

IRINA CULIC

State Building and Constitution Writing in Central and Eastern Europe after 1989

The dismantling of the communist system and the collapse of the supranational authority of Moscow in 1989 initiated a complex process of state building. States like Romania and Poland were forced to re-constitute themselves as non-communist, democratic states; depositories of human and political values, rights and guarantees. The others—former republics of the Soviet Union and Yugoslavia—regained their independence or, as in the case of Moldova or Macedonia, became independent states for the first time in modern history. The political elites of these newly formed states faced the task of formulating the philosophical foundation of their state: to decide upon the fundamental values on which the political, economic and social activities were to be grounded, the people, nation or political community in which the legitimacy of the ruling act was to be rooted, and the character of the state.

The main aims of political elites in state building were three-fold. First, political elites had to establish state authority internally and legitimize its placement through organized, free and competitive elections. Hence they were also compelled to produce new Constitutions placing establishing the full control of military and other security forces in the hands of central, domestic, political authorities.

Second, in accordance with the present international system of states, they were required to gain recognition as a political unit of international law and assert the sovereignty of their state. In order to do so, a definition of the political community of the state establishing a clearly demarcated territory, and a relational network with other states was necessary. In this respect most CEE states followed a maximal territorial and national state project, negotiat-

ing the maximum territory possible in accordance with historical-national, demographic or legal-constitutive principles. They shaped their states as national-states, of and for a titular/ dominant nation, and introduced remedial policies that promoted and enhanced the language and culture of the titular nation.¹

Third, endeavoring to insure national security and stability, as well as security within the region, these states struggled to advance in the process of economic, political and military integration in Euro-Atlantic structures.

In what follows I will concentrate on only one element of this complex process of state building – Constitution writing. The crucial importance of the Constitution lies in the character of its *founding act*. The constitution establishes a foundation in all senses of the word – as document (law, covenant), as deed (action, event), and as performance (instituting act performed through referendum). The Constitution alone sets the foundation and hence the institutions of the state. The adoption of the Constitution is virtually equal to the birth of the state as an internally and externally legitimate, recognized, and functioning state.

Constitution writing requires a vivid process of deliberation, discussion and consultation. During this process, which takes place both within the Constituent Assembly and throughout the public sphere, state institutions are devised as well as the principles and values that will guide their activity. The process itself bears the power to render legitimacy to the Constitution and to the institutions established through it.

The Context

Most of the states which declared their independence after the fall of the communist regime, and/or engaged in a democratic transition, defined themselves as both *democratic (nation) states* vesting power in all the people (citizens), as well as national states (*Nation states*) created of and for the protection and enhancement of one definite nation. Though not wholly contradictory as the concept of the modern (nation) state as a participatory state implies homogeneity of the population, an inherent tension exists between the two principles of nation and of democracy. The conflict is moreover augmented by the incongruity between nationalizing state policies carried out in view of the legitimate aim of strengthening the state, which favor the language and

¹ See Rogers Brubaker: Nationalizing States in the Old 'New Europe' – and the New. *Ethnic and Racial Studies*, Vol. 19, No. 2, April, 1996. 411–437.

cultural symbols of the dominant nation, and the democratic policies of state-making, wherein all citizens are accorded equal individual rights. The conflict is carried on mainly within the national (internal) realm of states, where a particular type of national(ist) sentiment, bred in uncertainty, existential insecurity, poverty, fast changes and polyphonic political discourses, is played against the concrete idea (objectified in a normative standard of Western democracy and free market, observance of human rights and international legislation) of integration into European and larger structures.

Communist regimes in Eastern Europe fell as a direct result of the loss of their leadership's legitimacy, coupled with the ideological and economic bankruptcy of the multiple variants of these political systems in the context of Gorbachev's economic reforms and transparency doctrine. In an effort to reestablish the grounds of these states, new political elites attempted to dissociate themselves from the former communist leadership, ideology and political structures, while struggling to preserve and selectively emphasize those elements of national history that supported an independent and democratic existence. For the newly independent states the latter comprised any endeavor to recover historical episodes of national statehood, which might demonstrate the legal continuity of their states. It also meant the promotion of those elements of nationhood which the nation had been deprived of, or which had been altered and neglected during the communist regime – language, territory, resources, and citizenship.

As concerns the former, the main strategy utilizes scapegoats, appealing to a rhetoric that radicalized an interpretation of the communist takeover in national terms. Thus communism comes to light as a foreign invasion imposed on the nation, carried out by local communists recruited massively from the national minorities.² The nation thus appears victimized and absolved of any responsibility or guilt.

The Newly Independent States

One must make an analytical distinction between states which were part of the external Soviet empire but existed legally as sovereign states, and the newly independent states emerging from the fall of communist multinational federations. In the first group I consider Albania, Bulgaria, Hungary, Poland, Romania, as well as the Czech Republic and Slovakia. The second group comprises Belarus, Estonia, Latvia, Lithuania, Moldova, the Ukraine

² E.g. the case of Jews and Hungarians in Romania, alongside the foreign Russians.

and Russia, and respectively Bosnia and Herzegovina, Croatia, Macedonia, Slovenia, Yugoslavia (Serbia and Montenegro). While the first group faced the difficult transformations demanded by the transition to democracy and market economy, the latter met with a different, more complex, agenda. These states confronted tasks whose urgency (real or perceived) exceeded that of establishing democratic institutional arrangements and the framework for an economic reform leading to a free, competitive market.

