

Secession has always been a highly controversial topic. Violent secessions – for example the secession of the Southern Confederacy from the United States – have been subject to protracted public debates both in the countries in which they have taken place and outside them. Secessions usually elicit divided and vehement opinions concerning their justification and the methods used in attempting or suppressing them. But as noted above, some recent secessions in former Yugoslavia, the USSR and in Indonesia have been presented, in the European and North American media with uniform sympathy, primarily as liberations from oppressive and violent regimes. While we do not intend to undermine the growing sympathy for secessions of this kind, our book attempts to show that in many cases to regard a secession solely as a liberation from oppression or violence fails to capture the complexity of the interaction between the secessionists, their leaders and their opponents in the state from which they want to secede. As it will become apparent from this book, we have some doubts as to whether secession should be viewed as an exercise in political liberty or as a remedy for political or social injustice. Our doubts arose from our study of the processes of secession and not because we doubt the commitment that secessionists have to political liberty and justice. Supporters of secession are, no doubt, sometimes motivated by these liberal ideas and principles. However, this does not imply that these ideas and principles are most useful in analyzing or assessing what happens in secessions.

Apart from those, we have some other, perhaps more theoretical, doubts. We doubt that any group has a right – political, moral or legal – to a state on the territory it inhabits. States, we believe, are there to serve individuals and groups and their needs and interests. However, from that it does not follow that any particular group has a right to control a state on the territory it inhabits to the exclusion of other groups. In consequence, we do not believe that any particular group of people has a general or 'natural' right to create a state of its own, to the exclusion of other groups. As we shall see in Chapter 7, many political and moral theorists – but not legal theorists – argue to the contrary, that some groups have or can gain such a general right. In short, they argue for a general group right to secession. Nevertheless, even those who argue for such general group rights do not agree what these rights are, what their scope is and how they should be exercised.

However, in spite of these doubts, we have no doubt that attempts at secession or secession can be evaluated from a political, moral and legal point of view. For the purpose of political and moral evaluation the vocabulary of territorial rights – right to a territory – or right to secession may, however, not be particularly useful. Why that is so we attempt to show in the following chapters.

Our principal aim is not to support or to argue for a particular theory or approach to secessions but to critically examine both the processes of secession and theories about them. If the book appears tentative and inconclusive in its treatment of secessions, this is because we do not believe that one can, as yet, make many firm and unqualified theoretical conclusions about this political process.

Chapter 1

What is Secession?

A definition of secession

The Latin roots of the verb 'secede' – 'se' meaning 'apart' and 'cedere' meaning 'to go' – suggest that to secede is to leave or to withdraw from some place. This meaning – 'an act of going away from one's accustomed neighbourhood' (OED, meaning 1) – is now obsolete in English. At the moment, 'secession' is usually taken to mean 'formally withdrawing from an alliance, a federation, a political or religious organization or the like.' (OED, meaning 3). In this book the term is used in a narrower sense restricted to the context of creation of new states. For the purposes of our exploration of secession, we define secession as follows:

> Secession is the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state.

For ease of understanding the discussion of secession in this book, the term 'host state' refers to the 'existing state' referred to in the definition, and the term 'seceded state' refers to the new state created as a result of secession.

Our definition of secession sees the seceded state as the product of a *process*. The process in question is that of seceding from the host state. How is the process, resulting in a seceded state, completed? During the process leading to the creation of the seceded state, the representatives of a population settled on a territory within the host state proclaim an independent state on that territory. In most cases they do so by means of a declaration of independence. In some, but not all, cases in which independence is so proclaimed, other states and international organizations formally recognize the independence of the new state. This recognition of independence by other states is vital evidence that the newly proclaimed state satisfies generally accepted requirements of statehood. The process of secession is said to be successfully completed when the state the secessionists proclaimed is recognized by a significant number of other states.

In this book, the term 'secession' is used to refer to the process of secession, to a stage or stages in this process prior to the completion of the process and to the completion of this process. Thus, secession is said to be successful when the process has been completed and the new state has been recognized. When this process was not completed – primarily because there was insufficient international recognition of the new state – secession was not successful. In such cases we can say that there was an attempt at secession or that secession has been attempted (for an explanation of these terms see Chapter 2).

Box 1.1 'Secession': a variety of definitions

There is no consensus amongst social scientists and legal scholars[1] on a precise definition of secession. This lack of consensus often leads to problems with interpreting the literature on secession as scholars are not always talking about the same thing. Among various alternative definitions we should note the following two. First, James Crawford defines secession as '... the creation of a State by the use or threat of force without the consent of the former sovereign' (Crawford 2006, 375). Second, Julie Dahlitz defines secession as follows: 'The issue of secession arises whenever a significant proportion of the population of a given territory, being part of a State, expresses the wish by word or by deed to become a sovereign State in itself or to join and become part of another sovereign State' (Dahlitz 2003, 6).

The three critical elements that appear in one or other of these definitions, but which do not form part of our definition, relate to (i) secession requiring the use or threat of force (Crawford); (ii) secession requiring opposition from the host state (Crawford); and (iii) secession *not* requiring the creation of a new state on the relevant territory, (that is, secession also involving cases in which the relevant territory *does not* become a new state) (Dahiltz).The first two of these elements qualify our definition by claiming that certain types of territorial withdrawals from existing states are *not* secessions. The third, appears to expand the definition of secession, but in fact refers to transfer of territory from one state to another which, as will be argued below, is something quite distinct from secession.

In relation to Crawford's qualification that secession must involve the use or threat of force, this element relates only to the *means* by which secession is achieved. It is irrelevant whether the process of secession is peaceful or violent because the product of the process is the same, namely the creation of a new state over territories which of themselves were not states previously. This point can be illustrated by analogy to childbirth. The birth of a child may be either by vaginal delivery or by Caesarean section. This difference in means of delivery does not change the fact that in each case birth has occurred and a new child has joined the community of human beings.

In relation to the qualification that the host state must be opposed to secession, this too is an irrelevant factor. The fact that at some stage of the process of secession the host state did not oppose the creation of the seceded state does not affect the final outcome – its creation. The same outcome, the creation of a new state, resulted in those cases in which the host state, at some stage, *did*

1 For different definitions of secession by social scientists see Chapter 6 section 'Rationally choosing secession: Hechter's theory'.

oppose its creation. Whether the host state opposed the creation of a new state or not is thus irrelevant to the final outcome, the creation of a new state on what was formerly the host state's territory. Again, the point can be illustrated by analogy. The termination of a marriage is not defined differently depending upon whether one of the parties to the marriage is or is not opposed to the other applying to terminate the relationship. In either case the termination is defined as a divorce.

The word 'secession', for a variety of reasons, is often viewed negatively. First, states are generally opposed to secession, although the strength of that opposition will vary depending upon the circumstances. For example, if state 'A' is a host state, its opposition to an attempt to create another state out of its territory will usually be determined and backed up by the use of force. However, the extent of opposition by other states to such an attempt will usually not be as determined and will most likely not extend to them using force to defeat the claim. The extent of other states' support for the host state's opposition to an attempt at secession from its territory against it will largely be determined by an assessment of their strategic and other interests.

Second, the violence that is often associated with secession has made 'secession' an 'undesirable' or 'dirty' word, best to be avoided, except if one wants to denounce or oppose claims that secessionists make. Thus, secessionists rarely use the word when propounding their claims. Declarations of independence almost invariably make no reference to the word. Host states, however, will almost invariably invoke the word when voicing opposition to secessionists' claims and their attempts to secede.

This general hostility to secession and the negative connotations associated with the word itself has led to the above definitions of secession that are beset with what we have argued are irrelevant elements. More importantly, these definitions are also not very helpful. This is because they do not regard as secessions the creation of new states that are, in all relevant aspects, secessions. For example, as Crawford states, pursuant to his definition of secession and excluding cases of decolonization, Bangladesh is the only secession to have occurred since 1945 (Crawford 2006, 415). Other cases of new state creation during that period that would fall within our definition of secession – and that are discussed in Part I of this book – are, according to him, simply not secessions. According to him, these new states are created, not through the process of secession, but rather as the result of agreement or in the wake of the dissolution of a state. By giving different labels to what we argue are cases of secession, these definitions ignore the crucial feature that is common to all of them, namely that in each case there arose a new state over territory which of itself was not a state previously. Giving different labels to the processes with the same type of outcome does not help

us in our endeavour to understand and analyse the political, normative and legal aspects of both the processes and their outcomes. This book argues that there is a commonality between all of these cases which justifies the broad definition we have given to the word 'secession'.

How is a territory 'withdrawn' from a host state?

Contrary to the suggestion of the Latin word 'cedere', a territory does not – and cannot – 'walk away' from a host state. When a territory secedes, the institutions of the host state on that territory cease to function and its laws no longer hold for or are enforced on that territory. One can illustrate this with a rather simple and thus crude example: when a territory secedes, the prime minister and/or president of the *host* state are no longer the prime minister and/or president of the *seceded* state. The same holds for the parliament or any such representative body of the host state or for its highest courts: none of these state institutions exercise their previous powers over the territory of the seceded state. Accordingly, the laws of the host state no longer apply or are enforced on that territory as the laws of the host country – the police and other law enforcement agencies no longer report to or take orders from the host state officials.

Paradoxically, when a territory secedes, it is not the seceded territory itself and its population but the host state and its institutions that are withdrawn. When a territory secedes, it is the *political, legal and coercive powers* of the host state that are withdrawn from the territory. This withdrawal is manifested in a variety of the ways. For example, the previous name labels of state institutions and their coats of arms and flags are replaced with new ones; many office-holders and civil servants on the territory leave their posts and even depart from the seceded territory and they, sometimes, take with them the instruments they used when in power, such as communication equipment, vehicles and weapons. The replacement of name labels, coats of arms and flags is in some cases carried out in public and widely reported by the media as events symbolizing the achievement of the much coveted independence from the host state.

Secession thus consists not only of a withdrawal of power from a territory but its *transfer* to the new set of institutions and office holders – the institutions and office holders of a new state.

The creation of a new state on the territory

In the process of transfer of powers to the new institutions and office-holders, the seceded state gets, most importantly, a new *name* to assert its status as a state and to distinguish it from its previous status as a non-state territory. Thus the thirteen British colonies in America were, in 1776, named the 'United States of America'. In 1991 the Socialist Republic of Slovenia became the Republic of Slovenia, shedding its status of a federal unit in the Yugoslav federation. In keeping with the new name and status, new offices and institutions are also created to match these changes, such as the offices of president or prime minister and other ministries; alternatively, the existing offices are re-named and given broader or enhanced powers. And, equally importantly, new state borders are demarcated and border crossing points established where there were none before (as the seceded state's territory was then part of the host state). These new state borders encircle the whole territory of the seceded state, demarcating it from all other states, including the host state or the remaining parts of the host state.

Secession thus involves the creation of a new state with its own borders on the withdrawn territory. In that way it is different from incorporation ('redemption') of the withdrawn territory into an already existing state.

Transfer of a territory from one state to another: 'redemption' of the 'irridenta'

A territory can be withdrawn from an existing state without the creation of a new state on it. A territory can be transferred from one state to another – usually to a neighbouring state. In the late nineteen century, nationalists in Italy sought to incorporate a number of territories populated by Italians which were then part of Austria-Hungary and Switzerland. They called these territories *'Italia irridenta'* – 'unredeemed Italy'. Hence the term 'irredentism' to denote a territorial claim that one sovereign state makes on the territory of another (Mayall 1990, 57). Some of those territories – the cities of Trieste and Fiume and the surrounding areas – were 'redeemed' or transferred to Italy after World War I. Similarly, after World War I, the province of Alsace was transferred from Germany to France. As in a case of secession, such a transfer, based on an irredentist claim, involves a withdrawal of the officials, institutions and symbols – flags and coats of arms – of the host state. But instead of newly created state institutions and offices and newly created state symbols, the withdrawn ones are replaced with the institutions of another existing, usually neighbouring, state. The borders of that neighbouring state are extended to encompass the withdrawn territory and new borders between the former host state and the new host state are demarcated. Such a transfer or 'redemption' can be thus viewed as a case of border change or adjustment. However different, both secession and successful 'redemption' of a territory from another state involve a transfer of sovereignty and jurisdiction.

Sovereignty

The changes that we have described can be succinctly described using two technical terms 'sovereignty' and 'jurisdiction'. In the cases either of secession or of transfer of a territory to another state, the previous – host – state loses sovereignty and jurisdiction over a territory and another state gains sovereignty and assumes jurisdiction over that territory. Let us now explain what this means.

The Latin roots of the English word 'sovereignty' – 'super' meaning 'above' and 'regnere' meaning 'to rule' – suggests a supreme or overriding rule. Indeed, the word 'sovereignty' in the present context refers to supreme rule: sovereignty is a political and legal *right* to control or to rule over all inhabitants on a particular territory which overrides all other rights to exercise power or control. A sovereign power is thus a

power that, by right, overrides any other power over a territory and is, in this sense, a supreme power over a territory. Not surprisingly, in our times it is a state and its office-holders that exercise sovereignty over a territory: a state that has the supreme right to control, by coercion if necessary, the territory and its inhabitants within its state borders.[2] In order to control a territory and its population, a state and its office-holders must be able, at least, to maintain order (that is, to prevent and/or stop large-scale violent conflict among the population), to extract tax or revenue from people and commercial organizations on its territory, to regulate the movement of people and goods across its borders and to prevent any other state or outside group from exercising control over its territory and its population. In controlling the territory and its population, a state is thus exercising its *sovereign powers*, such as the sovereign power of maintaining order.

In preventing any other state or outside group from exercising control, the state is exercising its sovereignty in relation to other states or outside groups. A state's sovereignty thus *excludes* other states or other states' officials from exercising control over its territory. In order for a state to exclude other states effectively, other states need to recognize that state as a sovereign state – as a state which has the right to control its territory. In excluding other states from the control over territory of a particular state, sovereignty implies *independence* of a sovereign state from other states. In recognizing a state's sovereignty, other states are recognizing its independence *from* other states. In our present system of sovereign states, states *formally recognize* other states as independent and sovereign states through the establishment of diplomatic relations with each other and by subscribing to principles of international law that require states to recognize and respect each other's sovereignty. Recognition of the independence of a new state, as we shall see in Chapter 2, is one of the main goals of any secessionist movement.

