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TITLE: THE "CONSTITUTIONAL
AGREEMENT" ON BOSNIA
AND HERZEGOVINA

AUTHOR: Robert M. Hayden
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**THE NATIONAL COUNCIL
FOR SOVIET AND EAST EUROPEAN
RESEARCH**

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THE "CONSTITUTIONAL AGREEMENT" ON BOSNIA AND HERZEGOVINA

Robert M. Hayden, J.D., Ph.D.
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EXECUTIVE SUMMARY

The "Constitutional Agreement on a League of Republics of Bosnia and Herzegovina," accepted by all three sides in July and the key to the peace plan offered by the international mediators, is a constitutional illusion. The supposed Bosnian state would have responsibility for foreign affairs but no authority within its own territory, a situation once described by Alexander Hamilton in Federalist Paper no. 6 as "the mere pageantry of mimic sovereignty." Further, the joint institutions of the "League" could all be blocked by republican veto. Finally, even if the "government" of the League agreed to do something, it would have no executive organs or powers with which to act. Thus the "League of Republics of Bosnia and Herzegovina" would exist only on paper, with no government, and no internal authority.

This constitutional absurdity is a recognition of political reality. The elected political leaders of the Bosnian Croats and Serbs have no interest in creating a joint state with each other or with the Muslims, but rather wish to join large parts of what had been the Socialist Republic of Bosnia and Herzegovina within Yugoslavia to the new nation-states of Croatia and Serbia. The recognition of Bosnia and Herzegovina as an independent state, when by the standards that the European community had applied to justify de-recognition of the former Yugoslavia it was in a "state of dissolution," was an attempt to prevent the Croat and Serb annexations of large parts of the territory of Bosnia and Herzegovina. As such, the recognition of Bosnia and Herzegovina was based on negative sovereignty, done not because its people wanted to build a common state but rather to thwart the will of the large segments of its population which rejected it.

The constitutional mirage of a fictive "League" of republics of Bosnia and Herzegovina is useful to the Croats and Serbs, who can accomplish the annexations de facto that they are denied de jure. It is also useful to the international community, which can pretend that Bosnia and Herzegovina still exists when it has, in fact, been dismembered by the actions of large segments, perhaps a majority, of its putative citizens, albeit with help from Croatia and Serbia.

The constitutional charade of a Bosnian "League" illustrates the political error of recognizing a "limited right to self determination" within republican borders, when the other republics were justified as the homelands of separate ethnic nations. Bosnia and Herzegovina had no majority and thus could not be the homeland of any nation unless the peoples who lived there chose to define themselves as "Bosnians." They did not do so in the 1990 elections, and once an independent Croatia and an independent Serbia were formed from Yugoslavia, the Croats and Serbs rejected the limitation, preferring to join Croatia and Serbia rather than maintain a joint state of Bosnia and Herzegovina.

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The first round of the latest Geneva talks on Bosnia and Herzegovina ended at the end of July with acceptance by all three sides of a "Constitutional Agreement on a League of Republics of Bosnia and Herzegovina."¹ This Agreement formed the basis for the comprehensive plan that the mediators offered to all parties on 20 August. At first glance, implementation of this Agreement would establish Bosnia and Herzegovina as one state composed of three "constituent republics." This League would maintain a single membership in the United Nations (Art. I,1), and the constituent republics could not join international organizations or become parties to international agreements if doing so would be "contrary to the interests of the League or of any other of the constituent republics" (IV,1[b] and IV,2[d]). Further, the Agreement provides for "joint institutions of the League of Republics of Bosnia and Herzegovina" (§ III): a collective Presidency (III,1), a Government (III, 2), a Parliament (III, 3), and a Judiciary consisting of a Supreme Court (III, 4[1]), a Constitutional Court (III,4[2]) and a Court for Human Rights (III, 4[3]).

Appearances are deceiving, however. In fact, the "Constitutional Agreement" would provide virtually no authority within its own territory to the state that it would supposedly constitute, except for the determination of citizenship rules and the creation of state symbols. Further, it provides no mechanism except unanimous republican consent for making decisions within the parliament of the supposed state (III,3[b]), or by consensus in the Presidency (III,1[c]), which are provisions for blocking decision, not reaching it. Thus press references to a "weak central government"² are misleading. If the term "government" is to retain any meaning, it cannot be applied to the joint institutions of the proposed "League of Republics of Bosnia and Herzegovina."