First, these states needed to find grounds to assert and support their independence. Second, most cited historic possession and demographic or legal arguments in order to achieve maximal, territorial statehood. And third, in defining their citizenry – those entitled to membership in the polity, these newly, independent states wagered the sheer definition of the nation in whose names they were (re)set.

Perhaps a brief note concerning nationality policies in the Soviet Union would prove enlightening to this argument. All students of post-communist nationalism acknowledge that the legacy of the communist institutions and policies, alongside several other factors, was an important catalyst in the upsurge of nationalist sentiment and action after 1989. The federal form imagined by Lenin, in opposition to Stalin's idea of a union of autonomous republics under Russian domination, was that of a union of republics equal in status within a Soviet federation which would allow the right to secession and would give the major nationalities considerable cultural and administrative autonomy. Thus, the titular nationalities were collectively enshrined in their own geographically defined union republics. After an initial move towards "nativization" made by Lenin who feared the "Great Russian chauvinism", a process of Russification began in the mid-1930's. Rebuking Stalin's policies at the 20th Party Congress in 1956, Khrushchev committed the Party to the flourishing of nations. He also envisaged, however, a policy of their "coming together" until a final "merger" was achieved. These policies went on unchanged for the next 25 years and favored the "creation" or institutionalization of nations (nationalities).³

The titular nationalities were collectively enshrined in their own geographically defined union republics. Thus nationalities such as the

³ Hélène Carrère d'Encausse: *Decline of an Empire: the Soviet Socialist Republics in Revolt*. New York: Newsweek Books, 1979. Alexander J. Motyl (ed.): *The Post-Soviet Nations. Perspectives on the Demise of the USSR*. New York: Columbia University Press, 1992. Rogers Brubaker: *Nationalism Reframed. Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press, 1996. 23–54.

Belarusians or the Moldovans, which did not have any experience of modern independent statehood, were “granted” union republics of somewhat arbitrarily drawn borders, as a result of particular political interests. The Belarusians could not unambiguously claim a certain territory as their nation’s homeland, nor a Golden Era in history. And, the Moldovan conception of statehood was made problematic by the existence of a Romanian “homeland” state, of which Moldova had belonged between the two world wars and with whom it had organic historical relations. The framework of these republics constituted the arena where, in a more or less controversial manner, Belarusian and Moldovan nations were (re)created.

During this time, the nationality of persons did not depend on the place of residence, but was allocated according to cultural/ ethnic principles. Thus, a significant ethnic/ national personal awareness became institutionalized through passports, identity documents, and various other bureaucratic forms asserting the nationality of a person. “The Soviet institutions of territorial nationhood and personal nationality comprised a pervasive system of social accounting, an organizing scheme of social accounting, an interpretative grid for public discussion, a set of boundary-markers, a legitimate form for public and private identities, and, when political space expanded under Gorbachev, a ready-made template for claims to sovereignty.”⁴ The Soviet regime institutionalized both a territorial-political and a personal-ethnocultural model of nationhood, resulting in expectations of “ownership” on the part of the successor states. The argument can be reproduced in a similar manner for the federal republics of the former Yugoslavia.

As political analysts note, the rules of sovereignty, defined as a set of principles by which the international community recognizes the legitimacy of authoritative control over a specified population and territory, are neither fixed nor constant, but subject to changing interpretations.⁵ A historical tension persists between two differing conceptions and practices of sovereignty: *state sovereignty*, which stresses the link between sovereign authority and a defined territory, and *national sovereignty*, which emphasizes a link between sovereign authority and a defined population. These two types of sovereignty correspond to two different principles of legitimacy of states as independent entities. State sovereignty emphasizes the integrity of borders, while national sov-

⁴ Brubaker, *Nationalism Reframed*, 204.

⁵ J. S. Barkin, B. Cronin: The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations. *International Organization*, Vol. 48, No. 1, Winter, 1994. 107–130.

ereignty is grounded on the claim (right) of nations to self-determination, and on the belief that national solidarity (national sentiment) serves as valid (and sole) criterion in defining the nation.

The international context in which the states of Central and Eastern Europe emerged at the beginning of the 1990s was characterized by an ideological convergence wherein democratic ideas faced no competition. Moreover, it provided a normative standard for whose realization the West offered several examples of institutional arrangements. The international community – its dominant players – also accepted national sovereignty as the source of legitimacy for state authority. In my opinion, this is a very problematic combination which raises many problems for the ruling elites of newly independent states as well as their populations.

Constitution Writing: State-Building Qua Nation-Building

Each of the former communist bloc countries adopted a new Constitution, except for Hungary who retained the 1949 Constitution, while significantly amending it in both 1989 and 1997, and Latvia who readopted the 1922 Constitution through the independence referendum and likewise amended it in 1998.

Like any political outcome, the Constitution is mainly the result of a struggle among the forces dominant in a political field – the more so in former authoritarian or totalitarian countries where actors from the civil society are often absent, weak or ignored. If theirs or the population's voice is to be heard, this is through the referendum.