How are these concepts of sovereignty and independence related to secession?

In attempting to secede from a state, secessionists deny a host state the right of control over part of its territory and demand that another, new state assumes that right. In this sense, the secessionists deny the host state sovereignty over the relevant territory and demand that a new state assume the sovereignty, that is, the right to control that territory. They are demanding not only that a new state exercise this control but that its right of control, its sovereignty, be recognized by other states, including the host state. As we have seen above, they are demanding that other states recognize the newly seceded state as *independent* from its host state and thus as a state sovereign over its territory. From a legal point of view, recognition by other states and international organizations completes the creation of a new state.

A successful secession thus involves first, a *transfer* of sovereign or supreme powers from one set of state institutions and office holders to another, newly created,

2 As a well known theorist of sovereignty put it: 'the idea [of sovereignty] is that there is a final and absolute political authority in a political community....and that no final and absolute authority exists elsewhere' (Hinsley 1966, 26)

set and, second, the *recognition* by other states and international organizations of the sovereignty of the state which these newly created institutions represent.

Recognition of a new state in international law

In international law, according to Article 1 of the Montevideo Convention of 1933 a new state should only be recognized by other states if it possesses a permanent population, a defined territory, a government and a capacity to enter into relations with other states. In the wake of the break-up of the Socialist Federal Republic of Yugoslavia (SFRY) and the Union of Soviet Socialist Republics (USSR) in 1991, it has been suggested that the seceded state must also meet international standards relating to human rights and self-determination, set out in the Guidelines for Recognition issued by the European Community (EC) in late 1991 (Dugard and Raič 2006, 96).

In international law the function of recognition is a controversial issue with two major schools of thought. According to the declaratory theory, recognition plays no role in the creation of a state. A state that meets the requirements of statehood is a state, irrespective of its recognition by other states with recognition being simply the recognition of that fact. According to the constitutive theory, recognition of a state creates that state. Recognition therefore constitutes a further requirement of statehood.

Whatever the merits of these competing theories it is generally accepted that, in the context of secession at least, recognition of a seceded state by other states has at least some part to play the creation of the seceded state (Dugard & Raič 2006, 99). That this is so is effectively conceded by secessionists themselves. Historically, international recognition of statehood has been the major foreign policy goal of any secessionist movement (Crawford 2006, 376). The recognition by India, a significant regional power, of Bangladesh in 1971 was a key to the success of the latter's secession from Pakistan (see Chapter 3). Conversely, the failure to gain international recognition has been a major contributing factor to the failure of various secessions. This is confirmed by the failure of the Confederate States of America to gain British recognition of its secession from the US in the 1860s (see box 'The attempted secession of the Confederate States of America', Chapter 2), and Katanga's attempted secession from Congo in the 1960s.

For recognition to achieve its constitutive function the most effective means by which it can be achieved is for the seceded state to be admitted to the United Nations Organization (UN). As membership to the UN is limited to states, admission to it is tantamount to recognition of statehood for the new member (see Chapter 2). As we point out in Chapter 3, the fact that only five states recognized the Biafra's attempted secession from Nigeria during the late 1960s, proved to be insufficient for the international recognition of Biafra as an independent state (Crawford 2006, 406).

***De facto** recognition* By expelling the host state agents or institutions from the secessionist territory or by neutralizing them in other ways, secessionist political leaders may be able to take over effective control over that territory from its host state and to establish their own state institutions on that territory. In some cases in

which secessionist authorities took over effective control from the host state, other states or international organizations dealt with them *as if* they were the authorities of a sovereign state without, however, extending formal recognition to the new state. This is often – but not always – a transition stage prior to formal recognition of the newly seceded state. As we shall see, this happened in Slovenia in July 1991 when EC officials negotiated with the Slovenian authorities over the withdrawal of the host state's armed forces as if the Slovenian government was already a government of an independent and sovereign state. Formal recognition of Slovenia's independence had to wait until January 1992 (see Chapter 5). In such cases, other states or international organizations *de facto* recognize the seceded state as an independent and sovereign state.

In all cases of successful secessions and in some cases of attempts at secession, the new, seceded state assumes sovereignty over a territory and its population. However, apart from sovereignty, secession also involves a change in jurisdiction.

Jurisdiction

The Latin roots of the word – 'jus' meaning 'law' and 'dictio' meaning 'a saying or announcement' – suggest that jurisdiction involves the proclamation of law. A state's area of jurisdiction is thus the area within which it proclaims and administers its laws. When a territory secedes from a host state, the host state no longer administers its laws on that territory. The host state in such a case loses or withdraws its jurisdiction from that territory and jurisdiction passes over or is transferred to a new state and its legal institutions. Jurisdiction may also be conceived more broadly than just the administration of law. A state's jurisdiction may be broadly regarded as an area in which its institutions and office-holders exercise their power. However conceived, in cases of secession the host state loses jurisdiction over the area which has seceded and a new state gains jurisdiction over that area. In such cases, the area of jurisdiction of the host state has contracted and a new jurisdictional space has been created.

Divided jurisdiction in federal states

Federal states or federations,[3] such as the United States of America or the Federal Republic of Germany, are states in which jurisdiction over the territory of the whole state is divided between federal units and the federation or the federal state ('federal state' here stands for the whole state and its central government). Federal units are bounded territories which possess governmental and legal institutions and powers and which together make up a federal state. Each federal unit administers its own set of laws which covers a defined and distinct set of policy or regulatory areas, on its own territory only. One federal unit's laws may differ from those of another federal unit. Federal unit laws typically are concerned with issues of crime, health, education and at least some areas of taxation. In addition, there is the federal state law which applies to all federal units and is usually administered by federal state

3 From Latin 'foedus' meaning 'league' or 'association'.

institutions and office-holders. In some areas both the federal state and federal unit laws apply concurrently and in these areas, where there is inconsistency between the two sets of laws, the federal state (central government) laws usually override the federal unit laws. A federal state's constitution divides the state into federal units and sets out areas in which federal state and federal units have competence as well as determining how federal state law relates to the laws of the federal units.

In this way jurisdiction in federations is *divided* between the federal state (federation) and its federal units. Federal units usually have exclusive jurisdiction over certain policy, thereby excluding the jurisdiction of the federal state. In short, federal units are in some areas protected, by the federal state constitution, from interference by the federal state and in these areas these units sometimes exercise sovereign powers. In spite of this, federal units are not sovereign or independent entities. The conduct of diplomatic and other relations with other states is the exclusive preserve of the federal state and so is, most often, defence of the whole state from other states or outside groups. In the international system of states, it is the federal state – and not federal units – that are recognized as sovereign and independent.

A similar division of jurisdiction is found in the states, such as the United Kingdom of Britain and Northern Ireland (UK) and the Kingdom of Spain, which have devolved political decision-making and legislative powers to those administrative units or provinces which had in the past independence or legislative autonomy. Like federal units, these units of devolved power have legislative assemblies with powers to legislate over certain policy areas and governmental bodies which oversee these policy areas and maintain order on the territory. While the jurisdiction is thus divided between the central government and the devolved units, the central government state, like the federal state, is recognized as sovereign and independent.

As we have seen in all the cases of divided jurisdiction, the federal state and the central government are recognized as sovereign and independent states. In spite of this, divided jurisdiction, as we shall see next, facilitates secessions of federal units or devolved-powers units from the federal or central state.

Secession of federal units from federations

All successful and many attempted secessions in the twentieth century involved federal units or political units which had their own legislatures and executive governments prior to secession. Why was this so? First, these units possessed a state infrastructure – legislative assemblies, executive bodies and the judiciary – which were capable of taking over additional powers, including full sovereign powers. In most cases of secession, it is the legislative or representatives assemblies of these units that proclaim independence of the new state and enact constitutional acts asserting its full sovereignty. Second, these institutions easily added to existing areas of their jurisdiction those areas which had previously been reserved for the host state. Finally, since the borders of these units had already have been marked, the new secessionist authorities simply transformed these internal borders into inter-

state borders – that is, borders between sovereign states – erecting border crossings at selected points of the previous internal borders.

All but two cases of secession to be examined in Part I were secessions of federal units. In these two cases, Norway and Iceland, had, prior to secession, very wide legislative, executive and judiciary powers and the host state's central government had very limited jurisdiction, primarily relating to foreign affairs and defence, on their territory. It is not surprising that at the time of writing, the strongest secessionist movements in liberal-democratic states are found either in federal units such as Quebec in Canada or in political units with devolved broad legislative and governmental powers such as Scotland in the UK or the Basque country in Spain.

However, not all federal states face the threat of secession of their federal units. For example, in the federations such as Germany, Mexico or the US, there is, at present, no threat that any one of its federal units will secede. Although these states have significant numbers of inhabitants who feel that they are culturally distinct from the majority population, these inhabitants are not politically represented as separate national groups and their cultural (or national) distinctness provides no basis for separate political organization or political representation. Since these federations provide no channels for separate political representation of culturally or nationally distinct groups either in their federal units or in their federal state institutions, these states are not, in a political or legal sense, multinational. In contrast, in some federal states such as Switzerland and India, separate national or ethnic groups are officially recognized and are often politically represented as separate groups in the representative bodies of the federal units. In Switzerland, for example, there are four recognized 'language' groups defined by their language – German, French, Italian and Rumantsch – all of whom belong to the encompassing or supra-national group of the Swiss.

In general, national groups are distinguished from each other by some observable 'marker' or other – such as a different language and/or culture (including everyday lifestyles, customs and religion) or different histories and historical descent (see box 'What is a nation?'). In liberal-democratic federations, such as Switzerland, such national or 'language' groups tend to control the federal units (cantons) in which they form a majority. In states with devolved-power units, such as the UK and Spain, separate national groups, such as the Scots or the Basques, control the units with the devolved power. These federations and states in which national groups have separate political representation and can thus control political institutions are, in a political and legal sense, multinational.

All secessions and almost all attempts at secession in the twentieth century took place in multinational federations or states and not in states which were not, in a political sense, multinational. In many multinational states and federations – but at the moment not in Switzerland – there are political movements or parties which advocate the independence of one or more federal units or devolved-power units. Such movements are here called 'secessionist movements.' The existence of federal or devolved-power units in a state is then not *by itself* sufficient to create favourable conditions for secession. For this purpose a federal or devolved-power unit needs also to be populated by a national group or groups, distinct from other national groups in that multinational state.

Box 1.2 What is a nation? A few theoretical answers

In the realm of politics, nationalists believe, at times very fervently, that the destiny and interests of their nation override all other considerations. Their loyalty to and identification with their nation is part of their conception of their own self or their own identity. Accordingly, they have no doubts as to who their co-nationals are and where their common homeland (fatherland or motherland) is located. They also expect everyone (except those whose development has been, in some sense, arrested) to know the same about their nation. For nationalists 'nations are the irreplaceable cells of ... the whole of mankind's being' (Tudjman 1981, 289).

However, scholars agree neither on the definition of the concept of nation nor on their origins or historical roles of nations. Some scholars define a nation in terms of its *objective* characteristics such as a common language, religion, territory, ancestry or kinship, and culture. Others use *subjective* or psychological characteristics such as self-awareness, the sense of solidarity, loyalty, a common will or a sentiment of belonging which members of a nation share. Anthony D. Smith's definition of 'nation' is an example of the former:

... a named human population occupying an historic territory and sharing common myths and memories, a public culture, and common laws and customs for all members' (Smith 2003, 24).

The French writer Ernest Renan offers an example of the latter :

A nation is a grand solidarity constituted by the sentiment of sacrifices which one has made and those that one is disposed to make again ... The existence of a nation ... is an everyday plebiscite ... a perpetual affirmation of life (Renan 1882, 27).

The difference between these two kinds of definitions is perhaps due to the difference of their respective points of view. On the one hand, in order for a person to emotionally identify with a nation, as one's own, she or he would have to feel some degree of solidarity with others who belong to it. On the other, for an outside observer to identify a group as a nation, it is necessary to refer to at least some objective or observable characteristics, such as its public culture and its association with a specific territory.

Nationalists often trace the origins of their nation to the first, or the first 'civilized,' settlers of the territory they claim for their motherland or fatherland. This view, nowadays rarely advocated in scholarly literature, is called primordialist or perennialist view. From the early 1980s, it came under sustained attack by scholars (dubbed 'modernists') who link the

origins of modern nations to the advent of modernity. Thus Ernest Gellner links their origin to the need of modern industrialized society for a culturally homogenized population. Modern industry requires highly mobile workers with uniform basic skills. State-sponsored education, based on 'high culture', provides these skills and homogenous national identity (Gellner 1983, 140). For Benedict Anderson, modern nations emerged as the vernacular languages replaced Latin and 'print capitalism' in seventeenth-century Europe enabled an ever growing number of individuals to identify with each other as members of a single language community. For Anderson, the nation 'is an imagined political community – and imagined as both inherently limited and sovereign' (Anderson 1983, 6). In the view of Eric Hobsbawm (1992, 82) the emergence of contemporary European nations was, in part, a result of 'conscious and deliberate ideological engineering' by late nineteenth century governments.

Against the 'modernists', Smith has argued that modern nations formed around *pre-modern* 'ethnic cores' or *ethnie* which had a collective name, whose members shared a myth of common ancestry, an association with a territory ('homeland'), some aspects of common culture and a sense of solidarity (Smith 1986, 22–32). In his view, called 'ethno-symbolism' 'the most modern of nations are defined and located by their roots in ancient ethnic past...' (Smith, 1986, 214). Leah Greenfeld (1992) and Adrian Hastings (1997) argue that the English nation was the first modern nation which provided the model for the emergence of others.

In contrast to many modern nations, *ethnic groups* are, in the words of Max Weber, 'those human groups that entertain a subjective belief in their common descent because of similarities of their physical type or customs or both; or because of memories of colonization and migration' (Weber 1978, 389). Some modern nations are based on similar beliefs of common ancestry and a common culture while others are more of an association of citizens (of various ethnic backgrounds) who all endorse a single political ideal or set of practices. This gave rise to the distinction between *ethnic* and *civic* nations and nationalism. An example of the former is the German and of the latter the French or American nation. But since the latter two have also excluded various groups on ethnic or cultural grounds (Sternhell, 1991) it is not entirely clear whether there are any non-ethnic nations.

