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DISAGREEMENTS OVER THE DEFINITION OF STATE PROPERTY IN THE PROCESS OF STATE SUCCESSION OF THE FORMER YUGOSLAVIA

The Present Situation — Joint Position of Four Successor States — Allegations by the FRY — Statements by the Arbitration Commission — Follow Up — Equitable Apportionment of State Property and Debts

I THE PRESENT SITUATION

Property, rights and interests as object of repartition between successor States of the former Yugoslavia are still one of the most controversial issues to be resolved after the demise of the former Yugoslav Federation. It is as such closely connected with the situation as it was on the date or dates of the succession of States.

Even after the normalization of relations between all five successor States and after the lifting of sanctions imposed by the UN Security Council in 1992,[1] the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter FRY) still holds, without a valid legal title, most of the federal property of the former Socialist Federal Republic of Yugoslavia (SFRY), especially:

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1 Sanctions under Chapter VII of the UN Charter by the UN Security Council Resolution 757 of May 30, 1992 were imposed on FRY mainly because of its involvement in the war in Bosnia-Herzegovina. They were lifted by Resolution 1074 of October 1, 1996.

- virtually all premises of the diplomatic and consular missions abroad, residences and apartments of heads of missions and other staff, along with the movable property;
- assets of the former National Bank of Yugoslavia (NBY), including its monetary gold and hard currency reserves which are not frozen in foreign banks;
- most of the arms and ammunition of the former Yugoslav People's Army (JNA);
- joint property of former associations of enterprises in key infrastructure, transportation and communications, such as Yugoslav Electric Power Industry (YUGEL), Yugoslav Railways, Yugoslav Post & Telecommunications, etc;
- all the archives of the former Federation, with many documents not belonging to the State Archives of the predecessor State.

It is a wellknown fact that the largest part of premises of federal institutions, which constitute the immovable property of the former Federation, is concentrated in Belgrade, former Yugoslav capital. Almost all research institutions of the Federal Army within the powerful military-industrial complex of the former Federation, are situated in Serbia alone. Even barracks and other installations of the former Federal Army are not equally distributed among all five successor States.

Of all above, only the frozen assets and diplomatic and consular premises abroad are out of reach of the FRY.

In the course of the war of aggression there was no way of preventing FRY from spending the monetary gold and hard currency reserves for military purposes to assist the so-called Serbian Republic in Bosnia-Herzegovina and the Serbian Republic of Kraina in Croatia. Other successor states have still no control or evidence of the fate of these assets.

The use of military assets of the former SFRY created most serious problems during the war of aggression waged since 1991. When on May 15, 1991 the JNA fell under the virtual control of the members

of the former Federal Presidency from Serbia and Montenegro, that huge army with all its weaponry was used in the aggression against democratically elected Governments: first in Slovenia (June 26, 1991); then in Croatia (mid August 1991); and finally in Bosnia-Herzegovina (even before April 7, 1992). Following the ceasefire agreements, most of that weaponry was transferred first from Slovenia to Croatia, then from Croatia to Bosnia-Herzegovina, and since the beginning of 1992 from Macedonia to Kosovo.

Parts of these arms, including military aircraft, tanks and heavy artillery, were - without any legal title - in the possession of the armed forces of the so-called Serbian Republic of Kraina in Croatia until its inglorious end in 1995. They are still in the possession of the "Republika Srpska" in Bosnia-Herzegovina.

Financed by the citizens from all Republics and Autonomous Provinces of the former SFRY, these arms were used for killing and terrorizing mainly the non-Serbian population in the successor states, including FRY.

The consequences of the passivity and tolerance of the International Conference on the Former Yugoslavia (hereafter: "the ICFY"), have been disastrous, especially in respect to the military assets of the former Federation that the FRY has illegally appropriated.

With these arms covered by the succession of States, dreadful racially motivated crimes against civilian population were committed. The siege of Sarajevo and other towns over almost four years was laid by means of these arms. Enormous civilian casualties and mass destruction of property were inflicted as a result of it.[2].

These crimes are prohibited as such by the Statute of the International Criminal Tribunal for the former Yugoslavia. The Prosecutor of the Tribunal has already begun his investigation against a number of political leaders and military commanders who are accused for committing crimes with these arms. Among them are JNA officers Milan

2 While nearly all victims in concentration camps were non-Serbs, the indiscriminate of bombing and shelling of the besieged cities like Sarajevo were people of all nationalities, including many Serbs who decided to stay.

Mrkšić, Miroslav Radić and Veselin Šljivančanin for mass killing of 261 non-Serbs taken from the Vukovar hospital in 1991. Also among them is Milan Martić the former "president" of the so-called "Serbian Republic of Kraina" in Croatia. The best known are the former president of the "Republika Srpska" in Bosnia-Herzegovina Radovan Karadžić and general Ratko Mladić. They are accused for genocide and crimes against humanity committed all over Bosnia-Herzegovina, especially for crimes committed following the seizure of Srebrenica.

Tolerating the abuse of this weaponry is equivalent to the complicity in war crimes. Yet the international community has done little to prevent its abuse in the form of killing and wounding of civilians, including the population of Kosovo.

II JOINT POSITION OF FOUR SUCCESSOR STATES

Succession of States as a consequence of the dissolution of a federation into its constituent parts within their existing boundaries - which before its demise had their revenues and enjoyed to a large extent all the vestiges of statehood - should be an easier task than the succession of quite new entities within their new frontiers. The example of the latter was the succession of States in the wake of the dissolution of Austro-Hungarian and Ottoman Empires after World War I. On the territories of these two Empires quite new States were created within new borders.

When it comes to the succession of federations like the former SFRY, USSR and Czecho-Slovakia, it is obvious that the object of apportionment will be the assets and liabilities of the Federation as they existed on the date of State succession.

Consequently, since the beginning of negotiations on State succession within the ICFY, Croatia, Slovenia, Macedonia and Bosnia-Herzegovina, have insisted on the definition of State property along the lines of Article 8 of the 1983 Vienna Convention of Succession of States in Respect of State Property, Archives and Debts (hereinafter: "1983 Vienna Convention"), which says:

> *"For the purposes of the articles in the present Part, "State property of the predecessor State" means, property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State."*

These four successor States argue that State succession applies only to the categories of State property which the former Yugoslav Federation possessed on the date of the succession of States, in conformity with the Federal laws in force on that date. The commonly agreed "reference date" is December 31, 1990.[3]

This process of State succession should be largely facilitated by the fact that from the constitutional reforms in 1971 onwards all the public property such as key infrastructure, transport and communications was assigned for management to "associated labour organizations" at the level of Republics and Autonomous Provinces.