Independence is usually a factor of convergence of sentiment and opinion, and it is symptomatic in rapid constitution adoption, high voter turnout rates and high approval percentages.⁶ Thus, Croatia adopted its constitution as early as December 1990, Slovenia in December 1991, Estonia in June 1992, Latvia through the independence referendum in 1990, and Lithuania in October 1992. The Czech Republic and Slovakia both voted for the constitution in 1992; the Czech Republic in December and Slovakia in September. Comparatively, countries where state independence had not been an issue,

⁶ There are of course other important factors which influenced the level of consent over the Constitution, as measured through speed of adoption, turnout and approval: the national issue in countries with significant Russian populations and the way these populations were conceived within the public sphere, economic and social development and homogeneity of the country, degree of stateness – level of central state authorities control over the territory, military or civil conflicts, and capacity of population mobilization.

adopted new constitutions in: November 1998 (Albania), July 1991 (Bulgaria), April 1997 (Poland), December 1991 (Romania, amended in 2003), and December 1993 (Russia). 92.5% of voters turned out in Slovenia and 95.7% voted for the constitution. Estonia saw a 66.8% with 91.3% of voters favorable to the constitution. 74.9% turned out in Lithuania, of which 75.8% voted “yes” for the constitution. In Baltic countries, the Russian minority became one of the crucial elements structuring politics, and decisions regarding their citizenship and legal status affected election results in subsequent elections. 77.3% of the 69.2% of Romania’s turnout voted in favor of the constitution. Poland had less than half of the population turn out at Constitution referendum in May 1997, 42.9%, of which 53.5% expressed approval. This new constitution came to replace the “Little Constitution” which had been in function since 1992 and which both Catholic groups and Solidarity strongly rejected.⁷

The processes of constitution writing set the legal and symbolic grounds of the newly independent states democratization for the region. It defined the organization and character of the state, which in most cases was explicitly and adamantly declared as unitary, indivisible, independent and sovereign.

Albania: Art. 1 (2) The Republic of Albania is a unitary and indivisible state.

Belarus: Art.1 (1) The Republic of Belarus shall be a unitary, democratic, social state based on the rule of law. The Republic of Belarus shall have supreme control and absolute authority in its territory and shall implement domestic and foreign policy independently.

Bosnia and Herzegovina: Art. 1 (1) Continuation. The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be “Bosnia and Herzegovina,” shall continue its legal existence under international law as a state, with its internal structure modified as provided herein and with its present internationally recognized borders. It shall remain a Member State of the United Nations and may as Bosnia and Herzegovina maintain or apply for membership in organizations within the United Nations system and other international organizations. (3) Composition. Bosnia and

⁷ The data are taken from Richard Rose, Neil Munro & Tom Mackie: Elections in Central and Eastern Europe since 1990. WP#300 of *Studies in Public Policy*; University of Strathclyde, Glasgow, 1998. 49, 66, 75, 95, 107, and official data released by the Electoral Bureaus in the respective countries.

Herzegovina shall consist of the two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska (hereinafter “the Entities”).

Bulgaria: Art. 2 (1) The Republic of Bulgaria is an integral state with local self-government. No autonomous territorial formations shall exist. Art. 2 (2) The territorial integrity of the Republic of Bulgaria is inviolable.

Croatia: Art. 1 (1) The Republic of Croatia is a unitary and indivisible democratic and social state. Art. 2 (1) The sovereignty of the Republic of Croatia is inalienable, indivisible and untransferable.

Czech Republic: Art. 1. The Czech Republic is a sovereign, unified, and democratic law-observing state, based on the respect for the rights and freedoms of the individual and citizen.

Estonia: Art. 1 (2) Estonian independence and sovereignty is interminable and inalienable. Art. 2 (1) The land area, territorial waters and airspace of Estonia are an inseparable and indivisible whole. (2) Estonia is politically a unitary state [...].

Hungary does not hold similar provisions.

Latvia: Art. 1. Latvia is an independent democratic republic. Art. 3. The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale.

Lithuania: Art. 1. The State of Lithuania shall be an independent and democratic republic. Art. 3 (1) No one may limit or restrict the sovereignty of the People or make claims to the sovereign powers of the People. (2) The People and each citizen shall have the right to oppose anyone who encroaches on the independence, territorial integrity, or constitutional order of the State of Lithuania by force.

Macedonia: Art. 1 (1) The Republic of Macedonia is a sovereign, independent, democratic and social state. Art. 2 (2) The sovereignty of the Republic of Macedonia is indivisible, inalienable, and nontransferable. Art. 3 (1) The territory of the Republic of Macedonia is indivisible and inviolable. (2) The existing borders of the Republic of Macedonia are inviolable. (3) The borders of the Republic of Macedonia can only be changed in accordance with the Constitution and on the principle of free will, as well in accordance with generally accepted international norms. (4) The Republic of Macedonia has no territorial pretensions towards any neighboring state.

Moldova: Art. 1 (1) Republic of Moldova is a sovereign and independent state, unitary and indivisible. Art. 3 (1) The territory of the Republic of Moldova is inalienable.

