

ICFY

WORKING GROUP ON SECESSION ISSUES

21 JAN - 30 OCT 1993

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PERMANENT MISSION OF THE
FEDERAL REPUBLIC OF YUGOSLAVIA
TO THE UNITED NATIONS
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Tel. 346 44 33 - 346 68 65 Fax 346 44 36 Tlx 42 77 64

BY FAX:
No. 994
Date: 30 October 1993

TO: Ambassador Alf Jonson
Chairman of the Working Group
on Succession Issues of the
International Conference on the
Former Yugoslavia (ICFY)
cc. Ms Jackie Mcmunn-I.C.F.Y.
Palais des Nations - Geneva (fax: 917-00-81)

FROM: Dr Vladimir PAVICEVIC
Deputy Head of Delegation
of the FRY to the ICFY, and
Ambassador, Chargé d'Affaires a.i.
Permanent Mission of the F.R.Y. to the U.N.O. - Geneva

No. of pages (cover included) : 13 (THIRTEEN)

MESSAGE:

Dear Ambassador Jonson,

Please find attached the letters of Academician Dr. Kosta Mihajlovic, Head of Delegation of the F.R.Y. to the Working Group on Succession Issues, addressed to You.

Please accept, dear Ambassador Jonson, the assurances of my highest consideration.

V.P.

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

Dear Mr. Jonson,

The last meeting of the Group on Succession Issues is remembered by the Yugoslav delegation primarily because of the impression that you became aware of the key problems which will determine the success or failure of further negotiations. Continuity, succession and the subject of division are the issues which, in addition to legal rules on succession, remain unresolved and continue to hamper the progress in the work of the Group. We therefore fully support your orientation towards these key problems and are prepared to render our full contribution.

In this context, we propose that you continue to insist on the discussion of the State property since the outcome of this discussion will determine the definition of the subject of division. Short of a definition of State property it is not possible to make an inventory of the property in the true meaning of the word since, generally speaking, such an inventory is nothing more or nothing less than State property itemized. The course of discussion at the last meeting of the Group on Succession Issues demonstrated that there exists no agreement on the definition of State property not only between the Yugoslav and other delegations, but also within these delegations themselves. Accordingly, the objection that a discussion of these issues would be tantamount to discussing the issues already discussed is inappropriate and off the point, just as is the objection that insistence on the definition of State property would be an academic discussion. As you could

2.

see for yourself, there is nothing academic in the request that joint investments be singled out of the public property and be treated as State property and, by extension, as the subject of division. This is a logical procedure, based on the adopted principle that the division must be just and fair, a procedure conducive to the achievement of an obvious and applicable definition.

The lack of definition of State property is not the only legal impediment to the progress in the negotiations. Elaboration of legal rules for the execution of succession is inevitable. If this job is done soon, the prospects for an early agreement will, no doubt, be greater. I feel free to remind you that, at the meeting of the Group on 5 - 7 May 1993, the Yugoslav delegation proposed a draft agreement on succession which, regrettably, was not discussed nor was an alternative proposal submitted. We trust that you will provide your opinion of the draft either in writing or during your visit to Belgrade expected to take place soon.

Collection and processing of documents is of particular importance for further successful negotiations. In order to accelerate this process, the Yugoslav Government has concluded an agreement with the Institute of Economics in Belgrade and instructed all departments to set up separate groups for the collection and primary processing of these documents. Far from starting documentation processing, the Government has thus in fact ratcheted up its organization level since Yugoslavia has been already active and has made some significant headway in this respect. I wish to inform you that the Yugoslav Railways have prepared two books on all investments per republic from 1918 to 1990. When you visit Belgrade, you will have an opportunity to acquaint yourself with other valuable documentation as well. This time, I am enclosing a collection of investment decisions and their realization so that you could form your own picture of the data supporting our argumentation. Of

course, every investment is supported by original bank documents. I hope that we shall clarify the problems of the valorization of past joint investments in personal contact, which has never been a particular difficulty for economists. Similarly, it should be borne in mind that the valorization is the last stage in the work of the Subgroup on the Evaluation of Assets and Liabilities.

Returning again to our last meeting, I express my concern at the fact that the principle of just and fair division, agreed upon by all delegations, was indirectly questioned by some delegations who averred that Serbia wanted to compensate itself through the succession process. The principle that no one can enrich himself at the expense of others was suggested by the Croatian delegation and the principle does imply compensation in the case of unequal distribution of development opportunities. And such inequality is established precisely through the territorial dispersion of investments. After all, succession must be not only just and fair; it must also be morally founded. I trust that, as a proud son of a nation that sets great stores by ethics in politics, you will understand this principle very well indeed.

The Yugoslav delegation also objects to having the majority issue continuously raised by other delegations, despite the fact that the principle of consensus must be observed, so much so since the majority is presented in a wrong way. The representative of Bosnia-Herzegovina denied his legitimacy himself so that it was not necessary for us to do so. Our absence from the meeting of 8 - 11 March 1993 was abused and a statement was made to the effect that four delegations had made a proposal on the division of archives. This proposal was subsequently presented as the document of four delegations. However, we obtained recently United Nations Secretary-General report S/25490 on the work of the Working Groups within the International Conference on the Former Yugoslavia dated 30 March 1993 in which the

Secretary-General, inter alia, said: "A representative of Bosnia and Herzegovina was present during part of the meeting as an observer...On substantive issues, the three delegations formally participating drafted texts on succession with respect to State archives...". Accordingly, until the situation regarding representation of Bosnia-Herzegovina is clarified, we cannot recognize not only the vote attached either to majority or minority, but also the legitimacy of the present representative of Bosnia-Herzegovina.

The Yugoslav delegation's satisfaction over the fact that the discussion of individual issues has taken a logical course and is proceeding from general to specific is blurred by the impression from past formal and informal meetings that it is expected to make concessions and espouse the positions of other delegations as a precondition for achieving further progress in the negotiations. There is no doubt in my mind that the prospects for agreement will continue to remain slim if such expectations are maintained and that they can be enhanced only if all positions are given the attention they deserve and if patient efforts are invested in finding a solution that will satisfy all sides. After all, consensus is the generally accepted principle short of which no agreement will be possible.

Reminding you of some of the key issues relevant for the further work of the Working Group on Succession Issues, I look forward to meeting you in Belgrade soon, confident that your visit will provide us an opportunity to discuss all these and other issues all over again and move forward with this immensely important job that fate has assigned to us all.

Belgrade, 29 October 1993

Yours sincerely,



Kosta Mihailović

ANNEX I

Field D object

Basis for approving of the
investment out of federal
fund

Electricity supply

Hydroelectric plant
Trebnjica

Decision of the FEC (Federal
Executive Council)
no. Rp.330 of November 30, 1958

Hydroelectric plant
Rama

Decision of the FEC no. RP 99
of May 7, 1963

Hydroelectric plant
Rijeka

Decision of the FEC no. RP 99
of May 7, 1963

Hydroelectric plant
Spilja

Decision of the FEC no. RP 99
of May 7, 1963

Hydroelectric plant
Tikves

Decision of the FEC no. RP 99
of May 7, 1963

Hydroelectric plant
Srednja Drava I

Decision of the FEC no. RP 99
of May 7, 1963

Hydroelectric plant
Bajina Basta
May 7, 1963

Decision of the FEC no. RP 53
of February 26, 1959

Hydroelectric plant
Potpec

Hydroelectric plant
Djerdap

Termo-power plant
Tuzla I

Termo-power plant
Tuzla II

Termo-power plant
Tuzla III

Decision of the FEC no. RP 99
of May 7, 1963

Decision of the Federal Assembly
of December 23, 1964

Decision of the FEC no. RP 243
of November 29, 1959

Confirmation of the Federal
Secretariat of Finance
XLIII competition 1960

Decision of the FEC no. RP 99
of May 7, 1963

Termo-power plant Kakanj II	Decision of the FEC no. RP 67 of February 18, 1958
Termo-power plant Plomin	Decision of the FEC no. RP 99 of May 7, 1963
Termo-power plant Sostanj II	Decision of the FEC no. RP 67 of February 18, 1958
Termo-power plant Brestanica	Decision of the FEC no. RP 244 September 29, 1959
Termo-power plant Trbovlje II	Decision of the FEC no. RP 99 of May 7, 1963
Termo-power plant Kolubara II	Decision of the FEC no. RP 67 of February 18, 1958
Termo-power plant Kolubara III	Decision of the FEC no. RP 244 of September 29, 1959
Termo-power plant Kostolac II	Confirmation of the Federal Secretariat of Finance XLIII competition 1960
Termo-power plant Morava	Decision of the FEC no. RP 99 May 7, 1963
Termo-power plant Kosovo II	Decision of the FEC no. RP 243 of September 29, 1959
Termo-power plant Kosovo II (financial expenditures)	
Termo-power plant Kosovo III	Decision of the FEC no. RP 99 of May 7, 1963