The most important was, however, the 1971 Law on the Transfer of Assets, Rights and Obligations of the Federation for Economic Investments to Republics and Autonomous Provinces. Pursuant to this Law, all assets, rights and various obligations were apportioned among Republics and Autonomous Provinces. Since then the beneficiaries of earlier credits have repaid their obligations the respective to agencies of their federal units.[4]

After the repartition the Federation lost its function in this important domain, except in respect to some particular joint investment construction projects (such as railway lines), for each of them a special law was enacted.

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3 However, after the Arbitration Commission in its Opinion No. 11 of July 16, 1993 set several dates of State succession — unless all the successor States subsequently agree otherwise — these four successor States did not oppose the sequence of dates. According to the said Opinion the dates of succession of States are: October 8, 1991 for Croatia and Slovenia; November 17, 1991 for Macedonia; March 6, 1992 for Bosnia-Herzegovina; and April 27, 1992 for the FRY (Serbia and Montenegro).

4 This important Law ("Zakon o prenošenju sredstava, prava i obveza Federacije za investiranje u privredi na republike i autonomne pokrajine") was enacted on July 1, 1971 and published in the Official Gazette of the SFRY ("Službeni list SFRJ"), No. 28 of July 5, 1971, pp. 244-248.

At the federal level remained only the Fund for Faster Development of Underdeveloped Republics and the Autonomous Province of Kosovo. Beside Kosovo, beneficiaries of credits from the Fund were enterprises from Bosnia-Herzegovina, Montenegro and Macedonia.

Consequently, the federal State property to which the succession of States applies consists mainly of: the property of the Federal Army ("JNA"); immovable and movable property of dismantled Federation abroad (property of diplomatic and consular missions with residences of heads of missions, and apartments of their staff); property of Federal bodies, such as the Federal Presidency, the Federal Assembly, the Federal Council with property of its Secretariats and Agencies, property of Federal Judicial Organs, etc; assets and liabilities of the National Bank of Yugoslavia (NBY); and joint property of former associations of enterprises in key infrastructure, transportation and communications, such as Yugoslav Electric Power Industry, Yugoslav Railways, Yugoslav Post & Telecommunications, etc.

Croatia, Bosnia-Herzegovina, Macedonia and Slovenia have never claimed the property which on the date of succession of States was owned by Serbia or Montenegro, or their communes or cities, or their natural and juridical persons. Besides, these four successor States have never claimed a greater share in the property and archives of the former Federation for themselves or at the expense of Serbia and Montenegro. They all gave full evidence of respect of legal rights and interests of the FRY in the process of State succession. On that issue they were in full agreement not only with legal principles of equal application to all, and with the Opinions rendered by the Arbitration Commission, but also with all ICFY proposals.

On that same legal ground which alone is applicable to the process of succession of the SFRY, the four successor States have never denied their duty to pay all allocated debts, as well as an equitable share in the general non-allocated debt of the former Federation, to all foreign creditors, being whether third States, or even foreign natural and juridical persons.[5]

5 After the adoption of the 1983 Vienna Convention its text was strongly criticized for excluding in the definition of State debts in Article 33, financial obligations towards foreign natural and

The fact is that among five successor States of the former SFRY, it is only the "FRY" which persistently acts contrary to and in violation of this legal basis.

In spite of tremendous economic difficulties which these four successor States as States in transition are currently faced with, in spite of heavy loses that especially Bosnia-Herzegovina and Croatia have sustained in the aggression of the former JNA and Serb paramilitaries, and in spite of the presence of almost one million refugees and displaced persons in Croatia at a time, these four States are trying to re-negotiate all their debts with foreign creditors. Slovenia and Croatia have already concluded agreements with the Paris and London Clubs and they are paying their share in the non-allocated debt of the former Federation.

But on no legal ground can these claims of foreign creditors in the process of State succession be treated as different from the claims of these four successor States of the former SFRY on the assets which the FRY still keeps in its illegal possession.

Finally, Croatia and Bosnia-Herzegovina adhered to the Opinion No. 13 of the Arbitration Commission of July 16, 1993, which stated that:

> "4. The equitable division of the assets and liabilities of the former SFRY between the successor States must... be effected without the question of war damages being allowed to interfere in the matter of state succession, in the absence of an agreement to the contrary between some or all of the states concerned or of a decision imposed upon them by an international body."

That is because the rules applicable to State succession, on one hand, and the rules of State responsibility, that the question of war damages depends on, on the other, fall within two distinct areas of international law.

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juridical persons, but implying at the same time the rights and interests of successor States in respect to these persons (Article 8). This lack of balance in the Convention proved to have no impact on the rights of foreign private creditors in the process of State succession of the former SFRY.

However, as the Commission pointed out: "...it is in no way prejudicial to the respective responsibilities of the parties concerned in international law. The possibility cannot be excluded in particular of setting off assets and liabilities to be transferred under the rules of state succession on the one hand against war damages on the other".[6]

Consequently, these two successor States have not renounced their claims for reparation of damages inflicted during the aggressive war for which the responsibility bears a successor State of the former SFRY of which Serbia and Montenegro are actually constituent parts.

III. ALLEGATIONS BY THE FRY

FRY tries to include in State succession not only State property in the strict sense of the word, what the former Federation possessed on the date or dates of State succession. It wants, in addition, to apportion *inter alia*,

- some parts of "State property" in the possession of former Socialist Republics and other territorial entities;
- certain parts of property of former "associated labour organizations" in the domain of key infrastructure, such as roads and highways, railways, postal service and telecommunications, power plants, water supply systems, etc. (according to internationally recognized criteria: "public property").
- and even certain parts of property of "associated labour organizations" in the domain of production.

The crucial criterion put forward by the FRY is that the construction of a road, a barrack, a hydropower plant, or a factory, was financed since December 1, 1918 from central budget or funds. This is quite an unusual claim in the light of previous practices of State succession which have always taken into account only the situation as it existed on the date of the succession of States.

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6 Cf., *International Legal Materials 1993*, No. 6, p. 1592.

In this connection the FRY delegation has proposed in its "Draft Agreement on Succession between the FRY and the Successor States" of May 4, 1993, the following definition of State property of the SFRY:

> "1. State property of the SFRY means the property, rights and interests of the federal institutions, property of the institutions of the federal units and those parts of the so-called "social property" which have in their totality or in part been created by or financed from the federal budget and other federal funds or from those of two or more federal units, or by juridical persons from two or more federal units.
>
> 2. State property of the SFRY does not include the property, rights and interests brought by the Kingdom of Serbia and the Kingdom of Montenegro, i.e. parts of the former Austro-Hungarian Monarchy, into the Kingdom of Serbs, Croats and Slovenes.
>
> 3. The net value of the State property of the SFRY shall be determined on the basis of subsuming to permanent prices of December 31, 1990 the real value of individual items in the agreed Inventory List of assets and liabilities of the SFRY..."