Poland: Art. 3. The Republic of Poland shall be a unitary State. Art. 4 (1) Supreme power in the Republic of Poland shall be vested in the Nation. (2) The Nation shall exercise such power directly or through their representatives. Art. 5. The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

Romania: Art. 1. (1) Romania is a sovereign, independent, unitary, and indivisible Nation State. Art. 3 (1) The territory of Romania is inalienable. (2) The frontiers of the Country are sanctioned by an organic law, under observance of the principles and other generally recognized regulations of international law. (4) No foreign populations may be displaced or colonized in the territory of the Romanian State. Art. 4 (1) The State foundation is laid on the unity of the Romanian people. (2) Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property, or social origin.

Russia: Art. 1. The Russian Federation – Russia is a democratic federal rule-of-law state with the republican form of government. The names “Russian Federation” and “Russia” are equivalent. Art. 3 (1) The multinational people of the Russian Federation is the vehicle of sovereignty and the only source of power in the Russian Federation. Art. 4 (1) The sovereignty of the Russian Federation applies to its entire territory. (2) The Constitution of the Russian Federation and federal laws have supremacy throughout the entire territory of the Russian Federation. (3) The Russian Federation ensures the integrity and inviolability of its territory.

Slovakia: Art. 1. The Slovak Republic is a sovereign, democratic, and law-governed state. It is not linked to any ideology or religious belief. Art. 3 (1) The territory of the Slovak Republic is united and indivisible. (2) The borders of the Slovak Republic can be changed only by a constitutional law. Art. 4. Natural wealth, underground water, natural medicinal springs, and waterways are in the ownership of the Slovak Republic.

Slovenia: Art. 1. Slovenia is a democratic republic. Art. 2. Slovenia is a state governed by the rule of law and is a social state. Art. 3 (1) Slovenia is a state of all its citizens and is based on the permanent and inalienable right of the Slovenian people to self-determination. Art. 4. Slovenia is a territorially indivisible state. Art. 5 (State Objectives) (1) Within its own territory,

Slovenia shall protect human rights and fundamental freedoms. It shall uphold and guarantee the right of the autochthonous Italian and Hungarian ethnic communities. It shall attend to the welfare of the Slovenian minorities in neighboring countries and of Slovenian emigrants and migrant workers abroad and shall promote their contacts with their homeland. It shall assist the preservation of the natural and cultural heritage of Slovenia in harmony with the creation of opportunities for the development of civilized society and cultural life in Slovenia. (2) Slovenians not holding Slovenian citizenship shall enjoy special rights and privileges in Slovenia. The nature and extent of those rights and privileges shall be determined by statute.

Ukraine: Art. 1. Ukraine is a sovereign and independent, democratic, social, law-based state. Art. 2 (1) The sovereignty of Ukraine extends throughout its entire territory. (2) Ukraine is a unitary state. (3) The territory of Ukraine within its present border is indivisible and inviolable.

Yugoslavia: Art. 1. The Federal Republic of Yugoslavia shall be a sovereign federal state, founded on the equality of citizens and the equality of its member republics. Art. 3 (1) The territory of the Federal Republic of Yugoslavia shall be a single entity comprising the territories of the member republics. (2) The frontiers of the Federal Republic of Yugoslavia shall be inviolable. (3) The boundaries between member republics may be changed only subject to their agreement, in accordance with the constitutions of the member republics.

The preambles of the constitutions (and the declarations of independence) are informative of the salience and urgency to assert valid grounds for the existence and sovereignty of the newly independent states. Nation is constitutive to, and the result of the existence of, the state. History and historiography constitute, as expected, the symbolic battleground of/for the state.

In the preambles of the constitutions, as well as public, political, and cultural discourses and in the substance of other state policies, the most salient and powerful arguments are the evidence and elements of the historical existence and continuity of a Nation state and the need to emphasize its nationhood by promoting its language, traditions, cultural inheritance, heroic history and territory.

The constitution of Belarus talks of the “centuries-long history of development of Belarusian statehood”, the Czech constitution of “ancient statehood of Czech Crown’s Lands and the Czechoslovak State”, Estonia of a “state which is established on the inextinguishable right of the Estonian people to national self-determination and which was proclaimed on February 24, 1918”. The Lithuanian Nation declares the approval of the constitution

in its preamble “having established the State of Lithuania many centuries ago, [...] having for centuries defended its freedom and independence, having preserved its spirit, native language, writing, customs”. The Macedonian preamble to the constitution talks of “the traditions of statehood and legality of the Krushevo Republic and the historic decisions of the Anti-Fascist Assembly of the People’s Liberation of Macedonia in the referendum of 8 September 1991, as well as the historical fact that Macedonia is established as a national state of the Macedonian people” after mentioning “their struggle over centuries for national and social freedom as well as the creation of their own state”. The Moldovan constitution says that “while growing into a nation the Moldovan people has given strong evidence of historical and ethnic continuity in its statehood”. The Polish constitution recalls the “best traditions of the First and the Second Republic”. The Slovak constitution of the “political and cultural heritage of our forebears, and of the centuries of experience from the struggle for national existence and our own statehood, in the sense of the spiritual heritage of Cyril and Methodius and the historical legacy of the Great Moravian Empire”. And the Ukrainian constitution speaks of the “centuries-old history of Ukrainian state-building and on the right to self-determination realized by the Ukrainian nation”.