All groups which were mobilized in support of secession in the past possessed:

(1) *a common set of markers* by which members of the group were able to distinguish themselves from other groups in the state;
(2) *a sense of solidarity* with other members of their group;

(3) *an association* with the territory which they identified as their homeland.

In the great majority of attempts at secession, these markers were cultural, including common language and customs. In this sense, the groups mobilized for secession were nations or national groups.

Why does a national group want a separate state?

All secessions and almost all attempts at secession[4] in the twentieth and twenty-first century were justified by reference to a nationalist world view or a particular nationalist ideology. In all these cases, the secessionist movements also endorsed and promoted amongst its potential followers a particular nationalist ideology. Nationalism thus appears to have, at least in the last century, provided both the justification and motivation for attempts at secession.

Within the framework of a nationalist world view, nations or national groups are the fundamental or natural sources of political sovereignty: each national group, in virtue of being a separate national group, is entitled to exercise sovereignty over its own affairs on the territory which it inhabits or lays claims to. As the *Declaration of the Rights of Man and the Citizen* (enacted on 26 August 1789 by the French National Assembly) put it:

> 3. The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.

In order to exercise such authority, each nation needs to have separate state institutions which it controls and through which it can exercise its sovereignty. States and their institutions are here understood to be instruments through which national groups exercise their sovereignty. At present this view of national sovereignty is most often justified by reference to the right of self-determination of peoples: every people has the right to determine its political status, that is, to govern itself, without interference from other states or other peoples. The origins and scope of this right will be discussed in the sections to follow.

Within the nationalist world view it is assumed that every nation wants to govern itself and wants to avoid being governed by others. This world view provides a simple justification both for multinational federations (or for the devolution of political power to national homelands) and for the creation of new single-nation states. Within a multinational federation, national groups can exercise their sovereignty through

4 One exception was the secessionist movement in Western Australia in the early 1930s which appears to have been motivated primarily by economic considerations, that is, by the economic disadvantages which Western Australia faced within the Australian federation (Musgrave 2003, 102–05)

the state institutions of the federal unit in which they form a majority.[5] These state institutions usually include a representative assembly, an executive government, police/civil servants and the judiciary. This is not, of course, full sovereignty but a limited one. The federation (federal state) still retains sovereignty over the territory of the whole state, including all its federal units. But within a federal state each recognized national group also has its representatives in the central or federal government and so 'shares' the control of its highest bodies. In this way a national group in a multinational federation exercises limited sovereignty which it 'shares' with other national groups. A national group (or its leaders) in a multinational state may find such shared and limited sovereignty arrangements unsatisfactory and, if it does, it will seek full sovereignty by creating a new sovereign state for itself. In consequence, by seeking to create a new sovereign state it will seek to secede from its multinational host state.

Nationalist ideologies

The reasons why some national groups supposedly find multinational states in which they reside unsatisfactory are varied and numerous; under the label 'secessionist grievances,' they are discussed in Chapter 2. At this stage we need to note that each secessionist movement, with a few exceptions, promotes a particular political ideology which articulates the reasons why its target national group is entitled or needs a state of its own. These reasons most often refer to the distinct historical origins and the historical uniqueness of the target nation. Such ideologies are called *nationalist* because they argue that a particular national group – the French or the Germans, for example – originated from a distinct group of people, settled on a bounded territory and has preserved its distinctness and its claim to this territory, excluding from this territory other similar groups. In some cases, secessionists' nationalist ideologies also explain why other groups, living on the territory claimed by these secessionists for their national state, are not *national* groups or *nations* and why they do not deserve a separate national state of their own. For example, in post-1947 Pakistan the official Pakistani ideology, promoted by the central Pakistani government, claimed that Pakistan – consisting of both West and East Pakistan – was a state of one nation, the Pakistanis, and denied that the Bengalis, the inhabitants of East Pakistan, formed a separate national group which was entitled to a state of its own (see Chapter 4). However, the Bengali nationalist ideology, insisted on the national, linguistic and historical distinctness of the Bengalis who were, as a separate nation, entitled to a separate state and viewed 'Biharis', non-Bengali Muslim inhabitants of East Pakistan, as foreigners who, in failing to assimilate, had no place in a Bengali state. In consequence, following Bangladesh's secession in 1971, several hundred thousand Biharis were expelled from the new Bengali state.

Secessionist nationalist ideologies are thus constructed in order to justify the claim that their target nation deserves or is entitled to a separate state through which it can exercise its sovereignty over a territory. How these ideologies justify these

5 For a brief discussion of the question of divided *sovereignty* in federal and devolved-power states, see Chapter 9.

claims and how they motivate members of their target group to support secession will be discussed in the next chapter.

The principle of political self-determination

In addition to specific national ideologies, the creation of separate states is also justified by the principle of self-determination. This principle enunciates the right of a people to govern ('determine') itself. If a people are ruled by foreigners – the rulers who come from another people – then the people in question obviously does not govern or 'determine' itself. Any foreign rule denies those who are ruled their right to self-determination, that is, their fundamental right to exercise control over their political status or organization. The principle of self-determination thus denies the legitimacy of any foreign rule on the ground that the rule by foreigners is an obvious injustice. From its first explicit proclamation, in the nineteenth century resolutions of German social democrats, the principle or right of self-determination was intended to expose the injustice of foreign rule. Accordingly the principle was primarily used as an instrument in the struggle for the liberation of various peoples from foreign rule.

Self-determination against foreign rule: the dissolution of multinational states in Europe

In 1896 the London Congress of the Socialist International – the international organization of Social Democratic (Marxist) parties of Europe – declared that

> 'it [the Congress] stands for the full right of all nations to self-determination [*Selbstbestimmungsrecht*] and expresses its sympathy for the workers of every country now suffering under the yoke of military, national or other absolutism' (Forman 1998, 69).

The Bolshevik faction of the Russian Social Democratic Party (later renamed the Communist Party of Russia), led by Vladimir Ulyanovich Lenin interpreted the right of self-determination as the right of *secession* from an existing state. Upon coming to power in Russia in October 1917, the Bolshevik government, in December 1917, agreed to the secession of Finland (a province of the Russian empire) from Russia. But faced with the disintegration of the Russian empire and secession of a large number of regions – including Ukraine, Georgia and Azerbaijan – in 1918 Lenin proposed that the Russian state be re-organized as a socialist federation within which each national group would be able to exercise its right of self-determination *without* establishing a separate state of its own. Following his blueprint, in 1922 the Union of Soviet Socialist Republics (USSR) was established on the remaining territory of the former Russian empire (Pipes 1957, 242–68) (see Chapter 5). The USSR became the model for other Communist-ruled federations such as Czechoslovakia and Yugoslavia (SFRY).

During World War I, outside the socialist circle, the principal champion of the right of peoples to self-determination was the US President Woodrow Wilson. He

believed that this right originated in a general democratic principle that required that the governed consent to be governed or ruled by their government. In his view, shaped by American constitutional theory, this consent is secured through free elections or plebiscites. As he believed that the right of self-determination would also provide a basis for peace after World War I, in January 1918 he proposed a peace settlement – the famous Fourteen Points – which, while not mentioning this right, specifically mentioned the 'opportunity of autonomous development' of 'nations' or 'peoples' who were under the rule of Austria-Hungary and the Ottoman Empire and the formation of an independent Polish state (Heater 1994, 41).

Following World War I, the victorious states – the UK, France, Italy and the USA – recognized the right of self-determination of only a few large national groups on the territory of the defeated states of Austria-Hungary, the Ottoman Empire, Germany as well as the Bolshevik-ruled Russia. Several new states – such as Czechoslovakia, the State of Serbs, Croats and Slovenes, and Hungary – formally seceded from Austria-Hungary. Partly as a result of these secessions, the defeated multinational states of Austria-Hungary and the Ottoman empire were dissolved into several states with a single dominant nation (such as Poland, Hungary and Turkey) as well as two multinational states, Czechoslovakia and the Kingdom of Serbs, Croats and Slovenes (later renamed 'Kingdom of Yugoslavia'). No plebiscites were carried out prior to the creation of these new states to allow the populations to express their 'consent'. A few plebiscites were carried out only in several contested multinational border areas, such as Silesia and Carinthia, to determine to which state these border areas would belong.

Following the collapse, in 1989–1990, of the communist political system, instituted by the Communist Party of Russia in Russia and Eastern Europe, the three multinational states created in the post-World War I period – the USSR, Czechoslovakia and Yugoslavia (SFRY) – dissolved as a result of secessions of federal units within them. Their dissolution is discussed in Chapters 4 and 5.

Self-determination and the United Nations (UN)

Until the establishment of the UN in 1945, the right of self-determination was recognized neither as a political nor a legal right. The UN Charter (1945), in Articles 1 (2) and 55, first recognized 'the principle of equal rights and self-determination of peoples' as a universal principle on which relations among states and peoples should be based. Then, in 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples by the UN General Assembly recognized this principle as a *legal* right:

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status [...]
5. 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, without any conditions or reservations, in accordance to their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

Self-determination thus requires 'a freely expressed will and desire' of a people on a territory without any discrimination of any group on that territory and its outcome is to be 'complete independence and freedom' of the people. As the UN General Assembly Resolution 1541 (also adopted in 1960) specifies, the achievement of the 'full measure of self-government'– that is, 'complete independence and freedom' – can take the following three forms or modes (Principle VI):

(a) Emergence of a sovereign independent State
(b) Free association with an independent State; or
(c) Integration with an independent State.

The above two UN resolutions did not specify how the 'will and desire' of a people is to be expressed in the case of (a) – the emergence of a sovereign independent state. No UN resolution to date has specified the instruments through and the conditions under which the 'will and desire' of a people to create a new independent state should be expressed. In most cases of states created after 1945, no plebiscite was carried out to determine that 'will and desire'.

Regardless of this failure, these two resolutions provided a legal basis for granting and recognizing the independence to the colonies of the UK, France, Belgium, Netherlands, Spain and Portugal in Africa, Asia, the Pacific region and Latin America. The legal right of self-determination, as elaborated in these resolutions, was thus the principal legal instrument in the dismantling of the European states' overseas empires. Although stated in the universal terms, the UN has so far recognized that right *only* for the peoples in the overseas colonies of European states.

Box 1.3 Decolonization and secession

Historically, decolonization has been an important way in which states have been created. Major theatres of decolonization include the two American continents during the late eighteenth and early nineteenth centuries and Africa and the Asia-Pacific region in the latter part of the twentieth century. Prior to the middle of the twentieth century, creation of new states out of former colonial entities was often only achieved by the use of force. Thus in the late eighteenth century the thirteen North American British colonies attained their independence, as the United States of America, through a revolutionary war. In the early nineteenth century many states formerly under the colonial rule of Spain and Portugal in Central and Southern America also attained their independence as a result of wars against their colonial masters. However, in some cases decolonization proceeded relatively peacefully, and often over a period of time. Examples here include the states of Canada, Australia and New Zealand that obtained their independence from the UK.

The two world wars of the first half of the twentieth century signalled a significant change in public attitudes towards colonialism, in particular towards the European states' rule over their overseas colonies. International opinion became increasingly hostile to the continuation of colonialism. This was clearly demonstrated with the recognition of the principle of self-determination in the United Nations Charter that came into effect in 1945. The Charter had explicit provisions dealing with colonial entities – formally referred to as either non-self-governing or trust territories. From 1945 to 1990 over 90 of these colonial entities attained independence. Out of these, over 80 per cent did so in the period commencing in 1960, the year that the United Nations General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514) aimed at facilitating the end of colonialism.

The United Nations took the view that decolonization should proceed as rapidly as possible, the justification for the process being the right of peoples to self-determination. In many cases decolonization proceeded peacefully, but in others involved the use of force. Indeed, in international law, the use of force in this context was justified. One of the key features of this era of decolonization was the general insistence that, in accordance with the principle of *uti possidetis juris* (Radan 2002, 69–134), newly independent states inherited the territories and borders of the former colonial entities from which they emerged. These borders cut across territorial divisions based upon the ethnic origins or culture of peoples living in the new states. As a consequence, a number of these new states were subsequently subjected to attempted secessions by disaffected minorities. Examples include the attempted secession of Biafra from Nigeria and the ongoing demands for independence by the Tamils of Sri Lanka.

In that decolonization involves the creation of new states out of territory *controlled* by an existing state by withdrawing that territory from its jurisdiction, decolonization may be regarded as a form of secession. However, for the purposes of this book, the discussion and analysis of secession is confined to secession of territory forming part of an existing state and does not include decolonization. We justify this approach on two major grounds.

First, the process of decolonization is almost complete in that there are only a handful of colonial entities left, all of them being very small, often island, territories. Thus, in practical terms, decolonization is no longer the significant political and legal issue that it was in the past. Second, decolonization, especially in the post-World War II era, was treated by the international community in a far different way than secession from independent states. Decolonization was seen as a positive goal to be achieved as soon as possible. Accordingly, a right to independence in accordance with the principle of self-determination was recognized, and the use of force was legitimate and in some cases necessary means by which independence could be achieved. However, with secession from independent states, the international community has consistently expressed a negative view. This is illustrated by the comment of the then Secretary-General of the United Nations in 1992 that 'if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve' (Boutros-Ghali 1992, 9). Thus, whilst decolonization was relatively uncontroversial, secession from an independent state has been, and remains, a contested and sensitive political and legal issue.

Secession and the United Nations

The UN Charter and its General Assembly resolutions concerning the right of self-determination do not endorse any detachment or withdrawal of territory from an existing sovereign and independent state. In particular, the UN documents do not recognize the right to detach a territory of such a state against its will and by the force of arms. On the contrary, the UN Charter, in article 2 (4), protects the territory – the 'territorial integrity' – of sovereign states by proclaiming that:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state [...]

In the UN General Assembly's Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States (the Declaration on Friendly Relations) of 1970, an attempt was made to reconcile the right of self-determination and the above principle of the territorial integrity of states. The resolution notes that any 'subjection of a people to alien subjugation, domination and exploitation' constitutes a violation of the principle of equal rights and self-determination. The Declaration further stipulates that a state's territorial integrity is assured only under certain circumstances. The Declaration requires states *not* to engage in particular forms of discrimination or oppressive conduct against groups defined on the basis of 'race, creed or colour', or, in other words, *not* to violate these groups' rights to self-determination.