Not only that this definition was not confined to the State property which, on the date of the succession of States, was, according to the federal law, owned by the Federation. It largely opened the door to the so-called "historic claims" going back to 1918, based on no existing property but on some imaginary book-keeping values. At issue was *inter alia* the "social ownership", allegedly a part of the State property of the Federation.

A quasi-legal argument pursued by the FRY to this end is that, since the early 1950s, the socio-economic and constitutional system of Yugoslavia was formally based on self-management rights of workers, who associated their work in so-called "associated labour organizations". In the text of latest 1974 Federal Constitution, no reference was made to any "State property" in Yugoslavia. All means of produc-

tion and all property of State institutions, including that of the Federal Army, or immovable and movable property of diplomatic and consular missions abroad, were according to its Article 12 (1) in "social ownership". Under its Article 85, "social ownership" even comprised natural resources, such as waters, watercourses, the sea and seashore. In all other States they are *res extra commercium*.

Only because the term of "State property" does not figure as such in the text of the 1974 Federal Constitution, FRY's allegation is that nothing similar existed in practice. As a way of filling this gap it insists on apportioning the values of all past central investments over a very long period of time, and exclusively on the basis of Yugoslav State authorities' decisions.

This allegation was a matter of major controversy during the negotiations. In this respect arguments should be quoted which were put forward in the Memorandum of Macedonia addressed to the Arbitration Commission in June 1993:[7]

> "Such allegation (by the FRY) is primarily based on an erroneous interpretation of Article 12 of the Federal Constitution of 1974, providing that:
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> "The means of production and other means of the associated labour, the products of the associated labour and the income realized by the associated labour, the means for satisfaction of common and social needs, natural resources and the goods in common use are in social ownership.
>
> No one may acquire the right of ownership on social means that are the conditions for work in the basic and other organizations of associated labour or are the material basis of the exercise of the functions of the selfmanaged communities of interests or other selfmanaged organizations

7 The same arguments were advanced during negotiations among the delegations of Croatia, Slovenia and Bosnia-Herzegovina. The Macedonian Memorandum is quoted here *in extenso* because it was addressed to the Arbitration Commission and because it was the best articulation of these arguments in legal terms.

> and communities and of the socio-political communities...". (translated from Macedonian language).
>
> Namely, in the early phases after the Constitution of 1974 came in force, the mere philosophical content of these provisions has been translated into a political phrase that "social ownership, belonged to the society as a whole", and that such ownership was "every ones' and no ones'". It is precisely that reasoning that is now suggested by FRY to support the allegation that, since "social ownership did not possess a clearly defined owner, the ultimate *de facto* owner of the totality of the properties socially owned (the properties of the republics and of organizations of associated labour included thereto), was the Federation itself."

The Macedonian Memorandum amply proved that in practice and in law the imaginary "non-property" concept of social ownership has lead the various entities involved in the enjoyment of full property rights over their assets, quite compatible with the internationally recognized categories of property law. Both the Federal Constitution of 1974 and the Law of Associated Labour of 1976 (LAL) gave rise to the organizations of associated labour (OALs) as independent market entities and they actually exercised full property rights. Thus OALs were legal persons responsible for their liabilities with all their assets (Article 24 of the Constitution and Arts. 37-38 of LAL). In the light of the "selfmanaged rights of the workers", the income and the operation of these organizations were managed by their employers (Arts. 14,19, 20 of the Constitution and Arts. 11, 13 of LAL). As independent legal entities which operated on the common Yugoslav market (Arts. 252, 254 of the Constitution and Arts. 20, 21 of LAL), OALs were empowered to enter into contractual or other commercial arrangements which also applied to foreign trade. Likewise, under bankruptcy legislation and the principle of universality, a bankrupt OAL was liable with all its assets.

The former Chairman of the Working Group on Succession Issues, the British lawyer Henry Darwin arrived at the exactly same conclu-

sions. In his paper produced on August 23, 1992, last before his sudden death, he concluded:

> "As I understand it, the self-managing organizations owned and could control their working funds, and could buy and sell equipment, vehicles, etc. They were legal persons with obligations and presumably also with rights, including rights of ownership. If their assets were bought or sold abroad, the contracts would be between the organization and the foreign party to the transaction. It would be for the organization to decide whether to insure assets and, if it did so, it would benefit from policy moneys. If the insured event occurred, if the asset were destroyed, when uninsured, the loss would fall on the organization. There must have been many cases where self-managing or other commercial organizations asserted by actions in the courts abroad and possibly in Yugoslavia their right to movable property, including debts, were, as parts of their case, they must and did assert that they were the owners. Even if some capital might be obtained from the communes and was refundable on liquidation to the communes, this would not prevent the assistance of a legal interest. The organization could not be closed down by the commune by action based on a proprietary interest. Court proceedings for its liquidation on economic, rather than proprietary, grounds had to be taken.
>
> As to immovable property, the law of the SFRY recognized the private ownership of land by private residents and by peasant farmers within certain hectare limits. If a self-managing organization needed to use land, it could obtain the use of it as long as its activities continued. It was at least arguable that this was an interest of a legal character, even if it was not permanent in duration, in the same way as a lease is a legal interest, though not unlimited in time. If the SFRY obtained a usufruct for a period, to use the civil law term, this would be a legal interest and would fall within the definition of state property. If, on the contrary,

a self-managing organization enjoys a usufruct or temporary use, it is arguable that this is an "interest" which is "owned" for the purposes of the Vienna Convention. Even if it is pointed out that, if the self-managing organization ceased to be in business, the immovable property would be revert in the commune, this would represent a potential reversionary legal interest of the commune, not a legal interest of the SFRY and would not justify a claim that federal state property was involved."

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The said Macedonian Memorandum has also proved that:

"The "non-property" concept of social ownership was formally abandoned in the Federal legislation passed prior to the date of succession in the period 1988-90. The Constitutional Amendments to the federal Constitution of 1988 (Off. Gazette of SFRY No. 70/88) introduced the category of "social capital" with a view formally to confirm the autonomous status of OALs as effective owners of their assets. On these constitutional bases, the Law of Enterprises was passed in 1988 (Off. Gazette of SFRY No. 77/88; amended in No. 40/89, 46/90) introducing various forms of corporate ownership in which OALs (then "enterprises in social ownership") were to be recognized, providing for them the ability to enter into relations on the basis of equity shares. The Law on Social Capital of 1990 (Off. Gazette of SFRY No. 46/90) provided for the transformation (privatization) of the social capital of the enterprises into share capital, by means of the so-called "internal shares" of the employees and/or through selling of parts or the whole enterprise. These federal legislation has been followed by an exhaustive legislation of the republics of former SFRY.

