


ORIGINAL ARTICLE

# Conflicting Legal Perspectives on the Establishment of Kingdom of Serbs, Croats, and Slovenes

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## Abstract

The analysis delves into the complex legal intricacies surrounding the establishment of South Slavic state entities post-World War I, as international law of the time didn't fully encompass modern legal instruments defining international relations subjects. Nonetheless, legal arguments affirm the statehood of the State of SCS, formed within the former Austro-Hungarian Empire through legitimate representative bodies, despite lacking formal international recognition. The Croatian state transitioned governance under the National Council of SCS without abolishing its institutions. The analysis of the "December 1st Act" highlights procedural violations during the forming of the Kingdom of SCS, indicating a deviation from authorized scope, though it did not render the new state's government illegitimate. The negotiating process favored Serbian authorities, evident in the "Vidovdan" Constitution, yet it doesn't suffice to claim the State of SCS was annexed by the Kingdom of Serbia. Legally, there's little ambiguity, but disputes in international legal rulings and interpretations uncover internal political tensions and external pragmatic influences.

World War I led to the crystallization of various South Slavic state visions that often contradicted each other, rooted in fundamental geopolitical determinants. For instance, certain Slovenes and Croats held high expectations for the preservation of the Habsburg Monarchy. Within it, they aspired to establish a distinct Croatian or a more extensive South Slavic entity that would be on par with the Austrian and Hungarian components.<sup>1</sup> At the same time, the political leadership of the Kingdom of Serbia, following the coup in 1903, perceived the Habsburg Monarchy as the main threat to their state visions.<sup>2</sup> While

<sup>1</sup> René Gonnard, "Le trialisme: Le point de vue slave et le point de vue autrichien," *Revue politique et parlementaire: questions politiques, sociales et législatives* 10 (1912): 223–44.

<sup>2</sup> Edislav Manetovic, "Ilija Garasanin: Nacertanije and Nationalism," *The Historical Review/La Revue Historique* 3 (2006): 137–73.

entertaining the notion of incorporating Croatian and Slovenian territories, the latter categorically rejected any prospect of subordination to the Habsburg state framework<sup>3</sup> and declined participation in a South Slavic state with a Catholic majority. This implied a willingness to accept only a state centered in Serbia and under the control of the ruling Serbian political elite.

The diverse visions of the future found expression in the legal and political documents published by various factions during World War I. On one side, the primary tenets of the May Declaration of 1917 emphasized the Habsburg state framework<sup>4</sup> and the historical rights of the Croatian state,<sup>5</sup> while on the opposing side, the rule of the royal Karađorđević dynasty<sup>6</sup> was underscored as a prerequisite for a unified state. Even if we entertain the claims of certain historians suggesting that the reference to the Habsburgs in the May Declaration was merely a tactical and insincere provision,<sup>7</sup> the concept of Croatian state rights undoubtedly formed the bedrock of much of the Croatian political groups' vision for the future state of Croats. This, however, contradicted the fundamental paradigm of Serbian state ideals.<sup>8</sup> These contradictions persisted throughout the Kingdom of Serbs, Croats, and Slovenes (Kingdom of SCS; in 1929 renamed in the Kingdom of Yugoslavia).

This article aims to illustrate how these differing perspectives clashed in the legal realm, commencing with the interpretation of the act that shaped the post-war state. The initial section offers a concise overview of the international circumstances that facilitated the establishment of the State of Slovenes, Croats, and Serbs (State of SCS) and its amalgamation with the Kingdom of Serbia. It then scrutinizes the political responses and interpretations of the December 1st Act in international legal proceedings and among contemporary international legal and constitutional experts, with the objective of assessing divergent viewpoints on the legal continuity or discontinuity between the Kingdom of Serbia and the Kingdom of SCS.

## Post-War Circumstances and the Significance of the Geneva Declaration\*

The final configuration of the South Slavic state was significantly influenced by the outcomes of World War I, disrupting the existing balance of power in the

<sup>3</sup> Ferdo Čulinović, *Tri etape nacionalnog pitanja u jugoslovenskim zemljama* (Zagreb: Jugoslavenska akademija znanosti i umjetnosti, 1962), 24–25.

<sup>4</sup> Janko Prunk, Cirila Toplak and Marjeta Hočevar, *Parlamentarna izkušnja Slovencev* (Ljubljana: Fakulteta za družbene vede, 2006), 72.

<sup>5</sup> Hodimir Sirotković and Lujo Margetič, *Povijest država i prava naroda SFR Jugoslavije* (Zagreb: Školska knjiga, 1988), 224.

<sup>6</sup> Andrej Mitrović, *Istorija srpskog naroda. Knjiga šesta. Od Berlinskog kongresa do ujedinjenja 1878–1918* (Beograd: Srpska književna zadruga, 1983), 41.

<sup>7</sup> Walter Lukan, Iz “črnožolte kletke narodov” v “zlato svobodo”? *Habsburška monarhija in Sloveni v prvi svetovni vojni* (Ljubljana: Znanstvena založba Filozofske fakultete, Zveza zgodovinskih društev Slovenije, 2014), 85.

<sup>8</sup> Prunk, Toplak and Hočevar, *Parlamentarna izkušnja*, 78.

broader international community.<sup>9</sup> At the war's conclusion, the Croatian political elite found itself divided, yet the ideal of a Croatian state was fervently embraced by numerous political groups, extending beyond the Party of Right.<sup>10</sup> It is noteworthy that during the period of the so-called "new course" politics, there was a strengthening trend of the Croatian-Serbian Coalition (Hrvatsko-srpska koalicija—HSK). However, for many Croatian representatives within the Coalition, the primary objective was the legal and territorial unification of Croatian regions, seen as the foundation for potential integration with other South Slavic territories within the Habsburg Monarchy. This sentiment was articulated during a meeting of politicians from Croatia-Slavonia, Dalmatia, Bosnia and Herzegovina (BIH), Istria, Međimurje, and Carniola held on March 3, 1918, in Zagreb. They advocated for the establishment of an independent state of Slovenes, Croats, and Serbs as a state of Slovenes, Croats, and Serbs without Serbs from Serbia. Political organizations in Dalmatia, the Croatian Littoral, and Istria also prioritized the unification of Croatian territories before any broader South Slavic community.<sup>11</sup>

Simultaneously, a certain faction of these politicians clandestinely hoped that the Habsburg authorities would obstruct the realization of certain elements of the political program that had attracted Serbian political representatives into HSK. This included the affirmation of Serbian political subjectivity in the Zadar Resolution,<sup>12</sup> as well as considerations regarding ties with Belgrade in the context of state unification.<sup>13</sup>

On the Slovenian side, despite historiographical works emerging in the specific context between the two World Wars attempting to present a different picture,<sup>14</sup> the prevailing view during the war was to resolve the Slovenian question within, rather than outside, the Habsburg Monarchy.<sup>15</sup> The defeats suffered by the Austro-Hungarian army and the subsequent collapse of the Austro-Hungarian Monarchy, coupled with the Vienna, and to a lesser extent, the Hungarian political elites' reluctance to satisfy not only the centuries-long Croatian<sup>16</sup> but also the Slovenian aspirations for political emancipation,<sup>17</sup>

<sup>9</sup> John Deak, "The Great War and the Forgotten Realm: The Habsburg Monarchy and the First World War," *Journal of Modern History* 86, no. 2 (2014): 336–80.

<sup>10</sup> It should be noted that not all Party of Right options advocated for the idea of an independent Croatian state. The Starčević's Party of Right, in particular, advocated for a broader Yugoslav option, but with a federal arrangement. (Miro Kovač, "Raspadanje Austro-Ugarske i radanje Kraljevine SHS u svjetlu francuske politike (od listopada do prosinca 1918.)," *Časopis za suvremenu povijest* 35, no. 1 (2003): 141–72, 143–44).

<sup>11</sup> Stanislava Koprivica-Oštrić, "Konstituiranje Države Slovenaca, Hrvata i Srba 29. listopada 1918. godine," *Časopis za suvremenu povijest* 25, no. 1 (1992): 45–71, 48–49.