Some of these accounts are arguably quasi-fictions – as is Macedonian people’s struggle over centuries for national freedom and a state of their own, or Moldovan’s historical and ethnic continuity in its statehood.⁸ As founding acts however, the constitutions, especially through their preambles, need to legitimize and prove the existence, independence, sovereignty and particular outlook of their states. This, as the following case study of Estonia will show, has complex stakes and implications.

Estonia’s road to independence started with public protests around an ecological issue: the intention of the Soviet central government to start a phosphorus-mining project. This developed into pressure for economic reform that took the shape of a plan for economic autonomy for Estonia proposed by a group of four Estonian liberals. The set up of the Estonian Popular

⁸ See for example Andrew Rossos: The British Foreign Office and Macedonian National Identity, 1918–1941. *Slavic Review*, Vol. 53, No. 2, Summer, 1994. 369–394, respectively Wim van Meurs: Carving a Moldavian Identity Out of History. *Nationalities Papers*, Vol. 26, No. 1, March, 1998. 39–56, and Charles King: The Ambivalence of Authenticity, or How the Moldovan Language Was Made. *Slavic Review*, Vol. 58, No. 1, Spring, 1999. 117–142.

Front was the first institutional form of the mobilization started by the idea of economic autonomy for the republic and was effective in opposing Gorbachev's attempt to change the Soviet Union's Constitution. The Estonian Supreme Soviet declared the republic's right to sovereignty (November 16, 1988) and called for a new union treaty. This was the beginning of a struggle for political sovereignty and economic autonomy with the authorities in Moscow.

Estonia, in alliance with the other Baltic republics, played the card of history as the main means of political struggle. They invoked the Nazi-Soviet Non-Aggression Pact, and were helped with the results of a commission charged with the study of its provisions, which revealed the existence of secret protocols dividing up Poland and the Baltic states. The struggle radicalized after the organization of the human-chain from Tallinn to Vilnius as protest, with the establishment of Estonian Citizens Committees, which maintained that the country had been illegally occupied and annexed by the Soviet Union. By this they asserted that Estonia's statehood never ceased during the Soviet period, and because the Estonian republic, established in 1918 (independent in 1920), still held international recognition, it would only legitimate Soviet authority by entering into negotiations about her secession. Estonia went on with the concept of continuing legal authority of the prewar republic, appealing to international law in order to secure her against any attempt to be kept in the union.

Estonia's strategy to assert the country's legal continuity as a state was also reflected in her subsequent citizenship policies. The prewar state's citizens and their descendants were granted Estonian citizenship, while the Soviet immigrants living in Estonia and their descendants were not automatically made citizens of the restored state, because they were settled or born in Estonia under Soviet rule. They would have to undergo a process of naturalization, on the basis of language and residence criteria. The conditions set in the naturalization law, including a one-year waiting period after application, had important political consequences, as these non-citizens, about 500,000 of a 1.4 million population, could not vote in the 1992 general elections. This was followed by the 1993 Law on Aliens meant to regulate the status of non-citizens, and required that these persons obtain a residence permit which needed to be renewed annually and was not warranted. Thus people who were born or have lived for most of their lives on the territory of Estonia suddenly found themselves aliens (non-citizens) with a very insecure situation in what they used to consider their country. In the fear that chances to obtain residence permits and subsequent citizenship would

be affected, many did not apply for Russian citizenship either, even though this was offered to all former citizens of the USSR. The law raised objections from key international supporters of Estonia, including the US, the Scandinavian states and the EU.

Estonia's emphasis on the legal continuity of the prewar Estonian state also complicated the process whereby she negotiated the bilateral treaty with Russia (a basic requirement for EU accession), settling the agreement on land and sea borders. The negotiations started in April 1992 and revealed conflicting positions with regard to the Tartu Peace Treaty of February 2, 1920. Estonia wanted full recognition of the treaty, as a valid and constitutive document in her relations with Russia, while Russia considered it dated. After two years of stalemate, the Estonian Prime Minister Tarand agreed to give up the Estonian territorial claims based on the Tartu Treaty borders in favor of the Soviet settled borders, whereby Estonia lost a territory representing about 5% of her size. This territory comprised areas around the city of Ivangorod, east of Narva and Pechory, cutting in two the territory of the kindred Setu people. In exchange, he requested the recognition of the Tartu treaty as a basic document of continuity of the Estonian state and the Russian agreement with the corresponding formulation in the text of the border treaty. After another few years during which the Estonia tried to assess what was more important - the recognition of the treaty or to achieve a border treaty, respectively whether Russia's non-recognition of the treaty affected Estonia's legal continuity as a state whatsoever - Estonia and Russia came to an agreement in 1999.

The greater the emphasis on national, independent unitary and sovereign nature of the state in the declarations of the constitution's preambles, the stronger the feelings of unfair treatment, domination or exploitation were within multinational states.

In what concerns the last federation of Central and Eastern Europe, Czechoslovakia, the velvet separation between the Czech Republic and Slovakia came about as a result of conflicting national conceptions and aspirations within the federation.⁹ The two national and statehood projects led to conflicts over the nature of their political relationship and identity, the institutions (forms of autonomy) defining this relationship, the future of the common state, and other political and economic issues.