Aside of the property of OALs, in the constitutional system of SFRY the republics enjoyed the status of sovereign states and constituent members of the Federation, which pos-

> sessed sovereign rights "derived" therefrom. For the purpose of the exercise of their sovereignty, the republics have had their properties, fully controlled by them and financed by their sources, over which they have exercised full ownership rights, as on the other hand, the Federation has had properties of its own. The Constitutional changes of 1971 and the Constitution of 1974 made it clear that the properties in the public domain were in exclusive competence of the republics."[8]

Therefore, on the date of State succession, be it December 31, 1990 or a latter date, there was no ground in law and in facts for the above claim of FRY.

Even if the arguments of FRY that social ownership in SFRY did not have a clearly defined owner were partly true, there is no evidence that its owner was the Yugoslav Federation itself, or that the past investments from central funds in associated labour organizations are now an issue of State succession. The same of course applies to investments from these resources in these organizations in Serbia and Montenegro.

The succession of States applies only on State property which the former SFRY owned according to the federal laws in force on the date of State succession.

In agencies which managed what we call here "State property" of the former Federation, there existed no self-management rights, nor rights to dispossess that property by "associated workers" employed in them. The matter was *inter alia* of officers and soldiers in the JNA, or of employees in the National Bank of Yugoslavia, federal Secretariats and Agencies including the Federal Secretariat for Foreign Affairs, or YUGEL, or Yugoslav Railways, or the Archives of the SFRY, etc.

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8 It should be commented in this respect that the republics did not enjoy the status of sovereign States in their external relations. In the sense of international law sovereignty is tantamount to full independence. But they enjoyed in law and in practice a very high degree of autonomy which should facilitate the process of State succession.

However, even the Opinion No. 14 of the Arbitration Commission — to which we shall return — did not convince FRY to relinquish claims of this kind. It may have partly changed the rhetorics and argumentation, but the substance of its allegations has remained the same. These claims cannot be based on any rules of law, being the law of the former Yugoslav Federation, or the rules of international law on State succession, nor on any previous comparable practice of States.

In the last version of its draft "Treaty Concerning Regulation of the Consequences of the Secession of Parts of the Yugoslav Federation" of June 1996, in which even the terms of "succession of States" were deliberately eliminated, Article 20 no longer makes any reference to "social ownership". It reads, however, as follows:

> "For the purpose of this Treaty the State Property of the Socialist Federal Republic of Yugoslavia shall include:
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> 1. Items, movable and immovable, which were the State Property of the Kingdom of Yugoslavia (*sic!*), unrealized financial and other rights of the Kingdom of Yugoslavia, as well as unrealized internal and external obligations of the Kingdom of Yugoslavia.
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> 2. Items, movable and immovable, financed from common sources listed in the Inventory, the rights ensuing in connection with, or on the basis of, these items or from the decision of the Competent State organ and internal and external obligations."[9]

It should be asked first of all, how unrealized financial and other rights and obligations of the Kingdom of Yugoslavia could be a matter of State succession in 1996? Due to the absolute identity of Yugoslavia as an international person since December 1, 1918 until its demise in 1991 and 1992, only unrealized financial and other rights and obliga-

9 The provision that the State Property shall not include items brought into Yugoslavia by the Kingdoms of Serbia and Montenegro and by the Habsburg Empire, remains unchanged in Article 21 .

tions, as existing on the date of State succession, can be a matter of repartition in this process between all its successor States.

In respect to this peculiar claim on "the State Property of the Kingdom of Yugoslavia" — this Kingdom as a form of Government was abolished on November 29, 1945 — one should remind from the earlier history that the Kingdom of Croatia in 1102 entered into a union with the Kingdom of Hungary. Later on in 1527, feudal parliaments of these two Kingdoms elected a first Habsburg as their king.

Nevertheless, the Kingdom of Serbs, Croats and Slovenes after 1918 was wise enough not to claim from Hungary a share in former contributions to the creation of common State property by the Kingdom of Croatia for the long period from 1102 and 1918. Equally, it did not raise such a claim against the Republic of Austria in respect to common assets collected in Croatia and in parts of Hungary ceded to it, for the period from 1527 and 1918. Even this would be less unreasonable than claiming in 1996 the property, rights and interests of a Kingdom which vanished in 1945, more than half a century ago.

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The claims on movable and immovable items as financed from common resources between 1918 and 1990, have equally no ground in federal nor international law, as in force on the date of succession of States.

As stressed above, the legal principle enshrined in Article 8 of the 1983 Vienna Convention speaks of "property, rights and interests which, at the date of the succession of States, were, according to the internal law of the predecessor State, owned by that State." If there is such a ground in law, the net beneficiaries of repartition of these imaginary past investments should be the successor States which contributed most to creation of that wealth in the past. These are the developed successor States of Croatia and Slovenia in contrast to Serbia and Montenegro.

FRY has explained this claim more precisely in its Memorandum of March 7, 1994:

> "... the Government of the FR Yugoslavia is of the opinion that state property consists of all movable and immovable

> property and financial claims of enormous value generated in a non-commercial manner since the establishment of the Yugoslav state, by joint collection and allocation of resources on the basis of *Yugoslav state authorities decisions, regardless of who is using these values today, and in which part of the former SFRY they are situated...*"

The above implies that all former investments from federal budget and funds, which were largely made in the former associated labour organizations in the field of production, have created debts of these other successor States in which these organizations are now situated. Therefore, instead of apportioning the actual State property of the former Federation and its general non-allocated debts to third States and foreign private creditors, by this magic formula the huge imaginary sums of alleged past investments becomes a heavy debt of successor States. As allegedly a continuing State of SFRY, FRY considers itself as the main, if not the sole creditor, without any grounds in fact and in law.

Such an approach is unsound for other reasons as well. It does not take into account the repayments of credits by former associated labour organizations raised from federal funds. It ignores the amortization of assets invested, as well as the present value of enterprises, beneficiaries of these credits or grants, which primarily depend on their present profitability.

If such an approach is admissible — which is definitely not — a mere decision by a political body or other agency that a sum of money will be invested in an enterprise is not a conclusive evidence that it was really done. A verification of contracts and conditions therein and of repayment of credits would require the access to documentation of the beneficiaries of these investments.

Such a verification of all documents would take more than three years of intense work. A great deal of crucial documents related to the enterprises was destroyed in the aggression against Bosnia-Herzegovina and Croatia. Other such documentation was destroyed by the sheer passage of ten years or so according to archivist rules. Others

were destroyed simply because the enterprises concerned do not exist now.