The Declaration's guarantee of the territorial integrity of states appears to prohibit secession from a sovereign state. However, the conditional nature of the guarantee, gives rise to the question of whether a right of secession arises in situations where a group or groups within a state are denied their rights to self-determination by the state's discriminatory or oppressive conduct against them. This question will be further explored in Chapter 8 in the discussion of the legal right of secession.

Who holds the right of self-determination?

The Declaration on Friendly Relations – as well as all other UN documents regarding the principle of self-determination – raise another question, namely: who holds the right of self-determination?

As we have seen above, European social democrats as well as the Russian Bolsheviks assigned the right of self-determination to nations or national groups which were defined by their language, culture and historical territory. And, following World War I, only a few selected national groups on the territories of the defeated states were enabled to exercise that right by establishing independent states dominated by those national groups.

In contrast, the UN Charter and the UN resolutions discussed above assign the right of self-determination to a people who 'belong' to a territory (see box 'The meaning of "people" in relation to self-determination' in Chapter 8). Neither the UN Charter nor UN resolutions determine who constitutes a people or how to distinguish one people from another. For the purpose of granting independence to former colonies, it was assumed that the whole population of any one European colony holds the right to self-determination: a 'people' here was the whole population of the colony, irrespective of the different cultures and languages of various segments of that population. The borders of these colonies were mostly demarcated, in the nineteenth century, by the European colonial powers. Thus by demarcating the borders among their colonies in the nineteen century, the European colonial powers determined who – which 'people'– will, in the twentieth century exercise the right of self-determination in those colonies.

In cases of secession, there are often severe disagreements as to who has the right to self-determine, that is, to secede from the host state. These disagreements sometimes led and are still leading to violent conflict. As we shall see in Chapter 5, several minorities in federal units of the SFRY and of the USSR, denied the majority national groups in these units the right to 'determine' their (that is, minorities') political status. In spite of this, in 1991 the EU's constitutional judges, in the Arbitration Commission on Yugoslavia (chaired by Robert Badinter) proclaimed that in the case of Yugoslavia (SFRY) the sole holder of the right of self-determination was the whole population of any one *federal* unit, whether or not minority national groups within a particular federal unit agreed with this. In their view, as the borders of the European overseas colonies determined who the holder of the right of self-determination is in each colony, so the borders of a federal unit determined who the people entitled to the right of self-determination within that federal unit is. According to the Badinter Commission, like the European colonial powers in the nineteenth century, the founders of federal states (for example, the Communist leaders of the USSR and SFRY) by creating the borders of the federal units determined who the holder of the right of self-determination in these units is. The Badinter Commission's view of self-determination failed firstly, to resolve the disagreements over borders and territories of new states arising from the SFRY and secondly, to prevent the subsequent wars in nationally mixed territories. This view has also been a subject to a continuing debate among legal scholars which we shall further explore in Chapter 8.

Why are some secessions violent?

All attempts at secession in the last century generated contention and, in most cases, violent conflict. Violence, at the time of writing this book, is still a feature of most secessionist conflicts in the world. To take a small sample, secessionist conflicts in the Basque country (Spain), Corsica (France), South Ossetia (Georgia), Abhkazia (Georgia), Chechnya (Russia), Kashmir (India), Xingjang (China), West Papua (Indonesia), Sri Lanka, South Sudan, and in the Kurdish regions of Turkey are all characterized by different levels of violence. This is only one reason why the phenomenon of violence in secession demands a systematic study.

In Part I we shall discuss four cases of secession which generated violent conflict and, by comparing them to four cases which did not, we shall attempt to identify at least some of the causes of violent conflict in the former cases. Even before any attempts at secession were made in these four cases, secessionist groups or parties publicly aired their grievances against the host state or majority population, the redress of which, they argued, required the creation of a separate state. In all of these cases, individuals and groups disagreed over the need for a new state: some argued that a new state was necessary for their group's survival and/or prosperity and that their group was entitled to have it, while others argued that the very same state threatened their group's existence and created avoidable conflict among different national groups. Thus both the need for a new state and the right to establish it were subject to disagreement and public contention – petitions, public protests, rallies and the like. Public contention is not always peaceful. During any form of public contention, violence can break out without any prior preparation or organization of any one group for violence. But, apart from the state authorities, who command police and military forces, various other groups also arm and incite their followers to violence against members of other groups or state forces. Moreover, the state authorities may order force to be used against demonstrators who otherwise display no violent intentions. Although not all public manifestation of secessionist intent have resulted in violence, most attempts in the twentieth century to publicly promote secession and to organize a political movement in support of secession resulted in an outbreak of violence of some form.

In Part I we shall approach the problem of violence in secession processes in two complementary ways. First, in Chapter 2, we shall examine the context in which secessionist movements arise and how they gather support amongst the members of the national (or interest) groups which they target. Second, in Chapters 3 to 5 we shall examine eight case studies of peaceful and of violent secessions. We shall examine two cases of secessions – of Norway and of Slovakia – and one case of an attempted secession – of Quebec – which did not involve violent conflict and two cases of secession – Biafra[6] and Bangladesh – and one attempt at secession – Chechnya – which were preceded or followed by protracted violent conflict involving

6 The case of Biafra is considered as an *unsuccessful* secession primarily because its independence was formally recognized only by four African states and Haiti. During its two years of independence from Nigeria, its independence was recognized *de facto* by many more states, including China and France. See Chapter 4.

guerilla fighting and conventional military operations. In Chapter 5 we shall discuss a set of (mostly) non-violent secessions – of Lithuania, Latvia and Estonia – which contributed to or triggered further secessions from the same host state – the USSR – and thus contributed to the mutually agreed dissolution of that state. In contrast, the secessions of Slovenia and Croatia were violent and triggered not only further, mostly violent, secessions from the host state, the SFRY, but also violent attempts at secession from the seceding states of Croatia and Bosnia and Herzegovina as well as from the non-seceding remnant of the SFRY (which consisted at the time of Serbia and Montenegro). In comparing these two – violent and non-violent – sets of secessions, we shall attempt to identify the factors, absent from the former set but present in the latter, which may, at least partially, explain why secessions and attempts at secession from the SFRY led to protracted war and violence.

In comparing violent with peaceful secessions, we are not aiming to find a comprehensive and/or conclusive answer to our initial question – why are some secessions violent? In order to find a comprehensive answer to that question, one would need to examine a much larger set of secessions or attempts at secession and to construct a theory which would link a variety of apparently unrelated political, economic and social conditions which facilitate or contribute to the attempts at secessions. In short, in order to find out why violence occurs in some secession processes and not in others one would need to attempt to explain, at least in part, how secessions take place in general. For this purpose one would need a theory of how secessions are carried out. But, as we shall see in Chapter 6, there is at present no generally accepted theory which would explain how secessions, in general, are carried out. In any case, our comparative study of violent and non-violent secessions in Part I does not aim to provide a comprehensive and systematic answer to the question of why some secessions are violent and some not. However, it may help us to understand why violence broke out in some cases of secession in the past and why violence may accompany some attempts at secession in the future.

Why (and how) do secessions happen?

All the eight cases of secessions to be examined in Part I share certain common features or characteristics. In all of these cases, there was a growing political movement in support of independence, the leaders of the movement proclaimed the independence (or were about to do so) from the host state and they attempted to gain recognition of their independence from other states. As we shall see in Chapter 2, these are common characteristics of all other secessions or attempts at secession.

But do these three common elements explain how secessions, in general, take place? And do they give us some indication as to why secessions are attempted in some states and not in others, that is, why people on certain territories attempt to secede? In asking these questions, we would expect to find a pattern or set of factors in secession processes which *explains* why and how such attempts are made, a pattern or set of conditions which is in some sense *necessary* for all attempts at secession. In order to find out what factors or conditions are necessary for such attempts one would need to examine a variety of features of many secession processes and to

attempt to relate them to each other in a systematic way. Moreover, one would need to determine the relationship between these factors and between them and the outcome of secession processes, in particular to the declarations of independence.

There is no space in this book to attempt a systematic study of secession processes of this kind. Instead, we shall approach the problem of how to explain secessions in two complementary ways. First, in Part I we shall attempt to identify those features in our eight cases of secession and attempts at secession which may provide a *partial* explanation of why these particular secessions or attempts at secession took place. Second, in Part II, Chapter 6, we shall analyse several recent social science theories which offer explanations of how and why secessions take place and attempt to apply them to our eight cases studies. These social science theories attempt to explain secessions; consequently, we shall call them 'explanatory theories.' Our aim, once again, is not to construct a comprehensive explanation of secessions but rather to establish the extent to which these explanatory theories succeed in explaining the secessions or attempts at secession we have discussed in Part I.

In our attempt to explain why secessions were attempted in our eight cases examined in Part I, we shall borrow a few basic concepts elaborated upon by John R Wood (1981) whose theory is discussed in some detail in Chapter 6. In particular, we shall distinguish between the general social and cultural conditions which facilitate the formation and growth of secessionist movement from the 'triggering conditions' for secession– the conditions which led to or 'triggered' the declarations of independence or other overt attempts to secede. An explanation of why secessions are attempted is thus bound to refer to both the general social and cultural conditions under which a secessionist movement developed and to the conditions which led its leaders to declare independence.

It is primarily social scientists who are interested in explaining how and why secessions take place. Their theories and explanations are also of interest to policy makers – political leaders and public servants – who formulate and implement policies regarding secessionist movements both in the states facing secessionist movements and other states. Social science theories of secession may be of some use to the policy makers if these theories can *predict* whether or not an attempt at secession will be made in a particular region and how a particular secession movement will develop. But policy makers and their advisers also need to *justify* their policies – for example, secessionist leaders need to justify their attempts to secede, the host state policy makers need to justify their policies towards secessionist movements and policy makers in other states need to justify their policies towards both secessionist movements and their host states. As we shall see, they are not the only ones who would be interested in the question of justification of secession.

Is an attempt to secede the right thing to do? Normative justification of secessions

A sovereign and independent state can bring some benefits to members of its majority population which a previous host state could not. For example, they can gain more income from the resources located in the new state, celebrate and develop their

cultural traditions and language and control or influence political decision-making in their new state more effectively. In addition, the creation of that state by secession from the host state may also conform to generally acceptable principles such as the principle of self-determination. In consequence, attempts at secession may be justified by reference either to potential benefits of secession to the secessionist population or to general norms or principle or both. However, if one is arguing that a particular attempt to secede is right or the right thing to do, one is implying that such an attempt would also be right for other groups in similar circumstances. And if an attempt at secession is right because it conforms to some general principle or norm, then any other attempt at secession which conforms to it in similar circumstances is also right. Therefore, in order to show that an attempt at secession is right, it may be sufficient to show that it conforms to a general principle or norm, applicable in other cases of secessions.

In Part I, Chapter 2 we briefly outline a variety of justifications of secession which are offered in attempts to gain support for secession among members of the target 'secessionist' groups as well as among outsiders. In discussing our eight cases of secessions or attempts at secession, we briefly outline specific justifications offered for each of these attempts at the time they were made. As we shall see, these justifications refer both to benefits resulting from secessions and to general norms or principles. Some of the general norms that are used to justify secession are further elaborated and defended in a variety of theories of secession advanced, since the 1980s, by political philosophers and theorists in scholarly works published in the English-speaking world. These theories are discussed in Part II, Chapter 7.

In contrast to the social scientists who are attempting to *explain*, political theorists and philosophers are attempting to *justify* secessions by reference to a variety of norms and principles with which, the latter argue, a just society or state *should* conform. In contrast to explanatory theories, their theories are called 'normative theories'. If any just state should conform to general norms and principles, the states created by secession from other states should conform to them too. Normative theories of secessions aim to elaborate and defend general and consistent criteria for the justification of secessions; and in most cases, they defend a general right to secede, as a right which is held by any group of individuals irrespective of their national belonging.

From a large number of contemporary normative theories of secession, for the purposes of our discussion in Part II, Chapter 7, we have selected a sample of theories based on either one of the following two kinds of norms or principles. The first principle, the *right* to live in a functioning and protective state, is intended to remedy wrongs or harms which host states or their governments often inflict on specific groups of their citizens. If a host state has systematically abused some interests or rights of a group living on a territory, this principle allows the group to secede from the abusive or non-functioning host state. The second principle, the *right* (or liberty) to choose a state in which one's group is to live, is intended to ensure that minority groups within any state are not subjected to the political tyranny of majorities. If a smaller group within a host state or a state seceding from it, decides, through an appropriate democratic procedure to secede for any reason whatsoever, it should be allowed to do so (provided no prohibitive harm is thereby caused to others). Once we

have outlined a few of these theories, we explore how they could be used to assess the eight cases of secessions examined in Part I and we outline an alternative approach to the assessment of secession which does not assume *any* right to secede.

Are secessions legal? How does the law regulate secessions?

Normative theorists, as we have seen, debate the nature and origins of the moral or political right to secede. What about the legal right of secessions? What does the law say about secessions?

There is no international law rule which explicitly establishes a legal right of secession. Only a few state constitutions, such as those of St Kitts and Nevis and of Ethiopia, explicitly proclaim the right of secession and determine the conditions under which such a right should be exercised. However, as our Appendix shows, since 1990 a large number of secessions and seceded states were formally – and thus legally – recognized by the UN, the European Union (EU) and their member states. Also a number of host states – the USSR, Czechoslovakia and Indonesia, for example – legally recognized secessions of their own federal or administrative units. This indicates that secessions can be legal and that they are being, at least in part, regulated by law. Where is the source of the legality of secessions?

In Chapter 8, we explore the existence of a legal right of secession from the perspectives of the domestic law of a host state and international law. The area of domestic law which is explored in Chapter 8 is restricted to the judgments of the highest courts of three states – the US, the SFRY and Canada – regarding attempts to secede from those states. The area of international law focuses primarily on UN General Assembly Resolutions. The US Supreme Court, the Constitutional Court of the SFRY and the Canadian Supreme Court have all ruled that *unilateral* secession was constitutionally illegal. In other words, if the host state or its federal units have not agreed to secession, through some constitutionally prescribed process, a secession of a unit or part of that state has no basis in domestic law. Beyond indicating that a legal secession requires amendment of the host state's constitution, none of the judicial decisions provided detailed rulings on procedures by which such secessions could be achieved. However, the essence of these decisions is that secession can occur if it is consensual.