Warm-water works

TO Zagreb

TO Ljubljana

TO Novi Beograd

Coal mining

"Kolbas", Vrsoci

Decision of the FEC no. RP 67
of February 18, 1958

XLIII competition

Decision of the FEC no. RP 243
of September 29, 1959

/56/53/ I competition

"Rembas" Resava	/55/55/ XII competition
Coal mine Bogovina	/55/55/ XII competition
Coal mine "Soko" Soko Banja	/55/55/ XII competition
Cobine Kosovo (II phase)	XLV competition of the Yugoslav Investment Bank 383/60
Cobine Kosovo (III phase)	Decision of the FEC no.RP 99/63 19/63
Lignite mine, Kreka	XII competition
KHK "Svelara", Lukavac	Decision of the FEC Rp /231/31-59/

Oil production and purification

"Naftaplin", Zagreb - Lipovljanje	Rp 125 "Official Gazette" 25/63
"Naftaplin", Zagreb - Ivanjic I	Rp 125 "Official Gazette" 25/63
"Naftaplin", Zagreb - Struzec II	Rp 50 "Official Gazette" 10/61
"Naftagas", Novi Sad - Polje Kikinda	Rp 50 "Official Gazette" 10/61
"Naftagas", Novi Sad - Elemir II	Rp 50 "Official Gazette" 10/61
"Naftagas", Novi Sad - stabilisation	Law on Economic Planning Measures ("Official Gazette" of SFRY 52/63)

Metallurgy

Iron Works, Zenica

Decision of the FEC Rp.99/63
"Offic. Gaz." 19/63

Iron Works, Iljase

Decision of the FEC Rp.99/63
"Offic. Gaz." 19/63

Iron Works, Vares

Decision of the FEC Rp.99/63
"Offic. Gaz." 19/63

Iron Works, Varas (separation)	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron ore mine, Ljubija	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron Works, Niksic	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron Works, Sisak	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron Works, Jesenice	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron Works, Ravne	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron Works. Store	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron Works, Smederevo	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Rolling Plate Mill, Zemun	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron and Steel Works, Skopje (I phase)	Decision of the FEC "Offic. Gaz." 19/63	Rp.99/63
Iron and Steel Works, Skopje (II phase)	"	"
Iron and Steel Works, Skopje (financial expenses)	"	"

Metallurgy of Ferrous Metals

Factory of electro and
ferrous alloys, Sibenik

Decision of the FEC Rp. 231
("Offic. Gaz." 31/59)

Factory "B. Kidric",
Sibenik

Decision of the Federal Secre-
tariat of Finance
("Offic. Gaz." 20/60)

Factory of alumina,
Kidricevo

Decision of the FEC Rp. 231
("Offic. Gaz." 31/59)

RTB, Bor

Decision of the FEC Rp. 99/63

RTB, Majdanpek

Decision of the FEC Rp. 99/63

Factory of aluminium
Lozovac

Decision of the FEC Rp. 231
("Offic. Gaz." 31/59)

Chemical Industry

Coke-Chemical Combine,
Lukavac

Decision of the FEC Rp. 87
of March 31, 1959

"Elektrobosna", Jajce

Decision of the FEC Rp. 87
of March 31, 1959

Factory of Carbide &
Cynogen "Dalmacia",
Dugi Rat

Decision of the FEC Rp. 87
of March 31, 1959

Factory of Nitrofertilizers,
Kutina

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Energo-chemical combine,
Valenja

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Metallurgical and
Chemical Industry
"Cinkarna" Celje

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Chemical Industry
"Pancevo", Pancevo

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Chemical Industry
"Zorka", Sabac

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Chemical Industry
"Zorka", Subotica

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Factory of Superphosphate,
Prahovo

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Factory of Nitro-fertilisers
Obilic

Decision of the Federal Assembly
A.S.no. 290 of September 27, 1965

Pulp and Paper Industry

Factory of cellulose,
Banja Luka

Federal Social Plan for 1959

1. Railway Traffic

Modern Yugoslav Railways

Agreement on crediting with
the International Bank on

SR Bosnia and Herzegovina
SR Croatia
SR Macedonia
SR Slovenia
SR Serbia

70,0 mil \$
70,0 mil \$
70,0 mil \$
70,0 mil \$
70,0 mil \$

2. Railway cargo wagons and mechanization -----

Resolution of the Federal Assembly
A.S. no. 24 of December 24, 1963
and Resolution of the FEC Rp. 76
of April 18, 1963

SR Bosnia and Herzegovina
SR Montenegro
SR Croatia
SR Macedonia
SR Slovenia
SR Serbia
AR Voivodina

"
"
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Pulp and Paper Factory,
Drvar

Perspective Plan of Economic
Development
1957-61 XXXII competition

Pulp and paper Industry,
Plaski

Perspective Plan of Economic
Development
1957-61 XXXII competition

Paper Factory,
Rijeka

Perspective Plan of Economic
Development
1957-61 XXXII competition

Pulp Factory,
Medvode

Perspective Plan of Economic
Development
1957-61 XXXII competition

Paper Factory,
Vladicin Han

Perspective Plan of Economic
Development
1957-61 XXXII competition

Pulp and Paper Factory,
Sremska Mitrovica

Perspective Plan of Economic
Development
1957-61 XXXII competition

Traffic and Communication

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- 7 -

Sea TrafficResolution of the Federal Assembly
A.S. no. 64 of January 16, 1964

SR Croatia

"

"

SR Slovenia

SR Montenegro

Post, Telegraph and TelecommunicationsDecisions of Yugoslav Investment Bank of:
October 9, 1963
March 19, 1964
July 13, 1965based upon resolutions of the FEC:
Rp.26 of January 22, 1963
Rp.137 of June 25, 1963and the Law on Economic Planning Measures
for 1964 and 1965SR B & H
SR Montenegro
SR Croatia
SR Macedonia
SR Slovenia
SR Serbia
AR Vojvodina
AR Kosovo



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10

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NOTE

TO: Mr. T. Stoltenberg/Lord Owen
Co-Chairmen

FROM: *for* Ambassador Alf Jonsson *U. Ch. S.*
Chairman of the Working Group on State
Succession Issues

DATE: 40.10.93

SUBJECT: Report of the Working Group for State Succession Issues
Session held in Geneva 27-29 September 1993.

1. The Working Group on State Succession Issues held talks in Geneva from the 27th to the 29th September 1993.

The meeting was well attended, about 25 delegates from all parties took part in the deliberations.

Bosnia-Herzegovina was represented by Professor Tyrlyn, who explained that his credentials were not in order due to the present situation in Bosnia-Herzegovina. Professor Tyrlyn maintained a low profile throughout the meeting, mainly associating himself in his interventions with the views of the delegations of Croatia, Slovenia and Macedonia.

2. This memorandum will give a brief outline of the items discussed and a few reflections on the way forward. A full report of the meeting will be forthcoming in the coming days.

3. The agenda was as follows:

- a, Succession in respect of State Archives
- b, Legal questions concerning the definition of the objects of succession
- c, Future work of the Working Group
- d, Any other business

Under the agenda item Any other business the Croat delegation insisted on a discussion of the advisory opinions from the Badinter Commission. This provoked a twenty minute FRY walkout as the FRY refused to recognise any or relevance of the Commissions opinions.

Little progress was achieved on either of the two matters of substance; archives and the definition of the objects of succession. The reason for this is the difference between the FRY on the one hand and Croatia, Slovenia, Macedonia and Bosnia Herzegovina on the other hand with regard to questions of definition and choice of legal rules applicable. This is due

mainly to the continued claim of the FRY to be the continuation of the former SFRY, qualifying "only" the other republics as "Successor States."

As regards archives the FRY continues to insist on a definition of the state archives subject of succession implying the preservation of the bulk of the archives in Belgrade, and thus unacceptable to the other Successor States. Attempts to find intermediate practical solutions to the archives issue was fenced off by the FRY, insisting on first solving the definition problem.

The situation as regards state property is somewhat parallel to the archives question. The FRY insists on a definition of the term state property much wider than the one applied by the Working Group when drawing up the Draft Single Inventory at a previous meeting (boycotted by the FRY). A wide definition will favour the FRY, hence they insist on the inclusion of so called "social property," something that is at best questionable according to the Vienna Convention on the succession of states.

4. In my view the stalemate cannot be broken through the present form of negotiation. The delegations mainly consist of legal experts with academic backgrounds and limited skills in negotiating. The situation is furthermore complicated by the fact that one of the parties, the FRY, possesses most of the assets to be divided in the succession process. As the problems relating to liabilities are to a large extent solved, there is little incentive for the FRY to change their attitude which at the moment amounts to a blocking of the succession process. Before calling a new meeting I would have to be convinced that there are grounds to believe that progress is possible. Bilateral consultations will prove whether there is any will on behalf of the Serbs to continue the negotiating process. Deputy Prime Minister Semic has indicated to me in a private meeting that the FRY is considering making a gesture of good will. The Head of the Serbian delegation Professor Mihailovic also hinted to this.