FRY has already produced a preliminary inventory with about 9.000 identified items on the basis of political decisions. Only a small number of them relate to the property of the former Federal Army, the value of which is assessed by impartial consultants engaged by the European Community, to about US$ 70 billion. This preliminary inventory includes almost no other items which were parts of the State property of the former Federation.

The point at stake, therefore, is not the State property of the former Federation to which the succession of States applies. This insistence on the definition of the State property has as its sole purpose the obstruction of the process of negotiations. Never in history has such an approach been workable. The object of apportionment was, and will remain so in the future, the State property of the predecessor State such as existed on the date of the succession of States.

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Members of the FRY delegation sometimes make public statements alleging that all the State property of the former Yugoslav Federation belongs to FRY only as its allegedly continuing State. In the above Memorandum of March 7, 1994, the Government of FRY claims *inter alia*:

"Although its position on international legal continuity is firmly legally based (*sic!*), the FR of Yugoslavia agreed, as an act of good will and proceeding from the principle of equity, to renounce part of the SFRY's property in favour of the successor states..."

That statement was elaborated in more detail in an interview with the Head of the FRY Delegation, Academician Kosta Mihajlović, published in the Belgrade daily "Politika" on March 17, 1994, p. 7:

> "The difference between succession and continuity is tremendous, with far-reaching consequences on the mode of final settlement of accounts. As a predecessor state which keeps continuity, Yugoslavia has agreed to set apart a fraction of its property, which it yields to newly established

> successor states according to the principle of equity. At this stage, when the question of (dis)continuity is still unresolved, this can be considered as an act of good will. In case the view that SFRY has dissolved be adopted as a starting point, then FRY (Serbia and Montenegro) shall be considered but one of the successor states. Quite a number of people, even experts, do not observe this difference but maintain that Yugoslavia could at the same time be a predecessor state and a successor state."[10]

The above leaves no doubt that FRY considers itself, on no legal grounds whatsoever, not only as the continuing State of SFRY but also as the sole owner of all the property of the former Federation. It does not recognize any legal rights or interests of the four other successor States in the process of State succession. Nevertheless, it agrees to grant them, *ex gratia*, as an act of good will, a fraction of that property, but on its own terms. Its condition for a successful outcome of the negotiations is that the other successor States agree upon its own concept of State property of the former Federation, which was discussed above.

Even if this continuity — as exemplified by the continuity of the Russian Federation — were internationally recognized, which is not the case, continuity does not exclude the succession of States and apportionment of State property, rights, interests, debts and other obligations between the continuing State and the successor States.

Succession of States ensues whenever there are territorial changes, thus even in case of full identity of the predecessor and the successor States, as in the case of the cession of a fraction of territory. There is no rule of general international law providing a privileged position, let alone all rights to the "continuing State" in respect to "successor States".

The proof for that are *inter alia* articles 17, 30 and 40 of the 1983 Vienna Convention relating to the apportionment of State property,

10 This allegation shows utter disregard for the basic principle of equality of the rights and duties of all parties in the process of State succession.

archives and debts in case of separation of parts of the territory of a State which continues to exist in a reduced territory. The legal principles enshrined in these articles are almost the same as these in Articles 18, 31 and 41 relating to the apportionment of State property, archives and debts in case of the dissolution of a State when it definitely ceases to exist. FRY's insistence on its continuity has no relevance in the process of State succession. In both cases be it the "continuing State" or one of five "successor States", it is equal in rights and obligations with all other successor States.

In one of its opinions the Arbitration Commission has confirmed as the basic principle of State succession "the principle of equality of rights and duties between states in respect of international law"[11] It directly derives from the principle of sovereign equality of all States set forth in Article 2 (1) of the UN Charter.

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In the "Memorandum of Understanding" of FRY, published on September 4, 1996, another argument was added in its Article 7 to the foregoing claims on the State property of the Kingdom of Yugoslavia: "Property created by investments from common sources belongs in principle to all (meaning all successor States?), and because the State (meaning the former Yugoslavia) has in these cases performed functions of a bank of investments, these funds must be returned to it with a certain interest."

This "argument" in the form of a treaty clause should be considered in the light of the fact that what was the Federal State property at the end of 1990 was created by the contributions of all republics and autonomous provinces and by taxes paid by all natural and juridical persons. Developed Republics in that Federation — Croatia and Slovenia — contributed to the creation of that property more than Serbia. On the other hand, Montenegro, as an underdeveloped republic was a net beneficiary of federal funds.

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11 See Opinion No. of the Arbitration Commission of July 4, 1992, *International Legal Material* 1992, No. 6, p. 1525.

According to the logic that SFRY functioned as an investment bank, Montenegro should now repay all funds raised first of all to Croatia and Slovenia. Croatia has no such claims. But it would have been grateful to Montenegro if its soldiers and "volunteers" had not destroyed historic monuments and libraries in Dubrovnik and if they had not plundered and destroyed the property of civilians in region occupied by them.

Totally neglected here is also the fact that by the end of 1990 Yugoslavia was not a strong and centralized State like the Russian Empire prior to 1917, or like France now. It was a loose federation of its republics and autonomous provinces, with many confederal elements installed in its constitutional system.

IV. STATEMENTS BY THE ARBITRATION COMMISSION

Faced with the disagreement between the claims of four successor States on one hand, and FRY, on the other, the Conference on the Former Yugoslavia took a pragmatic position from the very outset. It invited all successor States to present their claims in respect of all assets and liabilities to which according to their view, the State succession applies. Each successor State was authorized to express reservations on items proposed by others.

On this basis, on February 28, 1993, the Working Group on Economic Issues come up with the latest version of the "Draft single inventory of Assets and Liabilities of the S.F.R.Y. as at December 31, 1990".

That Inventory consists of two parts. In its first part are classified assets and liabilities agreed upon by all delegations of successor States, although the FRY submitted a general reservation as to the appropriateness of the Group's work. As for the second part, the Conference tried to reduce, in the course of further negotiations, the number of reservations expressed, and to eliminate claims not sufficiently corroborated by documentation or other evidence.

Meanwhile this job has progressed. Most assets and liabilities have been identified and even quantified. The European Community has

engaged independent teams of consultants for their evaluation. The evaluations were quoted in Yugoslav Dinars at the official rate of exchange valid on the reference date (December 31, 1990): 1 US$ = YD 10.57.

It should be noted that the work on that Inventory has never been finished. Most reservations on claims by other successor States have not been resolved. It was also hard or rather impossible to compare the values of items such as monetary gold and hard currency reserves on one hand, and those of military assets, or debts to the former Federation by Iraq or the former Soviet Union, on the other. Taking this into account, the values obtained by independent consultants were the following:

	YD million	*YD million*
Financial Assets	221,000	
Financial Liabilities		(368,000)
Assets of Federal Government, Its Secretariats and Agencies	13,000	
Other Assets	3,000	
Military Assets	745,000	
Infrastructure	19,000	
Total Assets	1001,000	
Total Liabilities	(368,000)	
TOTAL NET VALUE	633,000	(US$ 60 billion or ECU 50 billion)

It is to be noted that the bulk of these assets, over 75 per cent, form military assets, worth almost US$ 70 billion.