<sup>12</sup> Ivo Pilar, *Južnoslavensko pitanje: prikaz cjelokupnog pitanja/L.V. Südland* (Varaždin: Hrvatska demokratska stranka, 1990), 346.

<sup>13</sup> Igor Ivašković, "The Implications of the 'New Course' Strategy," *Politička misao* 56, nos. 3–4 (2019): 218–38.

<sup>14</sup> Jože Lavrič, Josim Mal and France Stele, *Spominski zbornik Slovenije* (Ljubljana: Jubilej, 1939).

<sup>15</sup> Jurij Perovšek, *Slovenska osamosvojitve v letu 1918* (Ljubljana: Modrijan, 1998), 13.

<sup>16</sup> Dalibor Čepulo, Lujo Margetić and Ivan Beuc, *Hrvatska pravna povijest u europskom kontekstu* (Zagreb: Pravni fakultet, 2006), 113–22.

<sup>17</sup> Vlasta Stavbar, *Majniška deklaracija in deklaracijsko gibanje: slovenska politika v habsburški monarhiji, od volilne reforme do nove države* (Maribor: Založba Pivec, 2017), 55–60.

prompted their political representatives to sever all ties with Austria-Hungary in October 1918. Additionally, the information that the Allied powers would allow the dissolution of the Austro-Hungarian Monarchy significantly contributed to this decision.<sup>18</sup>

Before that, on October 19, 1918, the National Council of Slovenes, Croats, and Serbs assumed power throughout the entire South Slavic lands of the Habsburg Monarchy, rejecting the Emperor's (King's) Manifesto of October 16 and any future proposals attempting to address the Slovene, Croatian, and Serbian question within the monarchy on a partial basis.<sup>19</sup> Ten days later, the State of Slovenes, Croats, and Serbs (State of SCS) was proclaimed in the Croatian Parliament,<sup>20</sup> thereby preempting attempts to establish Soviet republics following the Bolshevik model.<sup>21</sup>

Members of the National Council of SCS faced external pressures, particularly from the victorious powers, who were reluctant to permit the formation of states outside their control. In this context, French and British diplomacy played a significant role, with the latter committing, through the London Pact in 1915, to address Italian and Serbian territorial claims, and the former seeking an ally to curb Italian expansion and avoid alignment with German interests on the opposite side of the Alps.<sup>22</sup> It is not surprising, therefore, that British and French diplomacy actively encouraged discussions between representatives of the State of SCS and Nikola Pašić, the Prime Minister of the Kingdom of Serbia. Brief negotiations ensued, culminating in the signing of the Geneva Declaration on November 9, 1918. The declaration outlined the establishment of a joint South Slavic state, with the future constituent assembly empowered to decide on fundamental matters of state organization. With the agreement's signing, which envisioned a federative basis for the merger of the State of SCS and the Kingdom of Serbia, the Serbian government not only acknowledged the legitimacy of the National Council of SCS as the representative of the State of SCS but also recognized the equality of the two state entities.<sup>23</sup> Pašić himself affirmed this in his statement just before the conference on October 25 of the same year:

Serbs do not want to adopt a hegemonic stance in the future Kingdom of SCS. I solemnly declare that Serbia considers it a national duty to liberate Serbs, Croats, and Slovenes. The liberated will have the right to self-determination, namely the right to express whether they want to join

<sup>18</sup> Janko Pleterski, *Prva odločitev Slovencev za Jugoslavijo* (Ljubljana: Slovenska matica, 1971), 202.

<sup>19</sup> Ljubo Boban, "Kada je i kako nastala Država Slovenaca, Hrvata i Srba," *Časopis za suvremenu povijest* 24, no. 3 (1992): 45–60.

<sup>20</sup> Hodimir Sirotković, "O nastanku, organizaciji, državnopravnim pitanjima i sukcesiji Države SHS nastale u jesen 1918," *Časopis za suvremenu povijest* 24, no. 3 (1992): 61–74.

<sup>21</sup> Ivo Banac, "Emperor Karl Has Become a Comitadji: The Croatian Disturbances of Autumn 1918," *The Slavonic and East European Review* 70, no. 2 (1992): 301.

<sup>22</sup> Kovač, "Raspadanje Austro-Ugarske," 141–72.

<sup>23</sup> Jurij Perovšek, "Jugoslovanska združitev," in *Slovenska novejša zgodovina 1848–1992*, eds. Neven Borak and Jasna Fisher (Ljubljana: Mladinska knjiga, Inštitut za novejšo zgodovino, 2006), 200–1.

Serbia in accordance with the Corfu Declaration<sup>24</sup> or form independent states. We will not allow any limitation on the right to self-determination for Croats and Slovenes in any way. We will not insist on the Corfu Declaration if it is not in line with their desires.<sup>25</sup>

This statement reflected the spirit of the moment, during which the principle of the self-determination of peoples was celebrated—an idea that, under the influence of the United States, the victorious Allied powers portrayed as one of their most important contributions to international relations and international law. Pašić, evidently, could not disregard this principle in his speeches, but he was also cognizant of Serbia's stronger position compared to Croats and Slovenes. The latter were allowed the illusion of free decision-making about a common state with Serbs or an independent state, but it was always emphasized that such a potential independent state for Slovenes and Croats would be left without the territories claimed by the victorious states, Italy and Serbia, which were, after all, promised to them by the London Pact. Therefore, it would have been exceedingly challenging for Croatia to sustain itself as an independent international entity, and the same would apply to areas inhabited by Slovenes.

Given the aforementioned circumstances, the Geneva Declaration stands out as a significant political achievement of Ante Trumbić<sup>26</sup> and Anton Korošec.<sup>27</sup> Alongside certain members of the Serbian opposition, they successfully secured Pašić's agreement on a compromise intended to serve as the foundation for a new dual state.<sup>28</sup> The agreement incorporated both federal and confederal elements upon which the future constituent assembly was expected to base its work. The proposed governance structure for the new state included a twelve-member cabinet, with half of the ministers nominated by the Serbian government, pledging allegiance to the Serbian king, and the remaining half proposed by the National Council of SCS.<sup>29</sup> In contrast to the Corfu Agreement, the Geneva Declaration did not bestow full power upon the Karađorđević dynasty over the entire territory of the future state. Until the adoption of the Constitution, the National Council was intended to serve as the supreme authority within the territory of the State of SCS. This fundamental difference

<sup>24</sup> The Corfu Declaration signed on July 20, 1917 by Serbian Prime Minister Nikola Pašić and Yugoslav Committee President Ante Trumbić, aimed to unify Serbia, Montenegro, and parts of Austria-Hungary. Pašić favored a centralist government, while Trumbić preferred a federal state. The compromise established a constitutional monarchy under the Serbian Karađorđević dynasty, deferring detailed governance to a future constitutional assembly.

<sup>25</sup> Albin Prepeluh, *Pripombe k naši prevratni dobi* (Trieste: Založništvo tržaškega tiska, 1987), 130–31.

<sup>26</sup> Ante Trumbić (1864–1938) was a Croatian politician and lawyer. He initially supported the Party of Right, later became a Yugoslav-oriented politician, and eventually returned to the idea of Croatian statehood.

<sup>27</sup> Anton Korošec (1872–1940) was a Roman Catholic priest and a leader of the conservative Slovenian People's Party.

<sup>28</sup> John R. Lampe, *Yugoslavia as History. Twice There was a Country*, 2nd ed. (Cambridge: Cambridge University Press, 2002), 111.