⁹ See Hugh Lecaine Agnew: *New States, Old Identities? The Czech Republic, Slovakia, and Historical Understanding of Statehood. Nationalities Papers*, Vol. 28, No. 4, December, 2000. 619-650.

As the Second World War German protectorate could not work as the basis for the foundation of a new Slovak state, elites devised the 1992 statehood project, based on the Slovak conception of nationhood worked out on ethno-linguistic bases within the Hungarian kingdom, without a clear popular mandate¹⁰. It included a historical appeal to the Great Moravian state in the 9th century¹¹ and the Cyril and Methodius mission to Great Moravia. The Czech statehood project was founded on the traditions of the Kingdom of Bohemia transferred to the whole territory of Czechoslovakia. When the Slovak National Council declared sovereignty in July 1992, it referred to the millennial struggle for Slovak identity. The draft constitution presented in August 1992 declared the natural rights of a people to self-determination and the principles embedded in the idea of citizenship the foundation of statehood, so that Slovakia was conceived as a republic of free and equal citizens. When adopting the constitution, however, the Slovak National Council amended the opening phrase of its preamble from “We, the citizens of the Slovak Republic” to “We, the Slovak nation”. The whole text contained in the preamble follows:

We, the Slovak nation, mindful of the political and cultural heritage of our forebears, and of the centuries of experience from the struggle for national existence and our own statehood, in the sense of the spiritual heritage of Cyril and Methodius and the historical legacy of the Great Moravian Empire, proceeding from the natural right of nations to self-determination, together with members of national minorities and ethnic groups living on the territory of the Slovak Republic, in the interest of lasting peaceful cooperation with other democratic states, seeking the application of the democratic form of government and the guarantees of a free life and the development of spiritual culture and economic prosperity, that is, we, citizens of the Slovak Republic, adopt through our representatives the following constitution.

The preamble of the Croatian constitution is an extreme example of this trend, as it comprises a national history in short for Croatia. This narrative denies the only period of independent statehood during the Ustasha Independent State of Croatia founded in 1941. Through Article 11, however, its symbols are adopted. The entire preamble of the constitution of Croatia more than speaks for itself.

¹⁰ They did not organize a referendum to approve the split of Czechoslovakia.

¹¹ Whose existence pre-dated the arrival of Hungarians in the region.

The millennial national identity of the Croatian nation and the continuity of its statehood, confirmed by the course of its entire historical experience in various political forms and by the perpetuation and growth of state-building ideas based on the historical right to full sovereignty of the Croatian nation, manifested itself:

- in the formation of Croatian principalities in the 7th century;
- in the independent medieval state of Croatia founded in the 9th century;
- in the Kingdom of Croats established in the 10th century;
- in the preservation of the subjectivity of the Croatian state in the Croatian-Hungarian personal union;
- in the autonomous and sovereign decision of the Croatian Parliament of 1527 to elect a king from the Habsburg dynasty;
- in the autonomous and sovereign decision for the Croatian Parliament to sign the Pragmatic Sanction of 1712;
- in the conclusions of the Croatian Parliament of 1848 regarding the restoration of the integrity of the Triune Kingdom of Croatia under the power of the Vice-Roy (Ban) on the basis of the historical state and natural right of the Croatian nation;
- in the Croatian-Hungarian Compromise of 1868 regulating the relations between the Kingdom of Dalmatia, Croatia and Slavonia and the Kingdom of Hungary, on the basis of the legal traditions of both states and the Pragmatic Sanction of 1712;
- in the decision of the Croatian Parliament of 29 Oct 1918, to dissolve state relations between Croatia and Austria-Hungary, and the simultaneous affiliation of independent Croatia, invoking its historical and natural right as a nation, with the State of Slovenes, Croats and Serbs, proclaimed in the former territory of the Habsburg Empire;
- in the fact that the Croatian Parliament never sanctioned the decision passed by the National Council of the State of Slovenes, Croats and Serbs to unite with Serbia and Montenegro in the Kingdom of Serbs, Croats and Slovenes (1 Dec 1918), subsequently proclaimed the Kingdom of Yugoslavia (3 Oct 1929);
- in the establishment of the Banovina of Croatia in 1939 by which Croatian state identity was restored in the Kingdom of Yugoslavia;
- in laying the foundations of state sovereignty during World War Two, through decisions of the Anti-Fascist Council of the National Liberation of Croatia (1943), to oppose the proclamation of the Independent State of Croatia (1941), and subsequently in the Constitution of the People's Republic

of Croatia (1947), and several subsequent constitutions of the Socialist Republic of Croatia (1963–1990).

At the historic turning-point marked by the rejection of the communist system and changes in the international order in Europe, the Croatian nation reaffirmed, in the first democratic elections (1990), by its freely expressed will, its millennial statehood and its resolution to establish the Republic of Croatia as a sovereign state.