Anyway, FRY has participated with other successor States in drafting the "Single Inventory of Assets and Liabilities of the SFRY as of

December 31, 1990", within the Working Groups on Economic and on Succession Issues of the International Conference. Although keeping its general reservation about the appropriateness of the work in groups, FRY did not hesitate, like other successor States, to raise claims and to submit reservations to the claims by others. Other successor States cooperated with FRY in good faith, constantly seeking solutions which would respect the legal rights of all, including those of FRY.

FRY has by its former conduct been stopped to insist henceforth on its alternative "preliminary inventory", which it produced as a basis for all further negotiations after the above Inventory was established. Nobody is supposed to encourage FRY to act like this.

Due to the obstinacy of the FRY in its revendications, which go against all Opinions of the Arbitration Commission, it rejected all results reached, invoking its general reservation.

In a situation like this on April 20, 1993 Co-Chairmen of the Steering Committee of the Conference requested an opinion of the Arbitration Commission, *inter alia* on the following question:

> "In the light of the inventory in the report by the Chairman of the Working Group on Economic Issues, what assets and liabilities should be divided between the successor States to the former Socialist Federal Republic of Yugoslavia in connection with the succession process?"

FRY refused to take part in the proceedings because, after the Commission has rendered its first three Opinions on the initiative of Serbia itself, Serbia, Montenegro and FRY no longer recognized the existence of this body, nor any of its verdicts.

On the above question, on August 13, 1993 the Commission rendered its Opinion No. 14, underlining that:

> "...the first principle applicable to state succession is that the successor States should consult with each other and agree a settlement of all questions relating to the succession.

> Assets and liabilities listed in the Inventory of February 26, 1993, upon which the successor States have reached agreement should accordingly be divided between them."

This means that in case of an agreement between all successor States, the agreement will prevail over the application of objective rules relating to the succession of State property. That is because most of them are *jus dispositivum*. But the main problem is that an agreement of all on this issue has been impossible so far. Besides, in absence of such an agreement, the rules of *jus dispositivum* apply like all mandatory legal rules.

> "2. As regards non-agreed items, the Arbitration Commission considers that it does not have sufficient information on which to base a decision as to each asset and liability listed in the Inventory. Moreover, it considers that these are not legal issues which it could profitably seek to resolve as part of its consultative remit and that it should confine itself to determining the general principles to be applied."

Statements of general principles are certainly most welcome as regards the doctrine and future international practice. For such situations involving disagreements among parties concerned, the Commission has invoked a "well-established rule", enshrined in the 1983 Vienna Convention:

> "...immovable property situated on the territory of a successor State passes exclusively to that State... The origin or initial financing of the property and any loans or contributions made in respect of it have no bearing on the matter."

As regards other State property, debts and archives,

> "...a commonly agreed principle to be found in several provisions of the (1983) Vienna Convention... requires that they be divided between the successor States to the SFRY if, at the date of succession, they belonged to the SFRY, and the question of the origin and initial financing of the

> property, debts and archives, or any loans or contributions made in respect of them, is irrelevant."

The Commission then expressed its views on two particular problems:

> "6. On the first point, there is no doubt that the 1974 Constitution transferred to the constituent republics ownership of many items of property which in consequence cannot be held to have belonged to the SFRY whatever their origin or initial financing."

As already said, the matter is first of all of the public property in the domains of key infrastructure, transport and communication, except specific property owned by obligatory communities of organizations at the federal level in respective activities (Yugoslav Power Management Community; Community of Railways; Community of Yugoslav Posts & Telecommunications; etc). The ownership over them was transferred to the republics and autonomous provinces as early as 1971.[12]

The second particular problem, which was the most difficult to resolve, relates to the concept of "social ownership", - "a concept which, while it does exist in other countries, was particularly highly developed in the SFRY". The Commission has laid down the principles of how to treat this property:

> "7. As for "social ownership", it was held for the most part by "associated labour organizations" - bodies with their own legal personality, operating in a single republic and coming within its exclusive jurisdiction. Their property, debts and archives are not to be divided for purposes of state succession: each successor State exercises its sovereign powers in respect of them.
>
> If and to the extent that other organizations operated "social ownership" either at federal level or in two or more republics, their property, debts and archives should be

12 See the Law on the Transfer of Assets, Rights and Obligations of the Federation for Economic Investments to Republics and Autonomous Provinces, *supra*, No. 4.

> divided between the successor States in question if they exercised public prerogatives on behalf of the SFRY or of individual republics. On the other hand, organizations operating at federal level or in two or more republics but not exercising such prerogatives should be considered private sector enterprises to which state succession does not apply."

In the foregoing the Commission has proposed a solution to the problem of collective equipment in the process of State succession of the former Yugoslavia in its broadest sense.

The object of repartition is to follow the above criteria: property of the Federal Army, that of Federal institutions and agencies, notably of diplomatic and consular missions abroad, the assets and liabilities of the NBY, etc. The same applies to the equipment of certain factories producing arms and ammunition for the Federal Army.

The object of repartition is furthermore the property of the obligatory communities of "associated labor organizations" at the federal level in the domain of key infrastructure.

To all the rest of the property of "associated labour organizations" the succession of States does not apply, because it is considered a property of private-sector enterprises.

What follows then is a general conclusion on all issues referred in this Opinion:

> "8. The answer to the question referred is without prejudice to whatever compensation might be necessary to achieve an equitable overall outcome."[13]

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In the light of the stubborn attitude showed by FRY in the course of negotiations, another question addressed to the Arbitration Commission was:

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13 *Cf. International Legal Materials* 1993, No. , pp. 1593-1595.

> "What legal principles apply to the division of State property, archives and debts of the Socialist Federal Republic of Yugoslavia in connection with the succession of States when one or more of the parties concerned refuse(s) to cooperate?"

The Arbitration Commission recalled some existing legal norms applicable to similar situations. In its Opinion No. 12 of August 13, 1993 it established that:

> (a) In case that a successor State refuses to cooperate it is in breach of its fundamental obligation to achieve with other successor States an equitable result by negotiations and agreement concerning distribution of the State property, archives and debts of the former SFRY. The breach of this fundamental obligation entails all the legal consequences.
>
> (b) Other successor States sustaining loss are entitled then to take non-forcible counter-measures, in accordance with international law.
>
> (c) Other successor States concerned may, by one or more agreements concluded between them, reach a comprehensive equitable settlement, reserving the rights of the State refusing to cooperate.
>
> (d) Any such agreement is *res inter alios acta* in relation to third States. But this is without prejudice to the right of the third States to take the necessary safeguard measures to protect the successor States, and to such obligations as might be incumbent on third States to give effect to decisions taken by an international agency having powers in the matter. (*Cf. International Legal Materials 1993*, No. 6, pp. 1589-1591.)

