

# **FINANCIAL ASPECTS OF STATE SUCCESSION: YUGOSLAV CASE**

**Ana Stanič**

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# Background

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- The disintegration of SFR of Yugoslavia was violent and foreseeable
- Independent consultants estimated the net assets of the SFRY as of 31 December 1990 at USD 60 billion, of which military assets represented 75%, immovable assets 3.4 % and financial assets 21.6%
- SFRY was an original party to the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts
- Agreement on Succession Issues was signed in May 2001 and entered into force on 2 June 2004
- Most of the State's Debts and some of the State Property were apportioned before the conclusion of the Agreement on Succession

# *Agreement on Succession Issues*

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- Bosnia and Hercegovina (BH), Croatia, Macedonia, Serbia and Slovenia
- 13 Articles and 7 annexes dealing with different categories of State Property and State Debts

Annex A: Movable and immovable property

Annex B: Diplomatic and consular properties

Annex C: Financial assets and liabilities

Annex D: Archives

Annex E: Pensions

Annex F: Other rights, interests and liabilities

Annex G: Private property and acquired rights

# ***Agreement on Succession Issues***

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- Standing Joint Committee of senior representatives of each Successor State
  
- Dispute Resolution mechanism:
  - Refer matter to an independent person of choice
  
  - Standing Joint Committee (unanimous vote required)
  
  - Expert appointed by agreement of the parties or by President of Court of Conciliation and Arbitration of the OSCE

# *Date of Succession*

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- Unlike succession cases of Soviet Union and Czech-Slovak, the issue was complex and controversial
- Article 2 of Vienna Convention: “*date upon which the successor State replaced the predecessor State in responsibility for the international relations of the territory to which the succession relates*”
- Possible dates:
  - Slovenia and Croatia declared independence on 25 June 1991, but agreed to a moratorium on independence until 8 October 1991
  - Macedonia adopted a new constitution on 17 November 1991
  - Bosnia’s referendum on independence was held on 6 March 1992, whereafter war broke out + remained part of monetary union for a few months thereafter
  - Last approved budget of SFRY was drawn up 31 December 1990

# *Date of Succession*

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- According to Arbitration Commission Opinion No.1 of 29 November 1991 SFRY was “in the process of dissolution”
- By 4 July 1992 Arbitration Commission concluded that the process was “now complete”
- Different dates for different categories of State Property and Debts:
  - Movable and immovable property: date of proclamation of independence (Article 7 of Annex A)
  - Diplomatic and consular property: value as at 31 December 1990
  - Military Assets: no date agreed yet
  - Financial Assets and Liabilities: end of December 1991

# *Method of Apportionment*

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- All Successor States agreed that the State Property and Debts should be divided equitably in line with customary international law
- Various keys used in Yugoslav case:
  - IMF key was used to apportion debts to and assets in international organisations (including BIS)
    - Macro-economic criteria including contribution of each successor state to budget of the federal state
  - FRY called for size of population as the fairest model as based on equality of citizens
  - Different key used for Diplomatic and Consular Properties
  - Different key used for movable assets located abroad

# State Debts

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- Definition under Article 33 of Vienna Convention

*“any financial obligation of a predecessor State arising in conformity with international law towards another State, an international organisation or any other subject of international law”*

- As of end of 1991, SFRY Debt was estimated at USD 16 billion
- Article 2 of Annex C of Agreement makes clear that State Debts to commercial creditors included in apportionment
- Most of the debt was apportioned by direct negotiations with creditors, outside the framework of succession negotiations
- FRY made payments to IMF until September 1992 to strengthen its claim to continuity
- EBRD was the first institution to proclaim the five republics as equal successors in October 1992

# State Debts

- State Debt to Financial Institutions
  - Localised debt + final beneficiary rule used for allocated debt
  - Remaining and unallocated debt apportioned using IMF key (adopted also by Paris Club and London Club)
  - IMF key devised primarily using economic criteria, including each successor's state contributions to the federal budget and their share in social product and export earnings of the SFRY, as well as their respective shares of SFRY's population and territory
- Debt to Commercial Banks
  - New Financial Agreement between 10 banks from the different republics of SFRY and the National Bank as borrowers and syndicate of over 100 banks as lenders
  - Joint and several liability clause
  - Until May 1992 each successor state paying own portion of debt
  - Significant proportion of debt bought by FRY on secondary market

# State Property

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- Definition of State Property under Article 8 of the Vienna Convention:  
  
*“property, rights and interests which, at the date of succession ... were, according to the internal law of predecessor State, owned by that State”*
- No autonomous criterion for determining the scope exists in CIL
- Concept of “socially owned” property under law of SFRY
- FRY advocated the historical benefit analysis approach requiring determination of the net credit position of each successor *vis-à-vis* the federal government
- No general definition of State Property adopted

# *Immovable and Movable Property*

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## **Immovable and Movable Property located in the territory of the Successor State**

- Territorial principle applied in line with Article 18 of Vienna Convention + CIL
- Exception for movable property of “*great importance to the cultural heritage of one successor state ... and which originated from the territory of that State*”
- If movable property which passed on date of independence to a successor state was removed without authorisation, it must either be returned or full compensation must be paid
- No valuation undertaken and no equitable compensation

# *Immovable and Movable Property*

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- In case of a “significant unequal distribution of immovable and movable property located in successor states”, the matter could be raised with Standing Joint Committee (which must act unanimously)
- Military property agreed to be subject to separate rules of apportionment
  - Overriding principle was the territorial principle.
  - Distinction drawn between immovable and movable property of the army used for civilian purposes
  - No progress to date

# *Immovable and Movable Property*

## **Immovable Property Abroad**

- Represented less than 1% of SFRY total net assets as at 31 December 1990
- Serbia had use of the majority of such properties throughout the 1990s
- 5 properties apportioned as at time of agreement, IMF key adjusted in favour of BH, Macedonia and Serbia
- Distribution in kind
- Division of only 42 agreed to date
- Serbia refuses to agree the transfer until all SFRY property is divided

# ***Movable Assets Located Abroad***

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- Financial assets represented the major share of SFTY's movable property and represented 21% of total assets
- Foreign exchange reserves of NBY stood at USD 6 billion as at 31 December 1990
- The assets of the central bank of the SFRY abroad were only frozen in 1992
- USD 5 billion Loan to Iraq settled by FRY in return for oil supplies
- Only USD 1.7 billion of gold and cash actually divided under the Agreement on Succession Issues

# *Succession Issues as of Today*

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- On 3 June 2006 Montenegro seceded from Serbia and Montenegro
- On 21 July 2006 IMF decided that Serbia would retain all the quotas of FRY and allocated new ones to Montenegro in January 2007
- In February 2008 Kosovo declared its independence and seceded from Serbia
- Kosovo has been recognised by 53 countries and is a member of the WB and the IMF
- Current status of negotiations under Agreement of Succession Issues
  - Proposed meeting on 29 April 2011 cancelled
  - 6<sup>th</sup> time Serbia has requested the postponement of the meeting of the Committee
  - Committee has not met for more than a year
  - No time frames