<sup>29</sup> Andrej Rahten, *Slovenska ljudska stranka v beograjski skupščini. Jugoslovanski klub v parlamentarnem življenju Kraljevine SHS 1919–1929* (Ljubljana: Založba ZRC, 2002), 26.

was the primary reason why the Serbian government ultimately refrained from confirming the agreement.<sup>30</sup> Furthermore, on November 13, Serbian Lieutenant Colonel Dušan Simović arrived in Zagreb as a delegate of the Kingdom of Serbia to the National Council of SCS, presenting the Croatian side with a stark reality. He delineated territories, including the entirety of Bosnia and Herzegovina, a substantial part of Dalmatia, and half of Slavonia. He concluded that all the mentioned areas would inevitably become part of Serbia, while to the west of that, Croats and Slovenes could decide whether they wanted to join Serbia or form a separate state.<sup>31</sup>

### The Proclamation of the Kingdom of SCS and Reactions

Vojvodina joined Serbia during the negotiations between the representatives of the State of SCS and the Serbian government. The National Council of SCS in Vojvodina, lacking significant political influence and military force, stood in contrast to the already amassed Serbian army in that province.<sup>32</sup> Immediately following the annexation of Vojvodina, the reign of King Nikola Petrović in Montenegro was overthrown, and the unification of the state with Serbia was proclaimed.<sup>33</sup>

During this period, two political blocs emerged in Croatia, impacting the activities of the National Council of SCS. On one side, certain members, along with the Yugoslav Committee, aimed for international recognition of the State of SCS. On the other side, led by Svetozar Pribičević,<sup>34</sup> there was a push for prompt unification with Serbia without prior international recognition of the State of SCS.<sup>35</sup> Stjepan Radić<sup>36</sup> vehemently opposed this stance and delivered numerous warning speeches: “Gentlemen! It is not too late! ... Do not form a unified government with the Kingdom of Serbia ... Do not act in such a way that it could be morally said tomorrow that you Slovenes and you Serbs from Vojvodina and Bosnia, and you our Croats from Dalmatia, and above all you our domestic Croatian Serbs, have all gathered here today just to carry out a conspiracy against (...) Croatia and the Croats.”<sup>37</sup>

<sup>30</sup> Neda Engelsfeld, *Povijest hrvatske države i prava—razdoblje od 18. do 20. stoljeća* (Zagreb: Pravni fakultet, 2002), 277; Perovšek, “Jugoslavanska združitev,” 201.

<sup>31</sup> Bogdan Krizman, *Hrvatska u prvom svjetskom ratu: hrvatsko-srpski politički odnosi* (Zagreb: Globus, 1989), 337.

<sup>32</sup> Ivan Jelić, “O nastanku granice između Hrvatske i Srbije,” *Časopis za suvremenu povijest* 23, nos. 1–3 (1991): 1–32.

<sup>33</sup> László Heka, “Crnogorsko nacionalno pitanje: pravne posljedice odluka Podgoričke skupštine 1918. godine,” *Politička misao* 59, no. 1 (2022): 24–48.

<sup>34</sup> Svetozar Pribičević (1875–1936) was a Croatian Serb politician who favored a unitary Yugoslav state led by Serbia.

<sup>35</sup> Hrvoje Matković, “Svetozar Pribičević u danima postojanja Države Slovenaca, Hrvata i Srba,” *Radovi Zavoda za hrvatsku povijest Filozofskoga fakulteta Sveučilišta u Zagrebu* 26, no. 1 (1993): 237–48.

<sup>36</sup> Stjepan Radić (1871–1928) was a Croatian politician and the founder of the Croatian People’s Peasant Party. Throughout his career, Radić opposed the union and subsequent Serbian dominance in Yugoslavia. In 1928, he was shot in parliament by a member of the Serbian People’s Radical Party and succumbed to his injuries several weeks later.

<sup>37</sup> Stjepan Radić, *Politički spisi: Autobiografija, članci, govori, rasprave* (Zagreb: Znanje, 1971), 334.

In the context of devising various alternative state and legal programs, Radić frequently invoked the United States, a victorious nation and a staunch proponent of the principle of national self-determination.<sup>38</sup> Taking a cue from the United States, he advocated for the establishment of a Croatian state founded on Croatian historical state rights and the principle of self-determination. The pursuit of national alternatives was rooted in the fundamental assumption that the State of SCS required additional time to negotiate on an equal footing for (con)federal integration with Serbia. Given the prevailing circumstances, there was a perceived risk of a centralist and unitary regime emerging, wherein non-Serbian South Slavic peoples might be reduced to mere appendages to Serbia:

Gentlemen! All of you constantly talk about national unity—a unified state, a single kingdom under the Karađorđević dynasty. And you all believe that by saying this, we Croats, Serbs, and Slovenes are one people because we speak the same language, so we must have a single centralist state, a kingdom, and that only such linguistic and state unity under the Karađorđević dynasty can save us and make us happy. So, you are scaring our people like little children, thinking that you will gain their support for your policies. Maybe you will gain the support of the Slovenes, I don't know; maybe you will quickly win over the Serbs too, but I know for sure that you will not win over the Croats because the entire Croatian peasantry is just as opposed to your centralism as it is to militarism, just as supportive of a republic as it is of a national agreement with the Serbs. And if you force your centralism upon us, here is what will happen: We Croats will say openly, clearly, and intelligently, “Well, if the Serbs really want such a centralist state and government, may God bless them; but we Croats want nothing but a federal federative republic.”<sup>39</sup>

Even when it became clear that he would not succeed in prolonging the negotiations and that unification with Serbia was inevitable, Radić proposed that the new state be temporarily governed by three regents: the Serbian king or regent, the Ban of Croatia,<sup>40</sup> and the president of the Slovenian National Council. According to this plan, the constituent assembly would consist of 42 members, with the Serbian assembly, the Croatian Parliament, and the Slovenian National Council (Narodni svet) each choosing ten members. The Bosnian assembly would have the right to elect four members, while Montenegro in its assembly, as well as the Dalmatian assembly, representatives of Vojvodina, and Istria, would each choose two members.<sup>41</sup> However, Radić did

<sup>38</sup> Igor Ivašković, “The Vidovdan Constitution and the Alternative Constitutional Strategies,” *Zbornik Pravnog fakulteta u Zagrebu* 68, nos. 3–4 (2018): 525–51.

<sup>39</sup> Ivo Banac, *Nacionalno pitanje u Jugoslaviji: porijeklo, povijest, politika* (Zagreb: Globus, 1988), 216.

<sup>40</sup> The Ban of Croatia was the title for local rulers and later viceroys of Croatia. Initially, bans served as the ruler's representative and supreme military commander. By the eighteenth century, they became the chief government officials, effectively acting as the first prime ministers of Croatia.

<sup>41</sup> Prepeluh, *Pripombe k naši*, 171–75.

not receive significant support, and his proposal was only endorsed by a group of socialists.

By the end of November 1918, it appeared that Radić's idea had been entirely defeated, and the HSK's vision of unconditional unification with Serbia would be realized. Notably, many Croatian politicians within that political group argued that the State of SCS and the Kingdom of Serbia should assume roles appropriate to the status of the defeated and victorious in the war, implying an inherent inequality between the two entities within the future state. One of the more explicit examples defending this thesis is that of Mate Drinković:<sup>42</sup> "We are not establishing Great Serbia, Great Croatia, or Great Slovenia, but a great, strong, and powerful Yugoslav state. However, we must openly admit that the Serbian kingdom emerged as the victor in this war, while we (Croats) were defeated. Reason and honesty dictate to every patriot to advocate for national and state unity in these great moments."<sup>43</sup>

In such circumstances, the committee of the National Council of SCS ultimately appointed 28 members of the delegation tasked with implementing the decision on the merger. This group was given a special document, the so-called "Napatuk" (Instruction), which, among other things, included a provision stating that the final form of state organization should be determined by the constituent assembly with a two-thirds majority.<sup>44</sup> However, these conditions of the National Council of SCS were ignored, and none of the delegates paid attention to them after arriving in Belgrade. Simultaneously, Serbian diplomacy skillfully prevented the return of Anton Korošec and Ante Trumbić from Geneva, enabling Svetozar Pribićević to assume the role of the most important representative of the State of SCS. During that period, Pribićević acted in the function of implementing Belgrade's hegemonic policy, and under his influence, on December 1, 1918, Ante Pavelić<sup>45</sup> read a statement handing over power to Prince Alexander Karađorđević. The Serbian regent declared the merger of Serbia and the State of SCS. Therefore, the December 1st Act consisted of the so-called "Address" of the National Council of SCS delegation, expressing the desire for unification, and the "Proclamation" of Regent Alexander Karađorđević, in which he accepted the expressed desire.<sup>46</sup>

The act of unification not only caused dissatisfaction among opponents of centralism and Serbian hegemony but also triggered a series of legal issues and disagreements among supporters of different South Slavic state concepts. However, a part of the Croatian and Slovenian elite welcomed the act of unification. For example, on December 3, the National Council of the State of

<sup>42</sup> Mate Drinković (1868–1931) was a Croatian politician and writer. Initially aligned with the Party of Right movement, he later embraced unitaristic Yugoslav ideology.