What about unilateral secessions carried out in the face of opposition by the host state? Here international law arguably provides a basis for an implicit and limited right of secession based upon the right of peoples to self-determination. The principal source for that right is found in the Declaration on Friendly Relations adopted by the UN General Assembly in 1970. As we shall see in Chapter 8, such a right only arises in cases of a state that discriminate or oppress a group of groups of persons living within that state.

Secession is thus a creation of a new state out of the territory of an existing state which can be legal, provided that it satisfies the above very broad criteria. Furthermore, secession can be subject to a normative assessment by reference to political or moral principles. But who carries out these acts of withdrawal and creation of new states?

And what motivates those who strive after secession? This is the subject of next Chapter which deals with secessions and secessionist movements.

Further reading

There is no introductory work in English which deals with the concept of secession and its relation to other concepts such as those of sovereignty, self-determination and nationalism. However, J. Mayall's (1990), *Nationalism and International Society* (Cambridge, Cambridge University Press) explores the impact of nationalism on the system of sovereign states and in this context discusses the creation of national states through decolonization, secession and of transfer of territories from one state to another (irredentism). His conclusion that 'separate national states' are still the basic organizational units of the present international system suggests that creation of new states from the existing ones through secession is likely to continue.

The reader *Nationalism* (1994), edited by J. Hutchinson and A. D. Smith (Oxford, Oxford University) presents a great variety of views on nationalism, nations, nation-states and the role of nationalist ideologies in the system of sovereign states and other topics related to nationalism.

The issue of sovereignty and statehood in the contemporary world is discussed in the special issue of the *Political Studies* (1999), (Vol. 47, No. 3, pp. ii–605). Articles by A. James, R. Jackson, J. Mayall and W. Wallace discuss the history and conceptual development of sovereignty, the practice of sovereign statehood in contemporary politics, the relation of sovereignty and self-determination and the practice of sharing sovereignty in the supranational organizations such as the EU.

S. D. Krasner's *Sovereignty, Organized Hypocrisy* (1999), (Princeton, Princeton University Press) offers an alternative and controversial analysis of sovereignty and its practice in the modern world. He argues that very few states exercise much control over their territory and population and that the international system of states is based on a pretense that states are independent and equal international actors.

J. Dugard and D. Raič (2006), 'The Role of Secession in Law and Practice' in M. G. Kohen (ed.) (2006) *Secession, International Law Perspectives* (Cambridge, Cambridge University Press, 94–137) discusses the significance of recognition of states in the context of secession.

T. D. Grant (1999), *The Recognition of States, Law and Practice in Debate and Evolution* (Westport CT, Praeger) is a discussion of the principles and their application to the issue of recognition of states with a particular emphasis on the states that emerged from the break-up of Yugoslavia.

PART I
SECESSION IN PRACTICE

Who supported the secession? Although opinion polls were suggesting that there was a majority in each republic for holding a referendum on the issue of dissolution (which was not held), there were also indications that, after two years of inconclusive constitutional debate and political wrangling, the majority of the electorate in Slovakia either supported the secession, or regarded the issue with a degree of indifference (Elster 1995, 128).[6] If this is correct, this would be perhaps a rare case of secession in which a large proportion of the secessionist population (around 36 per cent of respondents) was indifferent to, or ambivalent about, the outcome of the attempt at secession. Be that as it may, this was a case of mutually agreed secession carried out by a political coalition which had no popular mandate to do so. Neither the Movement for a Democratic Slovakia nor Civic Democratic Party and their coalition allies campaigned on a platform envisaging dissolution of the common state and, as noted above, the issue was not put to a referendum. After the dissolution, the absence of a popular mandate did not create any political backlash against these parties; their electorates in each republic appeared to have acquiesced in the dissolution in spite of being denied a vote on it. Neither did the absence of a referendum impede the swift international recognition of the independence of both states.

Quebec: towards a 'quiet independence'?[7]

The legacy of French and British colonial rule

Quebec is one of ten federal units – provinces – of Canada (which is, somewhat misleadingly, called 'the Confederation of Canada'). Its territory within the present boundaries of 1,170 thousand square kilometres is three times the size of France. Of approximately 7.5 million inhabitants (2005), 6 million are French-speaking, or francophones, mostly descendants of the first French settlers of Canada, 650,000 are English-speaking or anglophones, around 68,500 are Amerindians and around 10 thousand are Inuit; the latter two groups constitute the Aboriginal peoples of Quebec. The remaining residents are immigrants from non-English and non-French speaking countries. More than 80 per cent of the population lives in the urban centres near the St. Lawrence river, the largest of which is Montreal with 3.5 million inhabitants. Most Amerindians and Inuit form a majority population in sparsely populated northern Quebec (Quebec Immigration, 2005).

The southern part of today's Quebec was, in the 1600s, part of *La Nouvelle France,* colonized by the French Crown. After the defeat of the French royal army at the Plains of Abraham in 1759, the French Crown ceded its North American possessions to Britain by the Treaty of Paris (1763). By the Constitutional Act of

6 In July 1992, one month after the election, 86 per cent of respondents in Slovakia were in favour of the referendum. The eventual dissolution evoked positive feelings among 27 per cent, ambivalence or mixed feelings among 21 per cent and indifference among 15 per cent of respondents. Negative feelings were recorded among 37 per cent of respondents (Butorova 1993, 71).

7 'Un independence tranquille'. The phrase is based on the analogy with the Quiet Revolution in Quebec in the 1960s (see below); it was attributed to a Quebec separatist.

Map 3.3 Canada and Quebec

Source: Adapted from Perry-Castañeda Library Map Collection, University of Texas at Austin, Canada_pol_1994.gif.

1791 the British Crown guaranteed the use of French in the elected assembly and of French civil law in the Lower Canada (the southern part of present-day Quebec), thus protecting existing French property rights and the role of the French Catholic church. The British take-over of these provinces, in French Canadian nationalist discourse, came to be called 'the British Conquest'. Within the same discourse, the rebellion of francophone groups in Lower Canada, crushed by the British in 1837, was the beginning of the active francophone resistance to the 'British Conquest' which has continued to the present day.

The constitution of present-day Canada originated in the British North America Act passed in 1867 by the Imperial Parliament in London. The Act established the Dominion of Canada as a 'Confederation' of the provinces of Ontario, New Brunswick, Nova Scotia and Quebec (formerly Lower Canada). It guaranteed the use of French (in addition to English) in both the federal and Quebec legislature and courts, the use of the French civil code, as well as the maintenance of separate denominational schools in the province of Quebec. This constitutional framework provided few, if any, legal obstacles to the development of the francophone nationalist movement, which in the late 1960s took up as its main political goal the secession of Quebec from Canada.

Francophone nationalist movement in Quebec: the beginnings

Until the 1920s, the majority of francophones in Quebec were farmers living on family farms. Living in small francophone communities in which the francophone Catholic clergy and teachers played a central role, they had little if any contact with the anglophone population or with agents of the Canadian state. The beginnings of a francophone nationalist movement in modern Quebec could be, perhaps, traced to the *Parti National* of the dissident francophone Liberal Honoré Mercier who, upon gaining power in Quebec in 1886, sought to extend Quebec autonomy and to gain international recognition for Quebec by establishing official contacts with the Vatican and France (Lintau et al 1983, 276). But it was the federal government's involvement of Canada in 1899 on the side of the British in the Boer war in South Africa that led to the establishment, in 1903, of the first modern francophone nationalist organization – the *Ligue Nationaliste Canadiéenne*. A francophone politician, Henri Bourassa, led a mass campaign against Canadian involvement in British imperial wars and his followers established the *Ligue* to propagate the economic, political and military independence of Canada from Britain and the 'widest possible autonomy [of Quebec] compatible with maintenance of the federal link' (Lintau et al 1983, 491). In Canada, Bourassa believed, two equal nations – the French- and English-Canadians – should be together building a common homeland, independent from Britain or any other power.

However, in August 1917, in the midst of World War I, in spite of strong francophone opposition, the federal government passed a law on military conscription. Mass demonstrations against the law in Montreal resulted in street fighting amongst opposing groups, and in March 1918 federal troops killed several demonstrators while suppressing an anti-conscription riot in Quebec City. Under these circumstances, the idea of political separation of the francophones in Quebec from the anglophones in Canada appeared to gain new credibility. In the late nineteenth century, a few conservative Catholic thinkers – such as Jules-Paul Tardival in his *Pour ma patrie* (1885) – had already elaborated this idea. In 1923 the followers of an influential nationalist ideologue, Father Lionel Groulx, argued that the political independence of Quebec was inevitable (Lintau at al 1983, 553).

Since the 1920s, francophone nationalism has oscillated between these two opposing visions of Quebec. In one, Quebec is the francophone homeland with 'the widest possible autonomy compatible with maintenance of a federal link' with

Canada, a single state in which the two nations, the francophones and anglophones, co-exist as equals. In the other, Quebec is an independent francophone nation-state in North America.

The Quiet Revolution: a prelude to a Quiet Independence?

As a result of rapid industrialization, from the 1920s on francophones increasingly migrated to the cities, in particular Montreal, where they found employment in manufacturing industries. Until the 1960s, educated francophones gravitated towards the liberal professions – medical and legal – as well as teaching in the Catholic educational system, but their presence in commerce, banking or government service was far below their proportion in the population. This pattern of employment reflected an obvious *cultural division of labour* in which the Quebec francophones mostly occupied the lower rungs of the labour hierarchy – farmers and industrial workers – while the higher rungs – managers, civil servants and entrepreneurs – were mostly occupied by members of the minority anglophone population (McRoberts 1993, 67).

In the late 1950s, the younger generation of francophone intellectuals, educated at the secular faculties of the francophone universities in Quebec, replaced the ideal of a rural francophone society governed by traditional Catholic values, with an ideal of a modern technological society led by francophones and imbued with a spirit of new self-confidence and pride (McRoberts 1993 128–30). The primary instrument for building such a modern technological society was to be the state of Quebec, and for this purpose Quebec needed to expand its competencies and to take over various functions performed by the federal government of Canada. The 'Quiet Revolution' in Quebec consisted, in part, of the replacement of traditional francophone Catholic-based nationalism with a modernizing neo-nationalist ideology whose political goals were encapsulated in the slogan: to become *maitre chez nous* – to be masters in our own house – where 'chez nous' referred to Quebec.

In keeping with this ideology, in the 1960s the Quebec government took over responsibility for the provision of education, health and social services, previously held primarily by the Catholic Church, and undertook several large infrastructure and industrial projects, established new financial institutions and greatly expanded the provincial administration. In spite of the large-scale involvement of the state in the economy, the dominance of anglophones in the upper reaches of business and finance management was not broken. By the end of 1960 the francophones had not, as yet, become the *maitres* of Quebec (McRoberts 1993, 139). In order to achieve this, neo-nationalists argued, it was necessary, firstly, to ensure the exclusive dominance of French in education and everyday communication and, secondly, to gain the recognition from the federal government of Quebec's special status as an equal partner to anglophone Canada or the 'Rest of Canada'. The first goal was to be achieved by requiring the children of immigrants in Quebec to learn French as their first language and private anglophone-controlled companies to make French their language of communication. The second was to be achieved by a revision of the constitution of Canada recognizing Quebec as a 'distinct society' and accordingly allocating to Quebec appropriate legislative powers. As successive Quebec governments in the

1960s and early 1970s failed to achieve these goals, to many neo-nationalists the secession of Quebec appeared to be a more effective way of making the Quebecois *maitre chez nous*. In 1968 a former Liberal cabinet minister, René Lévésque formed a neo-nationalist party *Parti Québécois* (PQ) from the members of two established secessionist parties, *Rassemblement pour l'indépendance* and *Ralliement National,* and his own following. His new party promised to proclaim the independence – or sovereignty – of Quebec once it gained power.

Independence was also the proclaimed goal of the Marxist *Front de le Liberation du Québec* (FLQ) which in the mid-1960s launched a sporadic bombing campaign against the federal army and government targets. In October 1970, the FLQ kidnapped the British trade representative and a francophone cabinet minister. In response, the Liberal government of Quebec agreed to a massive deployment of the federal military and the imposition of the War Measures Act in Quebec. As demanded by the kidnappers, the FLQ manifesto was published and broadcast, but the Quebec cabinet minister was assassinated (the British diplomat was released in exchange for the safe passage of kidnappers to Cuba). There was no support among the francophone population for the FLQ and its campaign of violence and from 1970 no francophone secessionist organization in Quebec attempted to advocate the use of force or terror, let alone use it.[8]

The promise of independence appeared to gain a rather limited support too: in the 1973 Quebec elections, PQ gained only 30 per cent of the votes cast. In 1974 PQ abandoned this promise and committed itself to holding a referendum on independence. Partly as a result of this, its vote in the 1976 election rose to 41 per cent of the total vote and to 54 per cent of the francophone vote, including the majority of francophone voters in all occupational categories, except for farmers and owners/managers of companies (McRoberts 1993, 237).

Once the PQ came into power in Quebec in 1976, it immediately legislated to entrench the exclusive dominance of French in education, advertising and as the primary language of communication in private enterprises. But its referendum on independence had to wait until 1980 when the PQ government asked for a mandate to negotiate 'a new arrangement with the rest of Canada, based on the equality of nations'. This new arrangement, according to the wording of the referendum question, would include 'the exclusive power [of Quebec] to make its laws, administer its taxes and establish relations abroad – in other words, sovereignty – and ... to maintain with Canada an economic association...' (McRoberts 1993, 321–2). The avoidance of the word 'independence' and the insistence of an economic association with Canada in the referendum question was intended to reassure voters that the gaining of sovereignty for Quebec would not mean a sudden rapture with the rest Canada. In the first referendum on Quebec's independence 59.6 per cent of voters voted No, and 40.4 per cent voted Yes (with a turnout of 84 per cent of the electorate). Only 48 per cent of francophone voters and only 5 per cent of non-francophones voted Yes (McRoberts 1993, 327).