As a constitutional document, this "Agreement on a League of Republics of Bosnia and Herzegovina" is, therefore, bizarre. In purely constitutional terms it is a document worthy of a zen master, the concept of a state without authority on its own territory being comparable in its subtlety to the sound of one hand clapping. The "League of Republics of Bosnia and Herzegovina" might be compared to a hologram, the light picture that seems to have three dimensions and thus to be tangible, but is only a mirage. Alexander Hamilton's 1787 description of the United States under the Articles of Confederation, by which the central government had no authority independent of or superior to the states, is also apt: such a "state" is actually without a government, its ambassadors abroad "the mere pageants of mimic sovereignty."³ The Constitutional Agreement provides the script for this pageant.

Yet this kind of constitutional illusion is not new in the Yugoslav crisis. The "Constitutional Agreement on a League of Republics in Bosnia and Herzegovina" is only the latest in a series of proposed constitutional mirages that have been suggested in the former Yugoslavia since 1989, comparable to the confederal proposal for the former Yugoslavia offered by the Presidencies of Croatia and Slovenia in October 1990 and the "Platform for a Future Yugoslav Community" put forth by the Presidents of Macedonia and

Bosnia and Herzegovina (the latter, ironically enough, Alija Izetbegović) in early June 1991. Looking at the "Constitutional Agreement on a League of Republics of Bosnia and Herzegovina" in comparison with these other two documents may thus provide a way of reassessing some elements of the political machinations that broke up the Yugoslav federation.

THE CONSTITUTIONAL MIRAGE

An essential element of a constitution is the allocation of authority: which powers are given to the joint body and which reserved for the constituent units. Modern constitutions have approached this problem in different ways. Thus the American constitution (1787) grants specific powers to the federal government (Art. I § 8), reserving all others to the states (Amend. 10). The Constitution of India (1950), on the other hand, grants some powers only to the federal government, some only to the states, and makes some shared (Arts. 245 and 246). However, the Indian Constitution also specifies that the federal parliament has the power to make laws on all matters not specifically reserved for the states (Art. 248), the reverse of the American position. The Constitutional Agreement for B&H seems to follow the American model: "All governmental functions and authority, except those given by this constitutional agreement to the League of Republics of Bosnia and Herzegovina or to any of its institutions, will be those of the constituent republics" (II,3). However, the Constitutional Agreement gives authority and functions to the League and its institutions only as follows:

- The Parliament is to adopt a flag and coat of arms (I,2);
- The Parliament is to adopt a law regulating citizenship (I,3[a]); however, decisions regarding citizenship in individual cases are to be made by the authorities of the constituent republics, with a right of appeal to "the competent court." (I,3[d]). Presumably, such a court of first instance would also be at the level of the constituent republic, perhaps with an ultimate right of appeal to the League's Supreme Court.
- The Parliament may approve the formation of "joint bodies" by two or more republics. If it does not do so, however, such "joint bodies" cannot be formed (III,5).
- The President of the Presidency, a position that will rotate every four months, "represents the League" (III,1[b]).
- The Premier, the Minister for Foreign Affairs, and "other [unspecified] ministers appointed by the Presidency" form a Council of Ministers, with responsibility for the League's policies in regard to foreign affairs, international trade and the functioning of joint institutions, "and for all other functions and institutions that the Parliament may from time to time establish by statute" (III,2[d]).
- The Parliament will approve, on the recommendation of the Premier and with the approval of the Presidency, a yearly budget for joint functions and institutions. In case such a budget cannot be passed, the budget for the previous year will be used.

-- Courts: a Supreme Court, as court of final appeal from courts of the constituent republics (III,4[1]); a Constitutional Court, for resolving disputes between republics or between any of them and the League (III,4[2]); a "Court for Human Rights."

This is a breathtakingly restricted grant of authority, explicitly only to state symbols, citizenship, foreign trade and foreign policy.⁴ However, even these few powers are limited by the requirement of unanimous republican consent to their exercise. Thus the Parliament could only pass laws "by a simple majority of the delegates from each constituent republic" (III,3[b], emphasis added). The Presidency, which would consist of one representative from each republic (III,1[a]) must make its decisions "by consensus" (III,1[c]). Both provisions establish the right of each republic to veto any proposed action. Even if the Parliament and Presidency agreed to do something, however, their ability to enforce their enactments would be minimal. No provision is made for any central administrative or police forces, and there would be no army in this supposed state (I,4).