<sup>43</sup> Ferdo Šišić, *Dokumenti o postanku Kraljevine Srba, Hrvata i Slovenaca, 1914–1919* (Zagreb: Matica hrvatska, 1920), 277.

<sup>44</sup> Sirotković, "O nastanku, organizaciji," 61–74.

<sup>45</sup> Not the same person as the future leader of the Ustasha movement.

<sup>46</sup> It should be noted that the agreement was practically entirely drafted by representatives of the Kingdom of Serbia. In the first provisional government of 20 ministers, there were 13 Serbs, 4 Croats, 2 Slovenes, and 1 Bosnian-Herzegovinian Muslim, enabling a temporary centralist organization of the state (Engelsfeld, *Povijest hrvatske države*, 297).



Slovenes, Croats, and Serbs (National Council of SCS) in Zagreb announced that it had ceased to exercise supreme and sovereign power in the territory of the State of SCS. It declared that “as of December 1, our entire nation constitutes a common Slovene-Croatian-Serbian state under the regency of His Royal Highness Crown Prince Alexander.”<sup>47</sup> The People’s Government in Ljubljana also enthusiastically greeted the merger in a message to King Peter and Regent Alexander, stating:

The People’s Government of the State of Slovenes, Croats, and Serbs in Ljubljana wholeheartedly welcomes the unification of all Serbs, Croats, and Slovenes under the regency of Your Royal Highness. We dare to express our gratitude for the benevolent and comforting promises of a more decisive defense of the entire ethnographic territory of the State of Slovenes, Croats, and Serbs, especially on our northern and western borders. Long live Yugoslav Trieste! Long live Yugoslav Gorizia and Istria! May God bless the united Yugoslavia! God save King Peter and Regent Alexander!<sup>48</sup>

Mentioning Trieste, Gorizia, and Istria in the context of praising the king and his heir expressed the Slovenian hopes that the united Greater South Slavic state, led by the victorious Serbian royal dynasty, would be able to prevent Italian ambitions toward those territories. Nonetheless, discontent arose among certain Slovenes and, even more significantly, within segments of the Croatian population. They were dissatisfied with the notion that the former Habsburg South Slavic territories and peoples had become part of the Kingdom of Serbia, depicted as the liberator of all southern Slavs with an inherent right to territorial expansion.<sup>49</sup>

Such an interpretation was also opposed by a group that questioned the legality and legitimacy of the adoption of the December 1st Act, claiming that it was actually null and void. The thesis of illegality and illegitimacy of the unification Act was based on the fact that the signatures were not ratified in the assemblies by legitimate representatives of the two international legal entities. Instead, the new state was the result of the actions of illegitimate representatives who took advantage of international circumstances favorable to them.<sup>50</sup> Indeed, in the process of forming the Kingdom of SCS, numerous principles that had been customary in negotiations according to international law were ignored. This primarily referred to exceeding the powers of the Central Committee of the National Council of SCS, which did not seek the opinion of its own plenum. Even if we hypothetically accept the absence of state attributes of the State of SCS and thus its lack of statehood, then the act should have been

<sup>47</sup> Prepeluh, *Pripombe k naši*, 198.

<sup>48</sup> Momčilo Zečević, *Slovenska ljudska stranka in jugoslovansko zedinjenje 1917–1921: Od majniške deklaracije do vidovdanske ustave* (Maribor: Obzorja, 1977), 182–83.

<sup>49</sup> Ferdo Čulinović, *Državnopravni razvitak Jugoslavije* (Zagreb: Sveučilište u Zagrebu, 1963), 136–50.

<sup>50</sup> Stane Granda, *Slovenija: pogled na njeno zgodovino* (Ljubljana: Urad vlade za komuniciranje, 2008), 198.

approved by the Croatian Parliament, i.e., the Parliament of the Kingdom of Croatia, Slavonia, and Dalmatia. This entity held authority over the Croatian part of the former Habsburg South Slavic territories, and its subjectivity was undeniably confirmed during the dissolution of the Austro-Hungarian Monarchy.<sup>51</sup>

The process of merging with the Kingdom of Serbia was strongly influenced by the three-member presidency of the Central Committee of the National Council of SCS, which authorized a delegation for negotiations. However, the members of the delegation were not elected at a plenary session, so some legal experts<sup>52</sup> argue that the act of association was actually a unilateral act of Regent Alexander, which should have been ratified in any case. Due to the absence of such ratification, some historians<sup>53</sup> have characterized the merger as an illegitimate act that was carried out in violation of the applicable regulations at the time.

On the other hand, the more moderate political opposition at that time claimed that the Kingdom of SCS was still formed by the merger of two equal entities and that the new state was the result of mutual consent.<sup>54</sup> This position, therefore, challenged the notion of the annexation of the territories of the State of SCS to the Kingdom of Serbia and advocated for a legal discontinuity between the created state and any of the two entities that participated in its formation.

At the same time, there was no shortage of opponents to the merger in other significant segments of society. This immediately manifested itself with the uprising on December 5th, only 4 days after the proclamation of the Kingdom of SCS, in Zagreb.<sup>55</sup> The failure to maintain the border on the Drina River, the transfer of power to Belgrade, and the acceptance of the Serbian monarch represented a complete defeat for various Croatian nationalist movements and a true catastrophe for the Catholic clergy led by Josip Stadler in Bosnia and Herzegovina, as well as for the Muslim population along the Drina River.<sup>56</sup> The manner in which power was assumed, including

<sup>51</sup> Mirko Valentić, "O jednom pristupu hrvatskoj državopravnoj povijesti," *Časopis za suvremenu povijest* 5, no. 1 (1973): 147–59.

<sup>52</sup> Budislav Vukas Jr., *Hrvatska državnost—pravopovijesne prosudbe* (Rijeka: Pravni fakultet sveučilišta u Rijeci 2017), 81.

<sup>53</sup> Hrvoje Matković, *Povijest Jugoslavije. Hrvatski pogled* (Zagreb: Naklada Pavičići, 1998), 86.

<sup>54</sup> Ivan Žolger, "Da li je naša kraljevina nova ili stara država?" *Slovenski pravnik* 37, nos. 3–4 (1923): 1–18.

<sup>55</sup> Mislav Gabelica, "Žrtve sukoba na Jelačićevom trgu 5. prosinca 1918," *Časopis za suvremenu povijest* 37, no. 2 (2005): 467–77.