8 As the FLQ was made illegal and its activists imprisoned or exiled, it ceased to function in 1970 (Fournier 1998, 132)

In spite of its rejection at the referendum, a 'new arrangement' of this kind was reached in 1987: the Meech Lake Accords, negotiated by the federal and provincial governments, provided for a constitutional recognition of Quebec as a distinct society but failed to gain the necessary ratification of all the provinces (it failed in the legislature of Manitoba due to the opposition of a single Aboriginal member). In another attempt at a new arrangement, in the Charlottetown Accord of 1992, the clause recognizing 'the distinct society' of Quebec was subordinated to several other clauses concerning the 'characteristics and values' which were alleged to unify Canada as a nation. This accord was rejected by Quebec voters as well as the anglophone voters in five other provinces. The anglophone voters in Canada thus appear to have rejected any special status for Quebec.

Following the above two failed attempts to establish a 'new arrangement' for Quebec within Canada, the PQ, upon its return to government in Quebec in 1994, put, in 1995, to the Quebec electorate the following referendum question : 'Do you agree that Quebec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the Bill respecting the future of Quebec..... '. In the second referendum on Quebec's independence 49.4 per cent of the votes casts were for Yes and 50.6 per cent for No, with a record 94 per cent voter turnout. The difference between the Yes and No votes was only of 54,388 votes. The majority of the francophone business and financial elite – which by this time dominated the banking and business establishment of Quebec – supported the No vote. As a result, the then PQ premier of Quebec, Jacque Parizeau, felt justified to say that only 'money and ethnic votes' won in the referendum for the No camp. In fact, in spite of its systematic avoidance of the words 'independence' or 'separation,' the PQ once again failed to mobilize a sufficient majority of francophone voters to gain a simple majority of the votes cast.[9]

Following the second referendum, the federal government once again attempted to accommodate Quebec neo-nationalist demands: it passed a resolution in the federal parliament, recognizing Quebec as distinct society and granted, by law, all provinces, including Quebec, a veto on constitutional matters. But it also asked the Supreme Court of Canada to rule on the legality or constitutionality of a unilateral secession of Quebec, thus attempting to specify a legal or constitutional framework for any future attempts of Quebec to secede. For its part, the PQ vowed to repeat a referendum on independence under more propitious circumstances.

Legalizing Quebec's secession: The Supreme Court of Canada

In its 1998 judgement on the legality of secession of Quebec, the Supreme Court insisted that from the perspective of Canadian constitutional law, secession requires that it be carried within the framework of principles of constitutionalism, federalism, democracy, the rule of law and protection of minorities. These principles, the Court ruled, demand a clear question and a clear majority in a referendum expressing support for secession. A successful referendum introduces

9 This time, however, the PQ won 60 per cent of the francophone vote (from 48 per cent in the 1980 referendum).

an obligation on the federal government and the secessionist authorities – as well as other (unspecified) parties whose interests are at stake – to negotiate in good faith over the terms of the secession. These negotiations need to address the interests of Aboriginal peoples and minorities, the issue of borders of the seceding state and other issues that may arise as a result of the secession (see Chapter 8). A unilateral secession of Quebec, following or preceding a referendum, is proclaimed illegal in both domestic and international law.

The Court's opinion thus legally entrenched the requirement of a negotiated agreement on the secession of Quebec (see Chapter 8). However, the Court ruled neither on the procedure of these negotiations nor on the legal enforcement of this requirement. In consequence, the following issues were left unresolved: first, is there any legal remedy to the failure of the federal government to negotiate in good faith and, if there is none, whether an act of unilateral secession in response to this failure is a legal way to seek redress? Second, if the secessionists fail to negotiate in good faith and unilaterally – and illegally – declare secession, is the federal government legally entitled to use force against their illegal acts to take over the sovereign powers in Quebec? Third, in a case of an illegal secession, are the Aboriginal groups who oppose the secession of the territories which they claim as theirs, legally entitled to resist by force these (illegal) secessionist authorities?

In response to the judgement, both the federal and the Quebec government focused on the issue of the secession referendum. In 2000, the federal government enacted the Clarity Act, which gives the federal House of Commons the power to decide whether a referendum question is clear and whether referendum results represent a clear expression of the will of the population to secede. The minimum requirement for the latter is set at 50 per cent of the vote of all *eligible voters* plus one. In spite of its requirement that the views of all political parties and other Canadian institutions and of Aboriginal peoples be taken into account, the Clarity Act allows a majority of federal members of parliament from outside Quebec to decide on whether a referendum held in Quebec is legitimate or not. In response, in 2000, the Quebec government enacted Bill 99 which asserts the right of the Quebec National Assembly to determine all issues arising from a referendum in Quebec and denies that right to any other government or parliament. The Bill also sets the majority required in a referendum at 50 per cent of *votes cast* plus one and prohibits the alteration of Quebec boundaries without the consent of the Assembly.

These federal and Quebec laws not only set down contradictory requirements regarding any future referendum on the secession of Quebec but also placed significant constraints on the negotiating powers of both governments and thus increased the likelihood of a stalemate in any future negotiations. In view of this, is a potential secession of Quebec likely to resemble the peaceful secessions of Slovakia and Norway? This question is to be addressed in the next section.

Why were these secessions peaceful?

In answer to our question, raised in the beginning of this chapter,

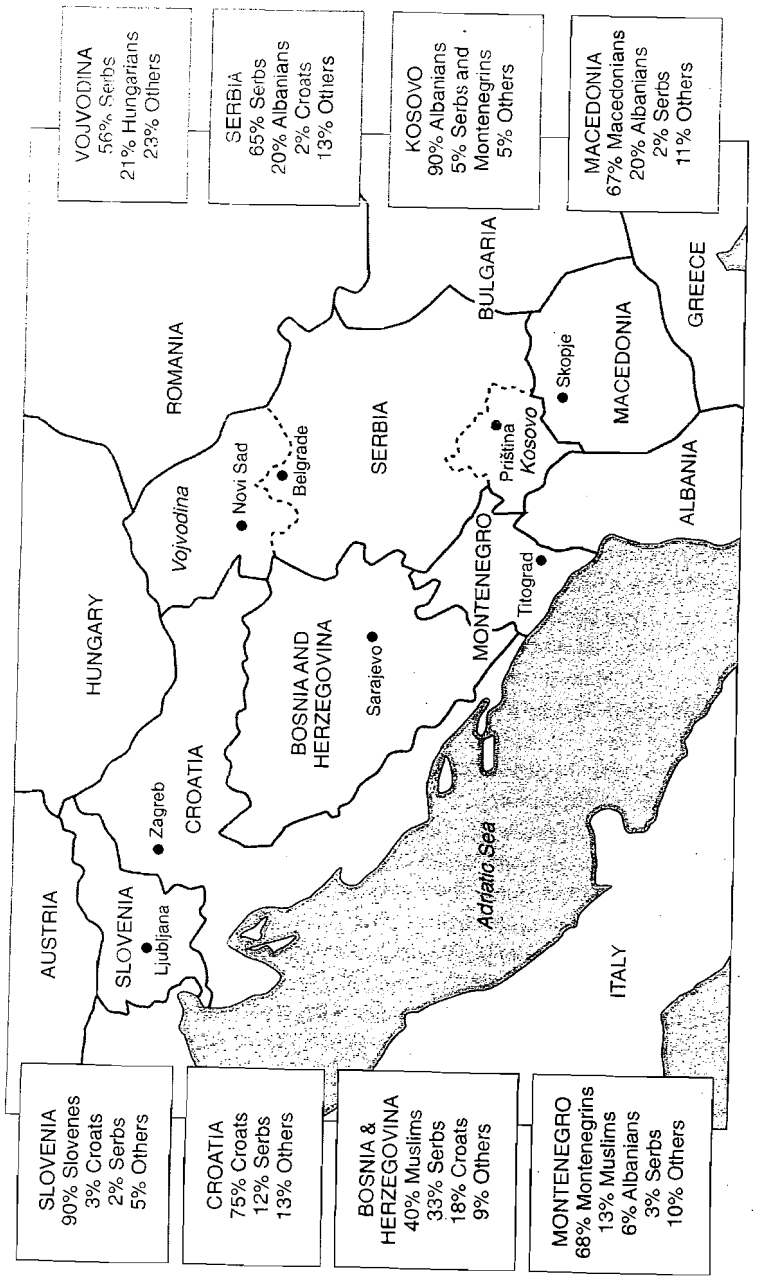
(i) Which factors contribute, or are likely to contribute, to the outbreak of violence in any attempt at secession?

in the three cases above we can observe the following:

Opposition to secession and independent armed groups In the case of *Norway* conditions (3) and (4) (specified in the beginning of this chapter) were conspicuously absent. There were no territorially concentrated groups which opposed the secession of Norway within its existing boundaries nor were there any armed groups outside the control of the secessionist and state authorities.

In contrast, in *Slovakia* condition (3) was present: there was an organized opposition to secession within the seceding state, Slovakia, among a territorially concentrated group, the Hungarian minority represented by the Hungarian Christian Democratic Movement and Coexistence (which gained 7.4 per cent of the vote in the 1992 election). The Hungarian minority representatives voiced fears that in an independent Slovakia, in particular under Mečiar's party, their minority rights would be denied or restricted; these rights primarily concerned to the use of the Hungarian language in education, media and in public administration. Thus all Hungarian members of the National Council in September 1992 voted against the Slovak constitution or walked out of the vote in protest of its failure to protect their minority rights (Stein 1997, 276, 280). Although Mečiar and his party repeatedly refused to respond to any of the Hungarian minority's demands, the Slovak government made no attempt to suppress the Hungarian or any other party's opposition to secession. The Hungarian minority groups were neither armed nor planned any violent resistance to secession. Moreover, no support for this kind of resistance was coming from neighbouring Hungary. As a result, the political conflict with the Hungarian minority party was not transformed into violent conflict. As in the case of Norway, in Slovakia condition (4) was not present: there were no armed groups independent from the secessionist and host state authorities.

In *Quebec,* both conditions (3) and (4) are present. The organizations of Cree Amerindians and Inuit oppose the secession of their traditional territories (located within Quebec) from Canada without their communities' consent and have, through several referenda, expressed preference for remaining in Canada (Makivik Factum, 1998; Cree Factum, 1998). Although the exact boundaries of the territories they claim as their own (under the name of 'Ungava') are disputed, they include most of northern Quebec bordering on the province of Ontario where the principal Quebec sources of hydroelectric energy are located. These territories were not part of *La Nouvelle France* in 1761 and were transferred to the province of Quebec only in 1898 and 1912 by acts of the federal parliament without the consent of their Aboriginal inhabitants (Grand Council of the Crees 1995, 213–14). Moreover, in these territories the Aboriginal population outnumber the non-Aboriginal settlers. The referendum of 1995 also gave rise to the partitionist movement among the anglophone population, which demanded that, in the case of the secession of Quebec, their anglophone majority areas remain in Canada. In 1997, 44 predominantly anglophone municipalities passed resolutions expressing their determination to remain part of Canada. (Stevenson 1999, 228).



Map 5.2 Socialist Federal Republic of Yugoslavia (SFRY) in 1991: distribution of national groups

Source: The Yugoslav Inferno (1994) by Paul Mojzes, reprinted with permission of the author.

and Georgia and to the violent conflicts characterizing all sequential and recursive secessions from SFRY (Yugoslavia) with the exception of Macedonia.

Secessions in the SFRY: sequential and recursive

Yugoslavia (the land of South Slavs) was created in December 1918 out of two independent kingdoms, Serbia and Montenegro and the State of Serbs, Croats and Slovenes. The latter consisted of the present day Slovenia, Croatia, Bosnia-Herzegovina, which seceded from the defeated Austria-Hungary in October 1918 and Serbia and Montenegro which united in one state only November 1918. The new state – which was at first called the Kingdom of Serbs, Croats and Slovenes – was a parliamentary monarchy with a Serbian royal dynasty on the throne. Immediately upon its establishment the new state faced an Albanian armed rebellion in Kosovo (which was suppressed by military force in 1918–1919) and the continuing demands by Croat political leaders that the state be re-constituted as a confederation. The Axis powers, which occupied the country in 1941, divided it among themselves and created a puppet state of Croatia under a pro-fascist Croat Ustasha regime. The Ustasha regime carried out massacres of Gypsies, Jews and Serbs as well as mass deportation of the Serbs into Serbia and their forcible conversion into Roman Catholicism. At the end of World War II, the forces of the Yugoslav Communist Party (with the help of British military aid and the Soviet army) defeated the Croat Ustasha, other quisling forces and the resistance forces loyal to the Serbian dynasty. In 1946 the Yugoslav Communist Party re-created Yugoslavia on the federal model of the USSR. On this model, five national groups were proclaimed to be the constituent nations – Serbs, Croats, Slovenes, Macedonians and Montenegrins – and each was assigned a titular homeland, a federal republic, in which it had a majority. A sixth constituent nation, Muslims, was proclaimed in 1968 and its homeland, Bosnia-Herzegovina (in which Muslims had a relative majority), was shared with Serbs and Croats (as constituent nations). The Albanian and Hungarian national minority was each assigned a sub-federal unit, the provinces of Kosovo and Metohija and of Vojvodina respectively, within Serbia. Unlike the USSR constitution, the Yugoslav constitution did not explicitly recognize the right of secession of any unit of the federation. Large economic disparities between industrialized Slovenia and Croatia on one hand and the undeveloped Macedonia, Kosovo and Bosnia-Herzegovina on the other, remained despite the efforts of the Communist authorities to industrialize the latter.

In 1948, under the Communist leader Josip Broz 'Tito' (1892–1980), Yugoslavia was expelled by the USSR from the Communist bloc and subsequently developed a less centralized and less coercive form of mono-party system, called 'socialist self-management'. Its last constitution of 1974 devolved almost all state competencies to the six republics and two provinces; within the collective state presidency each republic and province had an equal vote. The federal government retained control only over monetary and foreign policy and the Yugoslav federal army. From 1969, a second tier of armed forces, a lightly armed territorial defense force was put in place to deter possible Soviet invasion. Each republic had control over this tier of

defense on its own territory and over its police and security apparatus. This enabled the republics to establish their own armed forces which, in 1991, challenged the Yugoslav federal army stationed on their territory.