Thus the grant of authority to the "League of Republics of Bosnia and Herzegovina" boils down to being able to do whatever the constituent republics agree upon, unanimously, to do. Yet in that case, what need is there of the "League?" The republics can always do what they unanimously agree to do even without the League, although standing quasi-administrative institutions might facilitate joint action. A joint government is needed to structure decision making when there are disagreements between the republics. The "Constitutional Agreement" provides no such structure, of any kind, at any level, within the League itself.

The flaws of such a "league" of independent states are well known, beginning with the classic document of American political theory, the Federalist Papers (1787), and pointed out in regard to the de facto confederalism of Yugoslavia under the 1974 constitution by the first wave of post-Tito criticism of socialist self-management.⁵ The critics of confederation in Yugoslavia, who argued that a purely consensual union of independent states as intertwined as the republics and provinces there would lead to conflict and not consensus, saw their arguments confirmed, tragically, by the events of 1989-91. Like the "Constitutional Agreement" for B&H, the 1974 constitution of Yugoslavia required unanimity in decision making and provided for no federal administrative authority. At the best of times, this unwieldy structure produced a politics of confrontation between the republics, in which each threatened to veto joint actions until its own demands were met, a process that the Yugoslav political scientist Slobodan Samardžić called "combatative federalism."⁶ By 1989-90, however, this "combatative federalism" collapsed into confederalism, in which the various republics, beginning with Slovenia in September 1989, denied any binding authority to the federal government.⁷ In 1991 the result of this confederalization of the federation was exactly as predicted for such a situation by the authors of The Federalist Papers (nos. 6-10):⁸ the disintegration of the country into civil war and ultimately partition into states defined primarily by their hostility to each other.

The kinds of problems that the League of Republics of Bosnia and Herzegovina might face can be envisioned by looking at the possibilities for deadlock provided by the Constitutional Agreement, with reference to similar events in the former Yugoslav federation after 1989. Any republic could block any and all legislation, as Serbia, Slovenia and Croatia did at various times in 1990. Until all republics agree on a flag, there will be no flag -- which could mean that there is never a flag. Until all agree to the budget, there is no budget; and if there is no budget the first year, there is no constitutional way to finance the supposed League, since there would be no budget from a previous year to use. In regard to citizenship, the Agreement provides that "any person who has the right to be a citizen of the Republic of B&H at the time that this decree comes into force has the right to be a citizen of a republic and of the League of Republics of B&H" (I,3[b]). However, until the republics agree on a new citizenship law, there will be none; and there is little reason to think that they will agree on such a law, preferring instead, like the former Yugoslav republics, each to write their own. So much for legislative "power." In regard to other provisions, the Presidency must by consensus name a Premier and other ministers. Unless and until there is consensus, there is no government. Even if a Premier is appointed, his or her term can only run for one year, after which he or she must be replaced in a rotation system similar to that of the former Yugoslav Presidency, and which could therefore be blocked, as Serbia blocked the rotation of Croatia's Stipe Mesić to be President of the Presidency in 1991.

From all of this, we may sum up the Constitutional Agreement as creating an empty shell, with virtually no authority granted to its supposed organs, and with a variety of mechanisms to block decision making and none whatever to facilitate it. This is not a system of separation of powers, but rather of the complete absence of power within the supposed League.

QUASI-SOVEREIGNTY

There is one mechanism for making decisions in regard to the affairs of the League of Republics of B&H, but it requires submitting disputes to an authority external to the League and its constituent republics. The Constitutional Court would have three judges, appointed by the Presidency, no two of whom could be from the same constituent republic, who would be required to decide, by consensus, disputes between constituent republics or between the League and one or more republics (III,4[2]). However, in cases in which the court could not sit, or was not able to decide a case, it would be submitted to the "binding decision of a permanent arbitration committee composed of judges from the International Court of Justice, or of members of a standing court of arbitration, of which each republic would appoint one judge and the Presidency two; or, if the Presidency is not able to do so, by the Secretary General of the United Nations and the Council of Ministers of the European Community" (III,4[3]). These provisions provide a mechanism for political entities external to the League to impose decisions upon constituent republics within it. They thereby violate established concepts of sovereignty, whether defined, as Abraham Lincoln did, as "a political community without a political superior,"⁹ or, as often in international law, as a state not subordinate to another sovereign. Since the League would be required to submit an internal dispute to external adjudication, it must be subordinate to the external authorities, who are thereby its

political superiors, and thus the League would be quasi-sovereign: empowered to resolve its own political disputes except, presumably, the most important ones, since those are the ones on which consensus would be least likely.