<sup>56</sup> It is an interesting testimony from Ivan Meštrović, a prominent modern Croatian sculptor and architect, who described in his memoir book an account of statements made by the former editor of the magazine *Slovenski jug*, Božo Marković, in 1917. According to him, in the post-war period, a military dictatorship should be imposed on Croatian territories for at least ten years, until the Croats were assimilated and educated for the state. Even more radical were the representatives of the ruling Radical Party. Meštrović recounts a statement by Stojan Protić, prime minister of the Kingdom of SCS in 1918 and 1919: "When our army crosses the Drina River, I will give the Turks twenty-four hours, even forty-eight, to return to their ancestral religion. And those who refuse, we will cut them down, as we did in Serbia in our time." (Ivan Meštrović, *Uspomene na političke ljude i događaje* (Zagreb: Matica hrvatska, 1993), 73).

the introduction of the death penalty and the treatment of predominantly Muslim and Croatian areas as if they were occupied rather than liberated, also led to spontaneous uprisings among the civilian population.<sup>57</sup> The Slovene Catholic political elite, particularly a faction of the Slovene People's Party favorable to Ivan Šusteršič, also suffered a significant blow. Of course, the Act of December 1st was also a defeat for the groups in Montenegro and Serbia that had hoped for a different political framework for the new state. After being deposed, Montenegrin King Nikola sought support from Italy, where he eventually withdrew along with his followers, while advocates of an independent Montenegro staged an uprising that was brutally suppressed by the new authorities.<sup>58</sup> Socialist-democratic circles also became increasingly radical in their opposition to the monarchy. The monarchy, by its nature, was opposed to the Bolshevik model, which had already gained ground in Russia. However, it is a fact that the opposition groups belonged to different ideologies, so their actions against the new state were not coordinated. Consequently, attempts to internationalize the Yugoslav issue were limited to various private initiatives. For example, Stjepan Radić unsuccessfully attempted to engage representatives of the major powers, and after failures in London and Paris,<sup>59</sup> he decided to join his party with the Peasant International under the auspices of the Comintern.<sup>60</sup>

It can be concluded that the formation of the Kingdom of SCS did not represent only a victory for the Yugoslav idea, but rather a triumph of a specific form of Yugoslavism at the expense of alternative state ideas. These alternatives primarily opposed the idea of an independent Croatian state, as well as republican Yugoslavism and the federal idea of a South Slavic state. The fundamental political framework of the established state did not fully correspond to any initial South Slavic vision. However, the realized form was closest to the (Greater) Serbian idea, considering the geopolitical and administrative center of the state, as well as the fact that the Serbian king occupied the formal supreme power. The Serbian idea primarily aimed at integrating all areas inhabited by Serbs, to be governed from a single center under the control of the Serbian king. The number of supporters of different alternative ideas, however, serves as a reminder not to oversimplify the South Slavic issue and sheds a different light on certain claims that Yugoslavism, as realized in the Kingdom of SCS, was a component of state projects and the desired legal development of the majority of the population, except for Kosovo Albanians.<sup>61</sup> For example, the statement by Austro-Hungarian General Stjepan Sarkotić, who, in his letters in the autumn of 1918, disappointingly concluded that even 60% of Croats were infected with the Yugoslav idea, is often misinterpreted out of context.<sup>62</sup>

<sup>57</sup> Banac, *Nacionalno pitanje u Jugoslaviji*, 240–45.

<sup>58</sup> Heka, "Crnogorsko nacionalno pitanje," 24–48.

<sup>59</sup> First, it was the Croatian Peasant People's Party, later known as the Croatian Republican Peasant Party from 1920, and finally, it became the Croatian Peasant Party in 1925.

<sup>60</sup> Dejan Đokić, *Nedostižni kompromis. Srpsko-hrvatsko pitanje u međuratnoj Jugoslaviji* (Belgrade: Fabrika knjiga, 2010), 83.

<sup>61</sup> Such a thesis is proposed, for example, by Lampe, *Yugoslavia as History*, 101.

<sup>62</sup> Lampe, *Yugoslavia as History*, 108.

The South Slavic concepts were so diverse that it was practically impossible to speak of the desires of the majority of the population, which also indicated the lack of harmony between the concepts of the most important political parties. At the same time, the dichotomy of the South Slavic idea into the Habsburg and non-Habsburg variants is an inappropriate oversimplification, as evidenced by the fragmentation and consequent lack of alignment among opposition forces in the upcoming 1920 Constituent Assembly elections.<sup>63</sup>

### The Issue of the Legal Status of the State of SCS

After the formation of the Kingdom of SCS, certain political groups were deprived of the opportunity for legal participation in party life. The remaining opposition parties accepted the given political framework, but any anti-centralist activity pushed them toward the edge of legality. In the context of the anti-centralization political struggle, a range of legal instruments were used to argue for the necessity of a change in the state organization. To achieve greater autonomy for individual nations within the Kingdom of SCS, it was necessary to challenge predominantly Serbian claims and demonstrate that the territories from the Austro-Hungarian Monarchy entered the Kingdom of SCS through the State of SCS, which, at least formally and legally, was equal to the Kingdom of Serbia. This was an attempt to refute the thesis that Serbia's dominance in the Kingdom of SCS was based on law and that other nations should accept the fact that they were on the side of the defeated in the war and should accordingly bear the consequences. Similarly, Serbia suffered significant losses during the war<sup>64</sup> from the defeated side, whose territories it subsequently annexed. These territories were seen as a kind of reparation for war damages. Therefore, determining the legal relationship between the State of SCS and the Kingdom of Serbia, as well as the resulting Kingdom of SCS, became a paramount political and legal issue in the period after the Act of December 1st, carrying numerous implications for other spheres of social life. Advocates of unitarism on one side and the Greater Serbian doctrine on the other defended the thesis of the transfer of legal subjectivity from the Kingdom of Serbia to the Kingdom of SCS, relying precisely on the fact of Serbian victory in the war. In this context, the Austro-Hungarian Monarchy ceased to exist due to the war conflicts, while Serbia expanded its rule over a part of the defeated enemy's territory after the war.<sup>65</sup>

When addressing the dilemma regarding the legal nature of the State of SCS—a state whose formation, despite numerous protests, was still welcomed by a part of the Croatian public and even more so by the Slovenian public<sup>66</sup>—it is necessary to first examine the status of this territory within the Austro-Hungarian Monarchy and the process of its separation from the real union of Austria and Hungary. Croatia undeniably had a special legal position

<sup>63</sup> Ivašković, "The Vidovdan Constitution," 525–51.

<sup>64</sup> Mile Bjelajac, "Ratni gubici Srbije u Prvom svetskom ratu—kontroverze oko brojeva," *Tokovi istorije* 29, no. 1 (2021): 41–84.

<sup>65</sup> Dušan Subotić, "Naša Kraljevina nije nova država," *Novi život* 11, no. 11 (1922): 321–25.

<sup>66</sup> Josip Mal, *Slovenci v desetletju 1918–1928* (Ljubljana: Leonova družba, 1928), II.

within the monarchy, based on the concept of Croatian historical state right, which was confirmed by the Croatian-Hungarian Settlement of 1868.<sup>67</sup> Moreover, the Croatian Parliament made a decision to authorize the National Council of SCS for negotiations with representatives of the Kingdom of Serbia, and thus, these delegated powers had the character of a mandate in iure.<sup>68</sup> The crucial aspect was the fact that, at the dissolution of the Austro-Hungarian Monarchy, the Croatian Parliament adopted legal acts that indicated the sovereignty of Croatia. First, a special act terminated the state union with Austria and Hungary, and simultaneously, the territories that were divided within the Monarchy were re-incorporated, indicating the sovereignty of Croatia.<sup>69</sup> Croatian territories began to join new state associations only after leaving Austria-Hungary by a sovereign decision. Only after that did the Croatian Parliament decide to transfer power to the National Council of SCS, which thus became the supreme political body in the South Slavic territories of the former Monarchy. At the same time, it is a fact that a significant part of the territory of the State of SCS was not covered by Croatian state right, but these areas expressed their will to join the State of SCS through their representative bodies. Some authors emphasize this fact because they believe that in contemporary states, new entities can no longer originate organically but must be based on the expressed will of the subject that existed in those areas before. Therefore, the process must comply with the provisions of international law to avoid an escalation of violence.<sup>70</sup> In the case of the international legal subjectivity of the State of SCS, it is necessary to analyze the following criteria primarily: defined territorial jurisdiction, a permanent population, and effective control over the entire territory, with the ability to independently engage in relations with other states.<sup>71</sup>

In the case of the State of SCS, the National Council of SCS did not explicitly delineate the territorial jurisdiction over which it exercised power. However, the territory could be clearly identified based on the statement that it encompassed all those areas of the Austro-Hungarian Monarchy where the population was predominantly South Slavic.<sup>72</sup> Additionally, the National Council, in its

<sup>67</sup> Dalibor Čepulo, "Hrvatsko-ugarska nagodba i reforme institucija vlasti u Hrvatskom saboru 1868–1871," *Zbornik Pravnog fakulteta u Rijeci* 22, no. 1 (2001): 117–48; Vukas Jr., *Hrvatska državnost*, 76.