If no concession emerges from the FRY the Co-Chairmen will have to make a choice of whether the succession process should continue "a quatre," that is without the FRY. The legal framework for this exists. However, the practical and economical results of such an exercise are likely to be limited. If this approach is taken the four delegations of Croatia, Slovenia, Macedonia and Bosnia-Herzegovina have indicated that they, quite naturally, will give priority to the division of assets abroad and whatever reserves of hard currency the former Federal Bank of Yugoslavia possesses. Arbitration or other mechanisms for third-party settlement might also be proposed to the parties. However, I remain somewhat sceptical of the feasibility of such procedures settling the questions involved in this process.

5. I will seek the advice of the Co-Chairmen on how to proceed once I have had a chance to bilaterally explore whether there are any concessions likely to come forward from the FRY. However, I do not think it useful to start consultations before the overall situation regarding Bosnia Herzegovina is somewhat clearer.

Ambassaden Bern amtel 61 af 1. oktober 1993

Desk by dags dato kl. 15.00

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Møde i successions-arbejdsgruppen 26.-29.09.1993.

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Diffusion Restreinte

I C F Y: Meeting September 26-29, 1993 of the Working Group on State Succession Issues.

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

The working group gathered in Geneva for a three-day meeting. The agenda was as follows:

- a) Succession in respect of State Archives,
- b) Legal questions concerning the definition of the objects of succession,
- c) Future work of the Working Group,
- d) Any other business.

The meeting was well attended. Twenty-five delegates from all parties were present. Bosnien-Herzegovina was represented by Professor Tyrnin, who explained that his credentials were not in order due to the present situation in Bosnia-Herzegovina. Professor Tyrnin maintained a low profile throughout the meeting, mainly associating himself in his interventions with the views of the delegations of Croatia, Slovenia and Macedonia.

1. The delegation of the F R Y attended only after an exchange of letters with the chair on the significance of the advisory opinions given by the Badinter commission which the F R Y refuses to recognize as an arbitrary body. The exchange of letters makes it clear that the chair regards the opinions of the Badinter commission as advisory and that any delegation may use such advice in any way they see fit during developments of arguments.

2. The F R Y rejected the draft rules on distribution of archives along the same lines of argument as in the meeting of the working group 10-12 May, 1993, and reinforced the argument by

insisting on a definition of state archives in such a way that the bulk of the archives would stay in Belgrade. It was not possible to agree on either access or copying since the F R Y required a general definition before wanting to enter any settlement based on a pragmatic item-by-item approach. The Croatian delegation seemed inclined to let Belgrade have 90 pct. of all archives as long as they got a small original archive back to Zagreb. (I.e. the archives relating to the World War II period). The Slovenian and Macedonian delegations (supported by Professor Tyrllin) insist on a wider division.

3. On agenda item b) the discussion centered around the definition of state property as the object of succession. The discussion is somewhat parallel to the archives discussion. The F R Y insists on a prior definition of state property which would include a very large bulk of the so-called 'social property'. (The constitution of the Former Yugoslavia does not recognize the term 'state property'). Social property would include all workers' collectives etc. etc. to which federal funds have been allocated after 1945 and later. The other delegations insist on a much narrower definition taken from the Vienna Convention on Succession of States. The Economic Working Group has been drawing up a draft single inventory which could be the basis for negotiations, but the F R Y refuses to discuss any of the items before a general definition of the term has been made. The wide definition will favor the F R Y. The basic interest of the other delegations is at present first and foremost to give priority to the division of assets abroad (i.e. embassy property and frozen assets) and whatever reserves of hard currency the former federal bank of Yugoslavia possesses.

4. Under the item 'Any other business', which was taken up before the discussion on future work, the Croatian delegation insisted on a discussion on the advisory opinions of the Badinter commission. This provoked a 20-minute F R Y walk-out as the F R Y, as mentioned above, refuses to recognize the relevance of the Badinter commission's opinions.

5. Under the discussion of the future work of the working group the Croats, Macedonians and Slovenians insisted that the item of dividing assets abroad should be placed on the agenda for the next meeting. The chair suggested that a next meeting should be tentatively scheduled for the end of November. Such a meeting would only be called, if a round of bilateral consultations between the chair and the parties would give the chair grounds to believe that progress on any of the items would be possible.

6. The chair had a first round of bilateral consultations with the delegation which indicated that the F R Y is considering making some gesture of good will. Other delegations did not feel that such a gesture would be forthcoming and wanted to continue work in the group without the presence of the F R Y. The chair stressed, however, that it would be preferable to continue efforts with all parties concerned in the succession of Former Yugoslavia. Furthermore, the four delegations suggested that arbitration could be used in the archives question. The F R Y had already suggested such a procedure.

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The positive aspect of the meeting was that all parties participated, that the tone of the meeting was civil, and that the work did not break down in spite of the two fundamental differences, i.e. that the F R Y claims to be the continuation of the former S F R Y (and qualifying the other republics as successor states), and the F R Y insistence on a definition of state property. Since the F R Y is in possession of the bulk of the succession mass, other 'trade-offs' and pressures from outside will have to be used, if progress is to be made.

End of text

Joensson nr. 61

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

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Fax No/Broj: 927/1

Date: 26/9/1993
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TO: Mr. Thorvald STOLTENBERG and Lord David OWEN
PRIMA: Co-Chairmen of the International Conference
 on the Former Yugoslavia
 G e n e v a

Message
Poruka

Please find, enclosed herewith, a letter
 of Deputy Prime Minister and Minister for Foreign Affairs of
 the F.R. of Yugoslavia Mr. Vladislav Jovanović.

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PERMANENT MISSION OF THE
FEDERAL REPUBLIC OF YUGOSLAVIA
TO THE UNITED NATIONS
5, chemin Thury 1206 Genève
Tel. 348 44 33 - 348 88 88 Fax 348 44 36 Tlx 42 77 84

Genève, September 26, 1993

No 927/1

Excellencies,

I have the honour to forward, enclosed herewith, the letter of H.E. Mr. Vladislav Jovanović, Federal Minister of Foreign Affairs of the Federal Republic of Yugoslavia concerning succession matters.

Please accept, Excellencies, the assurances of my highest considerations.



Dr. Vladimir Pavićević

*Deputy Head of Delegation of the F.R. of Yugoslavia to the ICFY and
Ambassador, Chargé d'Affaires, a.i.*

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

FEDERAL REPUBLIC OF YUGOSLAVIA
Minister of Foreign Affairs

Beograd, 22 September 1993

Excellencies,

We deem it necessary to draw your attention to the fact that the negotiations on succession have come to an impasse, not least because the approach to them has been wrong from the very beginning. Instead of approximating the specific type of property existing in the FPR of Yugoslavia, i.e., SFR of Yugoslavia since 1953, to the notion of State property known in the comparative law in order to determine clearly the subject of division, it was proposed to divide only the property used by federal organs. This was done in disregard of the fact that investments in the entire post-World War Two period were predominantly socially financed. It is therefore necessary to separate from these investments the part that would account for the State property subject to division. The only reasonable way to proceed is to separate from the overall pool of social property that part which was financed from the common funds of the republics, i.e., the State capital of the FPRY, i.e. the SFRY. Short of such an approach, the inventory will continue to be the subject-matter of endless disagreements and the process of negotiations will turn to a never-ending dispute.

Reiterating the Statement of the Government of the Federal Republic of Yugoslavia of 5 May 1993, we note that the wrong framework of the Badinter Arbitration Commission was conducive to having suggestive questions addressed to that Commission, therefore, rather than contributing to the clarification of the dilemmas, its opinions only served to confuse the issue. These opinions confirm our conviction that the Commission does not recognize the factual situation, that it handles problems incompetently and that its proposals are unreasonable and unacceptable to all parties. The Commission thus asserts that all delegations have agreed on a part of the inventory, contrary to the fact that the Yugoslav delegation has reservations vis-à-vis the entire inventory until the approach to the division is regulated by legal rules. The Commission's opinion that "there is no doubt that the 1974 Constitution transferred to the constituent republics ownership of many items of property which in consequence cannot be held to have belonged to the SFRY, whatever their origin or initial financing" has no foundations whatsoever either in the said Constitution or in any other legal act. After all, a division of assets one gets to know about only 19 years later must seem very odd indeed! Equally surprising is the legal and real arbitrariness of the assertion that only the property "divided very unequally between the successor States" is subject to possible compensation among the parties. Particularly confusing is the category of "public property", since this category never existed in the Yugoslav legal system.

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

It would be time-consuming and unproductive to enumerate all the shortcomings of the opinions of the Badinter Commission. Not only do they fail to make a contribution to the work on succession, but, by a singular lack of professionalism and a serious display of partiality, downgrade the reputation of the Conference itself. While warning you of the danger, I take this opportunity to reiterate the readiness of the Yugoslav delegation to make a positive contribution to the successful completion of the work on succession. In doing so, I tend to believe that our efforts will bear no fruit unless we change our approach to the work on the division of assets and liabilities by adopting legal rules and, in consequence, by redefining the property.