This quasi-sovereignty could lead to the ultimate negation of sovereignty, the imposition of foreign military control over part of the territory of the League. Imagine that that Arbitration Committee rules against a republic, which refuses to comply. Since the League would itself have no military force, enforcement would have to come from external powers. Or, the "international community" could declare the offending constituent republic of the League to be, somehow, in violation of its (whose?) decisions and thus subject to sanctions. But at that point, the entire Constitutional Agreement would be violated, since it is based on unanimous consent. Without the consent of the offending republic, the League cannot function; nor can any of its republics form "joint bodies" without the consent of the Parliament (III,5), which requires the consent of the third republic (III,3[b]), which in this scenario is very unlikely to be forthcoming. So the decision of the Arbitration Committee, which would require consent of a republic not wishing to give it, would vitiate the very Constitutional Agreement that gave it authorization to decide. At that stage, the international community would have either to mount a war of conquest to incorporate the offending republic into B&H despite its lack of consent and thus contrary to the terms of the Constitutional Agreement, or recognize that the supposed League is an empty shell. In either case, the supposed sovereignty of the League disappears.

NEGATIVE SOVEREIGNTY

Mr. Vance and Lord Owen deemed it necessary to reject any model based on three separate, ethnic/confessionally-based states. ... A confederation formed of three such States would be inherently unstable, for at least two would surely forge immediate and stronger connections with neighbouring States of the former Yugoslavia than they would with the other two units of Bosnia and Herzegovina. Report of the Co-Chairmen on Progress in Developing a Constitution for Bosnia and Herzegovina, October 27, 1992.¹⁰

From the foregoing analysis, it is clear that the Constitutional Agreement on a League of Republics of Bosnia and Herzegovina cannot be meant to be a structure for any workable joint state. But this constitutional absurdity is a recognition of political reality. The problem is that the elected political leaders of the Serbs and Croats of Bosnia and Herzegovina have no interest in creating such a joint state,¹¹ but rather wish to join large parts of what had been the Socialist Republic of B&H within Yugoslavia to the new, post-Yugoslavia nation-states of Serbia and Croatia, as Vance and Owen acknowledged in October 1992 in the statement accompanying the first version of their peace plan. The recognition of Bosnia and Herzegovina as an independent state, when by the standards the European Community applied to justify their derecognition of the former Yugoslavia it was in a "process of dissolution,"¹² was meant to forestall the Serb and Croat Anschlusser of large areas of B&H. This attempt failed, with these Anschlusser accomplished the way Vance and Owen

foresaw that they would be, through "enforced population transfers" to achieve "homogeneity and coherent boundaries" of the new nation-states.¹³

It is, in fact, best to look at the entire international effort to maintain the fiction of a single Bosnia and Herzegovina as an exercise in negative sovereignty. The point of refusing to accept the disintegration of Bosnia is not to preserve the state for a citizenry that defines itself as a multi-ethnic Bosnian nation, for it is clear that few now do so. Instead, the point is to deny to the large Serbian and Croatian parts of the population who reject the putative B&H state their desire to remove themselves from it, along with much of its territory. The motivation for this course of action may be noble, since the process of separating the intertwined populations of B&H has been as brutal as Vance and Owen feared it would be when they rejected initially the idea of dividing B&H into three ethnic republics. The result, however, is the imposition of a state on many, perhaps even a majority, of its putative citizens against their wishes. This is negative sovereignty: legal and diplomatic recognition of a state not because its people have shown a willingness to build it, but precisely because large segments of its population have no wish to do so.¹⁴

CONFEDERATIONS, LEAGUES AND OTHER PROPOSED CONSTITUTIONAL ILLUSIONS IN YUGOSLAVIA SINCE 1989

Despite the fact that the international recognition of the League of Republics of Bosnia and Herzegovina would be aimed at thwarting their plans to annex formally large parts of its territory to Serbia and Croatia, the Constitutional Agreement has great utility to the Serb and Croat leaders who reject B&H. Since the League would have no authority within its territory, the Serbian and Croatian republics in B&H would be able to accomplish de facto what they are prevented from doing de jure: forming "immediate and stronger links" with their "mother republics" than with the other units of the League of Republics of B&H. Thus the fiction of a League of Republics of B&H becomes as useful to the Serbs and Croats as it is to the "international community." The latter can pretend that B&H still exists, when in fact it has been partitioned, while the Serbs and Croats can complete the incorporation of their regions into the mother republics while pretending that they are not doing so.

