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# State Succession after Former Socialist Federal Republic of Yugoslavia*

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The case of the former Socialist Federal Republic of Yugoslavia (SFRY) represents yet another proof that state succession issues are rather complicated. The first attempt at solving the succession problems of the former Yugoslav federation was made during the height of the Yugoslav tragedy back in 1992 within the framework of the International Conference on Former Yugoslavia (ICFY) in Geneva. The main object of the conference under the auspices of the European Union was to bring peace to Bosnia and Croatia. But it was also obvious that the long-term stability of this part of Europe among other things depended on the successful solution of the succession of the state that did not exist any more. An Arbitration Commission was established as one of the permanent bodies of the ICFY. The body known also as Badinter Arbitration consisted of distinguished European legal experts, among others the presidents of the French and German constitutional courts. One of the tasks of the Commission was to render the continued assistance in legal matters, specially in those concerning the succession of states.

The beginning of the negotiations among the representatives of the successor states, with the assistance of international intermediators, was quite promising. A number of working groups were established and quite a few draft reports (on archives, citizenship, acquired rights, federal pensions) produced. What was very important, a report to the co-chairmen of the ICFY consisting a Single Inventory of the Assets and Liabilities of SFRY as on December 31, 1990 was made as well. The Inventory was confirmed in 1993 by the organs of the ICFY. Yugoslav Prime Minister Milan Panic was replaced later in the year and consequently Yugoslav delegation to the Geneva Conference as well. Yugoslav side (Serbia and Montenegro) decided — against the principle of bona fide negotiations and legal safety — not to recognise anymore the consensus achieved till then.

Negotiations of successor states were restarted in December 1995 within the framework of the mandate given to the High Representative by the Conference held in London, England (this time under the auspices of the United

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Nations and the European Union) and in the light of Declarations adopted by the Peace Implementation Council — main body of the said Conference. Sir Arthur Watts, a renowned British legal expert, was appointed as an intermediator, special negotiator. He has been trying unsuccessfully for the last two years to bring closer the positions of Bosnia and Herzegovina, Croatia, Macedonia (FYROM) and Slovenia on one side and Federal Republic of Yugoslavia (Serbia and Montenegro) on the other. It is obvious that without greater involvement and pressure of the international community on the uncompromising Yugoslav side there will be neither progress nor an early solution to this issue.

The main difference lies in the opinion whether we are dealing with the state succession issue or something else. Bosnia and Herzegovina, Croatia, Macedonia (FYROM) and Slovenia believe that former SFRY dissolved in 1991 and was replaced by five new states, equal successors. There was a definite replacement of one state by the new states in respect of sovereignty over a territory of SFRY. This opinion is not shared by the Federal Republic of Yugoslavia (Serbia and Montenegro) which believes that it itself represents the continuity of SFRY and its sole or at least main successor and therefore claims almost all the assets of the former SFRY, its (automatic) membership in international organisations, international agreements, conventions etc.

The position of four successor states was backed by various international bodies and organisations. The European Council (Summit meeting of EU) adopted a respective declaration on former SFRY on June 27, 1992 in Lisbon. The same was the opinion of the London Conference (bringing together states interested in peaceful solution to the Yugoslav crisis) in August 1992. The Security Council of UN noted in its Resolution No. 757 dated May 20, 1992, that the claim of FRY (Serbia and Montenegro) to automatically continue the membership of former SFRY in the UN was not generally accepted. Consequently in its Resolution No. 777 dated September 19, 1992, the Security Council considered that the state formerly known as the SFRY ceased to exist and recommended to the General Assembly to decide that the FRY (Serbia and Montenegro) should apply for membership in the UN and that it should not participate in its work. Following the Security Council recommendation the General Assembly passed its Resolution No. 47-1/92 on the nonparticipation of the FRY in the General Assembly and its bodies. The mentioned Arbitration Commission of the ICFY concluded in its Opinion No. 8 dated July 4, 1992, that the process of dissolution of the former SFRY had been completed and that the former SFRY no longer existed. In its Opinion No. 10, the Arbitration Commission repeated that the FRY was a new state which could not be considered as the sole successor to the SFRY.

Four successor states (Bosnia and Herzegovina, Croatia, Macedonia — FYROM and Slovenia) believe that the succession agreement of all five successor states to the former SFRY on division of assets and liabilities must be based on the principles and rules of the international law. FRY, on the other hand, is of the opinion, that there is no international law and state practice which can be applicable to the unique Yugoslav case that can only be solved on the basis of political criteria.

In its Opinion No. 9, the Arbitration Commission of ICFY put forward the fundamental principles of the succession of states to the former SFRY, which are, among others, that new states have been created on the territory of the former SFRY and they are all successors to the predecessor state; the successor states must

settle all aspects of the succession among themselves by agreement; in the resulting negotiations, the successor states must try to achieve an equitable solution on the basis of the international law, relating to the succession of states, full account must be taken of the principle of equality of rights and duties in respect of international law.

International law dealing with state succession is indeed not always completely settled and state practice is sometimes equivocal. The appropriate rules of the customary international law (and general principles of law) are nevertheless clearly discernible and they can be of great help to the states concerned. The great majority of the said principles and rules are already included in two Vienna conventions. The *Convention on Succession of States in Respect of Treaties* was adopted in 1978 and has been put in force. The *Convention on Succession of States in Respect of State Property, Archives and Debt* was adopted in 1983, but it has not yet been ratified by the required number of states.

Other differences of opinion among the successor states with regard to the long list of subject matters are the consequence of this basic disagreement. There is no consensus, for instance, about the date which should be crucial for the making of the inventory of assets and liabilities of SFRY. Four successor states are of the opinion that there should be a single date. They prefer December 31, 1990 (as already agreed at ICFY in Geneva in 1992) when reliable data were still available. A date in June 1991 when the country definitively fell apart would be appropriate for the distribution of archives. FRY, on the other hand, proposes different dates for each newly established state.

Four successor states believe that if comprehensible agreement among successor states is not yet possible then the successors should proceed with partial agreement on certain burning humanitarian issues and certain economic issues where consensus is easier. It is very important for the every day life of individuals concerned, that successor states agree on issues of citizenships (dual citizenship, statelessness), pensions (federal pensions, pensions of federal units) and acquired rights (respect of private rights according to international standards) after seven years of futile negotiations. There is a broad opinion that, for instance, distribution of part of embassy buildings abroad and gold reserves of former SFRY in Basel Bank for International Settlements should not be a big problem if there is enough political will on the Yugoslav side. In order to treat all successor states equally, it is important, that the issue of archives is also included in partial agreement. Respect of principles of provenance, of functional pertinence and of accessibility of archives should be achieved, thus enabling normal administration of the states concerned and also succession negotiations on an equal footing. This was also the conclusion of the last session of the Peace Implementation Council held in Bonn, Germany in December last year.

FRY may continue to prove its political point of view and persist in unequal treatment of interests of all successor states contrary to international law and in its further international isolation. Further procrastination with the solution to succession of former SFRY is of no use to any of the successor states, not even to FRY, which is indeed in possession of many assets of the former federation but which struggling economy will also benefit from its share of assets now frozen abroad. Absence of the said solution is a reminder as well, that relations among the states established after the demise of the former SFRY are not yet fully normalised, a fact not unimportant in that volatile part of Europe. Successful end of the

Yugoslav state succession saga would be an important contribution to political stability and economic cooperation in the area, a fact not yet recognised by all. The partial agreement containing the above-mentioned issues would be a meaningful step into the right direction.

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