This means that a third State cannot dispose of that property otherwise than provided in the agreement reached by cooperative States, provided that it fulfills all above requirements. In any case, the non-co-

operative successor State, which holds the referred property abroad, will not be treated by third respective States as its possessor with a valid title of ownership.

The Opinion No. 12 only reiterates the existing rules of general international law, including a number of undisputed general principles of law recognized by all civilized nations. These legal rules would operate even if the Arbitration Commission had not issued this Opinion.

V. FOLLOW UP

As expected, although resolving all the main issues of the dispute, opinions of the Arbitration Commission did not impress FRY. It stubbornly insisted in subsequent negotiations on its own definition of State property and on its proposed Inventory as the sole basis of any agreement. FRY delegation even insisted that the Arbitration Commission and its opinions should not be mentioned by any other delegation in the course of negotiations.

Members of the FRY delegation in the Working group on succession issues made public statements as of the total value of property of the former Yugoslavia on the basis of 9000 items in its Inventory. According to their claim its total value is not 1001 billion YD as of December 31, 1990 (or US$ 94 billion), nor the net value of 633.000 YD (US$ 59 billion), of which only military assets were worth 745 billion YD (or US$ 70 billion).

Their estimate goes between US$ 200 to 220 billion.[14] In that non-existing property (especially military and financial assets were largely consumed or destroyed by FRY itself or by Serbian paramilitaries in Bosnia-Herzegovina and Croatia), they claim as the only "equitable" key of apportionment, the percentage in total population of the former

14 In an interview given to Belgrade magazine "Duga" of February 1995, Dr. Vladan Kutlešić mentioned a sum of US$ 220 billion. The Head of the Delegation Academician Kosta Mihajlović in an interview to the Television of Serbia of September 3, 1996 claims about US$ 200 billion "only".

Federation. Therefore to FRY should get 44,1 per cent (including Albanians of Kosovo, Moslems of Sandjak, etc.).[15] Furthermore, as mentioned above, they strongly insist on the net valuation of all property, regardless of its current value or even existence.

According to such "arithmetic justice" FRY should be entitled to anything between US$ 88,2 and 97,2 billion. That is the argument behind their allegation that all property in actual possession of FRY belongs to it alone. Perhaps, other successor States should even pay them for their freedom!

Having in mind the grave abuses of the federal property during the war of aggression, these strange claims — not based on any law or facts — are not surprising at all.

FRY has thus proved to be the only non-cooperative party during almost the entire process of negotiations on State succession of the former SFRY. As such, it is already in breach of its obligation from the fundamental rule in the process of State succession to reach an equitable result through negotiations and agreement.

For FRY consensus means its own dictate. And whenever the ICFY and at present Special Negotiator of the High Representative, try to reach a consensus with the FRY on issues which are definitely settled by respective legal rules and confirmed by the earlier practice of States, they run a risk of gravely compromising their tasks and even their very mission.

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Unfortunately, the international factors vacillated between imposing a solution based on legal principles and facts, and trying to reach a settlement by consensus.

In June 1994 the International Conference on the Former Yugoslavia decided to propose to all parties by early September, a Draft Treaty

15 According to the last census carried out in all republics and autonomous provinces — in 1981 — Bosnia-Herzegovina's share in total population of Yugoslavia was 18,4 per cent; Croatia's 20,5 per cent; Macedonia's 8,5 per cent; Slovenia's 8,4 per cent. The rest of Yugoslavia which now forms FRY (Serbia proper with its autonomous provinces Vojvodina and Kosovo, and Montenegro) had a share of 44,1 per cent.

Concerning Succession of the Former SFRY. It was then promised that, if after further negotiations one successor State refuses to become party to the Treaty, the case would be brought to the UN Security Council for further action. Since then the Conference produced on the basis of suggestions of all interested successor States, only the first part of its Draft Treaty, not relating to State property and debts.

As the delegations were informed later on, the Conference has abandoned this mission altogether and advised the interested parties to engage in direct negotiations. The main reason for this shift was that the peace in Bosnia-Herzegovina and the integration of Eastern Slavonia into Croatia were assessed as more important tasks than the succession of the property of the former Yugoslavia.

Following the Dayton Agreements the ICFY has been formally terminated by the Conclusions of the Peace Implementation Conference held in London on December 8-9, 1995. The new Peace Implementing Council (PIC) superseded the ICFY. It was decided there that some of its working groups — notably that on State succession — will continue their work.

Sir Arthur Watts, Special Negotiator appointed by the High Representative, is again trying to work out a consensus. An agreement of all successor States may well go beyond the rules on State succession enshrined in the 1983 Vienna Convention which are nearly all of *jus dispositivum*. Besides, the Convention has not yet entered into force. He tries to convince FRY to cooperate, sharing its view that the opinions of the Arbitration Commission were of advisory nature, especially as FRY did not take part in the proceedings (except in respect to Opinions Nos. 1 to 3 which were rendered on the initiative of Serbia itself).

His attempt to submit to a binding arbitration some disputes on which the agreement of all will not be possible — especially that on the definition of State property — so far seems not to be successful. On one hand, FRY fears of any impartial procedure because it lost all of them, including that on the application of the 1948 Genocide Convention before the International Court of Justice. On the other hand, the four cooperative successor States which previously accepted all ICFY

proposals, take the opinions of the Arbitration Commission as authoritative statements of law on questions proposed.[16] Any subsequent arbitration on these issues are for them a waste of time and money.

It does not seem in this moment that any third party mediation aimed at reaching an agreement of all, has any sense.

The process of succession of States, especially in respect of State property and debts, involves sensitive material rights and interests of all successor States. These relations are very much like commercial creditor-debtor relations. The duty to repay a debt, or the duty of restitution of somebody else's property, does not depend on the consent of the party holding it illegally. These relations cannot be settled by insisting on a consensus, cooperation and good will of all parties in the process of State succession at any price.

In addition, on no legal grounds can claims of foreign creditors towards the successor States of the former Yugoslavia be treated differently from the claims of four cooperative successor States on the assets which are now in illegal possession of the FRY (Montenegro and Serbia). There are no two different sets of legal rules when material rights and obligations of States are at stake.