Both the fictive nature of the supposed League and the utility of this fiction to various parties within and outside of the putative Bosnian state suggest that similar proposals for "confederations" or "loose federations" in Yugoslavia after 1989 might bear re-examination. Thus the "Confederate Model Among the South Slavic States" proposed by the Croatian and Slovenian Presidencies in October 1990, often referred to as a mechanism that was offered in an attempt to keep Yugoslavia together,¹⁵ looks, on close examination, to have been as illusory as the Constitutional Agreement for Bosnia and Herzegovina.¹⁶ While this confederacy would have had an Advisory Parliament, a Council of Ministers and a Confederate Court, a close reading of the document reveals that none of these joint institutions would have had the authority to do anything at all without unanimous consent of the republics, any one of whom could withdraw its consent, or for that matter withdraw completely from the confederacy, at any time. Thus there would have been no binding authority in this non-state. Remembering the legal principle that a promise that is not

binding is not, in fact, a promise, one wonders what value this association of republics not bound to each other in any way could have had.

The Presidents of the Republics of Macedonia and Bosnia put forth a "Platform for the Future Yugoslav Community" in early June 1991¹⁷ that was similarly weak. While this Platform referred to institutions such as a parliament, collective presidency and ministerial council, all would be subject to republican veto by a requirement of unanimous decision-making. Unlike the Croatian-Slovenian model, the Bosnian-Macedonian platform envisioned "bodies and means for effective and even execution of common functions in all republics," a provision that made it unacceptable to the Croats and Slovenes. But the proposed "Community" would have been a charade, since each republic could have sought international recognition and membership in international organizations. Thus this proposal, too, amounted to a plan to dismantle Yugoslavia while pretending to preserve it.

The European Community weighed in in October 1991, with a proposal for a "weak union" or "association" of republics.¹⁸ This "union" or "association" also envisioned no binding authority or institutions with binding jurisdiction, and provided for the international recognition of all republics desiring it. Thus this proposal, too, was a constitutional farce, proposing no mechanisms for government of an "association" that would not have been, in any event, a state.

These various proposals were resisted by the federal Presidency in early 1990, by the Federal Executive Council under Ante Marković through 1991, and by the Republic of Serbia at all times. All proposed the retention of some form of federal system, in order to ensure the state continuity of Yugoslavia and the existence of some effective means of government for collective purposes.

While Ante Marković made his proposals as matters of principle and was consistent in his desire to avoid the disaster that in fact did follow the confederalization of Yugoslavia, the Serbian and Bosnian Muslim positions are more curious. The same Serbian leadership that rejected the confederation of Yugoslavia because it would destroy that state has consistently supported the confederation, and hence dismemberment, of B&H. At the same time, the President of the Presidency of B&H, Alija Izetbegović, who supported the confederalization, and hence dismemberment, of Yugoslavia in 1991, has rejected proposals for the confederalization of B&H, saying that it would dismember the state. The "international community" has at least been consistent, since its options for both Yugoslavia in 1991 and B&H in 1992-93 have all been confederal,¹⁹ offering no mechanisms for internal governance, and proposing "associations" far less binding than those in which the members of the European Community now function. It may be that the EC's members, mesmerized by Maastricht, were indeed so "far gone in Utopian speculations" as to "seriously doubt that if these States should either be wholly disunited, or only united in partial confederacies, the subdivisions into which they might be thrown would have frequent and violent contests with each other."²⁰ On the other hand, it seems also possible that a

relatively short set of political motives can explain the actions of all parties and their support, at different times, for options that they rejected earlier.