Appreciative of your efforts to find a way out of the impasse in which the Group on Succession Issues has found itself, I am enclosing a copy of the letter of Yugoslav experts addressed to Ambassador Jorgen Bojer, requesting discussion of three crucial issues. I regret to note that substantive discussion of these issues has not even started. The proper answer to these three questions can be given on the basis of respect for the data and documents, which would rule bias and arbitrariness. Your support to this, as we see it, very constructive proposal would be invaluable for a successful continuation of the negotiations.

Yours sincerely,

Vladislav Jovanović (signed)

*Deputy Prime Minister and Minister of Foreign Affairs
of the Federal Republic of Yugoslavia*

Beograd, 19 September 1993.

Mr. Jorgen Bojer
Chairman of the Succession
Issues Working Group
International Conference on
the Former Yugoslavia

Dear Mr. Bojer,

Thank you for your letter of 14 September 1993 explaining the Yugoslav delegation the aim of the next meeting of Succession Issues Working Group.

The attempts to overcome the existing differences between the delegations would remain unsuccessful unless certain undisputable facts were taken into account. One of such facts are social investments prevailing in SFRY in the overall post World War II period. This fact was an uniqueness of SFRY, comparing to those countries where private property is the prevailing one, and where state property is relatively small and attached mainly to central government. This uniqueness of SFRY has not been taken into consideration nor it has been expressed appropriately in the creation of the inventory of assets and liabilities. Insisting to include in the inventory only the property used by federal organs of SFRY in the moment relevant for succession means nothing but ignoring the uniqueness of the investments carried out in SFRY and presenting country's economic reality with simplification, as if a country with prevailing private property and private investments has been discussed. The point is that succession of SFRY cannot be based on disqualification of economic reality such as it was.

Redefinition of social property is the second stumbling-block in our discussion. Since the category of state property has never existed in Yugoslav legal system after 1953, it is necessary to separate from the mass of social property the part that should be treated as state property in the inventory of assets and liabilities. Identifying jointly financed investments is the only way to separate such part of social property. This approach has not only acquired a reputation in international practice, as it was the case with the division of assets and liabilities of East African Community, but it satisfies requirements of the principle of equality by which the work of our group has been guided in search for final settlement.

Time scope is the third controversial matter. Croatian delegation insists on two contradictory statements: first, that the initial distribution of assets and liabilities of SFRY has been carried out in 1974, and, second, that there are no usable data for the early post World War II period. If one insists on the first statement, the second statement becomes superfluous and vice versa. International practice is instructive in this case, too, one should go in the past as much as data availability makes it possible. This is the way to be done in our negotiations, too. The statement that the initial distribution of assets and

liabilities of SFRY has been carried out in 1974 is not based on any document and it does not deserve to be subject of discussion. Those who make such statements must present evidence.

Warning you, Mr. Bojer, about these three points, which, in our opinion, are not disputable, we think that our group will make no progress unless we free our discussion of them. Taking this into account, it would be usefull to discuss these points one after another during our next meeting in order to come to conclusion which will show us if it is possible to continue further constructive discussion.

Looking forward to meeting you soon,

Sincerely yours,

Kosta Mihailovic
Kosta Mihailovic

Draft Letter from Co-Chairmen
to FRY DPM and FM Jovanovic

Dear Mr. Jovanovic,

This is to acknowledge receipt of your letter of 15 June requesting our support and assistance in connection with the transfer of ownership of the New York City residence of the head of Mission of the former Socialist Federal Republic of Yugoslavia to the United Nations.

We regret to inform you that we do not consider ourselves competent to intervene in connection with the transfer of ownership of the property to which you refer.

Whether or not that property should be included in the inventory of the assets and liabilities of the former SFR Yugoslavia and, if so included, how that property is eventually to be distributed are matters under consideration by respectively the Economic and Succession Issues Working Groups of our Conference. As you know, certain questions relevant to these matters have been addressed to the Arbitration Commission of the Conference.

Naturally, the Succession Issues Working Group will in due course appropriately take into account the actual state of ownership of the property in question in drawing up its conclusions concerning an over-all settlement of claims between the several successor States to the former Yugoslavia.

bcc, with copy of incoming:
Mr. C.-A. Fleischhauer
The Legal Counsel
United Nations

Draft Letter from Lord Owen/Co-Chairmen
to FRY DPM and FM Jovanovic]

Dear Mr. Jovanovic,

This is to acknowledge receipt of your letter of 4 June concerning the proposed consideration by the International Union of Railways of the distribution of certain debts, claims and assets of the railways of the former SFR Yugoslavia.

[Although the matters referred to in your letter appear to fall within the competence of the Working Group on Succession Issues of the International Conference on the Former Yugoslavia, they may also be within that of other international organizations, such as the International Union of Railways. It would therefore not be appropriate for our Conference to intervene in such other fora against their considering matters that are within their jurisdiction. However, it remains open for your Government to send a protest or appeal to the International Union of Railways and/or to the Governments of the successor States.

Naturally, any settlement that is decided in such other fora and that is actually implemented so as to affect assets under consideration by the ICFY Working Group will be taken into account by that Group in its conclusions concerning an over-all settlement of claims between the several successor States to the former Yugoslavia.]

INTERNATIONAL CONFERENCE
ON THE FORMER YUGOSLAVIA

TO: ✓ Mr. T. Stoltenberg
Lord Owen

FROM: P. Szasz

DATE: Geneva, 16 July 1993

SUBJECT: Response to an FRY letter of 2 July concerning
participation in the Succession Working Group

1. On 2 July FRY Deputy Prime Minister and Foreign Minister Jovanovic sent you a letter (under cover of a transmittal letter from the Mission in Geneva -- both attached) in which it announced the temporary suspension of FRY participation in the work of the Suspension Issues Working Group, because of the submission of question relating to succession to the Arbitration Commission.

2. In consultation with Ambassador Bojer I have prepared the attached draft response for your approval.

3. In this connection I would also like to recall that, as far as I know, you have not responded to Jovanovic's letter of 4 June requesting assistance in respect of the consideration of Yugoslav succession issues by the International Union of Railways, nor to the letter of 15 June requesting assistance in respect of the proprietary lease to the residence of the head of the Yugoslav Mission in New York. The necessarily negative replies I had drafted (copies attached) were not sent immediately because of reluctance to disturb more delicate and important negotiations then proceeding with the FRY and Serbian Governments. The present possibilities would be:

- (a) To send these replies now (in two letter or preferably one), more or less simultaneously with the reply to the 2 July letter;
- (b) To combine them with the reply to the latest letter;
- (c) To forget about the earlier letters entirely, unless Jovanovic sends a reminder.

Mr. Bojer favours option (c), on the ground that the requests that were addressed to us were entirely inappropriate.

4. Finally, Mr. Bojer asked me to inform you that he considers that no meeting of the Succession Working Group need be convened until mid-September, at which time he suggests that his successor, Ambassador Jönsson preside, with Bojer himself sitting next to him. He will be in Brussels on Monday and could discuss this matter with Lord Owen then.

5. In this connection it should be pointed out that the Arbitration Commission is currently in session in Paris. At this time it is not yet known whether they intend to issue their advisory opinions by 20 July, i.e. within the normal three-month period foreseen in their Rules, or by 20 August, making use of the one-month extension that is also provided for in the same Rule. (I will learn the decision on this late this evening or on Monday morning.) A mid-September meeting would thus come well after the issue of the opinions and would give the Working Group participants time to digest them.

090/2✓

PERMANENT MISSION OF THE
FEDERAL REPUBLIC OF YUGOSLAVIA
5, chemin Thury
1206 Genève
tel.: 346.44.33 & 346.68.66
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No. 660/1

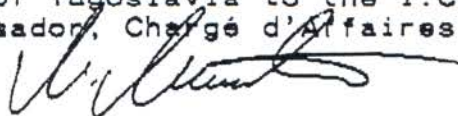
2 July 1993

Dear Sirs,

I have the honour to transmit herein the letter of 2 July 1993 of the Deputy Prime Minister and Minister of Foreign Affairs of the F.R. of Yugoslavia, Mr. Vladislav Jovanovic, concerning the working Group on Succession Issues within the International Conference on the Former Yugoslavia.

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

per Dr. Vladimir Pavicevic
Deputy Head of Delegation of the
F.R. of Yugoslavia to the I.C.F.Y. and
Ambassador, Chargé d'Affaires a.i.



Mr. Thorvald STOLTENBERG and
Lord David OWEN
Co-Chairmen of the International Conference
on the Former Yugoslavia
G e n e v a

FEDERAL REPUBLIC OF YUGOSLAVIA
MINISTER OF FOREIGN AFFAIRS

Belgrade, 2 July 1993

Excellencies,

I wish, first of all, to express my satisfaction at our recent meeting in Geneva within the International Conference on the Former Yugoslavia and its successful outcome to which you made a significant contribution.

