



EUROPEAN COMMISSION
DIRECTORATE-GENERAL - EXTERNAL POLITICAL RELATIONS

Dir1 EN

Brussels, 25 July 1994
IA-B/GBR D(94)

NOTE FOR THE ATTENTION OF MR. DE LARGENTAYE

Subject: Financial Assets and Liabilities for Consideration in SFRY Succession

1. Following the preliminary findings of KPMG's work on financial assets and liabilities, the following items are of relevance for the financial aspects of succession.

Financial Assets

2. The total financial assets for division are some YD 161 409 million (US\$ 15 146 million), which are comprised as follows;

- assets of the NBY	YD 89 197 million
- foreign currency and gold	YD 59 234 million
- outstanding dues from abroad	YD 4 500 million
- assets of JUBMES	YD 7 791 million
- assets of military dept of NBY	YD 687 million
TOTAL	YD 161 409 million

3. There are a number of comments which need to be borne in mind in considering this total.

a) Assets are given as at 31 December 1990, and are likely to have fluctuated substantially after this date. This applies also to the liabilities listed below.

b) Most, if not all, of these assets are likely to be under the control of the FRY.

c) The outstanding dues from abroad for contracts etc. has been adjusted in line with current banking practices to make provision for bad debt. The total has been reduced to 20 percent of the gross value.

4. Furthermore, there are a number of items on the original inventory which have not been included in this list for a variety of reasons.

Republican Obligations assumed by the SFRY: Accounts at 31 December 1990 show US\$354 million (YD 3769 million) in foreign loans refinanced by the FRY. While the loans are theoretically recoverable from the respective Republics, the practical situation remains unclear. This is an issue which will have to be resolved among the Republics in connection with the related liabilities.

Illegal Raids on the Federal monetary system: During 1990 and early 1991, Republican national banks issued more money supply than was authorised by the NBY. This was investigated and reported on in a document dated 30 January 1991. It is understood that the illegal raids were reversed shortly after the issue of the report.

Outstanding Republican dues to the Federal budget: Various Republics failed to make all the appropriate payments to the Federation in accordance with the 1990 budget. This resulted in similar failure on the part of the Federation to spend the Federal budget in these Republics. This item is being excluded on the grounds that such historical questions are outwith the scope of the succession process. It is, in any case, immaterial since the dues and corresponding payments largely (though not exactly) cancel each other out.

Capital paid to international organisations: Capital paid to various international organisations amounted to some YD 1 529 million. The protracted nature of the break-up of the Federation has led individual Republics to undertake bilateral negotiations with these organisations, and to the organisations themselves taking a leading role in dividing up capital (e.g. IMF). This has resulted in a situation of "fait accompli" regarding this item and it has therefore been excluded. Any outstanding questions should be resolved bilaterally with the organisations in question.

Assets of the Postal Savings Bank of Yugoslavia: It is understood that the assets of this Bank have already been divided amongst the Republics on the basis of the original capital contributed.

Financial Liabilities

5. The situation on the liabilities side is rather more complicated as this part of the balance sheet is made up of liabilities to external creditors and internal liabilities owed between the successor Republics. Another layer of complexity is added by the fact that

internal liabilities often have an external component as loan transfers between Republican commercial banks and the NBY are often involved. The principle to be adopted in dealing with these items is that only clear external liabilities will be used in calculating the percentages to be proposed for division of liabilities. Resolution of internal liabilities is a matter to be resolved bilaterally between the creditors and debtors involved (principally the NBY). Nevertheless, we should recognise now that a view on the resolution of internal liabilities may well be required in the future as part of the disputes resolution procedure, and these items are listed for information.

6. The major exceptions to this rule would be the assets and liabilities of JUBMES (Yugoslav Bank for International Economic Cooperation) and of the Military Department of the NBY. As JUBMES was only partly Federally owned (29.1 %), the FRY has argued that it should be excluded from the succession process. This was contested by the other delegations and, given its role as a national trade finance and development bank for the whole of the former SFRY, it seems appropriate to treat it as a Federal institution. The liabilities of JUBMES will therefore be included in the calculation of the totals for division (as have JUBMES assets). No such controversy appears to exist over the assets and liabilities of the Military Department of the NBY and both its assets and liabilities are consequently included.

7. The financial liabilities used to calculate the division is as follows:

- total unallocated external debt	YD 37 076 million
- liabilities of JUBMES	YD 6 921 million
-liabilities of the Military Dept.(NBY)	YD 524 million
TOTAL	YD 44 521 million (US\$ 4 178 million)

8. There are a number of other foreign items whose status is uncertain and may or may not be included by the Republics in their final agreement. These are;

- short-term non-convertible currency liabilities to the former GDR and CSFR totalling YD 107 million

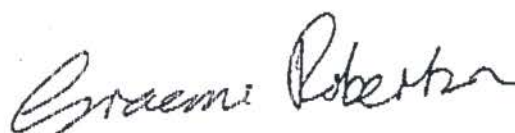
-refinanced long-term debt to foreign creditors YD 1 230 million

- other unexplained foreign currency liabilities to external creditors contained in NBY accounts YD 5 762 million

- compensation for nationalisation of foreign owned property under international treaties YD 1 082 million. Most (all ?) of this is owed under treaties with Italy and will be covered in the section covering international treaties.

8. For the purposes of completeness the following is a list of internal liabilities to be resolved among the parties. It is more than possible that the Conference will be asked to pronounce on some or all of these items at a future date. This will only be possible if more detailed information is provided.

- | | |
|--|--------------------|
| - short term currency liabilities of NBY
(deposits of commercial banks + interest) | YD 628 million |
| - amounts owed to exporting enterprises | YD 5 785 million |
| - unpaid interest to domestic creditors | YD 4 683 million |
| - obligations undertaken on behalf of domestic entities | YD 9 469 million |
| - foreign currency liabilities to domestic banks | YD 2 881 million |
| - missing household savings | YD 132 905 million |
| - outstanding claims on 1990 Federal budget (see above). | |



Graeme ROBERTSON



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DGIA - Direction B

Bruxelles, le 24 mai 1994
BL D(94) d12

**LA SUCCESSION D'ETATS TCHÉCOSLOVAQUE
VUE DE BRATISLAVA**
compte rendu de mission en Slovaquie

1. Objectif de la mission

Les autorités slovaques ont reçu le vendredi 20 mai une mission de la conférence internationale sur l'ancienne Yougoslavie, composée de MM. STROEMMEN et de LARGENTAYE, pour lui présenter les modalités de la succession d'Etats tchécoslovaque. La mission avait été sérieusement préparée par le ministère des affaires étrangères slovaque et en particulier par sa direction générale des affaires juridiques : elle fut marquée par des entretiens instructifs avec MM. Ivo HLAVACEK, directeur général des affaires juridiques et consulaires, Milar KOLLAR, directeur du département des affaires internationales, et Belo BOSAK, conseiller chargé de la succession d'Etats à l'ambassade slovaque à Prague, ainsi qu'avec des représentants des forces armées et du ministère des finances. Pour les représentants de la conférence de Genève, l'intérêt de la mission était surtout celui d'une étude comparative. Il s'agissait d'obtenir les réponses que l'on avait trouvées dans le contexte tchécoslovaque aux questions qui se posaient dans celui de l'ancienne Yougoslavie, des questions, intéressant, par exemple,...

...la délimitation de la masse successorale...

- ..comment la propriété d'Etat avait-elle été définie?
- ..un inventaire avait-il été dressé et, dans l'affirmative, selon quelles modalités?
- ..comment avait-on tenu compte des subventions et des crédits bonifiés au commerce et à l'industrie?
- ..comment avait-on procédé à l'évaluation des actifs (règles d'amortissement)?
- ..à combien la masse successorale avait-elle été estimée?
- ..quelle était la part de la masse successorale totale représentée par les équipements militaires?

...et son partage

- . n'avait-on retenu qu'un seul critère et, dans l'affirmative, comment l'avait-on justifié par rapport à d'autres critères possibles?
- . comment avait-on procédé à la répartition des actifs immobiliers?
- . quels mécanismes d'arbitrage avait-on prévu pour régler les différends?
- . quels instruments avaient été mis en place pour effectuer des compensations lorsqu'un partage s'avérait inéquitable?
- . quel sort avait été réservé aux accords spécifiques conclus, par exemple, dans le cadre du Fonds Monétaire et de la Banque Mondiale, lorsque les parties s'étaient entendues sur d'autres dispositions, d'ordre général de la succession d'Etats?
- . comment furent réparties les propriétés tchécoslovaques à l'étranger?

La recherche d'informations sur la durée du processus, sur le temps qu'avait duré la succession d'Etats tchécoslovaque, était également à l'ordre du jour.

2. Repères chronologiques

Un "inventaire auxiliaire" fut dressé, qui présentait l'état des actifs et des passifs à la date du 30 juin 1992. Le 31 décembre 1992 fut fixée comme date de la dissolution de la République Fédérale Tchéque et Slovaque. La succession d'Etats date donc du premier janvier 1993. Les grands principes de la succession d'Etats furent établis par une loi constitutionnelle du 25 novembre 1992.

3. La base juridique

La fédération tchécoslovaque a été dissoute : il n'y a pas eu de sécession. La fédération avait été établie par la loi n°143 de 1968, qui effectuait une distinction précise entre propriété fédérale et propriété des deux républiques. Le partage s'est fait sur la base du droit coutumier international et des conventions de Vienne : il est régi par la loi constitutionnelle n° 541/92.

4. Un partage en fonction de deux grands critères, le principe territorial et le principe de population, le premier ayant préséance sur le second

Le principe territorial s'est appliqué à tous les immeubles situés en Tchécoslovaquie et, par extension, aux biens meubles attachés à ces immeubles (mobiliers des palais de Prague, par exemple, ou encore chaudières des bâtiments). Le principe de population, aux termes duquel la part tchèque était deux fois plus élevée que la part slovaque, s'est appliqué à tout le reste, y compris à la propriété immobilière à l'étranger. Le choix du principe de population n'a pas donné lieu à des difficultés particulières : les deux parties sont convenues de ne pas se servir

du principe historique, impliquant la recherche des origines d'une propriété déterminée. Par rapport au principe historique, le principe de population présente l'avantage de la simplicité. Les deux parties ont voulu s'en tenir à l'état de la masse successorale au 31 décembre 1992, en écartant toute idée d'examen de ce qui s'était produit avant cette date, ce qui n'aurait fait que compliquer inutilement la procédure. Le principe territorial a reçu la priorité, de sorte que le principe de population n'a qu'un caractère subsidiaire.

5. Une approche de la succession d'Etats pragmatique, décentralisée, au cas par cas

Tchèques et Slovaques n'ont pas éprouvé le besoin d'établir un inventaire général, répertoriant tous les actifs et les passifs de la succession d'Etats, ni de présenter une évaluation de la masse successorale dans son ensemble : ce n'était pas l'objet de l'exercice, nous a-t-on fait remarquer. Il s'agissait, plus simplement, de parvenir à une répartition agréée. Des inventaires ont été établis pour les actifs et les passifs entrant dans la catégorie des biens mobiliers, en retenant la valeur comptable, c'est-à-dire en déduisant, en tant que de besoin, les amortissements, mais on ne dispose pas d'une estimation de l'actif et du passif global, ni, par conséquent, de l'actif, ou du passif, net. Des évaluations n'ont été nécessaires que là où le principe de population était applicable. L'évaluation se faisait alors suivant trois critères, un critère de valeur (recours au coût de remplacement), un critère d'ancienneté (calcul d'amortissement) et un critère de finalité ("purpose"). Les inventaires de biens mobiliers furent établis secteur par secteur, c'est-à-dire, le plus souvent, ministère par ministère.

6. La compensation et la prévention des litiges

Le partage des immeubles n'a pas donné lieu à compensation. En revanche le partage des meubles, y compris des meubles rattachés par leur destination à des immeubles, ouvrait droit à des compensations. Le plus souvent les compensations se sont opérées en nature (ce n'est qu'en dernier ressort que des compensations financières ont été effectuées) et ont eu lieu à l'intérieur d'un même secteur ministériel. L'ensemble des compensations, intéressant tous les secteurs ministériels, dues par la République Tchéque à la Slovaquie, a été évalué à 692 millions de couronnes (au 31 décembre 1992 le dollar valait 30 couronnes). Le montant des compensations dues par la Slovaquie à la République Tchéque n'a pas été communiqué, mais représenterait une somme sensiblement inférieure. Une autorité fut établie pour prévenir le recours à l'arbitrage, avec l'accord des deux gouvernements et avec des pouvoirs délégués par ceux-ci : ce fut une commission intergouvernementale, chargée de la répartition des actifs, composée de cinq membres de chacun des deux Etats. Sa charte fut établie par les deux parties. La règle fut que les ministères correspondants cherchaient d'abord un accord; ce n'est qu'à défaut d'un tel accord que la commission intergouvernementale était saisie.

7. Dispositions relatives au partage des archives

Les archives ont été traitées séparément. L'autorité responsable était située, de chaque côté, au ministère de l'intérieur. Les archives ont été divisées en trois catégories :

- les archives d'Etat, relatives aux questions civiles
- les archives relatives aux questions de sécurité
- les archives relatives aux questions militaires et de défense

Le principe de provenance (détermination de l'origine) a été appliqué pour procéder à la répartition. Le degré de professionnalisme qui a marqué toute la procédure a été relevé et a fait l'objet d'éloges au Conseil International des Archives, dont le siège est à Paris. Le droit d'accès obéit à des principes internationaux, emprunts de libéralisme, et diffère peu d'un Etat successeur à l'autre. La règle des trente ans est mise en oeuvre par les deux parties. Un projet de recours aux microfilms pour reproduire les documents les plus importants qui ne peuvent être divisés est en cours de réalisation avec l'appui du Conseil International des Archives. Dans la pratique, Tchèques et Slovaques se réservent un accès privilégié à leurs archives respectives mais on ne trouve aucune référence à cette situation de fait dans le texte de l'accord. Les ministères slovaques ont accès à la documentation qui intéresse les affaires courantes et qui est en possession des ministères tchèques, et vice versa. Les responsables des archives ont déjà communiqué de nombreuses informations aux autorités slovènes et croates; ils demeurent disponibles pour apporter une assistance technique si une conférence internationale sur cette question était convoquée : une telle conférence, est-il précisé, gagnerait à être conduite dans une langue non slave. Certaines archives vont être gérées de manière conjointe par les autorités tchèques et slovaques pendant une période de vingt ans. Les archives relatives aux questions de sécurité (archives de police) n'ont pas encore fait l'objet d'un règlement d'ensemble; dans ce cas, le secret est de règle, et l'autre partie n'a pas de droit d'accès aux archives. Les questions de sécurité et de défense étaient fédérales par nature.

8. Dispositions relatives au partage des biens des forces armées

Il existait un inventaire assez précis et assez satisfaisant des actifs militaires : le registre central de l'armée. Les biens immeubles furent répartis selon le principe territorial, sans compensation, ce qui a dû avantager les Tchèques : dix-sept terrains d'aviation militaires, bénéficiant des équipements les plus récents, se trouvaient ainsi en territoire tchèque, et aucun en territoire slovaque. 80% des forces armées tchécoslovaques étaient stationnées en territoire tchèque. Dans le domaine militaire, l'approche a été encore plus pragmatique qu'ailleurs. Il n'y avait pas de règles précises auxquelles se soumettre et tout a dépendu finalement de la bonne volonté des deux parties. La question préalable était celle de savoir si les Etats successeurs préféraient la destruction d'un bien déterminé à sa conservation. Le plus souvent on a procédé à une répartition en nature, conformément au principe de deux unités pour les Tchèques pour une unité pour les Slovaques. Lorsque ce principe du deux contre un ne fut pas appliqué - ce fut

le cas, par exemple, pour les Mig-29, où on s'en tint à un principe de parité - la partie désavantagée obtint une compensation, sur base du coût de remplacement.

9. Dispositions relatives au partage des biens immobiliers à l'étranger

Les actifs à l'étranger ont été évalués par des consultants étrangers (seul cas où les parties ont eu recours à ce type d'expertise), puis répartis en appliquant le principe de population, après que les ministres des affaires étrangères tchèque et slovaque se furent entendus sur leurs priorités respectives. Les meubles attachés aux biens immobiliers à l'étranger ne furent pas séparés de ces derniers. Souvent Tchèques et Slovaques se sont entendus pour se partager un même bien immobilier à l'étranger.

10. Dispositions relatives au partage des entreprises et des actifs et passifs financiers

Presque toutes les entreprises furent réparties en appliquant le principe territorial. La seule exception concerne les entreprises fédérales disposant d'établissements sur les territoires des deux nouvelles républiques, pour lesquelles on eut recours au principe de population. Les passifs correspondant à des crédits et subventions aux entreprises ont été rattachés au territoire sur lequel se trouvait le siège de l'entreprise en question; si, par exemple, une entreprise située sur le territoire tchèque avait reçu un crédit de l'Etat, la dette correspondante serait due à l'Etat tchèque.

La banque tchécoslovaque pour le commerce extérieur était responsable de presque tous les actifs financiers à l'étranger. La quasi totalité des actifs et passifs financiers à l'étranger fut répartie conformément au principe de population. Ce fut le cas en particulier des créances douteuses détenues sur l'étranger. La réserve d'or de la banque centrale fut répartie en appliquant le principe de population.

11. Un cas particulier : le partage des quote-parts et des dettes au Fonds Monétaire et à la Banque Mondiale

La répartition des actifs et des passifs au Fonds Monétaire et à la Banque Mondiale n'a pas obéi au principe de population mais aux règles propres à ces institutions. Les différences avec les résultats qui auraient été obtenus en application du principe de population n'ont pas donné lieu à compensation.

12. Etat d'avancement de la succession et réflexions finales

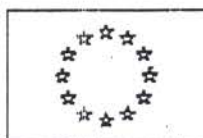
Le traité sur la répartition de la masse successorale tchécoslovaque n'est pas encore achevé. Un accord n'est toujours pas intervenu sur un actif résiduel représentant 2% de l'actif total. Toutes les questions intéressant les actifs

tangibles ont trouvé une réponse; ce sont les actifs et les passifs financiers qui posent encore quelques problèmes.

Une liste de dix-sept lois, accords et traités qui sont déjà signés et qui intéressent la succession d'Etats tchécoslovaque existe et est à la disposition des demandeurs.