Conflicting dissident blueprints

Following the death of Tito in 1980, the state of the Yugoslav economy, partly due to a huge debt to the US and European banks, rapidly deteriorated. Kosovo (Kosovë in Albanian) was economically the least developed region of Yugoslavia, with over 30 per cent of the population unemployed or underemployed and with the highest birthrate in Europe. The majority population of Kosovo (1.7 million out of the total of 2 million inhabitants) were Muslim Albanians (who are not Slavs) while the rest were Serbs, Montenegrins, Turks and Gypsies. In 1981 large scale demonstrations and riots, involving over 20,000 Albanians, spread from the capital Prishtina to several towns of the Kosovo province. These riots were the largest and most violent public protest in Communist Yugoslavia since the mass armed uprising of Kosovo Albanians against the Yugoslav Communist rule in 1944. Like the 1944 uprising, this one was suppressed by the Yugoslav federal army and a combined police force with a loss life. The demonstrators demanded the secession of Kosovo from Serbia and its upgrade to the status of a republic (federal unit) of the Yugoslav federation. In spite of the repeated purges of the Communist party of Kosovo and of mass arrests of secessionist supporters, the Communist authorities were unable to halt the spread of the secessionist movement among the Albanian population and the increasing emigration of Serbs and Montenegrins from the province.

In 1985 the anti-secessionist movement of Kosovo Serbs started a campaign of public protests and demonstrations in Belgrade, the capital of Yugoslavia and Serbia, demanding protection from the violence by Albanians and, later, the re-establishment of the Serb rule over Kosovo. The movement and its demands mobilized Belgrade intellectual dissidents in defence of the Serbs of Kosovo and, from 1986, received wider publicity in the Communist-controlled media in Belgrade. In 1986 the draft Memorandum of the Serbian Academy of Arts and Sciences, authored by dissident Serb writers and academics, repudiated the allegedly anti-Serb policies of (non-Serb) Communist leaders of Yugoslavia and called for a political unification of the Serb nation (and of Serbia) as well as for a re-centralized Yugoslavia. If other nations of Yugoslavia rejected the latter, the document suggested that other options be considered, presumably the creation of a separate Serb state (Pavković, 1995). In response to the Memorandum, in 1987 in a special issue of the Slovenian journal *Nova Revija* a group of 16 Slovene dissident intellectuals published essays on the Slovenian national program, all of which argued for separate Slovene statehood; such a state, one of the essayists stated, would also require an independent Slovene military force. In their view, Slovenians had no need for a state other than that of Slovenia and, therefore, Yugoslavia for them was no longer a political option (Pavković, 2000, 91–2).

In 1988 the Communist elites in Serbia and Slovenia endorsed the sharply different political platforms presented in these two dissident documents and started mass mobilization of their target populations in support of them.

Mass mobilization: Slovenia, Serbia and Croatia

In the mid-1980s, a youth media outlet *Mladina*, which voiced non-Communist political opinions in Slovenia, started attacking the Yugoslav federal army[16] – the only visible federal institution in Slovenia – as a repressive and warmongering organization and demanded that an alternative civilian service be made available. The Yugoslav federal army then arrested and put on trial three of its journalists and a Slovene sergeant-major of the army. The friends of one of the journalists, the (then) peace activist Janez Janša,[17] immediately organized a Committee for the Defense of Human Rights. Within a few months the Committee claimed more than 100,000 members (out of the Slovenian population of less than 2 million) and organized a series of demonstrations with tens of thousands of participants against the Yugoslav federal army (Mastnak, 1990).

The leaders of the Communist party of Slovenia as well as the Roman Catholic clergy joined in the protest. The trial soon became a focal point not only for mass demonstrations but also for the creation of a mass secessionist movement. In February 1989 emboldened by the success of the demonstrations focusing on the trial, the members of this Committee and groups associated with it organized a rally in support of the Kosovo Albanian miners' strike against the repressive policies of new Serbian Communist leadership under Milošević (Mastnak, 1990). As leaders of the Slovenian Communist party joined a variety of dissidents on the speakers' platform, this televised rally became a symbol of Slovene political unity in defiance of the threatening new Milošević regime in Serbia. The Slovenian rally triggered a mass demonstration in Belgrade (Serbia) against the Slovenian support for the Kosovo Albanians. Accusing Slovenian political leaders of collusion with Albanian separatists and of anti-communist deviations, the Serbian Communist leadership had already imposed a trade embargo on Slovenia and broken all contacts with Slovenian Communist authorities.

The counter-rally in Belgrade was only one in a series of mass rallies, with hundreds of thousands of participants, which the Communist leader Slobodan Milošević (installed in power in Serbia in 1987) organized throughout Serbia and Serb-populated areas in Croatia and Bosnia-Herzegovina during 1988/89. The demonstrations, displaying previously suppressed Serb national symbols, were called in support of the political unification of Serbia and of the Serbs in the whole of Yugoslavia. Unlike these demonstrations, sponsored by the Communist party of Serbia, the demonstrations of Kosovo Albanians in Prishtina and other towns in Kosovo in protest against Serbian rule over the province and in support of its secession from Serbia were suppressed by force, at times with a loss of life. Milošević's political mobilization of a single national group inhabiting four out of six federal units and his demand for the restoration of Serb political dominance in Yugoslavia seriously threatened the Communist territorial division of political power into federal and sub-federal units and the rule of the established national Communist elites in these units.

16 *Jugoslovenska narodna armija* – Yugoslav People's Army.

17 The future defence minister and, later, the prime minister of independent Slovenia.

In contrast to Serbia and Slovenia, the republics of Macedonia, Croatia, Bosnia-Herzegovina were until 1990 spared large-scale nationalist demonstrations (except in Serb-populated areas of the latter two). But none of the republics was spared industrial unrest and strikes which, due to the rapid fall in the standard of living and sharp rise in inflation, spread throughout Yugoslavia.

Faced with an economic embargo by Serbia on the one hand and with the demand for outright independence by the newly established Slovene opposition parties on the other, Slovene Communist leaders, in September 1989, proceeded to assert Slovenia's sovereignty and its right to self-determination through a set of amendments to the constitution of Slovenia. These amendments, passed by the Communist-controlled parliament, gave the Slovenian government the legal right to nullify any federal laws or directives, to proclaim a state of emergency and to mobilize the Slovenian territorial defense. In spite of this, the Slovenian opposition parties, which in December 1989 formed the coalition DEMOS, easily outbid the Communist party, by calling for Slovenia's full 'disassociation' from the SFRY.

In contrast to Slovenian Communist party leaders, the ruling Communist party leaders in Croatia refused to engage in the nationalist mobilization of the Croats. They were anti-nationalists who, until 1988, systematically persecuted Croat nationalist dissidents. In spite of the Croatian leaders' anti-nationalist policies, in 1988 local Serb notables started to mobilize the Serbs living in the Krajina and Slavonia region of Croatia in support of Milošević's call for Serb reunification within Yugoslavia. One of the focal points of the mobilization of Serbs both in Croatia and Bosnia-Herzegovina were Serb fears of the revival of Ustasha policies of the murder and expulsion of the Serbs. A result of the mobilization was, in 1989, the creation of the principal Serb party, the Serb Democratic Party, in Croatia and in Bosnia-Herzegovina.

The first Croat opposition party, the Croat Democratic Union (its Croat acronym is 'HDZ'), was established in January 1989 by Dr Franjo Tudjman, former Yugoslav Communist general who after 1971 became a leading Croat nationalist dissident. His party's avowed aim was to unite all 'strands' of Croat national thought (including some aspects of the Ustasha ideology) and to repudiate any demand for self-determination of the Serbs in Croatia, calling on them to acknowledge and respect their only homeland – Croatia.[18] It was this party, financially supported by a large number of Croat émigrés, that in 1989 started to mobilize Croats for separate Croatian statehood through a series of mass rallies (Pavković 2000, 101–121).

From the dissident take-over to secession: Slovenia and Croatia

At the extraordinary congress of the Yugoslav Communist party, in January 1990, the Slovenian and Croatian Communist party delegations walked out of the congress,

18 Due, in part, to their high participation in the Communist resistance movement during World War II, Croatian Serbs held a privileged position within the Communist party of Croatia. Although they constituted only 12 per cent of the population in Croatia, until 1971 they held a disproportionately large number of posts in the Communist political hierarchy and managerial class in Croatia.

thus effectively dissolving the only mass political organization which supported the Yugoslav state (Jović 2003, 474–6). Having walked out of the Congress, the Slovenian and Croatian Communist parties changed their names and abandoned Marxism. In spite of the change-over, both lost the first multi-party elections in April/May 1990. In Slovenia, the opposition coalition DEMOS won with 55 per cent of the vote while the coalition led by Tudjman's HDZ, won a majority of the seats in Croatia's parliament with only 44 per cent of the vote. The new governments of Slovenia and Croatia, led by former dissidents, rejected the Communist constitution of Yugoslavia and in a joint document entitled 'A Model of Confederation', published in October 1990, proposed to replace federal Yugoslavia with an alliance of sovereign and independent republics, each with its own armed forces and currency (Antonić 1997).

The negotiations over constitutional re-design, started in the mid-1990s, held first within the Yugoslav state presidency and then among the presidents of the six republics, produced no agreement. Neither the Serbian nor the Croat and Slovene leaders appeared ready to accept the compromise plan by the presidents of Bosnia-Herzegovina and Macedonia, according to which the republics, as members of the proposed 'alliance of republics,' could establish either federal or confederal ties among themselves (Pavković 2000, 125–27).

While negotiating over the constitutional redesign of Yugoslavia, the Croatian and Slovenian governments created a legal and institutional framework for independence; this included enlarging their armed forces (based on the existing territorial defence infrastructure) and arming them with clandestinely imported arms. In December 1990 the Croatian government promulgated a new constitution proclaiming Croatia the state of the Croat nation (thereby demoting the Croatian Serbs, formerly a constituent nation, to minority status) and granting the right to the Croatian parliament to leave SFRY (Trifunovska 1994: 252, 279). At the same time, the Slovenian government organized a plebiscite in which 88 per cent of the voters (in a 93.2 per cent turn out) supported 'independent and sovereign Slovenia.' The Croat independence plebiscite (which the Serbs in Serb-populated Krajina and Slavonia boycotted) took place May 1990: 93 per cent of those voting in it supported a 'sovereign and independent Croatia'.

On 25 June 1991 the Slovenian and Croatian parliaments, in a coordinated move, passed their declarations of independence. On the same day, the Slovenian defense forces without opposition took over the international border crossings to Slovenia and erected border crossings with Croatia. In a well-planned operation, the former blockaded the barracks of Yugoslav federal army in Slovenia and prevented its units from reaching the international border crossings. In response to these attacks, on the orders of the Yugoslav federal government, the Yugoslav federal army moved armored units with air support from Croatia to Slovenia and forced the Slovenian defense forces to withdraw from the international border crossings.

The aim of the Slovenian operation against the Yugoslav army was twofold: to launch a public relations campaign in support of its independence and to trigger an intervention by the European Community (EC) in the conflict. Through the contacts in Germany and other EC states, the Slovenian government established that the EC would only intervene on behalf of Slovenia in the case of a violent conflict (Rupel 1994, 190–1). Using intelligence provided by Slovene officers in the Yugoslav

federal army, the Slovenian defense minister planned to attack this army before the declaration of independence (Janša 1994, 101–13). The Slovenian government presented the conflict to the media as a brutal Communist attack on civilians in a democratic and freedom-loving nation. There were only a few civilian causalities among the Slovenian population; the majority of the casualties were Yugoslav federal army conscripts (around 45 were killed).

The EC intervention: from monitoring cease-fires to granting independence

It took only two days for the EC to respond to the Slovenian request and send a negotiating team which negotiated a cease-fire in Slovenia and an interim settlement called the Brioni accords. The latter, signed on 7 July 1991 by all six republics, introduced a three month moratorium on the independence of Slovenia and Croatia, handed over the international border control to Slovenia's government, lifted the Slovenian blockade of the Yugoslav army garrisons in Slovenia and introduced EC monitors to oversee the ceasefire. On 18 July 1991 the Yugoslav state presidency (without its Slovenian member) unilaterally started to withdraw the Yugoslav army units from Slovenia thus ending the last of its ties with Yugoslavia. The EC intervention effectively secured the new borders of Slovenia and recognized the *de facto* independence of Slovenia and Croatia.

The EC, however, proved unable to stop the fighting in Croatia between the Serb militias and the Yugoslav federal army on the one hand and the Croatian armed forces on the other (see next section). In spite of these failures, in August 1991, following the failed coup in Moscow, EC foreign ministers established the Peace Conference on Yugoslavia, which brought together EC mediators, the Yugoslav state presidency and representatives of the six republics. As no agreement was reached at the Peace Conference on the constitutional re-design of Yugoslavia, the EC Arbitration Commission of the Conference, led by the French jurist Robert Badinter, on 29 November 1991 proclaimed SFRY to be 'in the process of dissolution' and effectively proclaimed the borders among the federal units to be borders among sovereign states (see also Chapter 8).

On 16 December 1991 the EC invited only the federal republics of Yugoslavia to submit requests for recognition within five days. Of the four applicants, Croatia, Bosnia-Herzegovina, Macedonia and Slovenia, the EC Arbitration Commission recommended immediate recognition only of Macedonia and Slovenia. However, under pressure from the German government (which recognized Croatia on 19 December 1991) and the Greek government (which objected to Macedonia's flag and name), on 15 January 1992 the EC Council of Ministers recognized only the independence of Croatia and Slovenia; other states, including the US, followed.

This selective recognition of independence of two former federal units in Yugoslavia did not prevent the subsequent sequential secessions – of Bosnia-Herzegovina, Kosovo, Macedonia and Montenegro[19] – and several recursive secessions from Croatia and Bosnia-Herzegovina.

19 Macedonia's secession from Yugoslavia in 1991 was peaceful as the withdrawal of the Yugoslav federal army was mutually agreed between the Yugoslav army high command and the Macedonian government. Following a referendum on independence in May 2006, which was partly organized and closely monitored by the EU, Montenegro peacefully seceded from the Union of Serbia and Montenegro (formerly Federal Republic of Yugoslavia).