As stated in the Opinion No. 12 of the Arbitration Commission, cooperative successor States which, since they gained international recognition have sustained heavy losses, are entitled to take non-forcible counter-measures against FRY in accordance with international law. They are furthermore entitled to reach through an agreement among themselves a comprehensive equitable settlement, reserving the legal rights of FRY.

Although their agreement will be *res inter alios acta* in relation to the third States, the third States will be under legal obligation not to deal with the State property of the former SFRY in a manner different

16 It was in this respect stated that: "...the line, as regards actual effect (although not necessarily of legal obligation), between a judgment and an advisory opinion is thin." Oppenheim-Lauterpacht: *International Law*, Vol. II, Seventh Edition, London 1952, p. 66. "Advisory opinions, though not binding nevertheless have authority as statements of law", Sir Gerald Fitzmaurice: "The Law and Procedure of the International Court of Justice: International Organizations and Tribunals", *The British Year Book of International Law 1952*, pp. 54-55.

than that provided in such an agreement. They cannot ignore such an agreement provided that it reserves all the rights of the State which refuses to cooperate. As it was stressed, the most important is that third States will then not be entitled to treat FRY as a legitimate owner of the property which it keeps in illegal possession.

On their agreement these four successor States should treat items of property which have their own distinctive characteristics as distinct categories. The same agreed key of the apportionment of distinctive assets and debts should be applied.

Such an agreement of four successor States should incorporate provisions of the draft agreement proposed by the former ICFY on which there is no doubt in law and in fact. Among them is that all acquired property rights and obligations, including rights and obligations of natural and juridical persons, should be respected. That is because State succession does not apply to them.

Along the same line, the agreement should expressly provide that all former contracts concluded between public and private juridical persons (e.g. on joint investments in the construction of hydroelectric power plants, factories, etc), remain in force. The successor States should commit themselves to fulfill all obligations arising from these contracts, as well as to promote dispute settlement on them and to implement final judicial or other decisions.

We shall finish this discussion on the definition of State property with an explanation how to reach an agreement on the key apportioning of different categories of assets and liabilities of the former SFRY.

VI. EQUITABLE APPORTIONMENT OF STATE PROPERTY AND DEBTS

In several of its provisions the 1983 Vienna Convention deals with the passing of some categories of State property, archives and debts "in equitable proportions". Further it provides equitable compensation among successor States whenever a rigid application of some criteria of apportionment of property provided in it could lead to unjust results.

In a number of its Opinions the Arbitration Commission has affirmed "equitable solution" or "equitable result" reached through negotiation and agreement, as the fundamental rule of State succession (Opinions Nos. 1, 9 and 12). Finally, in its Opinion No. 13 the Commission has *inter alia* judiciously concluded that:

> "...Articles 18, 31 and 41 of the Convention of April 8, 1983 are relevant where state succession occurs as a result of the dissolution of a preexisting State. While equity has some part to play in the division of state property, archives and debts between successor States, these Articles do not require that each category of assets or liabilities be divided in equitable proportions but only that the overall outcome be an equitable division."

From another fundamental principle — that of the equality of the rights and duties between States in respect of international law — it follows that essentially the same key of apportionment should be applied to State property and non-allocated debts, i.e. assets and liabilities. So when discussing the problem of assets and liabilities to which the State succession applies, it is useful to depart from this problem.

All the above terms of equitable proportions, equitable compensation, equitable solution or result, call for fixing *ad hoc* criteria of the apportionment of all assets and liabilities, taking into account all relevant circumstances in each particular case of State succession. This means that some preestablished legal rules on this issue are unfeasible in practice.

In setting these criteria one may take into account: population and area of the territory of successor States; plus the contribution to the Federal Budget and gross national product of each of them over a previous period of time.

Contrary to FRY's allegations, no single criterion can yield equitable results; a combination of all of them is more likely to do the job. There is no simple solution to this delicate problem. It was once suggested that taking into account the population figures only could alone lead to justice. At stake are, however, assets and liabilities, as well as

reasonable expectations of foreign creditors, to safeguard their funds as much as possible.

However, the final result of an apportionment in application of whatever choice and combination of equitable criteria should be assessed by two basic principles:

a) The principle precluding "*l'enrichissement sans cause*" (unjustified enrichment) which is in fact one of general principles of law, recognized by civilized nations.[17]

b) The principle advanced by the International Law Commission, permitting all successor States to survive as viable entities, including their capacity for self-defence but not for aggression.[18]

In balancing between the above principles one should reach an equitable result in all problems arising from State succession.

In the case of the former Yugoslavia all its successor States have accepted the quotas in which each of them should take over the assets and liabilities of the SFRY in the International Monetary Fund. These quotas are: Bosnia-Herzegovina 13.20 per cent, Croatia 28,49 per cent, Macedonia 5,40 per cent, Slovenia 16,39 per cent, FRY (Serbia and Montenegro) 36,52 per cent.

These quotas have been subsequently adopted by some other UN specialized agencies, such as the World Health Organization, in repartition of the contribution of the former SFRY to their expenses, among its successor States admitted to their membership.

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17 The cases of application of this principle in arbitral practice are *inter alia* the following: *Landreau* of October 26, 1922 (*Reports of International Arbitral Awards*, Vol. I, pp. 352-353); *Lena Goldfields* of September 2, 1930 (*Annual Digest of Public International Law Cases 1933-1934*, (A.D.), Case No. 1, pp. 3-4); *Schumann* by the Administrative Tribunal of the I.L.O. (*A.D. 1933-1934*, Case No. 203, pp. 461-463); *Wakley* of October 6, 1961 (*Revue générale de droit international public* 1962, p. 641).
See on this principle as being specific for State succession in its various aspects - D. P. O'Connell: *State Succession in Municipal and International Law*, Vol. I, Cambridge 1967, pp. 243-244, and 266-267; Charles Rousseau: *Droit international public*, tome III, Paris 1977, p. 424; Paul Reuter: *Droit international public*, 6e édition, Paris 1983, p. 218; etc.

18 *Cf., Yearbook of the International Law Commission 1981*, Vol. II, Part Two, pp. 29-30, para. (8) and (11).

The above quota scheme takes into account advantages and burdens, assets and liabilities alike, of all successor States. At least it can be a starting point in seeking the most appropriate solutions in all domains of State succession. Consequently, the delegations of Bosnia-Herzegovina, Croatia, Macedonia and Slovenia have reached an agreement on adjusted proportions of apportionment to immovable State property abroad (premises of diplomatic and consular missions of the former SFRY with their accessories). This adjusted proportion, satisfying the criterion of the viability of the successor State in the most unfavourable position according to the above quotas, is the following: Bosnia-Herzegovina 13.0 per cent, Croatia 27,20 per cent, Macedonia 8,50 per cent, Slovenia 16,0 per cent, and the FRY (Serbia and Montenegro) 35,30 per cent.