Le plan de partage qui a été agréé et mis en oeuvre ne prétend pas être juste et équitable; il s'agissait surtout pour les parties prenantes d'aller vite pour parvenir rapidement à un résultat. La bonne volonté et la bonne foi des deux parties explique le succès de leur approche pragmatique et décentralisée, c'est-à-dire impliquant de nombreux accords ponctuels. Et la définition de la propriété fédérale, aux termes de la loi constitutionnelle tchécoslovaque de 1968, était sans doute plus précise et, en tout cas, mieux acceptée, que celle de la propriété fédérale dans la constitution yougoslave de 1974.

CC : MM DURIELX BENAVIDES KRONENBURG JONSSON VAN RAEPENBUSCH HOFMANN
ZEPTER STROEMMEN
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COMMISSION EUROPÉENNE
DIRECTION GÉNÉRALE - RELATIONS POLITIQUES EXTÉRIEURES

DGIA - Direction B

Bruxelles, le 28 juillet 1994
BL D(94) dl 52

Objet : notes prises au cours d'une mission à Belgrade pour le compte du groupe
succession d'Etats de la conférence internationale sur l'ancienne
Yougoslavie (24 et 25 juin 1994)

On se reportera au compte rendu préparé par G. ROBERTSON

En cours de séance Kosta MIHAJLOVIC, appelé par S. MILOSEVIC, demande à s'absenter

La matinée du premier jour est consacrée à une critique de l'inventaire préparé par les Serbes et du document qu'ils ont rédigé sur leur méthodologie. En fait les réunions seront beaucoup plus centrées sur les questions de méthodologie que sur l'inventaire proprement dit. Le bilan de la mission doit être jugé négatif sous l'angle de la collecte de l'information : les missionnaires n'ont obtenu aucune information brute nouvelle et, en particulier, aucun chiffre nouveau; l'accès à la comptabilité de la Banque Nationale de Yougoslavie leur a été refusé. Les missionnaires avaient proposé d'organiser leur temps à Belgrade autour de trois thèmes, qui auraient été examinés en parallèle par chacun d'entre eux,

- les actifs et les passifs réels (G. ROBERTSON)
- les actifs et les passifs financiers (I. KAMEL)
- les questions de méthodologie (B. de LARGENTAYE)

Les Serbes refusèrent cette approche, en indiquant leur préférence pour une succession de réunions plénières

M. KOVAC fait remarquer que les crédits budgétaires de la fédération étaient inscrits sur la demande des républiques : ils résultaient d'une demande des républiques

Les Serbes décrivent leur méthode, faisant intervenir un "facteur k" qui conduit à minorer l'importance des chapitres de l'inventaire consacrés à l'équipement militaire. On peut douter de la force de leur argumentation quand on sait que 75

à 80 % du budget de l'ancienne fédération était consacré aux forces armées. MKUCEVINAC explique la méthode du "capital d'Etat" consistant à identifier tout ce qui a bénéficié de financements fédéraux, directement ou indirectement, par le canal de fonds communs. Mme GNJATOVIC décrit la méthode "historico-financière" employée pour évaluer l'inventaire. L'utilisation ou non de capital d'Etat est le seul critère pertinent. M. KOVAC ajoute que la délégation de la RF de Yougoslavie accepte la date du 31 décembre 1990 comme date de référence sous réserve que l'on tienne compte le moment venu des événements ultérieurs intervenus entre cette date et la date de la succession. MKUTLECIC souligne que sa délégation doit identifier les sources du capital d'Etat et bien repérer à quoi ce capital a servi. Toute la documentation nécessaire est disponible : on a la preuve désormais que l'on peut être aussi complet que possible pourvu qu'on le veuille. MMIHAJLOVIC décrit la méthode retenue par sa délégation comme équivalant à l'établissement d'un inventaire de "prêts" consentis par la fédération; peu importe qu'un investissement donné ait été un succès ou non : la créance de la fédération sera la même. Il s'agit d'une approche résolument historique qui refuse de prendre en compte la valeur actuelle d'un actif.

Mme GNJATOVIC se réfère à un autre éléphant blanc de l'ancienne Yougoslavie, le complexe énergétique de Kirk.

Un certain nombre de mises au point s'avèrent nécessaires en début de réunion. M. KUTLECIC se déclare surpris de voir des représentants du groupe économique de la conférence et fait référence à une lettre signée de Jean DURIEUX annonçant la venue de la mission. Il faut lui expliquer qu'il s'agit d'un travail technique effectué pour le compte du groupe succession d'Etat; les questions de nature juridique sont suivies par W. STROMMEN. Sur les questions de méthodologie les missionnaires situent résolument la balle dans l'autre camp : à lui de choisir ses méthodes et de les justifier ensuite. Les représentants de la RF de Yougoslavie ne disposent pas de chiffres et encore moins d'agréats, même s'ils déclarent qu'ils les communiqueront dans un avenir proche. Priés de préciser la localisation territoriale des plus de huit mille rubriques figurant dans leur inventaire (pour se faire une "image territoriale" de ce document), ils répondent qu'indiquer le nom de la république où se situe chaque actif répertorié reviendrait à préjuger la solution politique du conflit. La délégation de la RF de Yougoslavie explique que la première phase de son projet correspond à un travail de documentation pour dresser un inventaire aussi complet que possible, et que le but politique de cette démarche est de réfuter la thèse selon laquelle presque tous les actifs de la RSFY se trouveraient sur le territoire actuel de la RFY.

Mme GNJATOVIC présente les différents sous-comptes, au nombre de six, qui figurent à l'inventaire préparé par les services de la RF de Yougoslavie. Le premier reprend l'ensemble des actifs réels, biens meubles et immeubles. Le second est la liste des créances détenues par la RSFY. Le troisième n'est que la somme des deux premiers : il correspond donc à la valeur brute de l'inventaire. Le quatrième sous-compte reprend le passif de l'ancienne fédération yougoslave: on y trouve aussi bien les dettes extérieures que la dette publique (passif intérieur). La dette extérieure publique et privée garantie relève du Club de Paris, la dette extérieure privée du Club de Londres. Aucune décision n'a encore été prise sur la dette extérieure yougoslave qui bénéficiait d'une garantie de l'ancienne fédération, ce qui explique que l'ensemble de la dette extérieure figure à

l'inventaire. Le cinquième sous-compte procède des deux précédents et présente la valeur nette de l'ancienne fédération. Le sixième sous-compte est consacré aux transferts. On y trouvera une évaluation de l'importance des délocalisations industrielles effectuées après la deuxième guerre mondiale; ce sous-compte n'aura pas d'incidence sur les calculs de la valeur brute et de la valeur nette; son intérêt est autre.

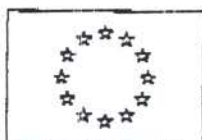
La délégation de la RF de Yougoslavie manifeste sa volonté de communiquer les résultats de ses travaux aux autres délégations.

--

Le 25 juin les trois missionnaires sont reçus par le gouverneur de la banque centrale, MAVRAMOVIC. MAVRAMOVIC se félicite de l'amélioration de la situation économique en Serbie, que l'on observe depuis que son plan de stabilisation et de reconstruction est appliqué (24 janvier); mais d'autres facteurs ont également joué, notamment des récoltes exceptionnelles. La production industrielle aurait augmenté de 100% depuis janvier, mais resterait en deça de son niveau maximum antérieur. La substitution des importations joue à plein dans l'industrie. On ne peut s'empêcher de penser au Dr Hjalmar SCHACHT en observant ce brillant technicien, qui se garde pourtant de dire qu'une économie fermée ne comporte pas que des inconvénients.

Bertrand de LARGENTAYE

cc : MM DUREUX JONSSON SZASZ
STROMMEN



COMMISSION EUROPÉENNE
DIRECTION GÉNÉRALE - RELATIONS POLITIQUES EXTÉRIEURES

DGIA - Direction B

Bruxelles, le 28 juillet 1994

BL D(94) dl 53

Objet : notes prises au cours d'une réunion à la mission de Slovénie avec le chef de mission, le ministre des finances, le gouverneur de la banque centrale et M. Durieux (Bruxelles, le 14 juillet)

le gouverneur de la banque centrale se réfère à l'accord européen et en particulier à son chapitre consacré aux services financiers, et aussi aux discussions sur la succession d'Etats

le ministre des finances met l'accent sur les différences entre la succession d'Etats yougoslave et celle de la Tchécoslovaquie; il fait part de la volonté des autorités de son pays de conduire rapidement à leur terme les négociations sur la succession et évoque la possibilité d'un retrait de la délégation slovène du groupe des questions économiques de la conférence internationale sur l'ancienne Yougoslavie : il ne voit pas l'intérêt pour son pays de parvenir à des accords particuliers avec les autres républiques issues de l'ancienne Yougoslavie

le ministre des finances fait appel à la vigilance des responsables du groupe succession d'Etats s'agissant de la préparation de la partie de l'inventaire ayant trait aux actifs et aux passifs financiers; il faut être très attentif aux dates auxquelles ces rubriques sont recensées et suivre très spécialement l'évolution du montant des réserves de change

les actifs de l'ancienne Yougoslavie à la Banque des Règlements Internationaux s'élèveraient à 520 millions de dollars et comprendraient 42 tonnes d'or et deux dépôts, un en dollars américains et l'autre en marks; la banque centrale de Slovénie a ouvert un compte à la Banque des Règlements Internationaux; une partie importante des réserves serait actuellement détenue à Chypre

les zones de libre-échange créées avec la Croatie et la Macédoine ont été des échecs

Bertrand de LARCÉNTAYE

KÖNIGLICH DÄNISCHE BOTSCHAFT
BERN

090/2

THUNSTRASSE 95 • CH-3006 BERN

T E L E F A X

Datum: July 4, 1994

Az.: 5.E.3.a.

An: ICFY

Telefax: 022 917 00 79

Z.Hd.: Mr. Wegger Strömman

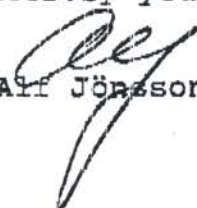
Von: Ambassador Alf Jönsson

Anzahl von Seiten ins gesamt (einschließlich dieser Seite): 10

Dear Wegger,

Attached please find copy of an ERRATA on the Croatian draft text for the Succession Treaty.

Sincerely yours,


Alf Jönsson

*P.S. I am including my fax of today
for M. Durieux
R.J.*

VLADA REPUBLIKE HRVATSKE
URED ZA PROJEKT SUKCESIJE BIVŠE SFRJ

GOVERNMENT OF THE REPUBLIC OF CROATIA
OFFICE OF PROJECT ON SUCCESSION OF FORMER SFRJ

Mesnička 23
Zagreb

AMB. BERN
BILAG
- 4 JULI 1994
56 Ba

DATUM / DATE:

4th July 1994

FAX BR. / FAX NO.:

41 31 351 2395

ZA / FOR:

ambasador
Mr. Alf Jensen

OD / FROM:

Boris Marudic

UKUPAN BROJ STRANICA UKLJUČUJUĆI OVU:

7

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PORUKA/MESSAGE

**INTERNATIONAL CONFERENCE
ON THE FORMER YUGOSLAVIA
WORKING GROUP ON SUCCESSION ISSUES
DELEGATION OF THE REPUBLIC OF CROATIA**

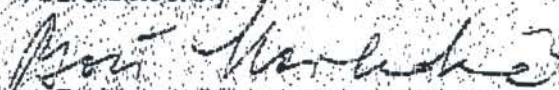
To:
Mr. ALF JONSSON
Chairman of the Succession Issues Working Group

Dear Mr Jonsson,

Please find enclosed **ERRATA** on the text "Draft Convention of the Succession of States" - suggestions by the Croatian Delegation - and, also, the pages from the text that should be replaced.

Also, I am mailing you the complete documents with enclosed Statement of the Croatian Delegation that "Draft Convention of the Succession of States" refers to in the page 12.

Yours sincerely


Božo Marenić,

Head of the Croatian delegation
on the Succession Issues Working Group

Zagreb, 4 July 1994

DRAFT CONVENTION OF THE SUCCESSION OF STATES**- Suggestions by the Croatian Delegation -****ERRATA:**

In order to eliminate potential ambiguities in the positions of the Croatian delegation, would you please introduce in our paper of 23 June 1994 the following corrections:

Page 7, passage 3 should read:

"Other successor States are however interested to get in exchange many **original** documents and especially film materials which do not belong to the State archives of the former SFRY. They were collected in Belgrade sometimes on a legal basis, but more frequently illegally. They are situated now mostly in the Military Historical Institute of the former Federal Army (the "JNA"); in the central "Jugoslovenska kinoteka" ("Yugoslav Film Archives"), and in the Archives of the former Federal Ministry of Foreign Affairs."

Page 8, passage 7 should read:

"It seems to be useful the reaffirmation under this heading of the principle that a succession of States does not affect as such boundaries, boundary and other territorial regimes **established by treaties**, as has been confirmed in Articles 11 and 12 of the 1978 Vienna Convention. This principle has been endorsed further on in a number of judicial decisions. The matter is of the 1986 Judgment of the I.C.J. (Burkina Faso/Mali); of the 1989 Arbitral Award (Guinea-Bissau/Senegal) especially in regard to maritime boundaries established by treaties; and of the Opinion No.3 of the Arbitration Commission of this Conference."

Page 19, passage 1 should read as follows:

"Financial assets and non-allocated debt ascertained on the above basis should be finally distributed in ~~("equal" to be deleted)~~ proportions **valid for all assets and non-allocated debt of the former SFRY**, as will be fixed in the Draft convention among all successor States."

Page 20, passages 7 and 8 should read:

"At that same Conference the parties to the Convention will submit their claims for equitable compensation of immovable State property situated in the territory of other States parties to the Convention, **strictly within the proportions established in the Convention for all assets and non-allocated debt of the former SFRY**."

All claims for equitable compensation not resolved **on the foregoing basis** by agreement of respective parties during that Conference, will be forwarded to an arbitration commission."

Enclosed is also the text of the former Statement of the Croatian delegation referred to in page 12.


/Bozo MARENDIC/

Zagreb, 4 July 1994.

The last paragraph is the additional proposal by the Croatian delegation in order to make the whole text more acceptable to all.

The above set of rules is very balanced. It is entirely based on principles set out in Article 31 of the 1978 Vienna Convention. It takes into account rights and legitimate expectations of all. Paragraph 6 permits that perhaps more than 80% of federal archives remain in originals in Belgrade under joint custody, as a common heritage of all successor States.

Other successor States are however interested to get in exchange many original documents and especially film materials which do not belong to the State archives of the former SFRY. They were collected in Belgrade sometimes on a legal basis, but more frequently illegally. They are situated now mostly in the Military-Historical Institute of the former Federal Army (the "JNA"), in the central "Jugoslovenska kinoteka" ("Yugoslav Film Archives"), and in the Archives of the former Federal Ministry of Foreign Affairs.

There is no legal ground that these archival documents remain in the possession of the FRY. They do not belong to the Federal State Archives even according to Articles 1 to 12 of the "Law on Archival Documents of the Federation" (Zakon o arhivskoj gradji federacije, "Sluzbeni list SFRJ 1986", No.11).

This issue is in fact a test of the will of cooperation by the FRY.

TREATIES

This problem affects first of all relations of each particular successor State with other parties to treaties in question. Equally important is however to ensure that many of general conventions, the parties of which was the former SFRY, continue to apply in relations of its successor States.

Article 34 of the 1978 Vienna Convention in Respect of Treaties, which might soon enter into force but has no retroactive effects, makes in fact the difference between three large groups of treaties:

1. First are general conventions of the so-called "universal character", dealing with protection of human rights, humanitarian law, refugees, stateless persons, narcotic drugs, diplomatic and consular relations, the law of treaties, the law of the sea, etc. Most of them provide more duties than rights to their parties. It is therefore of the interest of the world community at large that all States which arise by separation or by dissolution of the predecessor State, succeed ipso facto and ab initio the position of parties to all these treaties.

The depositary of these conventions is the most often the UN Secretary-General, or the Swiss Federal Council. In some instances the depositary ceased to exist, as for example the Secretary-General of the former League of Nations.

It is important to stress that Article 33 of the 1978 Vienna Convention does not provide the notification of succession of these conventions to their depositary. The clear intention was that all these conventions bind all successor States either in case of dissolution of the predecessor State, or in case of their separation from a predecessor

State which continues to exist. To such extent immaterial is the fact whether a State such as the FRY, pretends to keep identity and the continuity with the predecessor State or not.

It was in fact an unhappy practice by the UN Secretary-General to request the notification on succession of conventions of which he is depositary. By this practice he gave the opportunity to "new" successor States to pick and choose and unilaterally to decide whether to become parties to conventions such as those on genocide or on apartheid, or not.

For this very reason the provisions of the 1978 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts will never be applied as treaty obligations, even after its formal entry into force. It is necessary for this that all "new" successor States are ipso facto and ab initio bound by it. Any single successor State can now by the absence of its notification to the depositary break this relationship at its will.

Because of this practice Croatia and other successor States of the former SFRY have problems how to become full parties to the 1923 Geneva Convention on the International Régime of Maritime Ports and of similar conventions, the depositary of which disappeared.

2. To the next group belong the conventions of the same character as above which apply only to the successor State to whose territory they applied before the succession.

Article 34 (1) (b) does not however provide any agency to decide uncertain cases. But in the light of the present practice, every successor State will decide this problem for itself by its decision to notify or not to notify its succession of a particular convention.

3. All other multilateral, as well as all bilateral treaties of the predecessor State belong to the last group. The succession of these treaties by a "new" successor State depends on joint agreement of itself and of all other parties to them.

It seems to be useful the reaffirmation under this heading of the principle that a succession of States does not affect as such boundaries, boundary and other territorial régimes established by treaties, as has been confirmed in Articles 11 and 12 of the 1978 Vienna Convention. This principle has been endorsed further on in a number of judicial decisions. The matter is of the 1986 Judgment of the I.C.J. (Burkina Faso/Mali), of the 1989 Arbitral Award (Guinea-Bissau/Senegal) especially in regard to maritime boundaries established by treaties, and of the Opinion No.3 of the Arbitration Commission of this Conference.

In order to avoid evil consequences of the above practice of the UN Secretary-General as depositary, the Draft convention should provide an exhaustive list of general conventions of the "universal character". All States parties to the future Convention of succession of States will on behalf of a provision in it be considered full parties to these treaties. On this way will be established a conventional basis of legal obligations of all successor States inter se, as well as with other respective parties to particular treaties.

Financial assets and non-allocated debt ascertained on the above basis should be finally distributed in proportions valid for all assets and non-allocated debt of the former SFRY, as will be fixed in the Draft convention among all successor States.