Proceeding from the above presented historical facts and from the generally accepted principles in the modern world and the inalienable, indivisible, nontransferable and inexpendable right of the Croatian nation to self-determination and state sovereignty, including the inviolable right to secession and association, as the basic preconditions for peace and stability of the international order, the Republic of Croatia is hereby established as the national state of the Croatian people and a state of members of other nations and minorities who are its citizens: Serbs, Muslims, Slovenes, Czechs, Slovaks, Italians, Hungarians, Jews and others, who are guaranteed equality with citizens of Croatian nationality and the realization of ethnic rights in accordance with the democratic norms of the United Nations and countries of free world.

Respecting the will of the Croatian nation and all citizens, resolutely expressed at free elections, the Republic of Croatia is organized and shall develop as a sovereign and democratic state in which the equality of citizens and human freedoms and rights are guaranteed and ensured, and their economic and cultural progress and social welfare are promoted.

Most former communist bloc countries followed nationalist politics in the construction and consolidation of their (national) states. The nationalism of the post-communist, newly independent states took the form of *remedial political action*;¹² a polity-based, nation-shaping (or nation-promoting) nationalism, that aims to nationalize an existing polity. The majority of their new, political elites denounced the organization and policies within the multi-national federations as some sort of national and political domination, colonialism or, as in the case of Estonia, pure foreign occupation.

The main elements of this form of nationalism are (1) the “existence” of a core nation/ nationality defined in ethno-cultural terms and distinct from the citizenry/ population/ permanent residents, (2) the idea that the core nation legitimately “owns” the polity, which exists of and for the core nation,

¹² Brubaker, *Nationalizing states*, 411.

(3) the perception that the core nation is not flourishing, that its specific interests are not adequately realized or expressed, and that specific action is required in a variety of settings and domains to promote its language, traditions, cultural inheritance, demographic dominance, economic welfare and political hegemony, (4) justification of such policies based on the need to remedy or compensate for previous discrimination against the nation before it disposed of its own state to safeguard and promote its interests, (5) mobilization on the basis of these ideas in various settings, in an effort to shape the policies and practices of the state and other organizations, and the adoption of such policies according to these lines.¹³

Such efforts at state-building via nation-building or nationalizing of the state are objectified in a particular body of legislation including linguistic policies, local administration, citizenship and immigration policies, kin-state legislation, and education. Of course, the constitution, the principal piece of this body of legislation, embodies the constitutive law of the state, defining both the character and nature of the state and the citizenry.

Romania is one of the most outspoken countries in this respect, as Article 1 of her constitution states that “Romania is a sovereign, independent, unitary and indivisible National State.”¹⁴ Romania in fact, is the only state that asserts the national character of the state in her constitution. According to Art. 2 (1), “National sovereignty resides with the Romanian people”, thus making Romanians the constitutive people of the state, while leaving out persons of other ethnic belonging.

The national character of the state is (indirectly) reinforced in subsequent articles. Thus, according to Art. 3 (4) “No foreign populations may be displaced or colonized in the territory of the Romanian State.” Concerning the conception of the Romanian political community, Art. 4 (1) says: “The State foundation is laid on the unity of the Romanian people”. This asserts the historiographic theme of a unified origin for all inhabitants of the three Romanian principalities, the source of Romanian nationhood endeavors, which were finalized, with the Great Union of 1918. Formally, this paragraph, alongside the one which states the unitary and national character of the Romanian state, restrains the legal possibilities of national minority (Hungarian) self-government (forms of cultural or political autonomy) required to accommodate the needs and demands for national identity preser-

¹³ *Idem*, 415–6.

¹⁴ The following excerpts come from the official translation of the Romanian Constitution as provided by the Romanian government.

vation and cultural development. Symbolically, it excludes groups of people from the intrinsic link between the state and its political community, if the latter is defined in cultural terms.

These provisions have more than symbolic meaning, as the results of a survey regarding intolerance and authoritarianism in Romania indicates.¹⁵ When asked if in their opinion the Hungarians who live in Romania are part of the Romanian Nation or not, 67% of those surveyed said “yes”, 23% said “no”, and 10% declined to answer or said that they did not know.

The dominant nation is also privileged with regard to symbolic elements defining the state. According to Art. 12, (2) “The National Day of Romania is the 1st of December.” and “The national anthem of Romania is ‘Awake, Romanians.’ Both represent the struggle of national emancipation from Hungarian domination, and hence bear quite an emotional load. The former, marking the union of Transylvania with Romania in 1918 represents the greatest tragedy in the history of the Hungarian nation, the dismantling of the country at Trianon. The latter symbolizes the 1848 national revolution in Transylvania carried out against Hungarian domination. Furthermore, the constitution favors the language of the “titular” nation. According to Art.13, “In Romania, the official language is Romanian.”¹⁶

Finally, Art. 148 of the constitution states that the constitutional provisions regarding the national, independent, unitary and indivisible character of the state, the republican form of government, the integrity of the territory, and the official language can not be subjected to revision.¹⁷

Romania amended her constitution in 2003. The provision concerning the national character of the state was challenged by the Democratic Alliance of Hungarians in Romania (UDMR), which proposed its removal.¹⁸ The Al-

¹⁵ “Intolerance, discrimination and authoritarianism in public opinion”, survey done by the Institute for Public Policies and Gallup Organization Romania in September, 2003.

¹⁶ Subsequent events and legislation adopted by Romania, however, changed the status of minority languages which now can be used in local administration if the minority population represents more than 20% of the total population, and in the courts of law.