According to the practice of an open and sincere exchange of views, I take this opportunity to bring to your attention the serious problem we are facing concerning the Working Group on Succession Issues, due to the renewed activity of the so-called Badinter Commission.

In this connection, I wish to inform you about the decision of the Government of the Federal Republic of Yugoslavia to withdraw its representatives from and to discontinue, on a temporary basis, its participation in the Working Group on Succession Issues of the International Conference on the Former Yugoslavia pending discontinuation of the work of the so-called Badinter Commission for the reasons which we have indicated on several occasions.

The substantiated reasons underlying the decision of the FR of Yugoslavia not to accept the competence of the so-called Badinter Commission, as a body for settlement of disputes through arbitration, have been presented in the statement by the Government of the Federal Republic of Yugoslavia, in my letter addressed to you as well as in our direct talks. First of all, it is a fact that the Commission has not been established in compliance with international law. Furthermore, in its Opinions No. 1-10 the Commission has essentially violated the legal norms of international law, both in respect of procedure as well as the

./...

Mr. Thorvald STOLTENBERG and
Lord David OWEN
Co-Chairmen of the International Conference
on the Former Yugoslavia
G e n e v a

implementation of material law. In practice the opinions of the Commission, as an advisory body of the International Conference on the Former Yugoslavia, on the basis of which the Yugoslav participants at the Conference were to adopt relevant decisions by consensus taking also into account the Commission's opinion, were taken as judgements and served as a basis for making concrete decisions on relevant issues concerning the Yugoslav crisis.

Our side has particularly underlined the fact that the Government of the FR of Yugoslavia considers unjustifiable and unacceptable resort to any court mechanism, prior to substantiated and comprehensive discussion on the principles on the basis of which the property of the Federal Republic of Yugoslavia should be ceded to successor States.

I would like also to recall that the Government of the FR of Yugoslavia and its representative have underlined on several occasions that outstanding and pending question which may arise in the work of the International Conference on the Former Yugoslavia, could be solved, following a substantiated and comprehensive discussion, within a court procedure in accordance with international law.

For all the above reasons, the Government of the FR of Yugoslavia considers the opinions of the so-called Badinter Commission and the decisions and acts of other subjects based thereupon, null and unbinding for the Federal Republic of Yugoslavia.

Confident that, this time again, you will show understanding, please accept, Excellencies, the assurances of my highest consideration.

Vladislav Jovanovic (Signed)
Deputy Prime Minister and
Minister of Foreign Affairs of the
Federal Republic of Yugoslavia

Encl.:
Statement by the Government
of the FR of Yugoslavia of
30 April 1993

STATEMENT OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA

AS STATED BY THE DELEGATION OF THE FR OF YUGOSLAVIA AT THE BRUSSELS MEETING OF THE CONFERENCE ON YUGOSLAVIA AND AT THE LONDON CONFERENCE ON YUGOSLAVIA, THE FR OF YUGOSLAVIA DOES NOT RECOGNIZE THE JURISDICTION OF THE ARBITRATION COMMISSION, KNOWN AS THE BADINTER COMMISSION, IN THE ASSETS AND LIABILITIES DIVISION PROCEDURE AND IS NOT AGREED THAT THE COMMISSION ISSUE ADVISORY OPINIONS ON THE PRINCIPLES ON THE BASIS OF WHICH SUCCESSION OF STATES WOULD BE EFFECTED BETWEEN THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA - AS THE PREDECESSOR STATE, ON THE ONE HAND, AND THE SECESSIONIST FORMER YUGOSLAV REPUBLICS - AS SUCCESSOR STATES, ON THE OTHER.

THE GOVERNMENT OF THE FR OF YUGOSLAVIA ALSO DEEMS UNACCEPTABLE THAT THE QUESTION OF PRINCIPLES RELEVANT FOR THE SUCCESSION PROCEDURE BE DISCUSSED BEFORE ANY BODY, PRIOR TO SUBSTANTIAL DISCUSSION OF THESE PRINCIPLES WITHIN THE SUCCESSION GROUP OF THE CONFERENCE ON YUGOSLAVIA.

THE GOVERNMENT OF THE FR OF YUGOSLAVIA WISHES TO RECALL THAT IN THE SENSE OF INTERNATIONAL LAW THE ARBITRATION COMMISSION WAS NOT ESTABLISHED OR COMPOSED FOR ARBITRATION PURPOSES, WHILE IN ITS WORK WITHIN THE CONFERENCE ON YUGOSLAVIA SO FAR IT HAS BEEN SERIOUSLY IN BREACH BOTH THE LAW OF PROCEDURE AND THE IMPLEMENTATION OF MATERIAL LAW.

THE FEDERAL GOVERNMENT REITERATES THE POSITION OF THE FEDERAL REPUBLIC OF YUGOSLAVIA PRESENTED AT THE MEETING OF THE CONFERENCE ON YUGOSLAVIA IN BRUSSELS AND AT THE LONDON CONFERENCE THAT ALL DISPUTES THAT MAY ARISE VIS-A-VIS THE DIVISION OF ASSETS AND LIABILITIES, SHOULD BE REFERRED BY AGREEMENT EITHER TO THE PERMANENT INTERNATIONAL ARBITRATION COURT IN THE HAGUE OR TO AN AD HOC ARBITRATION COURT.

THE GOVERNMENT OF THE FR OF YUGOSLAVIA CONSIDERS ARBITRATION PROCEEDINGS IN THE SETTLEMENT OF THE CONTENTIOUS ISSUES THAT MAY ARISE IN THE WORK OF THE CONFERENCE ON YUGOSLAVIA AS PROCEEDINGS BEFORE A COURT OF LAW IN THE SENSE OF GENERAL INTERNATIONAL LAW AND NOT AS PROCEEDINGS BEFORE THE ARBITRATION COMMISSION PRESIDED BY MR. BADINTER.

WE RECALL IN ITS REPLY TO THE LETTER OF MR. BADINTER, PRESIDENT OF THE COMMISSION, OF 3 JUNE 1992, THAT IT CONSIDERS THE OPINIONS OF THE COMMISSION DOCTRINARY IN THE SENSE OF ART. 38 (D) OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, WHICH DO NOT CONSTITUTE A LEGAL GROUND FOR ANY VALID DECISION. THE FR OF YUGOSLAVIA SHALL CONSIDER NULL AND VOID AND NON-BINDING ANY OPINION OF THE COMMISSION ADOPTED IN THE PROCEDURE TO WHICH IT HAS NOT AGREED.

30.04.1993

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I C F Y: Meeting 10-12. May 1993
of the Working Group on Succession Issues.

Partners may be interested in the following report from the chairman of the abovementioned working group:

The working group met in Geneva for a three-day meeting, the main agenda items being

- Succession with Respect to Archives
- Legal Problems related to the Draft Single Inventory of the Assets and Liabilities of the SFRY.

Macedonia was represented by a diplomat from their mission to Geneva in an observer capacity only, as the delegates normally attending were busy with the negotiations in New York. Bosnia-Herzegovina was represented by Professor Trlin, who explained that his credentials were not formally in order due to the present situation between Muslims and Croats in Bosnia.

Little progress was achieved on either of the subjects, the main reason being the difference between the position of the FRY (Serbia and Montenegro), on the one hand, and Croatia, Slovenia, Macedonia, and Bosnia-Herzegovina on the other hand, on questions of definition and choice of legal rules applicable, due i.a. to the continued claim of FRY (Serbia and Montenegro) to be the continuation of the former SFRY, qualifying (only) the other republics as "successor states".

1. On archives, the fundamental difference of legal premises caused the FRY to reject the draft rules on distribution of archives that had been prepared by the working group in a meeting boycotted by the FRY and was based on a principle of equality among all successor states. The FRY insisted on a definition of the state archives subject of succession implying the preservation of the bulk of archives in Belgrade, and thus unacceptable to the other successor states. After minor narrowing of differences over some elements in the draft agreement, the Chairman concluded that discussion had to be deferred till a later meeting, where work could be resumed on condition that the delegations would have received new instructions, possibly after consultation among capitals of the successor states.
2. On "Legal Problems related to the Draft Single Inventory" already the formulation of the agenda item which concerns delimitation of those assets of the former SFRY that should be divided through the succession process, had caused considerable difficulty, the FRY delegation having insisted that no decision as to what should be divided could be taken before a definition of the term "State Property" had been agreed for the purpose of applying article 8 of the Vienna Draft Convention on Succession of States, which rules that "state property" (as opposed to private property) is the subject of succession.

As the Vienna Convention refers for such a definition to the national law of the predecessor state, and since the peculiar type of socialism prevailing in Yugoslavia before its dissolution did not recognize state property, the translation of Yugoslav concepts into internationally applicable categories is (or can be turned into) an extremely sophisticated exercise in legal theory.