The Draft convention should expressly provide that all former contracts concluded between public and private juridical persons (e.g. on joint investments on construction of hydroelectric plants, of factories, etc), remain in force. The successor States should assume obligation to carry out all obligations from these contracts, and to promote dispute settlement on them and to implement final judicial or other decisions.

(V) Military property

Military property of the former Federal Army, now created from the Federal Budget and it is as such undoubtedly the assets on which the succession of States applies.

The value of equipment, ammunition, military industry and development projects, has already been established such as was existed on 31 December 1990. This amount should be divided among all successor States according to the proportion fixed in the Draft convention.

Following above quoted legal principle, on Croatia has already passed all immovable property of the former Federal Army which is situated on its territory. However, during its withdrawal near the end of 1991 and in the beginning of 1992, the Federal Army has taken away with it many accessory equipment of that property and has by that diminished its value and has hindered its normal functioning.

The matter is inter alia of equipment of some military hospitals; of establishments for repairing and maintenance of vehicles and weaponry; of military educational centers; of barracks; etc. Croatia reserves its right to advance its claims for adequate compensations for this property and losses sustained, out of its claim on the sum of movable military property.

(VI) Others

A general provision should in this respect provide that all States parties to the Convention will do all efforts to facilitate and promote the apportionment of joint property of the federal associations of Trade Unions, of the former League of Communists, of the Socialist Alliance of Working People, of Sports unions and other alike entities, among present bearers of titles, or their legitimate heir organizations in the successor States.

DISPUTE SETTLEMENT MECHANISM

In this respect the Croatian delegation has the following suggestions:

Upon the receipt of the text of the Draft convention and after the meeting of the Working Group on Succession Issues, every successor State must be able to proceed through the Co-Chairmen of the Conference, the questions for opinion of the Badinter's Arbitration Commission of any legal issues proposed in that Draft convention which it deems to be contrary to international law.

Upon receipt of these opinions, the final text of the Draft convention will be dressed on the basis of these pronouncements, and it will be then proposed for signature and ratification to all successor States.

The Convention should enter into force thirty days after the date of deposit of the fourth instrument of ratification with the Secretary-General of the United Nations. Within these thirty days, the Co-Chairmen of the Conference will officially invite once again the remaining fifth successor State to become its party.

After the entry into force of the Convention, the Co-Chairmen of the Conference will convene a conference of parties to the Convention, but in the absence of that successor State which refused to become its party.

At that Conference will be distributed the immovable and movable property of diplomatic and consular missions of the former SFRY abroad according to the Rules which will be the part of the Convention.

At that same Conference the parties to the Convention will submit their claims for equitable compensation of immovable State property situated in the territory of other States parties to the Convention, strictly within the proportions established in the Convention for all assets and non-allocated debt of the former SFRY.

All claims for equitable compensation not resolved on the foregoing basis by agreement of respective parties during that Conference will be forwarded to an arbitration commission.

The Croatian delegation has nothing against that this function performs the existing Arbitration Commission with Robert Badinter as its president. But it is neither against a new body of five independent arbitrators from different third States, possessing all qualifications as required in Article 2 of the Statute of the International Court of Justice.

The arbitral procedure should consist of written and oral parts. Final awards on all claims should be pronounced by majority votes within next six months. The expenses of the Commission and of the procedure will be the expenses of the International Conference on the Former Yugoslavia.

If a party in a case fails to perform the arbitral award, the other party may have recourse to the UN Security Council under the terms of Article 94 (2) of the UN Charter.



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10



F A X

TO: M. Durieux
Chairman of the Economic Working Group,
European Commission
Brussels
Fax no. 0032 2 296 1141

FROM: Ambassador Alf Jönsson, Chairman of the
Succession Issues Working Group

DATE: July 4, 1994

PAGES: 1 including this cover page

Dear Mr. Durieux,

As Chairman of the Succession Working Group it is my intention to present a rough draft and my ideas of a solution to the whole succession issue to the relevant persons in the Russian Foreign Ministry. To that end we have arranged a meeting on July 20 and 21 in Moscow. I will be accompanied by Mr. Wegger Strømmen and would very much like also to have the assistance of Mr. Bertrand Jönsson. I hope it will be possible for the two gentlemen to take part in the mission.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'Alf Jönsson', followed by a horizontal line.
Alf Jönsson

Stalna misija Republike Hrvatske pri Ujedinjenim Narodima. Ženeva
Permanent Mission of the Republic of Croatia to the United Nations Office. Geneva

Note No. 207/94

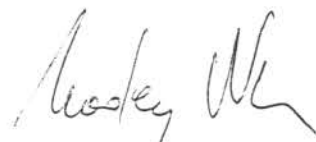
Geneva, June 27, 1994

Dear Sir,

I have the honour to transmit to you the enclosed document "Draft Convention of the Succession of States - Suggestions by the Croatian Delegation" which contains relevant proposals for the completion of the succession process.

Hoping that you will use these suggestions in a best possible way I remain

Sincerely yours,



Neven Madey
Chargé d'affaires a. i.

H. E. ALF JONSSON
Ambassador
Chairman of the Working Group on Succession Issues
c/o International Conference on Former Yugoslavia
G E N E V A

DRAFT CONVENTION OF THE SUCCESSION OF STATES

- Suggestions by the Croatian Delegation -

SOME PRELIMINARY PROBLEMS

Political Framework

The provisions relating to State succession are often parts of more complex treaties of peace. These treaties regulate other issues arising from a passed armed conflict and especially the reparation of war damages.

In cases when the succession of States proceeds from a peaceful demise of a predecessor State or from a peaceful separation of new States, all parties to an agreement of State succession recognize one to another ipso facto the fundamental rights to existence, to equality, to independence including their territorial integrity, to communications and to respect.

All the above fundamental rights are condensed in the principle of equality of rights and duties between States in respect of international law. This principle is according to the Opinion No.9 of the Arbitration Commission the basic principle of any process of State succession.

On this legal basis Croatia and Slovenia try to settle their remaining bilateral disputes arising from their acquisition of independence.

Hence, one of political provisions in the introductory part of this Draft convention should provide that:

"Bosnia-Herzegovina, Croatia, the Federal Republic of Yugoslavia (Montenegro and Serbia), Macedonia and Slovenia, hereby recognize one to another political independence within their internationally recognized frontiers."

In case that the drafters deem the inclusion of such a provision not appropriate - because not being acceptable to the FRY - it must be doubted that this State will carry out in good faith any provisions of this future convention when provide burdens on it, even if it formally becomes its party.

That would be in fact shameful for the International Conference on the Former Yugoslavia. The Conference has so far not produced sensible results, especially in the light of ethnic cleansing of occupied territory in Croatia and Bosnia-Herzegovina which has never stopped.

Nevertheless, the Draft convention on succession of States cannot in any of its provisions trespass the above principles and especially that of the territorial integrity of all its parties. The four successor States: Bosnia-Herzegovina, Croatia, Macedonia and Slovenia, have got large international recognition within their actual frontiers. They have

been admitted to membership of the United Nations and of a number of other international organization.

Even in a hypothetical case of splitting Bosnia-Herzegovina into two entities on the agreement of all respective parties, there would be a new process of State succession of this former Yugoslav Republic, which does not affect the succession of States of the former SFRY.

Hence, in any event the Draft convention of the succession of States of the former Yugoslavia cannot decline from existence of its five successor States with equal rights and duties and within their internationally recognized frontiers. All these facts were confirmed by the Arbitration Commission, as well as by a number of the UN Security Council resolutions.

The Problem of War Damages

The Opinion No.13 of the Arbitration Commission has stated that: "The equitable division of the assets and liabilities of the former SFRY between the succession 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..."

But in spite of this legal pronouncement, when defining solutions of some concrete problems within the existing rules of international law, one should not ignore the fact of war damages and calamities suffered by population, especially in Bosnia-Herzegovina and Croatia.

The Croatian delegation deems indispensable the inclusion of the following explicit provision:

"The States parties to this Convention do not renounce from their claims for reparation of war damages proceeding from responsibility of other State parties for waging armed aggression on their respective territories."

The Problem of Dates of the Succession of States

Although the Opinion No.11 of the Arbitration Commission has fixed four different dates of succession of States for five successor States, - "unless the States concerned agree otherwise" - the practical problems which arise seek a simplified solution.

It seems the most appropriate to adopt the reference date of 31 December 1990 as the starting date for most practical purposes. When the question is of the amount of the general non-allocated debt of the former Federation, this sum cannot in any event exceed the sum as existed at the specific date of the succession of States for each successor State. And after 27 April 1992 the last remnants of that what remained of the former SFRY, have definitely ceased to exist.

CITIZENSHIP AND ACQUIRED RIGHTS

The laws on citizenship (nationality) were among the first legislative acts of some successor States. The process of acquisition of new nationality has already largely been accomplished in most of them.

In our knowledge, all new laws on nationality contain provisions like that from Article 30 (1) of the Croatian Law on Citizenship: "Citizens of Croatia are all persons which have acquired this status in accordance with respective provisions valid up to entering into force of this Law". By cumulative application of these provisions is eliminated the problem of statelessness. On this way is satisfied the conclusion reached at the Session of the Working Group on Succession Issues of 24 to 27 November 1992, that:

"All citizens of the former SFRY held a Republican citizenship as well as citizenship of the former SFRY. They will continue to hold their Republican citizenship; nobody will become stateless."

Many persons want however to change their citizenship for practical or family reasons. They are called to submit their applications for naturalization according to laws of respective successor States. This problem is facilitated by the fact that the legislation of all successor States tolerates double and even triple citizenship.

The Croatian delegation is of the opinion that no common rules on naturalization, and still less the provisions on the right to option, are possible to be agreed at in the present circumstances. Even in case that the present armed conflict with its disastrous consequences did not occur, quite dissimilar situations exist in regard to number of persons and their family links of citizens of Slovenia and Macedonia who want to become citizens of Croatia and vice versa on the one hand, and present citizens of the FRY and Bosnia-Herzegovina who wish to acquire Croatian citizenship. Therefore, as the only realistic solution seems to be the following provision:

"Successor States may on a bilateral basis agree on special rules concerning the change of citizenship."

*

As to the acquired rights of natural and juridical persons, the Croatian delegation has always been of the view that the State succession does not apply on them. Every successor State is under obligation fully to respect these rights as they exist. The right to property is in addition one of fundamental human rights.

However just on this ground, natural and juridical persons on the soil of Croatia and Bosnia-Herzegovina have at least the same right that their destroyed, looted or confiscated property is returned to them or compensated, as for instance the present citizens of the FRY have the right to property on their rest houses at the Adriatic coast in Croatia. These two problems are closely linked and they cannot be settled even by some loose promises by the third parties, such as the European Union, of their financial

support of efforts of these two successor States in reconstruction of their destroyed industry. These promises are far from being legal obligations. That is especially true because negotiations within various working groups on this issue last since the beginning of 1992, but ethnic cleansing with new large scale destructions and misappropriation of private property have never since stopped.

In November 1992 and in January 1993 all delegations in the Working Group on Succession Issues have reached agreement on some points, but not on the formulation of the right of all refugees safely to return to their homes. Because the discussion on this issue has been at that stage interrupted, Croatian delegation has never since then had the opportunity to combat for some additional principles which form the integral part with those which it has approved.

The entire set of principles in regard to acquired rights should therefore be as follows:

"1. Any property right of a former SFRY citizen shall be recognized and guaranteed to him or her in the appropriate successor State, irrespective of whether he or she holds its citizenship or is domiciled there.

2. All refugees and displaced persons shall safely return to their homes.

3. In particular property rights of natural and juridical persons, including the right to restoration of or compensation for the destruction, confiscation, sequestration or any kind of illegal dispossession, shall be fully observed. Transfer of property rights and sales contracts concluded under duress shall have no legal effect.

4. Bosnia-Herzegovina, Croatia and the Federal Republic of Yugoslavia will reach agreements on the modalities of the implementation of above principles. In all other relations of State parties to the present Convention these principles are immediately applicable."

As was said, on above paragraphs 2 and 4 agreement was not reached between all delegations. But for Croatia acceptable are only all of them.

The principle under paragraph 2 is not subject to future political negotiations and settlement. They must be a part of the present Convention in the framework of provisions on acquired rights. In a contrary case all these provisions would be a mockery.

*

In regard to pensions, the consensus was reached at the session of January 1993 on the paragraphs 1 and 3 which follow. The proposal on federal pensions has been supported by all delegations except that of the FRY. They all read as follows:

"1. The responsibility for continuing payments of legally grounded pensions, founded from former republican sources, will be taken over by respective successor States.

2. All States parties to this Convention undertake the obligation for payment of pensions of their citizens founded from former federal sources.

3. Agreements on bilateral basis are needed in order to assume payments and transfer of funds for pensions between the successor States."

As is well known, Croatia was a victim of the aggression and of large-scale destructions committed by the former Federal Army. Consequently, it cannot pay pensions to persons who participated in this aggression.

ARCHIVES

The following paragraphs, except the last one, are the result of judicious debate and of agreement by four delegations of 10 March 1993, but in the absence of the delegation of the FRY. It is based on a proposal originally submitted by the delegation of Croatia in November 1992. The delegation of the FRY proved initially an interest and understanding for that proposal. But after the change of its composition, it rejected this plan all together. This text, slightly adapted, reads as follows:

"1. For the purposes of paragraphs which follow: State archives of the former SFRY" means all documents of whatever date and kind, produced or received by the former Yugoslav State in the exercise of its functions since 1st December 1918, which at the date of the succession of States, belonged to it according to its federal laws and were preserved by it directly or under its control as archives for whatever purpose.

2. Parts of State archives of the former SFRY (administrative, current and archival records necessary for the normal administration of the territory of one or more successor States shall pass to these States, irrespective of where these records are actually located.

3. Parts of State archives of the former SFRY which relate directly to the territory of one or more successor States or which were produced or received in the territory of certain or all such States shall pass to these States, irrespective of where these records are actually located.

4. Documents received by Central or Federal agencies from third States on the basis of international agreements, shall pass to the successor State or States to which these documents relate.

5. If more than one successor State is entitled to certain archives pursuant to paragraphs 2 to 4, these States shall agree which of them shall receive the original, while the others are entitled to make copies.

6. Other Central and Federal archives shall be distributed among the successor States in an equitable manner taking into account all relevant circumstances. However, to the extent that the successor States unanimously agree, certain such archives may be kept in joint custody.

7. Each successor State shall have the right to make copies from any original document referred to in the previous paragraph.

8. State and other related archives or their parts, and other documentary materials, produced or received by successor States or their territorial units in the exercise of their functions, as well as all private archives, are not subject to any apportionment. Those that were taken from their owner after 1st December 1918, shall have the originals returned to where they had been produced or to their owner, according to the international principle of provenance, without any compensation or other conditions.

9. All rights and obligations under bilateral treaties in force between the former SFRY and neighbouring States (Austria, Bulgaria, Hungary, Italy, etc;) regarding restitution of archives, shall pass to the respective successor States insofar as these treaties have not yet been entirely carried out. The commitments assumed shall be carried out in good faith by all parties concerned in accordance with the rule of pacta sunt servanda.

10. The current possessor of the original of any archival document that is required to be transferred pursuant to the articles from the present Part may, at its own cost and for its own use, make copies of such documents.

11. A successor State entitled to make copies shall bear the costs of doing so. The costs of transporting original documents shall be borne by the successor State which receives them pursuant to articles of this Part. The State holding or transferring originals shall assist in reducing these costs as far as possible.

12. All States parties to this Convention undertake to assure to all other parties, as well as to their citizens, the free access to their archives, and in particular to these relating to the period between 1 December 1918 and 27 April 1992."

The last paragraph is the additional proposal by the Croatian delegation in order to make the whole text more acceptable to all.

The above set of rules is very balanced. It is entirely based on principles set out in Article 31 of the 1983 Vienna Convention. It takes into account rights and legitimate expectations of all. Paragraph 6 permits that perhaps more than 80% of federal archives remain in originals in Belgrade under joint custody, as a common heritage of all successor States.

Other successor States are however interested to get in exchange many documents and especially film materials which do not belong to the State archives of the former SFRY. They were collected in Belgrade sometimes on a legal basis, but more frequently illegally. They are situated now mostly in the Military Historical Institute of the former Federal Army (the "JNA"); in the central "Jugoslovenska kinoteka" ("Yugoslav Film Archives"), and in the Archives of the former Federal Ministry of Foreign Affairs.

There is no legal ground that these archival documents remain in the possession of the FRY. They do not belong to the Federal State Archives even according to Articles 1 to 12 of the "Law on Archival Documents of the Federation" (Zakon o arhivskoj gradji federacije, "Sluzbeni list SFRJ 1986", No.11).

This issue is in fact a test of the will of cooperation by the FRY.

TREATIES

This problem affects first of all relations of each particular successor State with other parties to treaties in question. Equally important is however to ensure that many of general conventions, the parties of which was the former SFRY, continue to apply in relations of its successor States.

Article 34 of the 1978 Vienna Convention in Respect of Treaties, which might soon enter into force but has no retroactive effects, makes in fact the difference between three large groups of treaties:

1. First are general conventions of the so-called "universal character", dealing with protection of human rights, humanitarian law, refugees, stateless persons, narcotic drugs, diplomatic and consular relations, the law of treaties, the law of the sea, etc. Most of them provide more duties than rights to their parties. It is therefore of the interest of the world community at large that all States which arise by separation or by dissolution of the predecessor State, succeed ipso facto and ab initio the position of parties to all these treaties.

The depositary of these conventions is the most often the UN Secretary-General, or the Swiss Federal Council. In some instances the depositary ceased to exist, as for example the Secretary-General of the former league of Nations.

It is important to stress that Article 38 of the 1978 Vienna Convention does not provide the notification of succession of these conventions to their depositary. The clear intention was that all these conventions bind all successor States either in case of dissolution of the predecessor State, or in case of their separation from a predecessor

State which continues to exist. To such extent immaterial is the fact whether a State such as the FRY, pretends to keep identity and the continuity with the predecessor State or not.

It was in fact an unhappy practice by the UN Secretary-General to request the notification on succession of conventions of which he is depositary. By this practice he gave the opportunity to "new" successor States to pick and choose and unilaterally to decide whether to become parties to conventions such as these on genocide or on apartheid, or not.

For this very reason the provisions of the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts will never be applied as treaty obligations, even after its formal entry into force. It is necessary for this that all "new" successor States are ipso facto and ab initio bound by it. Any single successor State can now by the absence of its notification to the depositary break this relationship at its will.