1. Confederalists: proposals for confederation of a federation have been initiated by those parties within the existing federation who wished to destroy it. Thus the Slovenes and Croats pioneered the idea of confederation in Yugoslavia in 1989-90, to be joined by the Macedonians and Bosnian Muslims when it appeared that the "international community" had accepted the dismemberment of Yugoslavia, in 1991. The Serbs and Croats promoted confederation in 1992-93 as a means to destroy Bosnia. This principle could also be applied to the American confederalists in 1860-61, and to others, such as the Bengali politicians who offered a "confederation" of East and West Pakistan in 1971 as a stepping stone to complete independence for what became Bangladesh.²¹

The support of external political actors for the chimera of confederation is less clearly explainable, but seems based on the need to cloak a pragmatic decision in deceptive advertising. Presumably the Europeans and Americans were aware that "confederation" means dismemberment, but chose to view the confederal mirage as real once convinced that a recognized state (Yugoslavia in 1991, Bosnia in 1993) was not, in fact, viable. Confederation could have maintained the fiction, at least briefly, that a member state of the United Nations (indeed, in the case of Yugoslavia, a founding member) had not been destroyed.

2. Federalists: confederation was rejected by those with the most to lose in the dismemberment of the joint state, the Serbs in Yugoslavia (1990-91) and the Muslims in Bosnia (1992-93). In many ways, their situations were similar: pluralities in the state that they regarded as their own, likely to see large numbers of their co-nationals left as despised minorities stranded outside of their new state borders if partition were to occur, with their remaining territory in an unfavorable geopolitical position. Further, at a time when the other Yugoslav peoples were achieving their goals of building nation-states based on the principles of constitutional nationalism, or state chauvinism,²² it was surely impossible for the Serbian and Bosnian Muslim leaderships to survive politically were they to abandon their own peoples' long-held dreams. Thus both leaderships, elected like all other leaders in the formerly Yugoslav republics in the free elections of 1990 on nationalist platforms rather than democratic ones, led their peoples to disaster.

FROM "LIMITED" SELF-DETERMINATION TO NEGATIVE SOVEREIGNTY

The justification for recognizing the independence of the various Yugoslav republics was the right to self-determination. However, the international community that acceded to this principle made a logical error in attempting to recognize a right of "limited" self-determination, "namely, the right of the citizens of the individual Yugoslav republics to decide democratically within the framework of existing frontiers ... whether and to what degree their republics should be part of a Yugoslav state."²³ The logical lapse was the failure to recognize that the justification for the establishment of the republics themselves was state chauvinism, with each republic as the Heimat of its majority nationality, which, in turn,

was the bearer of sovereignty.²⁴ Since Bosnia and Herzegovina, like Yugoslavia itself, had no majority population, it could not be any nation's homeland unless the separate peoples of B&H chose to imagine themselves as one community. This they did not do, voting overwhelmingly for separate Muslim, Serb and Croat nationalist parties in the 1990 elections, thus partitioning themselves politically in a way that led directly to the partitioning of the country.²⁵ Once the supposedly "limited" right to self-determination was recognized for the majority nations in the other republics, the Serbs and Croats of B&H applied it to themselves without limitation, choosing to join their mother republics rather than remain in B&H. The Constitutional Agreement on B&H lets them do this in all but name. International insistence on the facade of B&H is the last manifestation of negative sovereignty, a symbolic rejection of the right of so many of the citizens of B&H to self-determination. As such, it shows the naivete of the original attempt to recognize a "limited" right to self-determination.

NOTES

1. Ustavni Sporazum o Savezu Republika Bosne i Hercegovina. My analysis throughout this paper is based on an unofficial Serbo-Croatian translation of this document as published in Borba (2 August 1993, p. 9). Article numbers indicated in the paper are those in the Borba version, by Roman numeral to indicate the seven major sections of the agreement, and Arabic number to indicate the "article" within each section.

2. E.g., New York Times, 20 August 1993, p. A-4.

3. James Madison, Alexander Hamilton and John Jay, The Federalist Papers, no. 15.

4. A wider grant of power might be seen in the provision giving the Government responsibility for "all other functions and institutions" that the Parliament may establish (emphasis added). However, this wider authority seems dubious conceptually, since it would amount to a grant of unlimited power to the League parliament, which is counter to the logic of the entire document. In any event, politically it is unlikely to matter, since any republic could veto any such extension of central power.