Furthermore, the choice between a wide and a more narrow definition has farreaching effects on the economic results of the succession process, the wide definition favouring the FRY. (If a large number of industrial assets located in other Republics are included in the succession process, because the funds with which they were created came from the federal budget, there will be large sums of compensation to be transferred, from which Serbia would be the main beneficiary.)

After an attempt to reach agreement on a formal definition of "State Property" had reached an impasse during the summer of 1992, the effort had been suspended in the hope that a concrete inventory of assets and liabilities to be divided might be agreed through an inductive approach, circumventing the difficulty of agreeing on an abstract, legal definition. The FRY delegation at the time, whose composition had been entirely changed by the Panic government, had co-operated rather constructively on this effort, undertaken in the economic working group assisted by private consultants. However, the inventory resulting from the exercise still contained a large number of reservations when it was transmitted to the Working Group on Succession for settlement of legal problems underlying the reservations mostly reflecting the above-mentioned difference over the definition of the subject of division ("state property").

After the change of government in Belgrade in March 1993 the delegates appointed to the working group by the Panic government during the summer of 1992 were again replaced, mostly with the ones that had preceded them, including Academician Kosta Mihejlovic, who is now the head of the six-member FRY delegation, and there seems to be a total disavowal of anything accomplished in the meantime.

During this meeting, at the insistence of the FRY delegation, there was a return to the discussion of a possible conceptual definition of the subject of succession. The discussion was conducted on the basis of two FRY working papers, which other delegations accepted in the expectation of being able subsequently to attempt a definition on the basis of the inventory - an expectation which was not fulfilled (cf. below).

At the end of the third day of discussions, the chairman concluded that it did not seem possible on the basis of present instructions to delegations to reach consensus on a definition of the subject of succession. The track based on conceptual arguments and analysis of the nature of property rights in the former SFRY was blocked. Behind the disagreement over concepts and definitions lay a conflict of economic interests. As long as this conflict of interests remained expressed in conceptual terms, it could not be reconciled. The only way that might offer a chance of overcoming the disagreement seemed to be a procedure that would allow a compromise through a trade-off of interests at stake. This would be pos-

sible if the group would continue working on the basis of the draft inventory, trying to eliminate the many reservations placed by delegations on the items of the inventory. Such an approach would not disregard legal arguments and principles, but would give them a role in a more concrete, transparent negotiation process.

As the FRY delegation refused to become engaged in such an exercise either at this meeting or a subsequent one, the Chairman concluded that discussion of this subject could not be fruitfully continued until there had been a review in respective capitals of the instructions delegations were now holding. He would try, through informal consultations with delegates and the Conference co-chairmen in the coming weeks, to ascertain when the group should be reconvened and with what agenda.

3. In the interval between this meeting and the previous one, the co-chairmen have requested advisory opinions from the Badinter Commission on six questions including the definition of the subject of succession. The Government of the FRY had reacted to this move with a statement including the following paragraph:

"The federal Government reiterates the position of the Federal Republic of Yugoslavia presented at the meeting of the Conference on Yugoslavia in Brussels and at the London Conference that all disputes that may arise vis-à-vis the division of assets and liabilities, should be referred by agreement either to the Permanent International Arbitration Court in the Hague or to an ad hoc arbitration court."

During the working group meeting, delegations referred several times to the request for advisory opinions pending with the Badinter Commission, the FRY delegation reaffirming its unwillingness to be influenced by anything coming from the commission and warning that the procedure of appealing to the commission for advice on questions still under discussion in the working group with the purpose of reaching consensus could undermine the raison d'être of the working group, if not of the whole conference.

The Chairman attempted several times, during sessions and in private conversations with delegates, to explore whether the last sentence of the statement quoted above - on litigation in the International Court of Justice at an alternation to the Badinter Commission - reflected a serious Serbian interest in submitting the questions to any such forum for binding rulings, and whether all of the other successor states would be willing to do so. The Serbian response was evasive, while other delegations expressed attachment to use of the Badinter Commission being an organ of the Conference in whose authority also the Serbian side had, in the view of the other delegation, at least acquiesced.

These reactions, as well as the course of the meeting as a whole, therefore seem to confirm the need for the adversory opinion, now requested from the Badinter Commission.

At the end of the meeting, and when saying good-bye to the Chairman individually, several members of the FRY delegation appeared embarrassed at having been isolated and blamed for the lack of progress during the session, stressing the need for further infor-

mal contacts to explore possibilities of renewed efforts to reach consensus.

INTERNATIONAL CONFERENCE
ON THE FORMER YUGOSLAVIA

New York, 5 May 1993

TO: Lord Owen
Mr. T. Stoltenbergcc: Mr. P. Hall
Mr. J. Bojer
Mr. B. RamcharanFROM: P. Szasz SUBJECT: Objection by the FRY to the Questions concerning State
Succession that the Co-Chairmen addressed to the
Arbitration Commission at the request of the Chairman
of the Succession Issues Working Group

1. By letter of 5 May (copy attached) Dr. Pavicevic communicated to the Co-Chairmen a "Statement" on behalf of the FRY objecting to the submission to the Arbitration Commission for advisory opinions of a number of questions concerning the succession of States. These questions had been formulated by the Chairman of the Succession Issues Working Group and were submitted to the Commission on 20 April by a letter of Lord Owen on behalf of the Co-Chairmen.

2. In this connection it should be recalled that when Lord Carrington, on 18 May 1992, submitted a number of questions to the Arbitration Commission on behalf of the EC Conference for Peace in Yugoslavia, the Presidents of the Republics of Montenegro and of Serbia, in a joint letter of 8 June, raised a series of objection, some of which are similar to those here advanced. The Commission dealt with these objections in a Preliminary Decision issued on 4 July -- on the same day that it issued its substantive responses in Advisory Opinions Nos. 8-10.

3. I would therefore suggest that instead of the Co-Chairmen responding substantively to the FRY objections, they merely communicate these to the Commission (draft letter attached), and inform Mr. Pavicevic thereof (draft letter attached).

4. It is, however, of some interest to note that the FRY appears to be offering, in the fourth paragraph of its Statement, to litigate these questions in either the Permanent Court of Arbitration or in an ad hoc arbitration court. Somewhat similarly, in the above-cited letter of 8 June 1992, the Presidents of Montenegro and of Serbia appear to have offered litigation in the International Court of Justice as an



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10



TO: Lord Owen
Mr. Stoltenberg

FAX NO.: 44.71.5384004

FROM: Paul Szasz

DATE: 6 May 1993

PAGE: 1 of 13

SUBJECT: Arbitration Commission

Attached are two memoranda concerning questions submitted or that might be submitted to the Arbitration Commission, together with three draft letters for your approval.

cc: ICFY Geneva

- 2 -

alternative to the Badinter Commission. One might, therefore, explore with the FRY delegation to the Succession Working Group whether they would seriously be interested in submitting these questions to any such forum for binding rulings and at the same time see if all of the other successor States would be willing to do so. Undoubtedly, a binding judicial or arbitral award would be preferable to a non-binding Advisory Opinion from our Arbitration Commission.

- 3 -

Draft Letter by Co-Chairmen
to the President of the Arbitration Commission

Dear President Badinter,

In connection with the questions concerning the succession of States that Lord Owen addressed to you on 20 April, we have received from the Deputy Head of Delegation of the Federal Republic of Yugoslavia to the Conference a letter dated 5 May and enclosing a Statement of the Government of the Federal Republic of Yugoslavia concerning these proceedings.

Attached hereto please find a copy of the above-cited letter and Statement.

Sincerely yours,

- 4 -

Draft Letter by Co-Chairmen to Dr. Pavicevic

Dear Dr. Pavicevic,

This is to acknowledge your letter of 5 May, transmitting to us a Statement by the Government of the Federal Republic of Yugoslavia concerning certain questions on the succession of States that the Co-Chairmen recently addressed to the Arbitration Commission of the Conference.

As the Statement raises a number of legal questions concerning the competence and jurisdiction of the Arbitration Commission, we have considered it appropriate to transmit it to the Commission itself, which will no doubt take it into account in its consideration of the questions submitted to it.

Sincerely yours,

SENT BY: U.N. ICFY NY

; 5- 6-93 ; 20:00 ;

U.N. ICFY NY-

4122 9170079;# 6/13

cc Mr STOLTENBERG N.Y.

MR BOUTER

Permanent Mission of the Federal Republic
of Yugoslavia to the United Nations Office
5, ch. Thury, 1208 G e n e v a
Phone: 346.44.53 and 346.68.66
Fax: 346.44.36 Telex: 427-784

5 May 1993

Dear Sirs,

I have the honour to transmit herein the Statement of the Government of the Federal Republic of Yugoslavia concerning the initiation of proceedings before the Arbitration Commission of the Conference on Yugoslavia.