Because of this practice Croatia and other successor States of the former SFRY have problems how to become full parties to the 1923 Geneva Convention on the International Régime of Maritime Ports and of similar conventions, the depositary of which disappeared.

2. To the next group belong the conventions of the same character as above which apply only to the successor State to whose territory they applied before the succession.

Article 34 (1) (b) does not however provide any agency to decide uncertain cases. But in the light of the present practice, every successor State will decide this problem for itself by its decision to notify or not to notify its succession of a particular convention.

3. All other multilateral, as well as all bilateral treaties of the predecessor State belong to the last group. The succession of these treaties by a "new" successor State depends on joint agreement of itself and of all other parties to them.

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It seems to be useful the reaffirmation under this heading of the principle that a succession of States does not affect as such boundaries, boundary and other territorial régimes, as has been confirmed in Articles 11 and 12 of the 1978 Vienna Convention. This principle has been endorsed further on in a number of judicial decisions. The matter is of the 1986 Judgment of the I.C.J. (Burkina Faso/Mali); of the 1989 Arbitral Award (Guinea-Bissau/Senegal) especially in regard to maritime boundaries established by treaties; and of the Opinion No.3 of the Arbitration Commission of this Conference.

In order to avoid evil consequences of the above practice of the UN Secretary-General as depositary, the Draft convention should provide an exhaustive list of general conventions of the "universal character". All States parties to the future Convention of succession of States will on behalf of a provision in it be considered full parties to these treaties. On this way will be established a conventional basis of legal obligations of all successor States inter se, as well as with other respective parties to particular treaties.

In the domain of human rights and rights of minorities, some of these conventions were provided in Article 2 of "Treaty Provisions for the Convention" dated at 4 November 1991. But the future list cannot include non-conventional instruments such as acts or reports of the CSCE, nor the Council of Europe conventions whose procedures are linked with the membership in this regional organization. Croatia has however enacted all these instruments as its internal law in Article 1 of its "Constitutional Law of Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities".

More exhaustive lists of these conventions are provided in proposals dealing with the solution of the conflict in Bosnia-Herzegovina.

In this list should be included in addition all other general conventions of codification and progressive development of international law, the party of which was the former SFRY, in the domains of the law of warfare, humanitarian law, diplomatic and consular relations, law of the sea, etc.

Exceptionally, this list could be supplemented by some conventions which have not previously obliged the SFRY, but which are important for solution of problems arising from the State succession. The question is for instance of the 1961 Convention on the Reduction of Statelessness.

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Finally, there is no room in the Draft convention for specific provisions on the succession of States in international organizations. There are no general rules of international law in this domain. The decision whether to recognize to a particular successor State the membership in an organization or not does not depend on provisions of a treaty on State succession. It depends on the political will of a majority of the member States as represented in the political organs of the organization in question which are competent to deal with the admission of new members (see Article 4 (1) of the 1978 Vienna Convention).

STATE ASSETS AND LIABILITIES

Equitable apportionment of State Property and Debts

In several of its provisions the 1983 Vienna Convention speaks on the passing of some categories of State property, archives and debts "in equitable proportions". It in addition provides equitable compensation among successor States whenever a rigid application of some provided criteria of apportionment of property could lead to unjust results. And the Arbitration Commission has in several of its Opinions affirmed "equitable solution" or "equitable result" reached by 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 8 April 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 rights and duties between States in respect of international law (Opinion No.9) - it results that essentially the same key of apportionment should be applied on State property and on non-allocated debts, i.e. on the assets and on the liabilities. Hence, when discussing the problem of assets and liabilities on which the State succession applies, it is useful to start with this problem.

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

In fixing these criteria one could take into account: population figures and surface of the territory of successor States; and the contribution to the Federal Budget and gross national product of each of them in a certain previous period of time.

No single criterion can lead to equitable results, but it can rather do a combination of all of them. There is no simple solution of this delicate problem. It was once suggested that taking into account of the population figures only would lead to justice. At stake are however assets and liabilities, as well as reasonable expectations of foreign creditors, to safeguard as much as possible their funds.

The final result of an apportionment in application of whatever choice and combination of equitable criteria should be however 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.¹

¹ The cases of application of this principle in arbitral practice are inter alia the following: Landreau of 26 October 1922 (Reports of International Arbitral Awards, vol.I, pp.352-353); Lena Goldfields of 2 September 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 6 October 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 edition, Paris 1983, p.218; etc.

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.²

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

In case of the former Yugoslavia all its successor States have accepted the quotas that each of them should bear of the assets and liabilities of the SFRY in the International Monetary Fund. These quotas are the following: Bosnia-Herzegovina 13.20%, Croatia 28.49%, Macedonia 5.40%, Slovenia 16.39%, FRY (Serbia and Montenegro) 36.52%.

This proportion has been subsequently adopted by certain other UN specialized agencies, such as the World Health Organization, in repartition of the contribution of the former SFRY to their expenses, between its successor States which are admitted to their membership.

The above quota scheme takes into account advantages and burdens, assets and liabilities both, of all successor States. It can at least be a starting point in search of the most appropriate solutions in all domains of State succession. Hence, the delegations of Bosnia-Herzegovina, Croatia, Macedonia and Slovenia have reached an agreement on adjusted proportions of apportionment of immovable State property abroad (premises of diplomatic and consular missions of the former SFRY with their accessories). This adjusted proportion, satisfying the criterion of viability of the successor State in the most unfavourable position according to above quotas, is the following: Bosnia-Herzegovina 13.0%, Croatia 27.20%, Macedonia 8.50%, Slovenia 16.0%, and the FRY (Serbia and Montenegro) 35.30%.

Croatia could be satisfied with its share in common assets and liabilities in the above percentage.

Determination of State property and debts for the purpose of succession of States.

Succession of States, as a consequence of dissolution of a federation into its component parts within their existing boundaries, which before its demise had their revenues and had enjoyed a large extent of statehood in all aspects, is an easier job than the succession of quite new entities within their new frontiers. The example of the second was the succession of States as a consequence of the dissolution of Austro-Hungarian and Ottoman Empires after the First World War.

In the case of the succession of federations like the former SFRY, USSR and Czecho-Slovakia, it is obvious that the object of apportionment cannot but be the assets and liabilities of the Federation as existed at the date of the succession of States. "The origin or initial financing of the property or any loans or contributions made in respect of it have no bearing on the matter" (Opinion No.14 of the Arbitration Commission). The

² Cf., Yearbook of the International Law Commission 1981, Vol.I, Part Two, pp.29-30, para. (8) and (11).

same proceeds from Article 8 of the 1983 Vienna Convention. That has been the case in entire former practice of State succession. Even for practical reasons only it cannot be different.

Therefore, the obstinate claims of the FRY, including its alternative Inventory, are of no use for a reasonable solution and for an agreement of all successor States.

Bosnia-Herzegovina, Croatia, Macedonia and Slovenia have no claims on that what forms the property of the former socialist republics of Montenegro and Serbia and of the former autonomous provinces Vojvodina and Kosovo at the respective dates of succession of States. That is in spite of the fact that at least two of these successor States have suffered grave losses inflicted on them in a war, the responsibility of which bears the FRY.

Some other arguments against claims by the FRY are explained in the Statement of the Delegation of Croatia, which is enclosed here.

For the above reasons Croatia will not be able to accept any Draft convention which exceeds the foregoing legal limits.

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As to the question of debts on which the succession of States applies, the International Law Commission has exposed in its Commentary to Draft article 31, different criteria for their division.³

Having in mind the circumstances of the dissolution of the former SFRY, and especially large-scale damages inflicted on Croatia and Bosnia-Herzegovina, the object of apportionment can only be the general and non-allocated debt of the former Federation as existed at the specific date of the succession of States for each successor State.

All local and localized debts which were previously borrowed by or used in the territory of a component State of the Federation, or by a commune or enterprise, should pass to the respective successor States. These debts cannot be parts of the general debt even if the former Federation has borrowed them, or the National Bank of Yugoslavia with banking institutions of all Republics and Autonomous Provinces have jointly guaranteed them. The war which has occurred in Croatia is in terms of Article 62 of the 1969 Vienna Convention on the Law of Treaties a fundamental change of circumstances, terminating all its former obligations towards foreign creditors of this kind.

Croatia has already assumed at the same time the obligation of payment of all foreign debts which were borrowed or used on its own territory, even in cases when respective goods were in the meantime partly or wholly destroyed by the Federal Army or by Serbian paramilitaries (the Adriatic pipe-line, the water-system in Dubrovnik, etc). It is in addition ready to participate in the general debt of the former Federation in the proportion of its rights on the assets on which the succession of States applies.

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³ Cf., Yearbook of the International Law Commission 1981, Vol.II, Part Two, pp.74-80.

The provisions of the 1983 Vienna Convention make unavoidable distinction between movable and immovable State property, and between the property which is situated in the respective territories of successor States and abroad.

Having in view that a large part of financial assets and of military property, as well as almost all premises of diplomatic and consular missions of the former Federation, are still under control of the FRY - which has so far not shown the will to cooperate - we shall divide here for reasons of convenience all that property into following six categories: (i) Immovable State property situated in the territory of successor States; (ii) The property of joint enterprises of Republics in key infrastructure; (iii) State property abroad; (iv) Financial assets and liabilities; (v) Military property; and (vi) Others.

(i) Immovable State property situated in the territory of successor States.

There exists just in this domain perhaps the only rule of general international law on apportionment of State property in the process of State succession. It is however not of peremptory character. It is subject to various exceptions.

Article 18 (1) (a) of the 1983 Vienna Convention disposes that, "unless the successor States concerned otherwise agree": "immovable State property of the predecessor State shall pass to the successor State in the territory of which it is situated".

Article 11 provides again that "unless otherwise agreed by the States concerned or decided by an appropriate international body": "the passing of State property of the predecessor State to the successor State shall take place without compensation".

The above is according to Article 18 (2): "without prejudice to any question of equitable compensation among the successor States that may arise as a result of a succession of States".

This set of rules is resumed and further clarified by the statement of the Arbitration Commission in its Opinion No.14:

"3. The Commission would... draw attention to the well-established rule of state succession law that immovable property situated on the territory of a successor State passes exclusively to that State. Subject to possible compensation if such property is divided very unequally between the successor States to the SFRY, the principle of the locus in quo implies that there is no need to determine the previous owner of the property: public property (in the French original text "biens publics") passes to the successor State on whose territory it is situated. The origin or initial financing of the property and any loans or contributions made in respect of it have no bearing on the matter."

There was nevertheless made an assessment of values of this property within the Working group on economic issues of the Conference, with the help of independent consultants.

It is a well-known fact that the largest part of premises of federal institutions is concentrated in Belgrade, former Yugoslav capital. And almost all research institutions of

the Federal Army within the powerful military-industrial complex of the former State, are situated in Serbia alone. And even barracks and other installations of the former Federal Army are not equally distributed in all five successor States.

It is first of all important that the Draft convention fixes shares of all successor States in assets and liabilities of the predecessor State. After entering into force of the future Convention, there should be the last round of negotiations in regard to claims of equitable compensation on this ground, but strictly within the proportions established. All eventually unsettled claims should then be forwarded to the final arbitral decision.

(ii) The property of joint enterprises of Republics in key infrastructure.

The Yugoslav Federal System implied obligatory association of enterprises of all Republics and Autonomous Provinces in key infrastructure, transportation and communications, such as Railways, PTT, Electric power management, Yugoslav Radio and Television, etc. All these enterprises continue to exist and to function within the successor States.

These associations had joint premises, installations and financial assets, which are mostly situated on the territory of Serbia.

It should be provided in the Draft convention that the respective enterprises of successor States settle all questions of apportionment of joint property on the basis of established agreements.

It should be expressly provided further on that the successor States undertake the obligation not to hinder the implementation of settlement agreements to be reached, and that within their competencies they shall carry out them in good faith.

(iii) State property abroad.

This category of State property of the former SFRY consists of two kinds. First is immovable and movable property of the diplomatic and consular missions of the former Federation. They are still kept under exclusive control of the FRY. Because third States on whose territory these missions are situated still keep semi-official relations with the Belgrade régime, they recognize on the basis of reciprocity their immunity. As a rule, they have not been so far ready to assure entering into possession of this property to four other successor States - with whom they established diplomatic relations - for the fear of the retaliatory measures against their own missions situated in Belgrade.

The future convention should regulate the fate of this property for ever. It is especially important that the key of distribution of this property among five successor States is the same as for the distribution of the general non-allocated debt of the former Federation.

In the absence of the delegation of the FRY (Serbia and Montenegro), four other delegations have agreed on 11 March 1993 on the Rules for the distribution of this property. The basis of discussions and agreement was the proposal submitted by the

delegation of Croatia. In the agreed text there were recorded some alternatives in brackets of the issues on which the agreement was not reached.

The following text is the final Croatian proposal which has taken into account suggestions by all delegations, even if they were not initially agreed by Croatia and by others. This the broadest proposal of the Rules should satisfy legitimate expectations of all except perhaps of the FRY which still deems that all this property belongs exclusively to it.

**"RULES FOR THE DISTRIBUTION OF IMMOVABLE AND MOVABLE PROPERTY
ABROAD ADMINISTERED BY THE FEDERAL SECRETARIAT
FOR FOREIGN AFFAIRS OF THE FORMER SFRY**

1. The following Rules define the method of distribution of immovable and movable property of the former SFRY situated abroad, including rights to rented property, administered by the Federal Secretariat for Foreign Affairs of the former SFRY.
2. The table prepared in 1990 by the Directorate for Property Rights and Investments of the Federal Secretariat for Foreign Affairs of the SFRY, which lists individual property, its size and its assessed values in US Dollars, is to be used as the basis for the distribution of this property. The table prepared on 10 March 1989 by the same Directorate is to be used as the basis for the distribution of buildings.
3. The values specified in the table cited in paragraph 2 above are to be used only in the application of these Rules.
4. The total value of the property listed in the table listed in paragraph 2 above amounts to US\$....
5. The property covered by these Rules shall be distributed among the successor States of the former SFRY on the basis of the following scale: Bosnia-Herzegovina 13.0%, Croatia 27,20%, Macedonia 8,50%, Slovenia 16,0%, and the FRY (Serbia and Montenegro) 35,30%. The value of the property distributed to each of the successor States may deviate by up to 5% from the values resulting from the application of this scale to the amount specified in paragraph 4 above.
6. The property shall be distributed in six stages, according to the following groups of countries in which it is situated, considered in the indicated order: OECD Member States; rest of Europe; Latin America and Caribbean; North Africa; Africa south of Sahara; Asia. The value of the property distributed according to these groupings need not to correspond to the scales specified in paragraph 5 above.

7. For the purpose of the distribution, each property at a given location constitutes an entity for itself.

8. Each successor State shall present a list of claims for property it wishes to obtain at the special session of delegations for making the distribution. In this list will separately be grouped claims for ownership and claims for rental property.

9. Should only one successor State claim a particular property, it will be allocated to it.

10. Should two or more successor States claim a particular property, it can be divided by agreement among all the claimants. If agreement is not reached, the ownership will be determined by drawing lots. These determinations will be made in order of the groups specified in paragraph 6 above, using the English alphabetical order of countries listed in the property table cited in paragraph 2 above for distribution within a group.

11. A successor State shall lose its right to continue to participate in the distribution process specified in paragraphs 9 and 10 above, when the value of property allocated on it exceeds by 5% the share to which it is entitled according to the scale set out in paragraph 5 above. Should it be established that a particular property has been allocated to a successor State which thereby exceeds by more than 5% of the share to which it is entitled, that property will be reallocated to another successor State which is entitled to obtain such a property which has not exceeded 5% of its share specified in paragraph 5 above. After completing the distribution, all successor States whose portions of property have exceeded their shares defined in paragraph 5 will without delay compensate the exceeded sums to those successor States which did not reach their share limit.

12. After the distribution accomplished according to paragraphs 10 and 11 above, all property not claimed by any successor States will be distributed among these successor States which did not reach the limit of their share specified in paragraph 5 above, following the above mentioned order of groups and English alphabetical order or countries within them.

13. The limits specified in paragraphs 5 and 11 above will not apply on the distribution of rights to rented properties.

14. In case that successor States want to exchange certain property after the distribution has been accomplished, they can do so by bilateral civil law contracts. Such exchanges are outside the scope of the present Rules.

15. With the exception of objects of art that represent the cultural heritage of a particular successor State and which shall be returned to it in kind, the movable property which constitutes the accessory of an immovable property, including rented property, will be allocated to the successor State which becomes its titular in this distribution. A detailed list of that movable property as existed on 31 December 1990 and according to its location, will be submitted by the FRY.

16. In case that the FRY does not become the party of this Convention, the distribution of the property will be carried out according to these Rules in its absence. The Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia will nominate a person who will safeguard its rights up to its share fixed in paragraph 5 above.

17. The distribution of property and rental rights according to the present Rules will be carried out at a special session of all successor States which will be convened by the Co-Chairmen of the Steering Committee of the International Conference on Former Yugoslavia, after the entry into force of this Convention. Upon the conclusion of distribution process a final list of the property allocated will be signed by representatives of all successor States and by the Co-Chairmen. This list will form the integral part of this Convention which will be registered with the Secretary-General of the United Nations pursuant to Article 102 of the UN Charter.

18. Co-Chairmen will communicate the agreed list to Governments of all States in the territory of which the allocated property is situated, requesting them their cooperation in the implementation of the distribution.

19. Legal titles to property distributed pursuant to the present Rules shall pass to the respective successor States fourteen days after the list specified in paragraph 16 above has been signed. The transfer of actual possession shall take place without delay and not later than thirty days after the signature of that list.

The paragraph 16 is added by the Croatian delegation in this new proposal. There are other slight modifications in the text now proposed, taking into account new circumstances.

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The next group within this heading form the financial assets abroad, frozen in pursuance of the UN Security Council resolution 757 of 30 May 1992.

In spite of allegations of the FRY to the contrary, the succession of States applies on most of these assets. Legal rights on them have all five successor States of the former

SFRY, as well as foreign creditors to the extent that their claims concern the non-allocated general debt of the former Federation.

The Draft convention must necessarily start from a rather imaginary position that all five successor States are peace-loving and cooperative. It will probably imply that the sanctions of the Security Council will be lifted. In such a chimerical situation in a foreseeable future, these assets will not be distinguished from others.

The Draft convention must however expressly provide its entry into force even in case that a single successor State refuses to become its party.