The attempt at secession of Serb Krajina from Croatia

In the municipal elections in 1990, the Serb Democratic Party in Croatia (see above) won 11 municipalities in the Krajina region in which Serbs were in a majority and in several municipalities in Western and Eastern Slavonia in which they were close to 40 per cent of the inhabitants. In July 1990 a large assembly of Croatian Serbs in the town of Srb approved the creation of the Serb National Council and, in response to secessionist legislation of the Croatian parliament, issued a Declaration of Sovereignty and Autonomy of Serb People, asserting the right of self-determination of Serbs in Croatia. In August 1990 Serb militias – using the infrastructure and arms of the territorial defense and of the Yugoslav federal army – prevented the Croatian police from gaining control of these municipalities. In May 1991, in a plebiscite held in the Serb-controlled areas (at the same time as the Croat independence plebiscite), the majority of Serbs voted for remaining in Yugoslavia (Radan 2002, 179). Following Croatia's reiterated declaration of independence and its request for recognition from the EC, on 19 December 1991 the Serb-controlled municipalities in Croatia merged and declared independence from Croatia as the Republic of Serb Krajina. The EC refused to accept an application for recognition of this republic.

The Yugoslav federal army not only protected the Serb-controlled areas from the Croatian armed forces but, by supplying the Serb militias with arms and officers, enabled them to conquer more territory from the Croatian government. To counter this, in August 1991 the Croatian government demanded from the Yugoslav state presidency the withdrawal of all Yugoslav federal army units from Croatia. As the Yugoslav state presidency was split on the issue, in September 1991 Croatian armed forces blockaded over a hundred Yugoslav army garrisons in Croatia, demanding their surrender. In response, the Yugoslav federal army, without the authority of the Yugoslav state presidency, launched an attack on Croatia's forces from Montenegro, Bosnia and Serbia. Facing stiff resistance from the Croat army and volunteers, a high desertion rate and low morale among its own (still multinational) ranks, the Yugoslav federal army concentrated on extending and securing the Serb-held areas and on extricating its forces and equipment from Croatia. In January 1992 the UN special envoy negotiated a cease-fire and replaced the Yugoslav federal army in Serb-held areas of Croatia with UN peacekeeping troops. In May and August 1995, the Croatian army, equipped and trained by the US, conquered these areas, triggering an exodus of almost the entire Serb population (around 150,000 persons) and thus ending the Serb attempt at secession from Croatia (Pavković 2000, 151–54).

Bosnia-Herzegovina: its secession and attempts to secede from it

In the first multi-party elections in Bosnia-Herzegovina, in November 1990, the vote was divided along the national affiliation of voters: the Bosnian Muslim Party of Democratic Action, received 37.8 per cent of the vote (the Bosnian Muslims, who

were later called Bosniaks, constituted 43.5 per cent of the population), the Serb Democratic Party, won 26.5 per cent (the Serbs were 31.3 per cent of the population) and the Croat Democratic Union (HDZ), 14.7 per cent (the Croats were 17.5 per cent of the population). The rest of the vote was shared among ex-Communist parties and other smaller pan-national parties. The Muslim party was led by a leading Islamic dissident, the author of a treatise on Islamic government. The Serb party, like its counterpart in Croatia, was part of the Serb unification movement initiated by Milošević. The Croat party was supported and controlled by its namesake in Croatia. The leaders of the Bosnian Muslim party had found supporters in the governments of Turkey and Saudi Arabia; the latter, with the assistance oftheir ally, the US, provided it with arms and Muslim volunteers during the ensuing war. After the election, the three parties formed an uneasy coalition government while each party consolidated its control over those municipalities in which they had won office. At the outbreak of large-scale fighting in Croatia in August 1991, each party started to organize its own armed forces using the territorial defense infrastructure in their municipalities, supplemented with smuggled arms. The Croat party's forces received arms and volunteers from Croatia, while the Serb forces received heavy weaponry and officers from the Yugoslav federal army as well as volunteers from Serbia.

Following the reiterated proclamations of independence by Croatia and Slovenia on 8 October, on 15 October 1991 the Muslim and Croat parties in the Bosnian parliament passed, with a simple majority, a 'Memorandum of Sovereignty' which effectively seceded Bosnia-Herzegovina from the SFRY. The Serb party proclaimed the Memorandum unconstitutional primarily because it failed to gather two-thirds of the vote of the parliament as required by the republic's constitution then in force. The deputies of the Serb party walked out of the parliament before the vote and established their own parliament outside the capital (Burg and Shoup 1999, 76–9).

The EC Arbitration Commission recommended against the initial application of Bosnia-Herzegovina for recognition, suggesting an independence plebiscite of all the citizens of the republic before recognition could be granted. The Serb party proclaimed the plebiscite unconstitutional and called for its boycott, a call which was heeded by most Serbs. At the plebiscite, on 29 February 1992, out of the 63.4 per cent of registered voters who cast their votes, 99.4 voted for independence. The Muslim-Croat coalition government proclaimed the independence of the republic on 3 March 1992 and the EC and the US recognized it a few days later. Fighting between Serb forces on one hand and Croat and Muslim forces on the other had started a few days before the proclamation of independence. From February 1992 until August 1995 first the EC, then the EC and UN jointly and, finally, a group of 'Great Powers' attempted, unsuccessfully, to negotiate a peace agreement among the warring parties which would re-constitute the split state.

Following the Memorandum of Sovereignty, in November 1991 the Serb party organized a plebiscite of the Serbs in Bosnia-Herzegovina in which, according to the organizers, 98 per cent of the votes (of the Bosnian Serbs) went for the republic of Bosnia-Herzegovina to remain within Yugoslavia. Following the republic's application to the EC for recognition, on 12 January 1992 the Serb parliament, appealing to the right of the Serb people to self-determination, established, out of

Serb-controlled autonomous districts and municipalities, a state which was later renamed '*Republika srpska,*' the Serb Republic. Following the declaration of independence of Bosnia-Herzegovina from Yugoslavia in March 1992, on 7 April 1992 the Serb parliament proclaimed its independence from Bosnia-Herzegovina (Radan 2002, 188–89). Using heavy weaponry from the Yugoslav federal army, in three years of warfare, the military of the Serb Republic conquered almost 70 per cent of Bosnia-Herzegovina. In the course of the conquest, they evicted hundreds of thousands of Bosnian Muslims and Bosnian Croats from the territory under their control. From the beginning of the conflict in 1992, the Bosnian Muslim authorities accused the Bosnian Serb forces of mass rape and of genocide of Bosnian Muslims. As in the cases of Bangladesh and Biafra, the media in the North America and Europe gave wide publicity to the alleged atrocities. In the former two cases, media publicity of the atrocities did not lead to the intervention of outside powers in support of the secessionists. In contrast, media – in particular, television – reports from Bosnia-Herzegovina influenced the decision of the governments of the US and EU member states to intervene, in 1995, in support of the Bosnian Muslim forces (see below).[20]

In the initial stages of the war in 1992, Bosnian Croat militias, supported by the Croatian army, evicted the Serb population and military forces from western Herzegovina and established undisputed control over this region, leading to the proclamation of the independence of the Croat Community of Herzeg-Bosna on 2 July 1992. On 26 July 1994 an autonomous province of Western Bosnia, controlled by a Bosnian Muslim politician who defected from the Bosnian Muslim government in Sarajevo, also proclaimed independence from Bosnia-Herzegovina as the Republic of Western Bosnia (Radan 2002,190–1). None of these three secessionist statelets – the Serb Republic, Herzeg-Bosna or Western Bosnia – gained international recognition but each received support in arms and supplies from the neighboring states: Serbia supported the Serb republic, Croatia supported Herzeg-Bosna and both supported Western Bosnia. During the war in Bosnia-Herzegovina, 1992–1995, each statelet's military forces fought against the Bosnian Muslim army while the forces of the Serb Republic and Herzeg-Bosna also fought against each other.

20 After a year of intensive fighting in Bosnia-Herzegovina, in 1993 the UN Security Council established the International Criminal Tribunal for former Yugoslavia to try persons accused of 'serious violations of international humanitarian law' committed in former Yugoslavia since 1991. Up to 2006 it had tried and convicted high-ranking military officers of Serbian, Croatian, Bosnian Croat, Bosnian Muslim and Bosnian Serb background and indicted Kosovo Albanian military personnel for a variety of war crimes and crimes against humanity. Only Bosnian Serb and Serbian officers and political leaders were accused of genocide, in particular of the acts of genocide against the Bosnian Muslims (Bosniaks) of Srebrenica. While Serbian, Bosnian Croat and Bosnian Serb political leaders have been tried on other similar charges, no Croatian or Bosnian Muslim political leader has been indicted on *any* charges. In other words, the Tribunal was ready to bring to trial the political leaders of the secessionist statelets which were *refused* international recognition and those political leaders from Serbia who supported the non-recognized Serb secessionist states but not the leaders of Croatia and of Bosnia-Herzegovina, the two secessionist states whose independence was internationally recognized. The secession of Slovenia has been excluded from the Tribunal's jurisdiction.

During the war from 1992 to 1995 around 2 million out of 4.6 million inhabitants of Bosnia-Herzegovina were displaced, mostly through forced eviction. Tens of thousands of were killed in military operations, bombing of civilian targets and massacres of civilians. After a year of fighting between the Bosnian Croat and Bosnian Muslim forces, in March 1994 the Croat Community of Herzeg-Bosna was incorporated into a new state entity, the Federation of Bosnia and Herzegovina (comprising only the Croat- and Muslim-controlled territories), created by an agreement which the US government negotiated between the Bosnian Muslim party and the government of Croatia. The Republic of Western Bosnia was overrun in August 1995 by the Bosnian Muslim army and Croatian army in a joint operation with NATO. In the same operation the Croatian army and the Bosnian Muslim forces, together with the NATO ground troops (under the UN flag) and NATO air force, attacked the Serb Republic. Abandoned by their erstwhile supporter, Milošević, the Bosnian Serb authorities ceded territory (from which around 400,000 Serbs fled) and left to Milošević to negotiate a peace settlement on their behalf. In the peace settlement, brokered by the US government, and signed in Paris in January 1996, the Serb Republic became one and the Federation of Bosnia-Herzegovina the other entity in the reconstituted Bosnia-Herzegovina. This confederal union of two entities, each with its own armed forces, was placed under the UN protectorate in which the UN High Representative wielded sovereign powers and the NATO-commanded international force kept peace. Thus NATO forces and the Croatian army ended the attempts at secession of Western Bosnia and of the Serb Republic.

The secession of Kosovo/Kosovë from Serbia

After the Kosovo Albanian demonstrations of 1981 mentioned above, a large variety of clandestine secessionist groups continued to operate in Kosovo. From 1988 to 1990, these groups (together with the Kosovo Albanian Communist cadres purged from the Kosovo Communist party) organized large scale demonstrations and strikes against Serb rule over Kosovo. Responding to the draft of the new constitution of Serbia, which stripped Kosovo of its political autonomy, the Kosovo Albanian deputies of the Kosovo parliament (without their non-Albanian colleagues) declared, in July 1990, the sovereignty of the Republic of Kosovo and its secession from Serbia but not from the Yugoslav 'Federation-Confederation' (Cani and Milivojević 1996, 256). In a semi-clandestine plebiscite of Kosovo Albanians, the declaration received, according to its organizers, 99.87 per cent of the vote in a turnout of 87.01 per cent of all eligible voters (Kostoviceva 1997, 136). Following the repeated declarations of independence of Slovenia and Croatia, on 18 October 1991, Kosovo Albanian deputies declared the independence of Kosovo from Yugoslavia. The EC and other states, however, refused recognition.[21]

The principal secessionist party, the Democratic League of Kosovo, organized a parallel Albanian governmental structure as well as an educational, health and trade union system which was tacitly tolerated by the Serbian authorities in Kosovo. In early 1996, however, a clandestine secessionist group, the Kosovo Liberation

21 Albania was the only state to extend recognition.

Army (KLA) started a campaign of bombing and assassinations against Serb targets and alleged Albanian collaborators of the Serbian government. In early 1998, this campaign turned into a mass armed uprising against Serb rule which, by October 1998, had spread over 40 per cent of Kosovo's territory. However, by the end of the year, the military of Serbia and Montenegro, using heavy artillery and air support, forced the KLA to retreat to the mountainous regions. At that point, a ceasefire monitored by the Organization for Security and Cooperation in Europe (OSCE) allowed the KLA to regain some of the lost territory. As Milošević's regime refused, at negotiations organized by the US and European governments in France, to allow its forces in Kosovo to be replaced by NATO troops, in March 1999 NATO started an air bombing campaign against Serbia and Montenegro. The bombing triggered an exodus of over 700,000 of Kosovo Albanians but, in May 1999, the Serbian/Montenegrin military was forced to leave Kosovo. This led to the return of the Albanian refugees but triggered the flight of over 150 thousand of Serbs and non-Albanians to Serbia. As in the case of Bosnia-Herzegovina, Kosovo became a UN protectorate with a NATO-led force as peacekeepers. But in contrast to Bosnia-Herzegovina, in this case NATO military intervention secured a *de facto* secession: that of Kosovo from Serbia. The conditions of the formal recognition of its independence were being negotiated at the time of the writing in 2006.

The use of force in the secessions from the USSR and SFRY: a comparison

The initial secessions from Yugoslavia and from the USSR were attempts to detach territory and to overthrow a mono-party regime on the territories to be detached. Facing a mono-party regime controlling a superior military force and capable of effectively controlling the secessionist territory, the initial secessionist movements – in Slovenia, Croatia and the Baltic republics – aimed at undermining the capacity of the host state to use military force against them. However, the initial seceders from Yugoslavia and from the USSR differed in:

- the tactics used to neutralize the superior military forces of the central government
- the readiness to use force in the pursuit of their secessionist objectives
- the capacity to use force in that pursuit
- the readiness of the international organizations and their member states to intervene on their behalf.

The question of tactics The secessionist movements in the Baltic republics assisted and provided an example for other secessionist movements in the USSR. The spread of secessionist movements in other union republics undermined both the capacity of the central government to counter these movements by force and the legitimacy of any such attempt. The rapid reduction of the competencies of the central government of the USSR during 1990 (partly as a result of the 'defection' of Russia) left the central government with very few instruments for countering the secessionist movements and an uncertain command of the armed forces. By January 1991 the initial seceders – the Baltic republics – were capable of mobilizing large numbers of their citizens in