5. See, e.g., Jovan Mirić, Sistem i Kriza (Zagreb: Cekade, 1984); Vojislav Stanovčić, Federalizam/ Konfederalizam (Titograd: Univerzitetska Riječ, 1986); Pavle Nikolić, Federacija i Federalne Jedinice (Belgrade: Službeni List, 1989). These weaknesses were also pointed out by members of the Belgrade University Law Faculty in a public discussion of the 1971 amendments to the federal constitution that confederalized Yugoslavia. The papers from that discussion were printed in the Law Faculty's journal, Anali, which was then banned and not made available until December 1990. The analyses of the potential for the confederalized Yugoslavia to disintegrate were prescient.

6. Slobodan Samardžić, Jugoslavija pred iskušenjem federalizma (Beograd: Naučna Knjiga 1990), and ibid., "Dilemma of Federalism in Yugoslavia -- Problem of Sovereignty in a Multinational Federation," Praxis International 11:377-386 (1991).

7. See Robert M. Hayden, "The Beginning of the End of Federal Yugoslavia: The Slovenian Amendment Crisis of 1989" (University of Pittsburgh Center for Russian and East European Studies, The Carl Beck Papers no. 1001 [1993]), and Samardžić, "Dilemma of Federalism in Yugoslavia."
8. At least one such cause of war was seen by Alexander Hamilton in Federalist Paper no. 6 as lying "in the attachments, enmities, interests, hopes, and fears of leading individuals in the communities of which they are members. Men of this class, whether the favorites of a king or of a people, have in too many instances abused the confidence they possessed; and assuming the pretext of some public motive, have not scrupled to sacrifice the national tranquility to personal advantage or personal gratification." Noting that the politicians who sacrificed the national tranquility of the citizens and peoples of Yugoslavia remain in power, we might only amend Hamilton to read "whether the favorites of 'the working class' or of 'the nation.'"
9. Abraham Lincoln, "Message to Congress in Special Session," July 4, 1861; in Abraham Lincoln: Speeches and Writings, 1859-1865 (New York: Library of America, 1989), p. 256.
10. International Conference on the Former Yugoslavia, document STC/2/2, pp. 4-5.
11. See Robert M. Hayden, "The Partition of Bosnia and Herzegovina, 1990-1993," RFE/RL Research Report, May 28, 1993.
12. Ibid., p. 6, note 11.
13. Vance and Owen, Report of the Co-Chairmen, October 27 1992, page 4.
14. My use of the term "negative sovereignty" is thus different from that of Robert Jackson, who uses this phrase to denote the right of a state to be free of outside interference (Quasi-States: Sovereignty, International Relations and the Third World [Cambridge: Cambridge University Press, 1990], p. 27).
15. See, e.g. Mark Thompson, A Paper House: The End of Yugoslavia (New York: Pantheon, 1992), pp. 188-189.
16. See Robert M. Hayden, "A Confederal Model for Yugoslavia?", paper presented at the annual meeting of the American Association for the Advancement of Slavic Studies, Washington, DC, 22 October 1990. The text of this "Confederate Model" was published in English translation in Review of International Affairs, October 20, 1990.
17. Borba, June 4 1991, p. 10; the text was printed in English translation in Review of International Affairs, June 20, 1991.
18. Borba, 19-20 October 1991, p. 2; 25 October 1991, pp. 16-17.

19. The Vance-Owen plan for B&H, like the Constitutional Agreement, envisioned no effective joint forms of government. See Hayden, "The Partition of Bosnia and Herzegovina, 1990-93," pp. 9-11. Vance-Owen failed not because its constitutional provisions were unacceptable to Serbs and Croats, but rather because its proposed geographical division was unacceptable to Serbs.
20. Federalist Paper no. 6 (Alexander Hamilton), 1787.
21. See Richard Sisson and Leo Rose, War and Secession: Pakistan, India and the Creation of Bangladesh (Berkeley: University of California Press, 1990).
22. Robert M. Hayden, "Constitutional Nationalism in the Formerly Yugoslav Republics," Slavic Review 51: 654-673 (1992).
23. "Recognition of the Yugoslav Successor States," position paper of the German Foreign Ministry, Bonn, March 10, 1993.
24. The constitutions of the various formerly Yugoslav republics justify the existence of the state on the "right to self-determination" of each ethnically-defined nation [narod], rather than on any wish to build a democratic state of citizens. See the preambles of the constitutions of Croatia (1990), Macedonia (1991), Montenegro (1992), Serbia (1990) and Slovenia (1991). Bosnia and Herzegovina was never able to enact a new constitution.
25. Hayden, "The Partitioning of Bosnia and Herzegovina, 1990-93."