For such a situation one of final provisions of the Draft convention should provide that all these assets frozen abroad, pass to five successor States in the proportion established by it as being applicable on all assets, as well as on liabilities. The share in these assets of the successor State which refuses to become the party to the Convention passes in its entirety to its foreign creditors.

And because all successor States parties to the Convention will by its text recognize their local and localized foreign debts, as well as their respective share in the general non-allocated debt of the Federation, their share of financial assets frozen abroad should pass on each of them in its entirety.

The most important is however that the International Conference on the Former Yugoslavia ascertains, on its own authority or through the United Nations, all amounts frozen in third States. The Basel Bank for International Settlements should give its help.

(iv) Financial assets and liabilities.

For the reasons explained above, Croatia can accept as the basis of ascertainment of financial assets and liabilities only the Inventory in the reports of the Chairman of the Working Group in Economic Issues of 26 February 1993.

Croatia cannot accept claims listed in the said Inventory relating to situations existing or investments made prior to the reference date, or at least prior to the respective date of the succession of States. The Opinion No.14 of the Arbitration Commission was in this respect explicit.

Furthermore, because Croatia was with Slovenia as early as on 26 June 1991, arbitrarily excluded by the National Bank of Yugoslavia from the monetary system of the Federation, it can recognize the state of foreign currency reserves and financial obligations of that Bank as existing at that very date.

In the assessment of final values of assets and liabilities, Croatian delegation preserves its right to discard all claims which are not based on reliable and sufficient documentation.

It is to be noted here that the FRY has not cooperated in presentation of all documentation in its possession. All these documents must be made available for verification to all other successor States, to officials of the International Conference, as well as to consultants engaged.

Financial assets and non-allocated debt ascertained on the above basis should be finally distributed in equal proportions, as will be fixed in the Draft convention among all successor States.

The Draft convention should expressly provide that all former contracts concluded between public and private juridical persons (e.g. on joint investments on construction of hydroelectric plants, of factories, etc), remain in force. The successor States should assume obligation to carry out all obligations from these contracts, and to promote dispute settlement on them and to implement final judicial or other decisions.

(v) Military property

Military property of the former Federal Army was created from the Federal Budget and it is as such undoubtedly the assets on which the succession of States applies.

The value of equipment, ammunition, military industry and development projects, has already been established such as was existed on 31 December 1990. This amount should be divided among all successor States according to the proportion fixed in the Draft convention.

Following above quoted legal principle, on Croatia has already passed all immovable property of the former Federal Army which is situated on its territory. However, during its withdrawal near the end of 1991 and in the beginning of 1992, the Federal Army has taken away with it many accessory equipment of that property and has by that diminished its value and has hindered its normal functioning.

The matter is inter alia of equipment of some military hospitals; of establishments for repairing and maintenance of vehicles and weaponry; of military educational centers; of barracks; etc. Croatia reserves its right to advance its claims for adequate compensations for this property and losses sustained, out of its claim on the sum of movable military property.

(vi) Others

A general provision should in this respect provide that all States parties to the Convention will do all efforts to facilitate and promote the apportionment of joint property of the federal associations of Trade Unions, of the former League of Communists, of the Socialist Alliance of Working People, of Sports unions and other alike entities, among present bearers of titles, or their legitimate heir organizations, in the successor States.

DISPUTE SETTLEMENT MECHANISM

In this respect the Croatian delegation has the following suggestions:

Upon the receipt of the text of the Draft convention and after the meeting of the Working Group on Succession Issues, every successor State must be able to proceed through the Co-Chairmen of the Conference, the questions for opinion of the Badinter's Arbitration Commission of any legal issues proposed in that Draft convention which it deems to be contrary to international law.

Upon receipt of these opinions, the final text of the Draft convention will be dressed on the basis of these pronouncements, and it will be then proposed for signature and ratification to all successor States.

The Convention should enter into force thirty days after the date of deposit of the fourth instrument of ratification with the Secretary-General of the United Nations. Within these thirty days, the Co-Chairmen of the Conference will officially invite once again the remaining fifth successor State to become its party.

After the entry into force of the Convention, the Co-Chairmen of the Conference will convene a conference of parties to the Convention, but in the absence of that successor State which refused to become its party.

At that Conference will be distributed the immovable and movable property of diplomatic and consular missions of the former SFRY abroad according to the Rules which will be the part of the Convention.

At that same Conference the parties to the Convention will submit their claims for equitable compensation of immovable State property situated in the territory of other States parties to the Convention.

All claims for equitable compensation not resolved by agreement of respective parties during that Conference will be forwarded to an arbitration commission.

The Croatian delegation has nothing against that this function performs the existing Arbitration Commission with Robert Badinter as its president. But it is neither against a new body of five independent arbitrators from different third States, possessing all qualifications as required in Article 2 of the Statute of the International Court of Justice.

The arbitral procedure should consist of written and oral parts. Final awards on all claims should be pronounced by majority votes within next six months. The expenses of the Commission and of the procedure will be the expenses of the International Conference on the Former Yugoslavia.

If a party in a case fails to perform the arbitral award, the other party may have recourse to the UN Security Council under the terms of Article 94 (2) of the UN Charter.

FINAL REMARKS BY THE CROATIAN DELEGATION

For all above suggestions Croatian delegates did not get the approval by the competent authorities of their State. They hope however to be able to convince all these authorities for an approval of the Draft convention if it is strictly based on the rules of international law and in particular on the principle of equality of rights and duties of all successor States.

It is already a great concession by Croatia that, in accordance of the Opinion No.13 of the Arbitration Commission, it is ready to separate its claims for reparation of war damages from the issues of State succession.

We hope that Croatia will become a party to the future Convention even in case that the FRY refuses it and further keeps in its illegal possession all the weaponry of the former Federal Army on which the succession of States applies.

But we are not ready to support solutions which infringe legal rights of Croatia itself on its titles on State succession as a price that the FRY formally becomes the party to the future Convention. As was stressed, even in such an event it is not certain that it will perform in good faith all its obligations assumed by it.

This paper proves that Croatia itself has renounced from all its claims which have no support in law and in facts. For this reason important is for us that all disputable issues proposed in the future text of the Draft Convention go for opinion to the Badinter's Arbitration Commission.

Last, but not least, in the light of passed experience, the most important is now that the authorities of the Conference are determined to proceed on this initiative up to its end, and that they do not renounce from it even if the FRY promises some political concessions in some other domains. The search for cooperation and consensus of all successor States has already costed many new human lives, new displaced persons and new destructions of property.

Zagreb, 23 June 1994.

REPUBLIQUE DE BOSNIE-HERZÉGOVINE
G O U V E R N E M E N T

Direction pour les affaires
de la succession de l'État

090/2

Fixed to
AJ
Bdh
Re

N/Réf.: DG-549-39/94

Sarajevo, le 21 juin 1994

Monsieur Alf JOHNSON

Président du Groupe de travail
pour les questions de la
succession de l'État

G e n è v e

Télécopie : 41 22 917 00 79
41 22 917 00 81

Monsieur,

Nous confirmons la réception de votre lettre du 27 avril 1994
par laquelle vous avez demandé de nous de vous faire parvenir,
avant le 1er juillet 1994, toute information concernant les ques-
tions juridiques ou économiques qui pourrait être utile à vous
et à vos collaborateurs dans votre travail sur les documents de
la succession de l'État de l'ex-Yugoslavie.

A ce propos nous désirons porter à votre connaissance ce que suit :

Les dispositions du Gouvernement de la République de Bosnie-Herzégovine sont parfaitement claires et elles étaient, à plusieurs reprises, présentées aux fonctionnaires du Groupe de travail pour les questions de la succession de l'État par les matériels écrits et oralement. Ces dispositions sont exprimées par écrit dans :

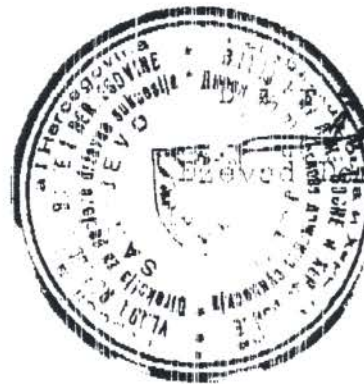
- des dispositions du Gouvernement de la République de Bosnie-Herzégovine au sujet des principes révisés du 30 septembre 1992 ;
- des Annexes rédigées par le Gouvernement de la RBH concernant les principes de la succession et des Remarques sur la formulation de ces principes faites par les présidents.

- des propositions pour compléter la liste d'inventaire du 12 mars 1994 qui ont été demandées à Monsieur Wagner STROMMEN, secrétaire du Groupe de la succession à Genève le 30 mars 1994.

La Direction pour les affaires de la succession de l'Etat a examiné toutes ces dispositions concernant les questions de la succession. Actuellement nous sommes dans l'attente de l'opinion du Gouvernement de la République de Bosnie-Herzégovine.

Etant donné que nous nous trouvons devant la reconstruction du Gouvernement de la République de Bosnie-Herzégovine, nous vous aurions gré de bien vouloir prendre en considération le retard de notre réponse à votre lettre précitée.

Veuillez agréer, Monsieur, les expressions de nos sentiments les plus cordiaux.



cteur:
Bjelovinski kod



РЕПУБЛИКА СРПСКА КРАЈИНА
The Republic of Serbian Krajina
Министарство за иностране послове
Ministry of Foreign Affairs

KNIN, KRALJA PETRA I OSLOBODIOCA 17
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REPUBLIC OF SERBIAN KRAJINA

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FAX: (011) 3224-573
YUGOSLAVIA

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18 JUNE 1994

THEIR EXCELLENCIES
LORD DAVID OWEN & THORVALD STOLTENBERG
CO-CHAIRMEN OF THE INTERNATIONAL
CONFERENCE ON THE FORMER
YUGOSLAVIA
UNITED NATIONS
GENEVA

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Your Excellencies,

I am writing to draw your attention to the fact that the representatives of the Republic of Serbian Krajina have thus far not participated in the work of the International Conference on the Former Yugoslavia related to the division of assets and liabilities of the Socialist Federal Republic of Yugoslavia. This fact, you will agree, may cause problems vis-a-vis these assets and liabilities since no new State created in the territory of the former Yugoslavia can be excluded from their division, including the Republic of Serbian Krajina. I have therefore taken the liberty to request you to use your influence as Co-Chairmen of the International Conference on the Former Yugoslavia to ensure that the interests and property of the Republic of Serbian Krajina and its citizens be protected in the territories of the newly created States, as well as in the territories of third States, until the Republic of Serbian Krajina is equitably represented in the work of all commissions of this Conference. Particular valuable and appreciated at this moment would be your intercession with the President of Slovenia, Mr. Milan Kucan, in connection with deposits of the citizens of former Croatia in the Ljubljanska Bank. As you know, the Republic of Croatia has lately intensified its demands that the Republic of Slovenia transfers the deposits of all citizens of the former Croatia with the Ljubljanska Bank to the account of the Croatian state. If this is done, the Republic of Slovenia will legally turn over also the deposits of the citizens of the Republic of Serbian Krajina to a third State.

Your Excellencies will certainly appreciate being reminded that, broad-minded and ethnically tolerant, the Serb people was committed to

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Yugoslavness and had no particular preferences as to the national belonging of the banks in which they deposited their savings, unlike the Slovenes and Croats who deposited their money almost exclusively in Slovene and Croat banks. It so happened that most customers of the Ljubljanska Bank in the former Croatia were Serbs. The vast majority of these people now live in the Republic of Serbian Krajina, or are refugees in the Republic of Srpska, the Federal Republic of Yugoslavia or elsewhere in the world. All of them, however, are the citizens of the Republic of Serbian Krajina according to its Constitution. Particularly saddening in this regard is that some of the depositors have been executed by the members of the Military and Ministry of the Interior of the Republic of Croatia, and that their deposits require special inheritance proceedings before a court of law to determine inheritors, so that, in addition to being unacceptable, the turning over of these deposits to the Croatian state is also morally detestable.

I avail myself of confirming my highest esteem.

PRESIDENT OF THE REPUBLIC OF
SERBIAN KRAJINA


Milan Martić

HE Boutros Boutros Ghali
Secretary General of the
United Nations
New York

Mr. Yakushi Akashi
Special Representative
of the Secretary General
of the United Nations
Belgrade/Zagreb

Diplomatic - Consular Missions
Accredited to Belgrade



090/2

COMMISSION
DES COMMUNAUTES
EUROPEENNES

Bruxelles, le 21 Avril 1994
ZR/az

DIRECTION GENERALE
RELATIONS POLITIQUES EXTERIEURES

- Copy for the file
- section WS

TELEFAX - TELECOPIE

A L'ATTENTION DE :

FOR THE ATTENTION OF : M. Wegger STROEMMEN

EXPEDITEUR : Zoran RADOVIC, DG I-A - MO-34 - 6/100
SENDER :

MO 34 6/100 - tél. 2955551
Fax : 296.11.41

MESSAGE

Monsieur Stroemmen,

Veuillez trouver ci-joint l'extrait du rapport
"Financial assets and liabilities" élaboré par KPMG et concernant
"Unallocated external debt".

Je vous prie de bien vouloir m'excuser pour
cet énorme retard

NOMBRE DE PAGES :

NUMBER OF PAGES :

Cordialement



**Report dated 30 December 1992 on
the valuation of the financial assets
and liabilities of the Socialist
Federative Republic of Yugoslavia
as at 31 December 1990**

Financial assets and liabilities

This final report has been produced at the request of the Commission of the European Communities. The views expressed within are those of KPMG Peat Marwick and are not necessarily those of the Commission.

Le présent rapport final a été réalisé avec l'assistance financière de la Commission des Communautés Européennes. Les vues qui y sont exprimées sont celles de KPMG Peat Marwick et n'engagent pas la Commission.

KPMG Peat Marwick
30 December 1992
Ref GLTB/JML/AC/YUG

6 - Unallocated external debt (I.C.1)

6.1 Item description

- 6.1.1 The inventory description makes it clear that this item refers only to the portion of the national debt which had not been previously allocated to individual republics. The total foreign debt of the SFRY was estimated to be in the region of US\$ 17 billion as at 31 December 1990. (Source: IMF estimates). We understand from representations made by the delegates at the September meeting that a substantial proportion of this amount was allocated to various republics therefore the amount included in the inventory valuation is a much lower figure. At the September meeting, the Slovenian delegation estimated unallocated external debt to be US\$ 3.4 billion.

6.2 Information sources

- 6.2.1 It was agreed at the September meeting that documentation provided by the NBY would represent the most comprehensive source of information as the NBY acted as paying agent for all external debt. No details were given at the September meeting as to exactly what form the NBY documentation would take.
- 6.2.2 At the date of this report we have received no additional information specifically relating to this topic. Our information sources have therefore been limited to discussions of a general nature on external debt with officials of the NBY and examination of the foreign currency reserve balance sheet of the NBY.

6.3 Valuation methodology

- 6.3.1 In the absence of any additional information, we have assumed that all unallocated external debt appears on the balance sheet of the NBY.

6.4 Valuation

- 6.4.1 The foreign currency debt included in the NBY balance sheet at 31 December 1990 is 42,838 million dinar, which represents approximately US\$4 billion (see Volume II, paragraph 1.5.9).

**KÖNIGLICH DÄNISCHE BOTSCHAFT
BERN**

THUNSTRASSE 95 • CH-3008 BERN

T E L E F A X

Datum: March 23, 1994

Az.: 5.E.3.a.

An: ICFY

Telefax: 022 917 00 79

z.Hd.: Mr. Wegger Strømmen


Von: Ambassador Alf Jönsson

Anzahl von Seiten ins gesamt (einschließlich dieser Seite): 4

Kære Wegger,

Vedlagt tekst ifølge aftale.

Med venlig hilsen


Alf Jönsson

I C F Y: Meeting March 16-18, 1994 of the Working Group of State Succession issues.

Partners may be interested in the following report from the chairman of the above-mentioned working group:

1. A full round of negotiations in the succession issues working group took place March 16-18. A dinner for the heads of delegations was held on Wednesday, March 16, followed by bilateral consultations in the morning of March 17. Plenary sessions were held during the afternoon of the 17th and throughout the 18th. Most of the negotiations took place in formal sessions, but ample time was left for informal consultations among the parties, without I C F Y presence.

The meeting was well attended. Twenty-two experts from all successor republics participated. The delegates were mainly legal and economic experts. The Chair was assisted by Mr. Bertrand de Largentaye of the E U Commission, who is the economic expert of the working group, and Mr. Wegger Strømmen, legal adviser to the I C F Y.

2. The agenda had two main items:

- Presentation by the F R Y of the alternative inventory of assets and liabilities.
- General aspects of the division of assets and liabilities of the S F R Y.

The F R Y delegation presented a preliminary, alternative inventory and applied methodology. The preliminary inventory consists of some 2,600 items. The full inventory is believed to come close to 6,000 items, although the present list of 2,600 items comprise over 75 pct. of the value.

The F R Y delegation has not yet started the process of valuating the assets. Several very important methodological decisions need to be taken in this regard. The Chair urged them to address these questions immediately and go forward with the work, with a view to finalising the inventory within the next couple of months.

The F R Y inventory drew a cool response from the other delegations.

The criticism was not very concrete and was not addressing questions of principle. The critical remarks mostly limited themselves to rejecting the inventory and demanding that the inventory drawn up in the spring of 1993 be the sole basis for negotiation. This point of view was most clearly articulated by the Croat delegation. It particularly stressed the 1974 constitutional transfer of assets and liabilities from the federal organs to the republics and the so-called labour associations, the latter being in its view an entity which more or less corresponds to limited companies and other forms of private enterprise.

The Slovenian delegation, agreeing in general with the Croat delegation, nevertheless made an interesting observation to the effect that it found it useful that the F R Y now showed their hand in a concrete sense. The Bosnian and Macedonian delegations shared the Croat and Slovenian attitudes, but were less committed in their criticism and emphasised the need for more time to study the list and the methodology applied.

The working group did not manage to quite avoid lengthy legal interventions, especially on behalf of the Croat and F R Y delegations. Although the Chair in no way disputes the fact that the group is addressing questions regulated by rights and obligations under international law, such interventions are rather unhelpful. It is also fair to say that they are to some extent fuelled by personal animosities and not always related directly to the underlying legal and economic realities. These interventions, however, now occupy less time in the working group than in the past, and the minds of the delegates seem to be turning to a more realistic approach.

In the last half of the round the scope of the debate was broadened by the introduction of other aspects of the division process, i.e. the question of valuation and the key of division, elements that are almost as crucial as the content of the estate itself. Mr. de Largentaye made a constructive intervention on these issues.