<sup>68</sup> Ferdo Čulinović, *Državopravna historija jugoslavenskih zemalja XIX. I XX. stoljeća—Hrvatska, Slavonija i Dalmacija, Istra, Srpska Vojvodina, Slovenija, Bosna i Hercegovina* (Zagreb: Školska knjiga, 1956), 54.

<sup>69</sup> "The Croatian Parliament, wounded in the full right of national self-determination, a right already acknowledged by all belligerent authorities today, arrives at this conclusion: All prior state relations and connections between the Kingdom of Croatia, Slavonia, and Dalmatia on the one hand, and the Kingdom of Hungary and the Austrian Empire on the other hand, are hereby dissolved." (Boban, "Kada je i kako nastala Država," 50).

<sup>70</sup> Juraj Andrassy, Božidar Bakotić and Budislav Vukas, *Međunarodno pravo* (Zagreb: Školska knjiga, 1995), 70.

<sup>71</sup> James R. Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2007), 111–19.

<sup>72</sup> "Dalmatia, Croatia, Slavonia, with Rijeka, proclaim themselves as a fully independent state vis-à-vis Hungary and Austria. Grounded in the modern principle of nationality and the foundation of national unity among Slovenes, Croats, and Serbs, they unite to form a collective national

regulations on its activities, defined: “The National Council of Slovenes, Croats, and Serbs in Zagreb is the political representative of all Slovenes, Croats, and Serbs living in Croatia-Slavonia, with Rijeka, in Dalmatia, Bosnia and Herzegovina, Istria, Trieste, Carniola, Gorizia, Styria, Carinthia, Bačka, Banat, Baranja, Međimurje, and in other regions of southwestern Hungary.”<sup>73</sup>

Of course, one could question whether this territory was sufficiently clearly defined or whether the inclusion of Vojvodina into Serbia indicated that the State of SCS did not have clear state borders. However, the subjectivity of a state does not depend on a clearly defined demarcation.<sup>74</sup> Even today, many countries, including numerous UN member states, do not have precisely defined borders, yet this does not diminish their status as a state. According to the opinion of the majority of scholars,<sup>75</sup> the key territorial element of statehood relates to its core, the center of the territory of a community considered a state, and in the case of the State of SCS, this was indisputably confirmed. The criterion of a permanent population was indirectly fulfilled through the definition of the state’s territory, which is usually the least problematic criterion. The most controversial criterion of statehood was the effective control of the National Council of SCS. The National Council did not control certain areas of the new state formation, but despite certain limitations in exercising actual power, it performed the most important state functions in critical parts of the territory. The National Council of SCS was also involved in international relations through the Yugoslav Committee.<sup>76</sup>

In the Greater Serbian doctrine, the argument of the lack of international recognition of the State of SCS was often emphasized, implying that a subject cannot be considered a state until it is recognized as such by other states. However, it overlooked the fact that a state can be recognized indirectly, through establishing relations with a specific entity that is recognized as having an equal right to express its own will in international relations. This points to the concept of “silent” or indirect recognition. For example, Vukas Jr.<sup>77</sup> mentions that in November 1918, the state authorities, namely the National Council of SCS, received several diplomatic notes, including notifications of the appointment of foreign diplomats to the State of SCS. We can consider this indirect evidence of recognizing the subjectivity of the State of SCS. Another indication is the equal participation of its representatives at the Geneva Conference from November 6 to 9, 1918, which directly demonstrates the ability of the State of SCS to establish equal relations with other states. This is also the best proof that this state managed to establish relations with other

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sovereign state of Slovenes, Croats, and Serbs across the entire ethnographic territory of that nation. This union transcends any territorial and state borders, encompassing the areas where the people of Slovenes, Croats, and Serbs reside today.” (Boban, “Kada je i kako nastala Država,” 51).

<sup>73</sup> Koprivica-Oštrić, “Konstituiranje Države Slovenaca,” 52.

<sup>74</sup> Andrassy, Bakotić and Vukas, *Međunarodno pravo*, 69.

<sup>75</sup> Ernest Petrič, *Zunanja politika: osnove teorije in praksa* (Ljubljana, Mengeš: Center za evropsko prihodnost, Znanstvenoraziskovalni center Slovenske akademije znanosti in umetnosti, 2010), 190.

<sup>76</sup> Budislav Vukas Jr., *Hrvatska državnost s gledišta međunarodnog prava* (Zagreb: Pravni fakultet, 2002), 47.

<sup>77</sup> Vukas Jr., *Hrvatska državnost s gledišta*, 45.

countries. Consequently, international recognition only strengthens the international position of the subject, but it is not a constitutive element of statehood.<sup>78</sup> This position was confirmed by the Montevideo Convention on the Rights and Duties of States in 1933, which defined “the state as a person of international law should possess the following qualification: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states.”<sup>79</sup> This supports the argument of the statehood of the State of SCS, which was implicitly recognized by some Serbian constitutional jurists at the time. For example, Slobodan Jovanović<sup>80</sup> stated as early as 1924 that by the decision of the Croatian Parliament, Croatia transferred its powers to the National Council of SCS, thereby abolishing the independent Croatian state in favor of the State of SCS.

### The Issue of (Dis)Continuity of the Kingdom of SCS

The discourse surrounding the statehood of the State of SCS was just one facet of a more substantial dilemma that permeated the political landscape of the Kingdom of SCS during that period. Different perspectives arose concerning the continuity or discontinuity between the existing state and the Kingdom of Serbia. Upholding the thesis of legal continuity would suggest that the Kingdom of SCS was the lawful successor of the Kingdom of Serbia. In this scenario, the territories and populations of the State of SCS would be considered as additions that Serbia gained through victory in the war, irrespective of the statehood status of that entity.

Interestingly, this query was initially brought up by Germany in the context of a dispute concerning the liquidation of German assets in the Kingdom of SCS. Germany contended that, as a new state, the Kingdom of SCS did not possess the same rights as other Allied states, as outlined in the provisions of the Treaty of Versailles. The treaty categorized post-war nations into “new” and “old,” suggesting significant economic implications. Germany was obligated to compensate war damages exclusively to the civilian population of the Allied states and the inhabitants of the territories annexed to those states.<sup>81</sup> One method of recovering damages involved the transfer of German assets in those countries to the victorious states.<sup>82</sup> The exception pertained to new countries without legal subjectivity during the war or a reason to carry out the liquidation due to their nonexistence at the time of the damages. Nevertheless, some of these countries still seized German assets, leading to the inclusion of Article 297 in the Treaty of Versailles, allowing for the restitution of unlawfully acquired property. Germany could exercise this right before ad hoc mixed courts, a scenario that unfolded in the lawsuit against the Kingdom of SCS.

<sup>78</sup> Engelsfeld, *Povijest hrvatske države*, 290.

<sup>79</sup> *Montevideo Convention*, December 26, 1933, art. 1.; Petrič, *Zunanja politika*, 184.

<sup>80</sup> Slobodan Jovanović, *Ustavno pravo Kraljevine Srba, Hrvata i Slovenaca* (Belgrade: Složbeni list SRJ, 1995), 34.

<sup>81</sup> *Treaty of peace with Austria. St. Germain-en-Laye*, September 10, 1919, art. 177 and 178.

<sup>82</sup> *The peace treaty of Versailles*, June 28, 1919, art. 243 and 297.