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

Dr. Vladimir Pavicovic
Dr. Vladimir Pavicovic
Deputy Head of Delegation of the
FRY to the ICFY and
Ambassador. Chargé d'Affaires a.i.
of the FRY to the UNO at Geneva

Mr. Thorvald Stoltenberg and
Lord David Owen
Co-Chairmen of the
International Conference
on the Former Yugoslavia
United Nations Office
G e n e v a

Following the announced initiation of proceedings before the Arbitration Commission of the Conference on Yugoslavia concerning the principles on the basis of which succession of States would be effected between the Socialist Federal Republic of Yugoslavia - as predecessor State, on the one hand, and the secessionist former Yugoslav republics - as successor States, on the other, the Government of the Federal Republic of Yugoslavia has made the following

S T A T E M E N T

as stated by the delegation of the FR of Yugoslavia at the Brussels meeting of the Conference on Yugoslavia and at the London Conference on Yugoslavia, the FR of Yugoslavia does not recognize the jurisdiction of the Arbitration Commission, known as the Badinter Commission, in the assets and liabilities division procedure and is not agreed that the Commission issue advisory opinions on the principles on the basis of which succession of States would be effected between the Socialist Federal Republic of Yugoslavia - as the predecessor State, on the one hand, and the secessionist former Yugoslav republics - as successor States, on the other.

The Government of the FR of Yugoslavia also deems unacceptable that the question of principles relevant for the succession procedure be discussed before any body, prior to substantial discussion of these principles within the succession group of the Conference on Yugoslavia.

The Government of the FR of Yugoslavia wishes to recall that in the sense of international law the Arbitration Commission was not established or composed for arbitration purposes, while in its work within the Conference on Yugoslavia so far it has been seriously in breach both the law of procedure and the implementation of material law.

The federal Government reiterates the position of the Federal Republic of Yugoslavia presented at the meeting of the Conference on Yugoslavia in Brussels and at the London Conference that all disputes that may arise vis-à-vis the division of assets and liabilities, should be referred by agreement either to the Permanent International Arbitration Court in the Hague or to an ad hoc arbitration court.

The Government of the FR of Yugoslavia considers arbitration proceedings in the settlement of the contentious issues that may arise in the work of the Conference on Yugoslavia as proceedings before the court of law in the sense of general

international law and not as proceedings before the Arbitration Commission presided by Mr. Badinter.

We recall in its reply to the letter of Mr. Badinter, President of the Commission, of 3 June 1992, that it considers the opinions of the Commission doctrinary in the sense of Art. 38 (D) of the Statute of the International Court of Justice, which do not constitute a legal ground for any valid decision. The FR of Yugoslavia shall consider null and void and non-binding any opinion of the Commission adopted in the procedure to which it has not agreed.

INTERNATIONAL CONFERENCE
ON THE FORMER YUGOSLAVIA

New York, 5 May 1993

TO: Lord Owen
Mr. T. Stoltenberg

CC: Mr. C. Vance
Mr. P. Hall
Mr. B. Ramcharan

FROM: P. Szasz

SUBJECT: Proposed request for an advisory opinion from the
Arbitration Commission concerning the guarantee of
minority rights in Bosnia and Herzegovina

1. In a letter the President of the Arbitration Commission addressed to Mr. Vance on 29 April (a copy of which is attached, together with its second annex), which was presumably also sent in identical form to Lord Owen, Mr. Badinter reverts to a suggestion that he made during the Co-Chairmen's visit to Paris on 11 March in connection with a request for an advisory opinion that the Government of Bosnia and Herzegovina had a few days earlier attempted to address directly to the Commission, concerning the alleged incompatibility of certain of the Constitutional Principles with Commission Advisory Opinion No. 4 (on the international recognition of the Republic of Bosnia and Herzegovina). It was then anticipated that the BiH Government, on being informed by the Commission that only the Co-Chairmen of the Steering Committee could make such a request, would then ask the latter to submit the Government's questions to the Commission -- and that the latter would decide not to do so on the ground that the questions were primarily political and at best marginally of a legal nature. However, in order to soften such a rejection, it was suggested that the Government be informed that in due course it could ask the Co-Chairmen to address to the Commission questions concerning the proposed new constitution itself.

2. In the event, the Bosnian Government never asked the Co-Chairmen to forward its questions to the Arbitration Commission -- perhaps because in the meantime they has found a better forum in which to conduct high-profile litigation, i.e. the International Court of Justice to which they addressed an Application under the Genocide Convention. Nevertheless in his newest letter President Badinter proposes the formulation of either one or three questions (set out in the attached second annex to his letter) that he considers might be addressed to the Commission at any convenient time.

- 2 -

3. As indicated in para. 1, it was my understanding that the Co-Chairmen's offer to address questions to the Commission on this subject was only meant to be made if the Bosnian Government had asked them to address to the Commission the political questions it itself had tried to submit. Furthermore, such offer would relate to questions concerning the legality of the eventual draft of the new Constitution -- should the Bosnian Government wish to challenge these -- rather than requesting suggestions as to how to implement the Constitutional Principles. In particular, it would seem most unwise to ask and such question of the Commission, for we would then more or less be bound by the answer and thereby reduce our flexibility in finding negotiated solutions.

4. I therefore suggest that a polite but negative response be sent to Mr. Badinter, along the lines of the attached draft letter.

- 3 -

Draft letter by Co-Chairmen
to the President of Arbitration Commission

Dear President Badinter,

First of all, we would like to congratulate you on your re-election, by your colleagues, as President of the Arbitration Commission of the Conference, of which you informed us by letter of 29 April. We are certain that under your renewed leadership the Commission, which has now been reconstituted as an organ of the Conference, will be able to assist us in a number of ways in carrying out our difficult and complex mandate.

We have taken due note of the Rules of Procedure that the Commission adopted at its first session after its reconstitution. The text of these Rules has been communicated to the members of our Steering Committee by a Conference Information Note.

Finally, we thank you for your suggestion concerning the formulation of a question or questions that we might address to the Commission concerning the protection of minority rights in Bosnia and Herzegovina. However, it appears to us inopportune to do so at this time. Rather, it was our thought that if the Bosnian Government should ask us to forward to you the questions it had originally attempted to address to you directly, we might, in explaining any refusal to do so, suggest that in due course if they were dissatisfied with the new constitution on which negotiations are yet to begin, they could ask us to address to the Commission questions concerning the legality of that instrument. In the event, we have not had to make such a suggestion because the Bosnian Government appears to have abandoned its attempt to approach the Commission at this time.

Looking forward to our further close collaboration,

COMMISSION D'ARBITRAGE

Le Président

Paris, le 29 avril 1993

Monsieur le Président, *Dear Cyrus,*

Réunie à Paris le 26 avril dans sa nouvelle composition, la Commission d'Arbitrage a bien voulu me renouveler sa confiance en tant que Président.

A ce titre, je vous adresse copie du règlement de procédure que la Commission a adopté conformément au paragraphe 4 de son nouveau mandat.

Par ailleurs la Commission a désigné les rapporteurs chargés de préparer des projets d'avis sur les questions dont vous m'avez adressé le texte le 22 avril et qui ont été communiqués pour observations à l'ensemble des Etats issus de la dissolution de l'ancienne Yougoslavie. La Commission a fixé la date de sa prochaine réunion, durant laquelle elle s'efforcera d'adopter les avis demandés, au 15-16 juillet 1993.

Je saisis cette occasion pour donner suite à notre entretien du 11 mars dernier. Nous avons évoqué l'éventualité d'une saisine de la Commission au sujet des garanties des droits des minorités en Bosnie-Herzégovine. Je joins le texte de la ou des questions qui, après réflexion, me paraissent pouvoir être adressées à la Commission le cas échéant, au moment que les Co-Présidents jugeront opportun.

Je vous prie de croire, Monsieur le Président, en l'assurance de ma considération la meilleure,

Yours Truly,
Robert Badinter
Robert BADINTER

P.J. : - Règlement de procédure.

- Texte des questions pouvant être posées à la Commission au sujet des garanties des droits des minorités en Bosnie-Herzégovine.

Monsieur Cyrus VANCE
Co-Président de la
Conférence Internationale sur l'ex-Yougoslavie
Palais des Nations
1211 GENEVE 10

COMMISSION D'ARBITRAGE AU SUJET DES GARANTIES DES DROITS DES
MINORITES EN BOSNIE-HERZEGOVINE

a) - question unique :

"Selon Quelles modalités pourraient être mis en oeuvre les principes n° 8 et 9 acceptés par les trois parties dans l'Accord signé le 30 janvier 1993 ?" (1).

b) - ou bien, en les décomposant :

"1 - Quelles normes internationalement reconnues devraient être incorporées dans la future Constitution de la Bosnie-Herzégovine pour assurer la protection la plus élevée dans le domaine des droits de l'homme, prévues par l'Accord signé le 30 janvier 1993 (principe n° 8) ?

"2 - Quels mécanismes internes et internationaux pourraient être envisagés pour en garantir le respect ?

"3 - Quels dispositifs internationaux de surveillance ou de contrôle devraient être prévus par la Constitution à titre transitoire pour garantir le respect des dispositions de la future Constitution en application du principe n° 9 de l'Accord signé le 30 janvier 1993 ?"