A few months ago such a move, to put all the important elements on the table at the same time, would have provoked procedural protests. None were received this time. The parties restrained themselves to matters of substance.

3. The assessment of this round of negotiations is that it was useful and that the group is slowly moving in the right direction. However, on substance the parties are still wide apart.

4. A few other issues that need to be handled in the near future came up during the sessions:

- The apparent agreement reached in Vienna by the E U before Christmas on access to archives is not working. Upon the request of all parties, the Chair will through bi-lateral consultations try to broker a deal on this question.

- Several delegations raised the problem of the outstanding non-allocated debt of the S F R Y. It should be recalled that of the US\$ 20 billion debt, some 17 billion dollars have been distributed among the republics. The main creditors of the 17 billion dollars were the I M F and the World Bank. The non-allocated 3 billion dollars are owed to several creditors, including commercial banks. All successor republics have an interest in settling this matter in order to be able to perform normally on the international capital market. All asked for assistance from the working group.

The Chair specifically asked the F R Y delegation whether they would agree to a separate agreement on this issue, as they have

always in the past resisted partial agreements. They let it be known that they were interested in such a separate agreement.

- The Croatian delegation in concurrence with the Bosnian again raised the suggestion of establishing a special working group within the I C F Y on war damages. The reason for this is that the Badinter commission in its Opinion no. 13 rejected war damages as part of the present succession process. As in the past, the Chair avoided this complicated and controversial question by interpreting the Slovenian, Macedonian and F R Y silence as non-acceptance.

5. Leaving some time for reflection and for the F R Y to complete its work on the alternative inventory, the Chair will in late April undertake bi-lateral consultations with the parties, concentrating on the two above-mentioned issues of access to archives and the non-allocated external debt. At the same time possible compromises on the question of the division of assets will be attempted.

The next full round of negotiations is expected to take place in two months' time, i.e. in the third week of May.



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA



Palais des Nations, 1211 Geneva 10

TO: MR STOLTENBERG / LORD OWEN
THE CO-CHAIRMEN

FROM: *for* AMBASSADOR ALF JONSSON *Ulf Jonsson*
CHAIRMAN OF THE WORKING GROUP
SUCCESSION ISSUES

DATE: 22.03.94.

SUBJECT: SUCCESSION ISSUES WORKING GROUP.

1. Last week we held a full round of negotiations in the working group. It started off with dinner for the heads of delegations on Wednesday 16 March, followed by bi-lateral consultations on the morning of 17. Plenary sessions were then held during the afternoon of 17 and throughout the 18 March. Most of the negotiations took place in formal sessions, but ample time was also left for informal consultations among the parties, without ICFY presence.

The meeting was well attended. 22 experts from all successor republics participated. As before the delegates were mainly legal and economic experts.

In my endeavours I was assisted by Mr. Bertrand de Largentaye, who is our economic expert and Mr. Wegger Strommen, legal adviser.

2. The agenda had two main items:

- Presentation by the FRY of the alternative inventory of assets and liabilities.
- General aspects of the division of assets and liabilities of the SFRY.

The FRY delegation presented their preliminary, alternative inventory and applied methodology. The preliminary inventory consists of some 2,600 items. The full inventory is believed to come close to 6,000 items, although the present list of 2,600 items comprise over 75% of the value.

The FRY delegation has not yet started the process of valuating the assets. Several very important methodological decisions need to be taken in this regard. I urged them to address these questions immediately and go forward with their work, with a view to finalising the inventory in the next couple of months.

As expected the FRY inventory drew a cool response from the other delegations.

I would have hoped that the criticism would have been more concrete and addressing questions of principle. However, they mostly limited themselves to rejecting the inventory and demanding that the old spring 1993 inventory be the sole basis for negotiation. This point of view was most clearly articulated by Professor Marendic, the head of the Croat delegation. He particularly stressed the 1974 constitutional transfer of assets and liabilities from the federal organs to the republics and the so called labour associations, the latter being in his view an entity which more or less corresponds limited companies and other forms of private enterprise.

Dr. Mejak, of the Slovenian delegation, agreeing in general with Professor Marendic, nevertheless made an interesting observation to the effect that he found it useful the FRY now were showing their hand in a concrete sense. The Bosnian and Macedonian delegations shared the Croat and Slovenian attitudes, but were less committed in their criticism and emphasised the need for more time to study the list and the methodology applied.

Like in the past we did not manage to quite avoid lengthy legal interventions, especially on behalf of the Croat and FRY delegations. Although I in no way dispute the fact that we are addressing questions regulated by rights and obligations under international law, I must admit that I find these interventions rather unhelpful. I believe it also fair to say that they are to some extent fuelled by personal animosities, and not always related directly to the underlying legal and economic realities. But I am happy to report that these interventions now occupy less time in the working group than in the past, and that the minds of the delegates seem to be turning to a more realistic approach.

Half way through the series of meetings I tried to broaden the scope of our debate by introducing other aspects of the division process; the question of valuation and the key of division, elements that are probably almost as crucial as the content of the estate itself. Upon my request, Mr. de Largentaye, made a most constructive intervention on these issues.

A few months ago such a move, to put all the important elements on the table at the same time, would have provoked procedural protests. We received none this time around. The parties restrained themselves to matters of substance, which in my view is a good sign.

3. My assessment of this round of negotiations is that they were useful and that we are slowly moving in the right direction.

However, on substance the parties are wide apart and I clearly deem it unlikely that they will be able to agree on any of the main elements for the division; the content of the estate, the valuation of the assets, the key of division, - even leaving room for several years of negotiations.

Bearing this in mind, we have the following four alternatives for the way ahead:

- we could try to slowly narrow the gap, the way we have been doing up to now. In this regard I attach importance to the speedy finalisation of the FRY alternative inventory, something I believe is important, no matter what approach we take. Everybody, including the FRY, must be given the possibility to present their views in full and concrete forms.

- continuation "a quatre". This is still being pushed by the Croat side with reference to the Badinter Commission Opinion number 12. The enthusiasm for this proposal is diminishing on behalf of the Slovenian, Bosnian and especially the Macedonian side. I have let the Croats know my view that if they pursue this they would be faced with grave problems of execution. They would also probably need another forum than the ICFY to proceed.

- arbitration, is of course always an alternative. You will nevertheless recall that I have previously voiced my doubts on the appropriateness of arbitration in this case. Arbitration might create more problems than it solves, in particular if the arbitration process would drag on for years and economic and legal realities are changed in the meantime.

- my mind is increasingly turning to a fourth alternative, which I have briefly informed you about before; introducing a compromise package from the chair. This would be in a sense a kind of forced arbitration. I believe the ICFY to be in a good position to do this. We have a well established knowledge of the parties and their intentions, we have become used to their legal arguments and also by now have a pretty good view of the economic realities involved. And as I have stated before I believe it unlikely that they ever will agree on the division of assets and liabilities in the foreseeable future.

I will in the weeks to come, pursue two of these approaches at the same time: trying to slowly narrow the gap and starting to prepare a compromise package deal, which could be presented at the appropriate time. I will of course consult the Co-Chairmen before taking any step that involves the parties.

4. A few other issues that need to be handled in the near future came up during last weeks sessions:

- The apparent agreement reached in Vienna by the EU before Christmas on access to archives is not working. Upon the request of all parties I will through bi-lateral consultations try to broker a deal on this question.

- Several delegations raised the problem of the outstanding non-allocated debt of the SFRY. You will recall that of the \$20 billion USD debt, some \$17 billion, has been distributed among the republics. The main creditors of the \$17 billion USD were the IMF and the World Bank. The non allocated \$3 billion, is owed to several creditors,

including commercial banks. All successor republics have an interest in settling this matter in order to be able to perform normally on the international capital market. They all asked for our assistance.

I specifically asked the FRY delegation whether they would agree to a separate agreement on this issue, as they have always in the past resisted partial agreements. They let me know that they were interested in such a separate agreement.

I will take on this task.

- The Croatian delegation in concurrence with the Bosnian again raised the suggestion of establishing a special working Group within the ICFY on war damages. The reason for this is that the Badinter Commission in its Opinion no 13, rejected war damages as part of the present succession process. As in the past I avoided this complicated and controversial question by interpreting the Slovenian, Macedonian and FRY silence as non acceptance.

5. I will now leave some time for reflection and for the FRY to complete its work on the alternative inventory. In late April I intend to have bi-lateral consultations with the parties, concentrating on the two above mentioned issues of access to archives and the non-allocated external debt. At the same time I will prepare the ground for a possible compromise package deal proposal from the chair to the question of the division of assets. I will keep you duly informed.

I expect the next full round of negotiations to take place in two months time, i.e. in the third week of May.

090/2/

PERMANENT MISSION OF THE
FEDERAL REPUBLIC OF YUGOSLAVIA
TO THE UNITED NATIONS
5, chemin Thury 1206 Genève
Tel. 346 44 33 - 346 68 66 Fax 346 44 36 Tlx 42 77 64

Geneva, March 11, 1994

No 235/1

Dear Sirs,

I have the honour to enclose herein a letter of Mr. Željko Simić, Vice-President of the Federal Government, as well as a Memorandum of the Government of the Federal Republic of Yugoslavia in response to the allegations contained in the Memorandum of the Government of the Republic of Slovenia that you have received recently.

Please accept, dear Sirs, the assurances of my highest consideration.

Dr Vladimir Pavićević
Dr Vladimir Pavićević

Ambassador, Permanent Representative
of the FR of Yugoslavia to the UN

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Mr. Thorvald Stoltenberg
Lord David Owen
Co-Chairmen of the International Conference
on the Former Yugoslavia
Geneva

FEDERAL REPUBLIC OF YUGOSLAVIA
Federal Government
Cabinet of Vice-President

Belgrade, March 8, 1994

TO CO-CHAIRMAN OF THE INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

His Excellency Lord David Owen

His Excellency Torvald Stoltenberg

Dear Co-Chairmen,

The Government of the Federal Republic of Yugoslavia studied thoroughly the Memorandum of the Government of the Republic of Slovenia concerning the work within the Group on Succession Issues, dated January 26, 1994, and considers as indispensable responding to it by its own Memorandum.

Being assured that its delegation would adhere to the agreement achieved during the negotiation process, as it has been set out in the well known document by Ambassador Do Vale, the Government of Yugoslavia pleads on You to study thoroughly the arguments set forth in the enclosed Memorandum and to inflict with a view to prevent any hindrance in the work of the Group on Succession Issues.

We assure You that the Government of FR of Yugoslavia will do its best in order to enable the qualitative and speedy development of the work within the Group on Succession Issues being in the possession of the documentation that exerted an adequate methodical data collecting, without which the work could not be successfully effectuated.

Respectfully,

Vice-President of the Government

Zeljko Simic
Zeljko Simic



MEMORANDUM
of the Government of the Federal Republic of Yugoslavia

1. The Government of the Federal Republic of Yugoslavia notes with regret that the Memorandum of the Government of Slovenia of 26 January 1994 was drawn up in a manner that does not contribute to the work of the Group on Succession Issues of the International Conference on the Former Yugoslavia. Instead of explaining the standstill in the work of the Group in a serious manner, proceeding from facts, the Memorandum is based on arbitrary statements and unfounded accusations that can be easily denied by arguments and facts.

2. The Government of the Republic of Slovenia notes in its Memorandum that the work of the Succession Group is blocked, the main reason being the position of the FR of Yugoslavia "that claims to be the sole, exclusive and legal successor of the former SFRY". By this unfounded statement and by attributing to the Yugoslav side claims that it has never made, and that bear no logical and legal relation with its basic position, the Slovenian side is trying to make another side responsible for the standstill of the work of the Group on Succession Issues of the International Conference on the Former Yugoslavia. Although its position on international legal continuity is firmly legally based, the FR of Yugoslavia agreed, as an act of good will and proceeding from the principle of equity, to renounce part of SFRY's property in favour of the successor states. This facilitated the work of the Succession Group. Yugoslav representatives have never raised the issue of continuity at the Group's sessions, consistently abiding by the agreement reached when Ambassador Do Vale's "non-paper" was presented in May 1992. Under this agreement, pending on agreement on legal rules regulating the consequences arising from secession of the former federal units, the term "state-parties" shall be used instead of the terms "state-predecessor" and "state-successor". Thus, not only that the Group does not discuss the issues of continuity and discontinuity, but all the Chairmen of the Group so far have shared the view that these issues are not in its competence in the first place.

3. The Government of the Federal Republic of Yugoslavia is of the opinion that the main reason for the blockade in this phase of the work of the Succession Group is to be sought in avoiding to define state property as an important prerequisite both for elaborating an inventory of SFRY's assets and liabilities and for successfully continuing the entire negotiating process. The Government of the FR of Yugoslavia drew the attention of the Co-chairmen of the Conference on the Former Yugoslavia to this fact in its letter of 22 September 1993. The insistence of the Yugoslav side on opening a meritory discussion on that essential issue has been constantly rejected by other delegations. When the Succession Group finally started a concrete discussion on the succession issue at its session of 27 - 29 September 1993, it missed the opportunity to consider and define state property. Again other delegations rejected the initiative, with the usual explanation that this issue had already been discussed and that it was no use returning to the starting point. At the express request of the Yugoslav delegation to explain the definition, the Slovenian, the Croatian and the Macedonian delegations offered three completely different interpretations! Without previously defining state property, the Succession Group attempted to indirectly define state property as an inventory of SFRY's assets and liabilities, containing individual proposals burdened by numerous reservations of all the delegations. This is exactly why this approach proved to be unsuccessful, as undoubtedly underlined in the "Chairman's Report on the Valuation of the Assets and Liabilities of the Former SFRY, Group 5 (Economic Issues)", International Conference on the Former Yugoslavia, of 26 February 1993.

4. The avoiding to precisely define state property has led to the blockade of the work on the Inventory, for which the FRY delegation is not responsible in any way. The Slovenian delegation is trying to indirectly impose a legally unfounded definition by insisting on the fact that negotiations should exclusively focus on properties and rights used by the federal authorities. This is why Slovenia is trying to focus only on the property situated in the territory of the FR of Yugoslavia or used by FRY

authorities. In order to define state property in such an arbitrary way, the delegations of Slovenia, Croatia and Macedonia established that division of state property among the republics had taken place in 1974. However, these delegations did not, nor could they, support that claim by evidence. At the same time, these delegations denied that there were any data on jointly financed property after World War II, which the Belgrade Economic Institute proved untrue in its research. Therefore, what has led to the blockade of the Succession Group are the two year long elaboration of the Inventory and two unsuccessful statements upon which positions of all the delegations based.

5. Unlike this arbitrary approach, the Government of the FR of 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 uses these values today, and in which part of the former SFRY they are situated*. Defined as such, state property recognizes the principle of equity and is in compliance with the SFRY legal order and socio-economic system. Despite this, the other delegations did not want to discuss the issue. It was not before December 1993 when this definition of state property was given a real chance, when during his visit to Belgrade Mr. Alf Jönsson proposed to the Yugoslav side to draw up a draft Inventory based on that idea.

6. The FR of Yugoslavia accepted Ambassador Jönsson's proposal, and in two months' time finished a preliminary Inventory with over 2,500 identified items of jointly financed investments based on original documentation. This Inventory was sent to Geneva on the 10th of February this year. Even at first sight it is obvious from the Inventory that a wide range of jointly acquired property, rights and interests exists, that no impartial final settlement can reduce. A long list of items concerning jointly financed investments proved that the Yugoslav delegation was right to state that there was after all relevant documentation on the entire post-war period, as well as that state property is situated in the entire territory of SFRY, and not only in the territory of the FR of Yugoslavia.

7. This significant headway in the work proves as false the statement contained in the Memorandum of the Government of the Republic of Slovenia, according to which there has been no progress since September 1993. The preliminary Inventory shows that not only progress is possible, but also that it is vital for a successful work of the Succession Group. However, no progress would have been possible if Ambassador Jönsson had not proposed the elaboration of a draft Inventory on a new basis. Ambassador Jönsson realized that there would be no progress in the Succession Group, unless various issues are thoroughly previously reviewed with the delegations. So far, Mr. Jönsson has treated all the delegations in a balanced manner. The fact that he enabled the Yugoslav side as well to come up with an Inventory must not be interpreted as a special concession, but as a recognition of the right of the every delegation to submit its proposal and to the equal treatment of its proposal. Therefore, the issue is not why Mr. Jönsson acted along these lines, but rather why his predecessors failed to do so. In view of the above, we consider the questioning of Mr. Jönsson's credibility in the Memorandum of the Government of Slovenia unfair and unfounded.

8. The Slovenian side obviously believes that its negotiating position will be jeopardized if the Yugoslav draft Inventory adequately reflects the legal and economic reality of the SFRY, and turns out to be an unavoidable document. Even if it was possible to predict such a negative reaction by Slovenia, the Government of the FR of Yugoslavia received with surprise and indignation the open political request by the Memorandum of the Government of the Republic of Slovenia to forbid the Yugoslav delegation to open a discussion on the definition of state property at the next meeting of the Succession Group. In the context of current developments, this can be seen as a request to make further work on the Yugoslav version of the Inventory impossible, and to determine in advance by means of political pressure the standpoint and further guidelines for the Expert Group. To avoid any ambiguities as to what interests are hidden behind this position, the Memorandum of the Government of the Republic of Slovenia proposes that next meeting's agenda include issues related to property abroad, financial assets, division of assets and, of course, the Inventory, that should enable Slovenia to have a

privileged position in the final settlement, since it would include only part of the jointly financed assets and liabilities. The interference of Slovenia in the competence of the Succession Group Chairman to propose the agenda deserves no comment; it is easy to see that the intention was to abandon the "package deal" and to take on partial physical division of the attractive part of SFRY's assets. This obvious intention to satisfy only one's own interests cannot be a basis for a successful work of the Group.

9. When proposing that some state-parties can conclude agreements on the relinquishing of the SFRY's property, the Government of the Republic of Slovenia violates fundamental rules of international law, as well as the rule of the work of the Conference. It is not clear whether this request was made only because it was not known that the agreement must be reached with consent of all participants, or because the intention was to deliberately violate the mentioned rule. In any case, this request is absurd. No less absurd is the statement according to which "non-cooperation" of the FR of Yugoslavia jeopardizes the international peace and safety and that the UN Security Council must take this as another reason to prolong the sanctions! This inappropriate statement is all the less understandable as the Slovenian side clearly states in its Memorandum what is in store if negotiations fail.