¹⁷ The Romanian Constitution recognizes and guarantees the right to preserve, develop and express ethnic, cultural, linguistic and religious identities for non-Romanian ethnics, under the condition that principles of equality and non-discrimination of other Romanian citizens are held (Art. 6). Together with Art. 16, it excludes any form of positive discrimination towards ethnic/ national minorities. The right to minority language education is expressly mentioned in the Constitution (Art. 32). Political participation and representation of national minorities are permissively insured.

¹⁸ The Alliance was part of the government coalition between 1996–2000 and collaborates with the present government party, the Social Democrat Party (PSD), according to a signed protocol.

liance's proposal was rejected with a majority of 238 against 23 (the latter representing UDMR representatives in Parliament).

The importance which legislators give to nation-building (or even national building) as part of state-building, and for the accepted boundaries of the citizenry and nation can be seen in the wording of the constitution. Perhaps its roots go even deeper to cultural features of the ethnic nation. Thus, the Polish Parliament hosted a debate regarding the religious nature of Polish nationals, arriving to the bizarre formulation :

We, the Polish Nation – all citizens of the Republic,
Both those who believe in God as the source of truth, justice, good and beauty,
As well as those not sharing such faith but respecting those universal values as arising from other sources [...].

Most of these countries vest sovereignty in the people, in many cases implicitly conceived of as an ethnic nation. There are, however, countries that are careful to employ more objective and technical terms, in that they pronounce as the source of state power and repository of sovereignty “the citizens of the republic” (the Czech Republic), “the People (people) of the republic” (Albania, Belarus, Hungary, Moldova, Ukraine), and the “multinational people of the Russian Federation”. Generally, only those states secure in either their nationhood or tradition of statehood (Czech Republic, Hungary, Russia) or those displaying a dubious and contested definition of nationhood (Belarus, Moldova, Ukraine) use these formulae. All other countries assert their statehood by massively employing elements of nationhood.

*Conclusion. State Building in Eastern Europe:
Struggling Behind and Ahead*

Most countries of the former communist bloc wrote a new constitution as a result of major changes in 1989 and 1991. The revolutions that led to the dismantling of the communist system were seen as more than the termination of an illegitimate, violent, repressing, and economically bankrupt regime. For the newly independent states they were also liberating movements, as they were for the satellite states as well. Moreover, this liberation was seen as the final episode of a century long struggle for national self-determination, statehood and independence.

The political context of the time, shaped by the interpretations and interests of major powers, favored the flourishing of nations and acceptance of na-

tional independent statehood. The principles of state legitimacy, either internal or international, as previously set by the United Nations Charter were not apparent throughout the Cold War. The Charter asserted the right to self-determination of peoples (in the sense that everyone as an individual has a right to his own government and to participate in that government), but not of nations, and established the priority of the integrity of established state borders over the integrity of national groups. The Cold War carried on in order to legitimize specific political and economic ideologies. It allowed the expansion of the Soviet state at the price of several nationalities' statehood, as well as domination by force over its external empire (best objectified on the Brezhnev doctrine). Discontent with the Realpolitik (inviolability of states) and its consequences: abuses of populations by their governments, and internal colonialism/imperialism, brought about the end of the Cold War. Border changes and concessions towards greater autonomy to domestic ethnic groups became acceptable, normal, and even desirable. The changed security environment accounts as much for this, as the loss of the (perceived) legitimacy of the respective states (to their populations, and to the international community).

Thus post-communist state-building took place within a modern framework of statehood and international relations, according to the modern principles of territoriality and sovereignty. Moreover, new states were set as states of and for a nation, and thus state building was conceived as vigorous nation building. Constitutions and citizenship policies – which have a constitutive worth as acts whereby the body politic of the state is set and which are expressive of the nature of the state, followed the national principle. All related legislation was shaped according to remedial and assertive nationalism.

Constitutions provide the main sources of data in investigations of state-building. In order to grasp the bigger picture, however, one has to analyze all related legislation. Thus, one can note that, while the states of Central and East European reinforced the modern principles of statehood in their endeavors to obtain recognition and integration within Western security, economic and political structures, they also attempted to go beyond these principles. The unique chance to reformulate the nature and worth of their nation and state was seized by most post-communist elites who sought maximal territorial and national projects. This approach modeled political processes such as border settling and citizenship legislation. If in their claims of historical, territorial restoration, states of Central and Eastern European seemed to lag behind the ideology of the time, they were, however, ahead of the West-

ern states in terms of institutional and political arrangements linked with their national policies.¹⁹ The liberal and all inclusive citizenship laws of e.g. Romania towards her co-ethnics living in other countries clearly went beyond the principles of territorial borders and the sovereignty of states principles. The Hungarian kin-state law also advanced the concepts of shared sovereignty, community of communities versus union of sovereign states, and infringed on neighboring states' sovereignty with provisions to be applied on their territory. State building and nation building in CEE Europe are also part of a larger process re-institutionalizing and re-organizing political space and political phenomena. Both their innovative concepts and legislation are constitutive to these processes.

¹⁹ Here I refer to their position and policies towards their co-national (co-ethnics) abroad, the so-called kin-state legislation.