In this particular instance, the court was initially tasked with determining a pivotal question: whether the Kingdom of SCS should be classified as a new or old state. Surprisingly, the court's determination leaned toward categorizing the Kingdom of SCS as an "old" state. This outcome, somewhat unexpectedly, seemed to align with the Greater Serbian doctrine, as the ruling ostensibly affirmed that the Kingdom of SCS is, indeed, the legal successor of the Kingdom of Serbia. According to this interpretation, the appellation "Kingdom of SCS" merely represented a new title for the state, essentially constituting an expanded version of the pre-war Kingdom of Serbia. The court's verdict in the *Germany vs. the Kingdom of SCS* case garnered positive commentary from prominent Serbian jurist Dušan Subotić, who also served as a member of the mixed judicial council in the case. He highlighted that the court assessed the legal continuity of the Kingdom of SCS from an international law perspective, grounding the international legal subjectivity of the Kingdom of SCS in the statehood subjectivity of the Kingdom of Serbia.<sup>83</sup>

The verdict, despite the challenging political atmosphere, did not escape notice, even among legal experts who occupied significant political roles at the time. In response to the judgment and Subotić's accompanying commentary, Ivan Žolger, a respected Slovene jurist, diplomat, and member of mixed commissions responsible for determining post-war state borders between the Kingdom of SCS and Austria and Hungary, presented his counterargument.<sup>84</sup> In an article titled "Da li je naša Kraljevina nova ili stara država?" (Is our Kingdom a new or old state?), Žolger scrutinized the perspective on the continuity of the Serbian state within the framework of the international legal provisions of that era. However, he also examined the competence of the specific court in rendering a conclusive judgment on the legal character of states in general.

He initially posited that the "newness" of a country is of a formal nature, while the right to liquidate German assets stems from material facts, specifically, the fact "of the existence of a civilian population that was in some way (through the illegal conduct of hostilities or extraordinary orders that disrupted property relations) damaged by German measures."<sup>85</sup> Furthermore, according to Žolger's viewpoint, the court evaluated the newness of the state, even though it exceeded its jurisdiction. As per Article 297 of the Versailles Treaty, the Kingdom of SCS was not a new state because it indeed had a civilian population that suffered damages during the war due to German measures. Therefore, Žolger also believed, as was ruled, that the German claim was not justified. However, he contested the simplified interpretation of the court based on the so-called "currency factor." The agreements of Saint-Germain and Trianon defined the currency exchange rate between the paying reparation country and the recipient country when determining the amount of compensation for war damages. The Geneva exchange rate, which existed two months before the dissolution of Austria-Hungary, was to be

<sup>83</sup> Subotić, "Naša Kraljevina nije."

<sup>84</sup> Bogdan Krizman, *Vanjska politika jugoslavenske države 1918-1941. Diplomatsko-historijski pregled* (Zagreb: Školska knjiga, 1975), 20.

<sup>85</sup> Žolger, "Da li je naša kraljevina," 7.



applied for the payment of compensations. In this context, Poland and Czechoslovakia were considered new states because they did not have their own currency during the war.<sup>86</sup>

Analogously, the fact that the “dinar” was the currency in both the Kingdom of Serbia and later in the Kingdom of SCS played a decisive role in the court’s classification of the latter as an “old” country. From today’s perspective and through the legal logic of the prevailing international principles of that time, we can conclude that Žolger’s opinion was better founded and legally more consistent. The existence of an internationally recognized currency for the Kingdom of SCS was neither necessary nor a constitutive criterion by which the state could be deemed “old.” Hypothetically, a state could renounce its monetary sovereignty and adopt another country’s currency, but that would not mean relinquishing its international subjectivity. Such an attribute, which was actually obscure in terms of statehood and the distinguishing factor between the Kingdom of SCS on one side and Poland and Czechoslovakia on the other, could not be the sole and decisive factor in differentiating between old and new states. Peace agreements should be interpreted according to their purpose because they primarily determine individual rights and obligations of states while presuming and not scrutinizing their origins. Thus, even in the preamble of the Saint-Germain Treaty, it is only stated that Austria-Hungary as a state has dissolved, and “Czechoslovak” and “Serb-Croat-Slovene” states have emerged, both of which are internationally recognized.<sup>87</sup> The purpose of the Treaty was to regulate relations between the Allied powers and Austria, but the agreement did not interfere with the acts of already established states, nor was it made with the intention of questioning their manner of constitution.

In his criticism of the judgment, its reasoning, and Dušan Subotić’s stance, Žolger identified the key criterion for determining the “newness” of a state as its constitutional determination. According to him, the fundamental constitutional act determines whether a state bases its existence on a previous state, thus establishing legal continuity between the present and past state, or whether the present Constitution distances itself from the previous state formation and its constitutional framework, whether explicitly or implicitly.<sup>88</sup> The same author leaves no doubt that the temporary constitutional act of the Kingdom of SCS was not created in accordance with the norms of the Constitution of the Kingdom of Serbia from 1903, implying a discontinuity between the former Serbian state and the new state of Serbs, Croats, and Slovenes. The process of adopting the temporary Constitution of the Kingdom of SCS was not in line with the provisions of the Serbian Constitution and its Article 200, which defined the only possible procedures for making constitutional changes in the Kingdom of Serbia.<sup>89</sup> As a result,

<sup>86</sup> *Treaty of peace with Austria*, art. 248.

<sup>87</sup> *Treaty of peace with Austria*, art. 46.

<sup>88</sup> Žolger, “Da li je naša kraljevina,” 11.

<sup>89</sup> *Ustav za Kraljevinu Srbiju* (Belgrade: Vlada Kraljevine Srbije, 1903), art. 200.

the establishment of the Kingdom of SCS represented a violation and consequent interruption of the constitutional order of the Kingdom of Serbia.

Adding to this the fact that the “Naputak” (Instruction) was not implemented, we can agree with Ferdo Čulinović, who believed that the December 1st Act was “more like an ukase, as neither the regent had any basis in the ‘Naputak’ of the National Council in Zagreb for this proclamation, nor was he authorized by the provisions of the Serbian Constitution of 1903.”<sup>90</sup> Moreover, the unconstitutionality of the December 1st Act from the perspective of the Constitution of the Kingdom of Serbia from 1903 also stemmed from the fact that the Kingdom of SCS was proclaimed by the regent and not the king, who had the sole right to eventual territorial expansion of Serbia.<sup>91</sup>

The interruption of continuity between the Kingdom of Serbia and the Kingdom of SCS was based on an international agreement that did not follow the rules of the Serbian Constitution because the international agreement was not ratified in the assembly of the Kingdom of Serbia, as provided by Article 52 of its Constitution.<sup>92</sup> The government of the Kingdom of SCS was also formed contrary to the provisions of this Constitution and derived its legitimacy from the same non-ratified international agreement. The key argument for legal discontinuity between the Kingdom of Serbia and the Kingdom of SCS was, therefore, hidden in the December 1st Act, which represented an international agreement whose essence was to determine the process of creating a new Constitution, which in no way sought support in the Serbian Constitution. Moreover, in this case, there was no cession, accretion, occupation, and accession, which were the only recognized possibilities for enlargement or expansion of a state according to the then international law.<sup>93</sup> In the case of the formation of the Kingdom of SCS, the opposite happened. The Kingdom of Serbia entered into an agreement with the representatives of the State of SCS, thereby acknowledging its equality, indicating a merger, which, along with dissolution, secession, and decolonization, represented a form of derivative state formation.<sup>94</sup>

Based on the above, it can be concluded that the National Council of SCS (within the territory of the State of SCS) had the same powers as the highest institutes of authority in the Kingdom of Serbia. This is evident from the act of the National Council of SCS dated December 3, 1918, in which this body relinquished its authority and transferred it to the Serbian regent. Therefore, the State of SCS did not join the Kingdom of Serbia; rather, they established a new state, which was implicitly confirmed even by some followers of the unitarist idea who spoke about unification and merger.<sup>95</sup> This implies

<sup>90</sup> Čulinović, *Državnopravna historija jugoslavenskih zemalja*, 210–11.

<sup>91</sup> Koprivica-Oštrič, “Konstituiranje Države Slovenaca,” 69.

<sup>92</sup> *Ustav za Kraljevinu Srbiju*, art. 52.

<sup>93</sup> Žolger, “Da li je naša kraljevina,” 13.

<sup>94</sup> Danilo Türk, *Temelji međunarodnega prava* (Ljubljana: GV založba, 2007), 89.