If the Succession Group does not reach an agreement, the FR of Yugoslavia expresses readiness to start negotiations with a view to concluding an agreement on the settlement of relevant disputes before an unbiased judicial authority. However, at the same time, the FR of Yugoslavia believes that before such a step is taken, it is worth trying to find generally acceptable solutions through negotiations, based on the principle of equity and on international law, the spirit of tolerance and the recognition of mutual interests.

The Government of the FR of Yugoslavia hopes that the inadequate remarks and ill-meaning explanations contained in the Memorandum of the Government of the Republic of Slovenia will not disturb the work of the Succession Group in any way, and expresses readiness to contribute to the success of that work within its competences and possibilities.

Belgrade, 7 March 1994

090/2



PERMANENT MISSION OF THE REPUBLIC OF SLOVENIA TO THE UN OFFICE - GENEVA

147, rue de Lausanne, CH - 1202 Geneva

Tel.: 022 / 738 66 60 - Fax: 022 / 738 66 65

TELEFAX MESSAGE

NO: 513
DATE: 11.III.1994.
MESSAGE CONTAINS: 1 page (INCLUDING THIS ONE)
TO: International Conference on
Former Yugoslavia
Attn. Ms. Jackline McNunn
FAX: 9170078
79
81
FROM: Andrej Logar

We are confirming that at the International Conference of
Former Yugoslavia the Republic of Slovenia will be
represented by:

- Dr. Miran Mejak
- Dr. Mirjam Škrk
- Dr. Borut Bohte
- Mr. Andrej Rant
- Ms. Valerija Mikelj

Best regards



Andrej Logar



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10



TO: Lord Owen / Mr Stoltenberg
The Co-Chairmen

FROM: Wegger Strommen 
Secretary of Succession Issues Working Group

DATE: 14.02.94.

SUBJECT: SUCCESSION ISSUES WORKING GROUP, INVENTORY RECEIVED FROM FRY.

1 The main outstanding issue in the succession issues working group is the division of assets. You will recall that Ambassador Jonsson informed you just before Christmas, that the FRY had after lengthy discussions agreed to come forward with an itemised inventory of assets. The FRY accepted to do so by the 10 February 1994.

Ambassador Jonsson, saw this as an achievement, as it would take the focus away from legal definitions of state property and open for bargaining related to the assets themselves.

2. The other parties accepted in bi-lateral consultations to take no new initiative before they had seen the FRY inventory. However, there was considerable distrust and scepticism, especially on the part of the Croats. Their fear was that the new inventory would not be itemised and hence just a delaying tactic on behalf of the FRY.

3. The FRY delegation kept their word and on 10 February, we received a preliminary inventory of assets and liabilities including indications of the sources of finance for the assets in question. The inventory is indeed itemised, the FRY has listed 2,543 assets. The inventory is now being communicated to the other parties. We will also do a bit of home work ourselves and compare the new inventory to the one drawn up last spring by the four other delegations. A meeting to this end is foreseen later this week in Brussels between Ambassador Jonsson and Mr Jean Durieux, Chairman of the economic issues working group. We will let you know the outcome of our internal evaluation of the inventory.

4. The FRY inventory is clearly unacceptable to the other parties. It is in the FRY's interest to make the estate to be divided as extended as possible, and what they have done is pretty much to put the larger part of the whole economy of the SFRY onto the list.

Nevertheless, at the next meeting of the working group which is to take place in the second week of March, we will be able to move into a new phase, i.e., negotiating the assets themselves and not waste our time on legal definitions.

5. Please let me know if you are interested in having a copy of the full list of the 2,543 assets.

090/2 ✓

STALNA MISIJA SAVEZNE REPUBLIKE JUGOSLAVIJE PRI ORGANIZACIJI UJEDINJENIH NACIJA
PERMANENT MISSION OF THE FEDERAL REPUBLIC OF YUGOSLAVIA TO THE UNITED NATIONS ORGANIZATIONS
MISSION PERMANENTE DE LA REPUBLIQUE FEDERALE DE YOUIGOSLAVIE AUPRES DES NATIONS UNIES

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Fax No/Broj: 86/1

Date:
Datum: 1/2/1994

No. of pages (cover included): 2
Broj strana (sa ovom):

TO: H.E. Mr. Alf Jonsson
PRIMA: Ambassador, Chairman of the Working Group on
Succession Issues, I.C.F.Y.
Fax 031 351 23 95 , 917 00 78 / 96

Message
Poruka

Dear Mr. Jonsson

Please find enclosed herewith a letter from Professor
K. Mihajlović, Chairman of the Working Group on State
Succession Issues of the Federal Republic of Yugoslavia.

for AMBASSADOR
dr Vladimir Pavićević

SENT BY:YUGOSLAV MISSION GVA : 1- 2-94 : 18:11 :
RCV BY:YUGOSLAV MISSION GVA : 1- 2-94 : 17:32 :

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FAA 3404430:# 3

Belgrade, January 31, 1994

Dear Mr. Jonson,

I would like to inform you on a preliminary inventory based on our definition of State property, as we agreed upon in our telephone conversation a few days ago.

According to the statement of the Economic Institute, Belgrade the inventory should be finalized by February 10, 1994 and the Yugoslav representatives of the Group for Succession who have regularly followed the work are also of the opinion that the given term could be respected.

As for Mr. de Larentaue's arrival to Belgrade I would like to confirm to you that he would be welcomed at any time but according to my personal opinion his arrival after February 10, 1994 would be more useful.

The preliminary inventory will offer some representative cases which are indispensable for a general discussion on the inventory.

During his stay in Belgrade, Mr. de Larentaye could have an insight into the whole inventory including all investment objects and to see the decisions and the way of financing of these investments. There will also be the opportunity for the beginning of the discussion on the methodological questions which should be included into agenda, representing the second phase of the work.

I avail myself of this opportunity to thank you, on behalf of the members of the Group for Succession and myself for the Season's greetings and to express my best wishes for your personnel happiness and the happiness of your family.

Hoping that we will have more success in our mutual work this year, I remain

Yours sincerely,

Kosta Mihailović

Mr. Alf Jonson
Chairman
Working Group on Succession Issues
International Conference on the Former Yugoslavia

CS

Dear Mr. Stoltenberg,

Despite the efforts made by the Co-chairmen of the International Conference on the Former Yugoslavia and by some of the successor States to reach an overall equitable and just solution, the negotiations have come to a standstill.

The negotiations have been blocked owing to the non-cooperative attitude of the FRY (Serbia and Montenegro), which has been claiming for itself the right to be the sole successor State of the former SFRY.

On account of such a position, the Republic of Slovenia does not foresee the resolution to the succession of States issues in the near future. Pending the settlement of these issues, we are faced with the fact that one of the successor States, i.e. the FRY (Serbia and Montenegro), is the only State which holds in its possession, without the legal title, practically all the State property of the dissolved State of the SFRY, which should be subject to a just and equitable agreement reached by all the successor States.

H.E.
Mr. Thorvald Stoltenberg
Co-chairman of the International
Conference on the Former Yugoslavia
G E N E V E

In the light of the present situation, we respectfully request Your Excellency to strive for the continuation of negotiations within the framework of the Working Group on the Succession of States Issues of the ICFY. The agenda for the next meeting of this Working Group ought to be drawn up in such a manner as not to give an opportunity to the delegation of the FRY (Serbia and Montenegro) to repeatedly reopen the discussion on the definition of State property, which this delegation manipulates on the procedural and substantive grounds, thus impeding progress during the negotiations.

We respectfully request Your Excellency to endorse the ICFY in giving full opportunity to the cooperative States to reach an agreement or a series of agreements that would, as a whole, cover all the succession of States issues of the dissolved State of the SFRY.

The Republic of Slovenia is willing to accept peaceful means of the settlement of the succession of State's disputes, including an arbitration in case the successor States achieve such an agreement. However, we give the priority to the role of the Arbitration Commission as a body of the ICFY that has played a decisive role in searching the way to a just solution of the States succession issues.

Enclosed please find the Memorandum of the Republic of Slovenia concerning the succession of the States issues at the International Conference on the former Yugoslavia.

We thank you in advance for your understanding and cooperation.

Please accept, Excellency, the assurances of my highest consideration.

J. Duman

MEMORANDUM

The Government of the Republic of Slovenia notes with serious concern that the negotiations between the successor States to the former SFRY within the Working Group on the Succession of States Issues of the International Conference on the Former Yugoslavia (ICFY) have been blocked and are hardly expected to be resumed with any success in the near future. The last meeting of this Working Group took place in Geneva between 27 - 29 September 1993, now under the guidance of its Chairman, Ambassador Alf Jönsson from Denmark. The Working Group failed to make any progress despite the fact that, on request of the Co-chairmen of the ICFY the Arbitration Commission, on 16 July and 13 August 1993, issued the Opinions No. 11-15 in order to clarify some concrete matters and thus to facilitate and speed up the negotiating process between the successor States to the former SFRY as equal partners in order to reach an overall equitable solution or partial solutions on equal terms with the same effect.

The main reason that the successor States to the former SFRY cannot reach any agreement on the succession of States issues lies in the position of the FRY (Serbia and Montenegro), which has been claiming for itself the position of the predecessor State and thus the sole and the exclusive legal successor to the former SFRY, while other successor States - Slovenia, Bosnia and Herzegovina, Croatia and Macedonia - have seceded from SFR Yugoslavia and are thus only obliged to share the liabilities of the predecessor State. This ill-fated stand-point of the FRY (Serbia and Montenegro), which has inter alia led to the acts and war of aggression against Slovenia, Bosnia and Herzegovina and Croatia, is contrary to the actual matter of facts, namely that the SFRY dissolved and ceased to exist. While the Arbitration Commission of the ICFY in its Opinion No. 1 of 29 November 1991 established that the former SFRY was in the process of dissolution, it concluded in its Opinion No. 8 of 4 July 1992 that this process was completed and that the former SFRY no longer existed. Accordingly, in its Opinion No. 9 the Arbitration Commission laid down the basic principles on 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 succession by mutual agreement; in the resulting negotiations, the successor States must try to achieve an equitable solution on the basis of international law relating to the succession of States; full account must be taken of the principle of equality of rights and duties between the States in respect of international law. In its Opinion No. 10 the Arbitration Commission reiterated that the FRY (Serbia and Montenegro) was a new State which could not be considered the sole successor to the SFRY. The spirit of these Opinions was embodied in the Statement of Principles and Work Programme of the ICFY, as the joint body of the UN and the EU.

Meanwhile, the practice of States, as expressed through the work of the UN and the EU and their respective organs, confirmed the above stated facts. Namely, the Security Council of the UN in its resolution 757 of 20 May 1992 noted that the claim by the FRY (Serbia and Montenegro) to continue automatically the membership of the former SFRY in the UN was not generally accepted. In its resolution 777 of 19 September 1992, the Security Council considered that the State formerly known as the SFRY had ceased to exist and therefore recommended to the General Assembly that it decided that the FRY (Serbia and Montenegro) should apply for membership in the UN and that it should not participate in its work. The General Assembly of the UN agreed with the Security Council's recommendation by adopting its resolution 47/1. By the resolution 823 of 28 April 1993, basically the same recommendation was passed by the Security Council in respect of the non-participation of the FRY (Serbia and Montenegro) in the work of the Economic and Social Council, which was followed by the General Assembly adopting its resolution 47/229. Numerous specialized agencies adopted this practice, while some of them, like the IMF and the ICAO definitely decided that the membership of the former SFRY was terminated and that all its successor States must apply for the membership respectively.

The insistence of the FRY (Serbia and Montenegro) as regards its position of the predecessor State, while it holds in its possession without the legal title, practically all the State property, assets and archives of the former SFRY, including the military property, its stocks and weaponry used by the former People's National Army and its para-military formations against Bosnia and Herzegovina and Croatia, is a breach of its international legal obligation to negotiate in good faith on the succession of States matters and therefore an international delict that invokes the international responsibility of the FRY (Serbia and Montenegro) towards the Republic of Slovenia and other successor States to the former SFRY. This was also confirmed by the Arbitration Commission of the ICFY in its Opinion No. 12 of 16 July 1993.

Consequently, the Arbitration Commission even noted that the refusal of one or more successor States concerned to cooperate gives title to other successor States to take counter-measures in accordance with international law.

According to the latest events, the FRY (Serbia and Montenegro) also misuses the impasse within the Working Group on the Succession of States Issues of the ICFY it had intentionally caused by its unwillingness to cooperate as an excuse not to grant to the National Archives of the Republic of Slovenia an unimpeded access to the Federal Archives of the former SFRY in Belgrade. This was a breach of the consensus that all successor States had free access to the former Federal Archives in Belgrade, which was reached within the Sub-group on Archives of the Economic Issues Working Group of the ICFY.

In order to prevent the continuation of this illegal situation as regards the State property, assets and archives of the former SFRY, which favours exclusively the wrongdoing successor State, namely FRY (Serbia and Montenegro), the Government of the Republic of Slovenia is of the opinion that the negotiations within the Working Group on the Succession of States Issues of the ICFY are to be resumed as an urgent matter.

The agenda for the next meeting of this Working Group ought to be drawn up in such a manner as not to give an opportunity to the delegation of the FRY (Serbia and Montenegro) to repeatedly re-open the discussion on the definition of State property, which this delegation manipulates on the procedural and substantive ground with the sole purpose of preventing that any progress be made during the negotiations. Their view that the social property of the former SFRY corresponds to the definition of the State property has no basis in any legal reasoning as it was also established by the Arbitration Commission of the ICFY in its Opinion No. 14 of 13 August 1993.

The Government of the Republic of Slovenia therefore suggests the following Agenda :

1. Draft Agreement on the Distribution of the Property Abroad.
2. Distribution of State Archives (paper of four successor States of 10 March 1993).
3. Inventory (Agreed Items)-item by item approach.
4. Financial Assets.

Those successor States that are willing to cooperate must be given full opportunity to reach an agreement or a series of agreements that would, as a whole, cover all the succession of States issues of the former SFRY. The distribution of the property of the former State abroad and of the hard currency reserves could serve as suitable examples for such distribution, as they are under the jurisdiction of the third States. The member States of the UN and the EU as well as the main organs of these organizations should be expected to give full support to the recognition and execution of such agreements.

The Government of the Republic of Slovenia is convinced that the agreement(s) between the successor States to the former SFRY concerning the settlement of the succession of State issues on the terms of equality of all successor States is(are) one of the preconditions for the normalisation of future relations between these States. Therefore, the wilful non-cooperation of the FRY (Serbia and Montenegro) in the negotiations on State succession endangers the international peace and security too and must be taken into account by the Security Council of the UN as one of the reasons for the continuation of sanctions imposed against FRY (Serbia and Montenegro).

Finally, it should be stressed that the Government of Slovenia is willing to accept peaceful means of settlement of the succession of State's disputes, including an arbitration, should the successor States to the former SFRY so agree. However, we give the priority to the role of the Arbitration Commission as an organ of the ICFY, due to its efficiency, which is in the interest of those successor States that are willing to cooperate in order to reach the just solution.

Ljubljana, 26 January 1994



INTERNATIONAL CONFERENCE
ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10



090/2 ✓

January 26, 1994.

Dear Mr. Crockett,

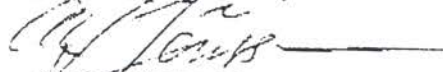
The Working Group on State Succession Issues of the International Conference on the Former Yugoslavia, which I am presiding, has decided to ask one of the other working groups of the Conference, i.e. the Economic Working Group, to establish an inventory containing assets, liabilities and archives of the Socialist Federal Republic of Yugoslavia.

Such a document was presented approximately one year ago. However, a thorough examination of this documents has led us to take a closer look at some of the items.

As far as I know, the Bank of International Settlements possesses information concerning the financial assets of the Former Yugoslavia held abroad. I am particularly interested in information concerning the assets which are frozen according to Security Council Resolution no. 757 of May 30, 1992. It would be very useful for the Group to have access to such information, and I would be most grateful if you could help us in obtaining such information.

Thanking you in advance for any assistance you may be able to provide in this matter, I am,

Sincerely yours,


Alf Jönsson
Ambassador

Mr. Andrew D. Crockett
Director General
Bank of International Settlements
4002 Basle

KONGELIG DANSK AMBASSADE
ROYAL DANISH EMBASSY
Thunstrasse 95
CH-3006 BERNE

Telephone 031 352 50 11
Telefax 031 351 23 95
Date 26.01.94.
Ref.nr. 5.E.3.a.
Number of pages incl.
this front page 2

TELEFAX FOR

Mr. Wegger Chr. Strømmen
Secretary
International Conference on the Former Yugoslavia
Geneva
Fax no. 022 917 00 96

Dear Wegger,

Attached please find copy of my letter of today's date for Mr.
Andrew D. Crockett, Director General of the Bank of International
Settlements in Basle.

With warmest personal regards,

Yours,


Alf Jönsson

096/2



COMMISSION DES COMMUNAUTÉS EUROPÉENNES

DIRECTION GÉNÉRALE I A
RELATIONS POLITIQUES EXTÉRIEURES

Direction B3

Berne, le 24 janvier 1994

PROJET:

Monsieur le directeur général,

Le groupe succession d'Etats de la conférence internationale sur l'ancienne Yougoslavie, que je préside, a été conduit à demander à un autre groupe de travail de la conférence, le groupe des questions économiques, d'établir un inventaire des actifs, des passifs et des archives de la République Socialiste Fédérative de Yougoslavie. Ce document a été préparé il y a un an environ. Son examen attentif nous a montré cependant que sur certains points nous aurions intérêt à le préciser davantage.

Il me revient que la Banque des Règlements Internationaux dispose de données sur les actifs financiers de l'ancienne Yougoslavie détenus à l'étranger et qu'elle pourrait en particulier nous informer sur la part de ces actifs qui sont actuellement gelés aux termes de la résolution no. 757 du 30 mai 1992 du Conseil de Sécurité.

Il nous serait très utile de pouvoir avoir accès à ces informations et je vous suis d'avance très reconnaissant de l'aide que vous pourriez nous apporter pour obtenir ces précisions.

En espérant qu'il vous sera possible de réserver une suite favorable à cette requête, je vous prie d'agréer, Monsieur le directeur général, l'expression de ma ...

