VALIDITY OF THE 1918 UNIFICATION OF MONTENEGRO AND SERBIA - AN INTERNATIONAL LEGAL THEORY APPROACH

The unification of Montenegro and Serbia has been a subject of hot political and legal debates ever since it occurred back in 1918. A lot of what was written, both in attempt to justify and dispute this event, could not break free of the service to the respective political agenda it was trying to promote. This in turn produced a lot of works which analyzed this event not from a strictly legal point of view, but rather from a political, or rather - emotional one. Because of this, many questions which are of greatest theoretical interest have been overlooked and thus denied the attention they truly deserve.

One of such questions concerns the legal basis for such a unification. For obvious reasons, this question has often been subject of one-sided and incomplete analysis. Many of the writers which questioned the validity of this unification, did this by indicating that it had no legal basis in the then-existing Montenegrin legal system. Such an approach, however, meets one obstacle – the fact that the Montenegrin legal order at the time was not effectively in power. The then-sovereign, King Nicholas, had been unable to exercise his power in the country for over 2 years, considering that he, along with many high-ranking office holders, left the country in early 1916, leaving it with an incomplete government which, before being itself disbanded by the occupying Austrian forces, disbanded the Montenegrin military forces, leaving the country without effective or organized forces, which could carry on the fight, or, in some other way, keep the Montenegrin legal order alive.

A part of the critics base the validity of the then-existing Montenegrin legal system on the fact that King Nicholas had continued to claim his rights as a sovereign even after going in exile, and was in that capacity recognized by most of the Allied countries. They claim that the occupational regime which the Austrian powers installed in Montenegro, did not stray from the legal framework set up by the Fourth Hague Convention which treated occupations and annexations as a temporary condition which neither grants the occupying powers sovereignty over the occupied territory, nor rids the sovereign of their own sovereignty. This is indeed true. However, by basing the validity of the then-existing legal order on the grounds of international law, they necessarily implicitly accept a monist theory of international law, which carries with it a whole set of unwarranted conclusions which do not benefit their cause.

The most obvious one being the fact that the later unification of Montenegro with the Kingdom of Serbia has been, at the appropriate time, accepted by the international community as legally perfect. This was foremost demonstrated by accepting the Kingdom of Serbs, Croats and Slovenes, itself the product of the unification, as a legally perfect entity, also by denying King Nicholas and his Government the status of representatives of Montenegro during the Paris Peace Conference, a stance which got its ultimate form when the allied countries, after the elections for constituent assembly in the newly-formed country was performed, severed their diplomatic relation with King Nicholas and his Government., by which they undoubtedly expressed the view-point that Montenegro became an integral part of the Kingdom of Serbs, Croats and Slovenes.

However, if we are bound to perceive this process as legally perfect from the standpoint of international law – it must be based on an appropriate (international) legal basis. Two such bases can be found in the then-existing international law. The first being the most obvious, i.e. the exercise of the right of self-
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determination of the Montenegrin people, with the second one being the claim that King Nicholas lost the effective control of Montenegro, which was, following the liberation, regained by the Committee which proclaimed the unification of Montenegro and Kingdom of Serbia.

The problem with the second line of reasoning is that, because of the Hague Convention framework, for such a transfer to take place – the allied armies present in Montenegro at the time mustn’t be defined as hostile to the Montenegrin state. The very possibility of defining such a relation necessarily implies the existence of the Montenegrin state - which in turn mandates the recognition of some state representatives. Two pretendents to such a status – the King Nicholas and The Unification Committee, existed at the time of unification. The question of whether, and more importantly – how – the prior lost his capacity in favor of the latter in the eyes of international community will be the central point of this paper.

Because, regardless of the basis on which we base this unification - the manner of which such such a basis was adjudicated upon, in an atmosphere without a centralized judiciary body (as was the case in the immediate post-WW1 world), and thus, – without an appropriate court ruling, remains of upmost theoretical importance. We must wonder - whether a a “Rule of Adjudication” can be imagined in a world without institutionalized courts? Does the process of adjudication, then, present itself as a mosaic whose pieces are put together by respective state-actors until a somewhat uniform picture and stance is reached, or are such decisions reached by simple consent of state-representatives? Can such a construction of implicative, passive “adjudication ex silentio” – or rather – “adjudication by custom” hold any ground in general legal theory and the theory of international law? This we shall see in our work.