<sup>95</sup> For example, Milan Pribičević, Svetozar’s brother, wrote in a letter to British political activist and historian Robert Seaton Watson: “The merger of the South Slavic states is a completed act, and all differences have been erased. The new government in Belgrade is composed of representatives from all Serbian, Slovenian, and Croatian parties, including one socialist. The only party not

the creation of a new entity and consequently the cessation of the existence of the two previous entities, and that was not disputed even by the fact that the Karadorđević dynasty retained its function in the new state. The position of the royal family was determined by the relevant agreement, as was the case with legislative and executive powers, state territory, and people. Additionally, on a symbolic level, the new name and new symbols marked the legal and political separation of the Kingdom of Serbia and the Kingdom of SCS.

Analyzing the perspectives of Subotić and Žolger, it becomes apparent that the former approached the relationship between international and domestic law through a dualistic lens. This is the only way to interpret his assertion that a state can be simultaneously old in terms of international law and new according to its domestic law. According to Subotić, in the case of the Kingdom of SCS, a new constitutional order established a new internal organization, while the same state inherited the international status of the Kingdom of Serbia.<sup>96</sup> In contrast, Žolger deemed the dualistic theory itself as nonsensical because, in his perspective, it hindered a relevant assessment of acts that constitute a state. He staunchly supported a monistic paradigm, asserting that the international legal nature of a subject cannot be judged separately from the internal legal essence of the state. According to this view, a judgment on a preliminary issue in another proceeding, whose primary purpose was not to resolve the same issue, cannot be deemed constitutive in international legal matters. Therefore, the mentioned currency clause could not be relevant for the international legal position of the Kingdom of SCS since the currency is not a factor that could determine the essence of a state.

Žolger reinforced his argument about the inconsistent evaluation of the (dis)continuity of a state based on individual international legal acts that do not address the essence of the state. He cited an example of the treaty between the Kingdom of SCS and the so-called Principal Allied and Associated Powers in 1919.<sup>97</sup> This treaty confirmed that the Serbs, Croats, and Slovenes from the former Austro-Hungarian Monarchy decided, by their will, to unite with Serbia to create an independent and united state called the Kingdom of Serbs, Croats, and Slovenes.<sup>98</sup> Consequently, Serbia did not extend its sovereignty to the former Austro-Hungarian territories because the Slovenes, Croats, and Serbs from those regions voluntarily transferred their sovereignty to the newly formed state, implying a new original sovereignty. Interestingly, some Slovene unitarists, specifically representatives of the liberal Slovene political circle

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represented in the cabinet is Mr. Radić's party. That party consists of a few peasants who are all extremists and have no constructive program. It is just a small "Bolshevik" movement with little importance and very few sympathizers. I am very pleased that all misunderstandings and petty intrigues between the Yugoslav National Council and the Serbian government died a natural death the moment the main idea of national unity was realized." (Đokić, *Nedostižni kompromis*, 65).

<sup>96</sup> Subotić, "Naša Kraljevina nije."

<sup>97</sup> *Notes of a Meeting of the Heads of Delegations of the Five Great Powers Held in M. Pichon's Room at the Quai d'Orsay, Paris, on Monday, September 8, 1919*, <https://history.state.gov/historicaldocuments/frus1919Parisv08/d8> (accessed June 20, 2023).

<sup>98</sup> Žolger, "Da li je naša kraljevina," 16.

advocating for a union with Serbia, confirmed this.<sup>99</sup> For instance, during the assembly of the Commissioners of the Yugoslav Democratic Party on June 6, 1919, Ivan Tavčar, the Mayor of Ljubljana, stated that they wanted to be loyal servants of the new(!) state.<sup>100</sup>

## Conclusion

The analysis of the two key statehood legal issues related to the formation of the South Slavic state entities after World War I is complicated by the fact that international law at that time did not encompass all the legal instruments that currently determine the position of subjects in international relations. Nevertheless, legal arguments still confirm the statehood of the State of SCS, which was constituted in the territory of the collapsed Austro-Hungarian Empire through legitimate representative bodies and was de facto a complex state.<sup>101</sup> In this context, the Croatian state changed its government and placed itself under the new sovereignty of the National Council of SCS but did not abolish any of its institutions. Although there was no formal international recognition of the State of SCS, according to the declarative theory, this is not a constitutive element of statehood. Therefore, it can be concluded that this entity still fulfilled all the basic criteria of international subjectivity that were later formally determined by the Montevideo Convention, namely permanent population, territory, effective government, and the capacity to enter into relations with other states.<sup>102</sup> We can also agree with the assertion that the state had the legal capacity to establish relations with other subjects of international law. Moreover, from the short existence of the State of SCS, implicit acts of recognition of that state by other international subjects can be observed, as they established institutions to engage and communicate with representatives of the State of SCS.

The analysis of the December 1st Act leads to the conclusion that the process of unification involved a violation of the authority of the National Council of SCS, as it did not fully exercise its right in accordance with the intention of the Croatian Parliament and its decision of October 29.<sup>103</sup> It did not include subsequent ratification by its own plenum, and most decisions were made by the three-member Central Committee. Even for the act of unification, the National Council of SCS empowered 28 members who were not elected at the plenary session. In addition, the delegation that went to Belgrade ignored the “Naputak” (Instruction), and the signed act itself did not receive the

<sup>99</sup> Momčilo Zečević, *Na zgodovinski prelomnici* (Maribor: Obzorja, 1986), 89.

<sup>100</sup> Jurij Perovšek, *Liberalizem in vprašanje slovenstva* (Ljubljana: Modrijan, 1996), 142.

<sup>101</sup> However, this legitimacy was still limited because, for example, in the regions of Croatia and Slavonia until 1918, there was no universal suffrage, and only 8 percent of the population determined the composition of the Croatian Parliament. This raised doubts about the legitimacy of the relative majority of the Croatian-Serbian coalition. (Krizman, *Hrvatska u prvom svjetskom ratu*, 27).

<sup>102</sup> *Montevideo Convention*, art. 1.

<sup>103</sup> Boban (“Kada je i kako nastala Država,” 59) claims the December 1st Act was not binding for the Croatian Parliament.

necessary ratification from the Serbian Parliament, which would have been in accordance with the then-existing organization of the Kingdom of Serbia. Therefore, the unification was carried out beyond the authorized scope from the Croatian perspective and outside the Constitution, if we consider it from the Serbian side. This legal aspect is undoubtedly one of the key factors that leads to the conclusion that the Kingdom of SCS was indeed a new state because it received a new constitution that interrupted the continuity of the previous Serbian constitution and, consequently, the continuity of the Kingdom of Serbia. The temporary organization that the Kingdom of SCS received on December 1, 1918, was not created in accordance with the provisions of the Serbian constitution from 1903. Instead, it resulted from an agreed-upon break in the constitutional order of the Kingdom of Serbia, achieved through an international agreement between two formally equal subjects. The legitimacy of the new state's government was based precisely on that international agreement.

However, despite the formal equality, the actual negotiating positions did not enable genuinely equal conditions for both sides. It was evident that the representatives of the Kingdom of Serbia had a clear advantage, which was reflected in the process of shaping the new constitutional order and ultimately confirmed by the so-called "Vidovdan" Constitution. The latter included all the key demands predominantly from Serbian authorities and reaffirmed the dominance of the Greater Serbian national ideology. However, this is not sufficient to support the argument of some jurists<sup>104</sup> that in the case of the formation of the new state, the State of SCS joined the Kingdom of Serbia. In conclusion, from a legal standpoint, there were hardly any major ambiguities in this case. However, the judgment in the international legal dispute between Germany and the Kingdom of SCS, and even more so its diverse interpretations, revealed significant internal political disputes in the new state, as well as frequent political pragmatism of international factors.

Finally, this case highlights the necessity of verifying the judgments of legal institutions when incorporating their conclusions into historical works. Historians unfortunately often use certain legal documents without checking the purpose of their creation and without verifying the criteria by which certain dilemmas are resolved, as evidently happened in the case of Germany's lawsuit against the Kingdom of SCS.

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<sup>104</sup> Ciril Ribičič, *Ustavnopравни vidiki osamosvajanja Slovenije* (Ljubljana: Časopisni zavod Uradni list Republike Slovenije, 1992), 6.

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