A. JONSSON

M. Andrew D. CROCKETT
Directeur général de la
Banque des Règlements Internationaux

CH - 4002 Bâle



COMMISSION DES COMMUNAUTÉS EUROPÉENNES
DIRECTION GENERALE 1A
RELATIONS POLITIQUES EXTERIEURES

DIRECTORATE-GENERAL 1A
EXTERNAL POLITICAL RELATIONS

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FAX (+32-2) 296.11.41

Bruxelles,
Brussels, 24.1.94

FAX N°

Adressée à
Adressed to

M. STROEMMEN 00-41-22-917 00 79

Expéditeur
Sender

M. LARGENTAYE

Tél. 2956413

Nombre de pages
Number of pages

COVER + 1



**INTERNATIONAL CONFERENCE
ON THE FORMER YUGOSLAVIA**

Palais des Nations, 1211 Geneva 10

Office of the Co-Chairmen



090/2 /

URGENT FAX

CONFIDENTIAL

PAGE 1 OF 6

PLEASE DELIVER AS SOON AS POSSIBLE

To: Mr Thorvald Stoltenberg - ONLY
c/o MFA Oslo - NO DISTRIBUTION **Fax No: 47-22-349580**

From: Ann-Marie Cox **Fax No: 41-22 917 0079**

Date: 21 January 1994

If transmission incomplete please telephone (41-22) 917 1200

Attached are two papers regarding the Succession Issues Working Group from Wegger Stroemmen for your information.

Regards.



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10



090/2 ✓

NOTE

TO: Lord Owen and Mr Stoltenberg
The Co-Chairmen

FROM: Ambassador Alf Jonnson
Chairman of the Working Group on State Succession
Issues

DATE: 20 JANUARY 1994

SUBJECT: LETTER RECEIVED FROM PROFESSOR KOSTA MIHAILOVIC

Please find attached a letter from the FRY Head of Delegation Professor Kosta Mihailovic which reassuringly informs me that my understanding of our agreement at the bi-lateral held in Belgrade before Christmas was right. Otherwise there is no new substance in the letter.

The sequence of events in the working group will now be as follows:

We will receive the additional list to the inventory from FRY in early February. I will then together with my collaborators go through the inventory and make a comparative report with the old inventory. At the same time the new list needs to be communicated to the other parties. They should be given at least two weeks to study the material. It is my intention to call the next session during the first week of March.

Intro: DL.
BR.
✓ JPH. KE CMCM.
GA SC.
BDL.
PS.
-

Belgrade, 11 January 1994

Dear Mr. Jonson,

As our meeting in Belgrade recedes in time, the Yugoslav representatives in the Working Group on Succession Issues are becoming increasingly convinced that a useful job was done on that occasion, enabling us to make progress on the road towards a final solution. Your proposal to adopt our definition of State property as a working hypothesis and to work out an inventory of the State property of the SFR of Yugoslavia on that basis is important as a reaffirmation of the essential principle of equal treatment of all participants and of the agreement amongst them as the way of decision-making. The disregard for this principle in the past has proved to be an insurmountable obstacle in the work of the Working Group on Succession Issues. Also, Your proposal is useful because it brings in new elements which will be relevant for reaching a final agreement on succession issues. These elements will, no doubt, present the object of succession in a broader light and contribute in that way to a successful outcome of the negotiations.

It is certainly important that we came to an understanding in Belgrade that the work on the Inventory, being a technical realization of the agreed working hypothesis of the definition of the State property of the SFR of Yugoslavia, is exclusively technical and demonstrative in nature and that it therefore does not prejudge a final solution of relevant

Mr. Alf Jonson

Chairman

Working Group on Succession Issues

International Conference on

the Former Yugoslavia

2.

issues. No less important is the consensus reached that these issues will be solved by an agreement between the FR of Yugoslavia and the successor States in accordance with the norms of positive international law and, especially, the principle of legality which is a point of departure of these norms. Since, by definition, succession means the replacement of one State by another in responsibility for the international relations of a given territory in its entirety, it is self-understood that the discussion on any individual item of the Inventory established on the basis of such definition has not even a technical meaning outside a "package deal" approach.

The Yugoslav representatives are also pleased that You have shown full understanding for their positions on the need to consider the object of succession in its entirety rather than partially and that You have accepted that the names of the interested States be used, which will not cause misunderstandings and tension, that all delegations be nominated neutrally as participating parties and that terminology be used which neither prejudices fundamental options nor puts individual participants into an unequal position.

We on the Yugoslav side are also appreciative of Your awareness of the limitations that exist vis-a-vis the solution of the problem of succession as long as the civil war continues and of the delicacy of the representation of Bosnia-Herzegovina in our work.

Our recent meeting was positively reflected also on intensifying the work in FR of Yugoslavia on collecting and arranging documents relevant to the object of succession. This leads us to believe that, as agreed, we shall soon be able to forward a Draft Inventory worked out on the basis of the working hypothesis we have agreed upon.

3.

The Yugoslav representatives are reassured in their conviction that Your visit to Belgrade was a useful contribution to our method of work. We would be pleased if You came to the same conclusion. We would like to know if contacts with other participants have also proved to be successful. We would highly appreciate if You could inform us on the results of bilateral talks with other participants.

Hoping that we shall meet again soon on the meeting of the Working Group of Succession Issues, I remain

Your sincerely,

Kosta Mihailović

Kosta Mihailović

No. of Pages:

Date: 13 January 1994

To: Mr Stoltenberg
Lord Owen
Co-Chairmen

From: *for* Amb Alf Jonsson *U. Chr. S.*
Chairman of the Succession Issues Working Group

Subject: Bi-Lateral Consultations with the Macedonian and
Slovenian Delegations 11 - 12 January 1994

1. As suggested in my memo of 17 December 1993 following my meeting in Belgrade in December with the FRY delegation I have started bi-lateral consultations with the other delegations.

2. I saw the Macedonian delegation, headed by Minister Miljovski, in Skopje on Tuesday 11 January. I outlined the results of my meeting in Belgrade and asked for their consent to await the FRY additional list to the inventory of assets to be divided. I further explained to them the FRY proposal as regards terminology to be used in the succession process.

The Macedonians were sceptical but nevertheless agreed that it was an achievement to have the FRY show their hand as regards what real assets are hiding behind their definition of state property. The Macedonian scepticism was at least partially linked to the fact that they distrust some of the personalities involved on the FRY side. Hence they were afraid that this was a delaying tactic as the FRY possesses most of the assets in question. The Macedonians further made the point that the succession process should be guided by principles of

international law and not be left entirely to political bargaining. They were afraid that their relatively weak political position would be to their disadvantage in a bargaining situation.

3. In Ljubljana on the 12 January we were received in the National Bank by Professor Mejak and his whole team of experts. The Slovenians were, as always, well-prepared and well-organised. Some scepticism was expressed by the Slovenian side however not with the same strength as we had seen in Macedonia. Professor Mejak was pleased to note that the FRY agreement to produce an itemised inventory concurred with his own proposal presented at the September meeting of the Working Group. The Slovenians therefore accepted my proposal to wait for the Serbian inventory before other initiatives were launched.

Furthermore the Slovenians had a number of proposals for dealing with an itemised inventory. They made the point that the former National Bank of Yugoslavia should be given priority alongside the old proposal of assets abroad. One point they thought to be in the interests of all parties to resolve quickly was bi-lateral financial claims.

Another interesting element that surfaced during our discussions was the question of what would happen to frozen financial assets abroad once the sanctions were lifted. The Slovenes firmly made the point that in such a situation new accounts should be opened, and not just un-freeze existing

accounts. The Slovenian delegation had prepared a document outlining their general attitude to the work of the SIWG. The document contains no new positions but is a useful summing-up and therefore is attached for your information.

4. My general impression is that the bi-lateral consultations proved very useful and that we had an agreement from two of the parties to wait for the FRY itemised inventory before we take other action in the Working Group. I will see the Croats next week and hopefully get them to accept this procedure. I will also make sure that the Bosnian representative to our Working Group is duly informed.

The FRY have indicated that they will have their additional list ready by mid-February. I will distribute the list to the other parties in order for them to protect their own interests as well as have the Chairman and the Deputy of the Economic Issues Working Group Messrs Durieux and de Largentaye go through it in order for ourselves to be fully prepared. I then intend to call a full meeting in Geneva in late February.

5. Allow me also to mention that in Slovenia we repeatedly were told that for them the main interest in the Conference lies with the succession issues. Hence they saw these issues as very closely linked to an overall normalisation of relations in the region. The same might to some extent be said for the Macedonians, although it is obvious that other aspects such as security and minority issues is of vital concern to them.

/The Delegation of the Republic of Slovenia to the WG on the Succession of States Issues of the ICFY/

PRO MEMORIA

Slovenia notes with the serious concern that the negotiations between the successor States of the former SFRY within the Working Group on the Succession of States Issues of the International Conference on the Former Yugoslavia (ICFY) have been blocked and are hardly expected to be resumed with any success in the near future. The last meeting of this Working Group took place in Geneva between 27 - 29 September 1993, now under the guidance of its Chairman, Ambassador Alf Jonsson from Denmark. The Working Group didn't make any progress despite the fact that, on the demand of the Co-chairmen of the ICFY, the Arbitration Commission on 16 July and 13 August 1993 gave the Opinions Nos. 11-15 in order to clarify some concrete matters and thus to facilitate and speed up the negotiating process between the successor States of the former SFRY as equal partners in order to reach an overall equitable solution or partial solutions on equal terms with the same effect.

The main reason that the successor States of the former SFRY cannot reach any agreement on the succession of States issues lies in the position of the FRY (Serbia and Montenegro), which has been claiming for itself the position of the predecessor State and thus the sole and the exclusive legal successor of the former SFRY, while other successor States Slovenia, Bosnia and Hercegovina, Croatia and Macedonia have seceded from the former Yugoslavia and are thus only obliged to share the liabilities of the former State.

This ill-fated stand-point of the FRY (Serbia and Montenegro), which has inter alia led to the acts and war of aggression against Slovenia, Bosnia and Hercegovina and Croatia, is contrary to the actual matter of facts, namely that the former SFRY dissolved and ceased to exist. While the Arbitration Commission of the ICFY in its Opinion No. 1 of 29 November 1991 established that the former SFRY was in the process of the dissolution, it concluded in its Opinion No. 8 of 4 July 1992 that this process was completed and that the former SFRY no longer existed. Accordingly, in its Opinion No. 9 the Arbitration Commission laid down the basic principles on the succession of States of 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 of the former State; the successor States must together settle all aspects of succession by agreement; in the resulting negotiations, the successor States must try to achieve an equitable solution on the basis of international law relating to the State succession; full account must be taken of the principle of

equality of rights and duties between States in respect of international law. In its Opinion No. 10 the Arbitration Commission reiterated that the FRY (Serbia and Montenegro) was a new State which couldn't be considered the sole successor of the SFRY. The spirit of these Opinions was embodied in Statement of Principles and Work Programme of the ICFY, as the joint body of the UN and the EU.

Meanwhile, the practice of States, as expressed through the work of the UN and the EU and their respective organs, confirmed the above stated facts. Namely, the Security Council of the UN in its resolution 757 of 20 May 1992 noted that the claim by the FRY (Serbia and Montenegro) to continue automatically the membership of the former SFRY in the UN was not generally accepted. In its resolution 777 of 19 September 1992 the Security Council considered that the State formerly known as the SFRY had ceased to exist and therefore recommended to the General Assembly that it decided that the FRY (Serbia and Montenegro) should apply for membership in the UN and that it should not participate in its work. The General Assembly of the UN agreed with the Security Council's recommendation by adopting its resolution 47/1. By the resolution 823 of 28 April 1993, basically the same recommendation was passed by the Security Council in respect of the nonparticipating of the FRY (Serbia and Montenegro) in the work of the Economic and Social Council, which was followed by the General Assembly by adopting its resolution 47/229. Numerous specialized agencies adopted this practice, while some of them, like the IMF and the ICAO definitely decided that the membership of the former SFRY was terminated and that all its successor States must apply for the membership respectively.

The insistence of the FRY (Serbia and Montenegro) as regards its position of the predecessor State, while it holds in its possession without the legal title practically all the State property, assets and archives of the former SFRY, including the military property, its stocks and weaponry used by the former People's National Army and its para-military formations against Bosnia and Hercegovina and Croatia, is the breach of its international legal obligation to negotiate in good faith on the succession of State matters and therefore an international delict that invokes the international responsibility of the FRY (Serbia and Montenegro) towards the Republic of Slovenia and other successor States of the former SFRY. This was also confirmed by the Arbitration Commission of the ICFY in its Opinion No. 12 of 16 July 1993. Consequently, the Arbitration Commission even noted that the refusal of one or more successor States concerned to cooperate gives title to other successor States to take counter-measures in accordance with international law.

According to the latest events, the FRY (Serbia and Montenegro) also misuses the impasse within the Working Group

on the Succession of States Issues of the ICFY it had intentionally caused by its unwillingness to cooperate as an excuse not to grant to the National Archives of the Republic of Slovenia an unimpeded access to the Federal Archives of the former SFRY in Belgrade. This was the breach of the consensus that all successor States had free access to the former Federal Archives in Belgrade, which was reached within the Sub-group on Archives of the Economic Issues Working Group of the ICFY.

In order to prevent the continuation of this illegal situation as regards the State property, assets and archives of the former SFRY, which favours exclusively the wrongdoing successor State, namely FRY (Serbia and Montenegro), the negotiations within the Working Group on the Succession of States Issues of the ICFY are to be resumed as an urgent matter.

The agenda drawn for the next meeting of this Working Group ought to be drawn in such a manner not to give an opportunity to the delegation of the FRY (Serbia and Montenegro) to repeatedly re-open the discussion on the definition of State property, which this delegation manipulates on the procedural and substantive ground with the sole purpose of preventing that any progress be made during the negotiations. Their view that the social property of the former SFRY corresponds to the definition of the State property has no basis in any legal reasoning as it was also established by the Arbitration Commission of the ICFY in its Opinion No. 14 of 13 August 1993.

Slovenia therefore suggests the following Agenda:

1. Draft Agreement on the Distribution of the Property Abroad.
2. Distribution of State Archives (paper of four successor States of 10 March 1993).
3. Inventory (Agreed Items)-item by item approach.
4. Financial Assets.

Those successor States that are willing to cooperate must be given full opportunity to reach an agreement or a series of agreements that would, as a whole, cover all the succession of State issues of the former SFRY. The distribution of the property of the former State abroad and of the hard currency reserves could serve as the suitable examples for such distribution, as they are under the jurisdiction of the third States. The member States of the UN and the EU as well as the main organs of these organizations should be expected to give full support to the recognition and execution of such agreements.

It is to be believed, that the agreement(s) between the successor States of the former SFRY concerning the settlement of the succession of State issues on the terms of equality of

all successor States is(are) one of the preconditions for the normalization of future relations between these States. Therefore, the willful non-cooperation of the FRY (Serbia and Montenegro) in the negotiations on State succession endangers the international peace and security too and must be taken into account by the Security Council of the UN as one of the reasons for the continuation of sanctions imposed against FRY (Serbia and Montenegro).

Finally, it should be stressed that Slovenia is willing to accept any peaceful means of settlement of the succession of State's disputes, including an arbitration, should the successor States of the former SFRY so agree. However, we give the priority to the role of the Arbitration Commission as an organ of the ICFY, due to its efficiency, which is in the interest of those successor States that are willing to cooperate in order to reach the just solution.

Ljubljana, December 1993

TO: Lord Owen/Mr Stoltenberg
Co-Chairmen

FROM: *per* Alf Jonsson *W. Jonsson*
Chairman of Succession Issues Working Group

DATE: 17 December 1993

SUBJECT: **SUCCESSION ISSUES WORKING GROUP
BILATERAL CONSULTATIONS WITH
THE FRY IN BELGRADE, 14-15 DECEMBER 1993**

SUMMARY

Some progress can be reported from my discussions in Belgrade regarding the following three issues, the definition of state property, the use of terminology relating to the nature of succession, and archives.

1. I held bilateral consultations in President Milosevic's office in Belgrade this week with Professor Mihailovic and his whole team of experts including Kutlecic, Gnjatovic and Kovac. I also saw Deputy Federal Prime Minister Simic and Assistant Federal Foreign Minister Cicanovic.

Simic had given us a hint of willingness of a sign of goodwill at our most recent meeting in Geneva. However, this did not materialize when I saw him in the morning of the 14th. Nevertheless, what I was looking for materialized the day after in our discussion with the experts. It is my impression that this was not due to a political push but rather originated from Professor Mikhailovic and his team themselves.

Cicanovic was preoccupied with the sanctions and did not raise any issues directly related to the work of the Succession Issues Working Group.

2. As regards the definition of state property, the FRY delegation accepted, if not in principle in practice, to go back to a somewhat similar position held under the Panic Government, i.e. to produce an additional list to the inventory. The FRY will use their legal definition as a working hypothesis for the list, but they do not now insist on an agreed definition of state property before we draw up an inventory.

There will be many reservations to the extended inventory from all sides. However, I see it as very useful for the parties to know the maximum content of the estate in order to prepare the ground for political and economic bargaining. It should be acceptable to the other parties that the FRY adds to the inventory, however, they must be given ample time to protect their interests in this regard.

The FRY indicated that they needed two months to prepare a provisional list, something I find reasonable.

3. We discussed at length with the FRY delegation the use of terminology relating to succession/secession and the claim of the FRY to be the continuation of the SFRY. At the end of our deliberations, they accepted that we should use to the extent possible neutral terminology, that is, the names of the states, and avoid questions of principle.

This should also be acceptable to the other parties. However, I cannot impose upon them any terminology.

4. On the question of archives, it seems that the contentious issues have been diffused somewhat. The minds of the parties are shifting towards practical questions relating to access to archives and copying facilities. I believe it is possible through a generous grant of the European Commission to work out a plan for copying facilities to be given to all former republics. The parties are all eager to get this equipment, including the FRY who possesses most of the archives. Hence, the question of access does not seem to be a problem at the moment.

The question of who will, by the end of the day, have the originals remains, but I see no reason to raise that issue before we have finished the practical work relating to copying.

A technical meeting on these issues was held at the end of November in Vienna under the auspices of the chief archivist of the European Commission and the state archivist of Austria. I regard their work as very useful and shall continue to encourage them to go on.

5. It is my conclusion that the consultations in Belgrade proved useful. They were carried out in a good atmosphere and sometimes took the form of round-table brainstorming rather than formal negotiations. However, there is a long road ahead and I hold it unrealistic that the parties will ever exchange assets originating from within the former SFRY. Assets abroad and liabilities is another matter.
6. During the time the FRY produces its additional list to the inventory, I will hold bilateral talks with the other parties. This is necessary not the least to put them in a position to protect their own interests, knowing the that FRY will base themselves on a different definition. I intend to call a full meeting of the Working Group in mid-February mainly to discuss the inventory and take stock of the archives question.