(1) "n° 8) La Constitution assure les normes internationalement reconnues les plus élevées dans le domaine des droits de l'homme et en garantit le respect au moyen de mécanismes internes ainsi qu'internationaux.

n° 9) La Constitution prévoit un certain nombre de dispositifs internationaux de surveillance ou de contrôle, qui devront rester en place au moins aussi longtemps que les trois peuples constitutifs n'auront pas décidé, par consensus, de les supprimer".

090/2



COMMISSION
OF THE EUROPEAN
COMMUNITIES

DIRECTORATE-GENERAL
EXTERNAL RELATIONS

Brussels, 12 March 1993.

GR/fw

Summary of Activities of Working Group
on Economic Issues in 1993

Meeting: Brussels 20 and 21 January 1993

The six sub-groups charged with the valuation of the assets and liabilities of the former Federation met to review the latest draft of a report on this valuation. The meeting revealed uneven progress across the six sub-groups with some basic information still missing and some estimated values being contested. The gap between the undisputed part of the inventory and those parts which some of the delegations felt ought not to be considered in the framework of state succession, remained wide.

Subsequent to this meeting some further information and comments were received which were included in the report. The final draft of this was submitted to the co-chairmen on 4 March.

Meeting: Geneva 17 February 1993

The main item on the agenda was the proposed high level conference on the economic future of the countries of former Yugoslavia. All delegations except Slovenia (the delegation of Bosnia-Herzegovina did not attend) thought the Conference to be a useful idea, but a number of conditions will need to be satisfied before it can be held, notably an effective ceasefire, the emergence of a global political settlement, progress on the lifting of sanctions and activation of the PHARE programme. Further work on the draft paper on the economic situation of the countries of the former Federation as well as submissions from the Republics will follow, but progress is now heavily dependent upon political factors.

Forthcoming Work Programme

A draft work programme for the Group will soon be submitted to the co-chairmen.

Jean DURIEUX

Working Group on Succession Issues

International Conference on the

Former Yugoslavia

Geneva, 5 to 7 April 1993

F.R. of Yugoslavia

Proposal for Agenda Item 1:

CHOICE OF RELEVANT LEGAL RULES FOR SUCCESSION

Proposal:

"1. The F.R. of Yugoslavia and the successor States shall establish the rules for succession on the basis of mutual consent;

2. If mutual consent is not reached, international law rules shall be applied. Principles contained in the 1978 and 1983 Conventions on Succession of States shall be applied if they reflect the common international law rules."

Interpretation:

The disposition of parties should be the fundamental principle in formulating the relevant rules of succession. Such an orientation is in accordance both with international practice

and with adopted rules of procedure at the Conference whereby decisions are taken by consensus. It is also a fact that international law rules, as well as those contained in the 1978 and 1983 Conventions, are of a residual nature. The disposition of parties renders possible the formulation of the most appropriate ad hoc solutions to the given circumstances of succession.

If mutual consent is not reached common international law, in accordance with general legal principles, shall be applied. The implementation of common international law means that those parts of the 1978 and 1983 Conventions which express common law, that is codification as set out in Article 15 of the Statute of the United Nations Commission for International Law, shall be applied.

The implementation of the Conventions on Succession of States as independent, autonomous sources in this concrete case, is not viable as both Conventions are lex ferenda. The insignificant number of ratifications over a relatively long period clearly assert that the international community has not formulated an opinio juris whereby the said Conventions would represent autonomous sources in the succession procedure.

Proposal for Agenda Item 2:

DEFINITION OF "STATE PROPERTY"

Proposal:

"'State Property' means the property of the federation and its institutions, property formally belonging to the republics and those parts of the so-called 'social property' which have in their totality or in part been created by or financed from the federal budget or from those of other republics."

Interpretation:

The basic significance of the definition of "State Property" emanates from the fact that only the above defined property (or, in concreto, parts of the property) is the subject matter of succession. Hence, the question of the definition of "State Property" formally precedes any discussion on succession since without such a definition the latter has no precisely defined subject matter.

With regard to the definition of "State Property", international law refers to the internal law of the predecessor State, meaning that this notion in this concrete case is defined on the basis of the internal law of the SFRY in force at the date of succession. Since the internal law of the SFRY did not contain

the notion "State Property", it is indispensable that, on the basis of rules of interpretation of legal regulations, certain forms of property as regulated by Yugoslav law in force at the date of succession be adapted to the classical notion of "State Property".

Defining "State Property" as the property of federal organs, of republican organs and as those parts of social property jointly financed, is closest to the principle of equity, since: a) according to the legislature of the SFRY, property of the federal and republican organs is public property; and b) the said property was created through joint, social financial means on which detailed documentation exists.

The above stated definition has, on the one hand, been elaborated on the basis of the principle of equity and the principle of prevention of unjust enrichment, and, on the other, on the specific, sui generis regime of public, social property, as the form of ownership in force in accordance with the internal law of the SFRY at the date of succession.



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10



090/2

[Red circular stamp]

Geneva, 24 March 1993

Meeting of Working Group on Succession Issues from 8 to 11 March 1993 and Joint Meeting between the Succession and Economic Issues Working Groups on 12 March 1993

Attached for your information a summary on the above mentioned meetings by the Chairman of the State Succession Working Group, Ambassador Jorgen Bojer. The text has been distributed as COREU to the member states of the European Community.

Bolette Nyrop
Bolette Nyrop

HO ✓	PH
PS	GA
JW	GMW
LV	SC

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subject: coyug: meeting of the icfy wg on succession issues and joint meeting between this group and the wg on economic issues. 8-12 march 1993.

for the information of partners, the presidency hereby circulates the following chairman's summary on the meeting of the icfy wg on succession issues and joint meeting between this group and the wg on economic issues, 8-12 march 1993.

the meeting of the wg on succession issues held in geneva on 8-11 march 1993 was untypical in not having participation from fry (serbia, montenegro) nor a fully empowered delegation from bosnia-hercegovina.

the mission of fry (s.m.) had asked - by fax received on 4 march - for a postponement of the meeting until after 22 march with reference to the change of government in belgrade. however, as other delegations had already undertaken extensive preparation for the meeting and did not accept the request for postponement, the chairman informed the fry that the meeting could not be postponed at such short notice, expressing the hope that fry would be able to solve its problem of representation. there was no reaction from belgrade nor the fry mission in geneva to this reply.

the delegation of bosnia-hercegovina gave as reason for its non-participation the impossibility for its delegates - who have remained in zagreb since the previous meeting in january and had secured airline tickets etc. - to go to sarajevo to receive instructions prior to the meeting due to unprofor's recent restrictive practice concerning transport of government representatives in and out of sarajevo. (the charge d'affaires in geneva was present during part of the meeting and intervened in discussions on a personal, uninstructed basis).

thus, with only croatia, macedonia and slovenia effectively represented, proceedings of the wg showed a large measure of agreement on the main issues discussed, i.e. succession with respect to archives, property abroad, and pension obligations.

the two first items were discussed with the benefit of the work done by the working group on economic issues and in the perspective of possible separate action on distribution of archives and property abroad, without awaiting settlement of other aspects of the succession process. these two areas were chosen in accordance with conclusions drawn

by the chairman of the economic working group because of their suitability for separate treatment in terms of both immediate need and practical feasibility. it could not be overlooked, however, that fry still maintains its position of principle that the division of assets and liabilities of the former sfry should be undertaken as a global process, allowing all categories of assets and liabilities to be balanced in a package deal.

on archives, agreement was reached among the delegations participating on a set of rules to govern the succession process. the rules provide for distribution among successor states of all state archives of the former sfry, based on criteria of need and relationship, supplemented by a general criterion of equity. provision is made for possible joint custody of central and federal archives that are not related to any particular successor state or states, but even for such archives joint custody presupposes unanimous agreement among successor states. the rules contain answers to a number of legal problems submitted to the wg on succession by the subgroup of archives specialists under the economic working group.

work proceeded on the basis of a croatian draft which had been informally discussed with the delegate who had headed the delegation from belgrade to the most recent meetings of the wg. however, the trend of the modifications the paper underwent during the meeting, aside from technical revisions by the secretariat, was clearly away from some of the formulae favoured by fry, in particular the idea of keeping a considerable part of the archives together under joint administration.

the rules are based on and refer to article 31 of the 1978 vienna convention on succession of states in respect of

state property, archives and debts, which relates to the dissolution of the predecessor state (not secession from it). this frame of reference, though clearly justified by opinions nos. 3 and 10 of the arbitration commission ('adinter commission') and by security council resolution 777, has also hitherto been opposed by the delegation of fry.

on p r o p e r t y a b r o a d, a draft report was agreed, based upon a croatian draft which, however, was modified considerably by amendments proposed by other delegations as well as by a technical revision by the secretariat. the draft report sets out rules for the distribution of property administered by the federal secretariat for foreign affairs of the former sfry as indicated on a list of such properties prepared by the economic wg (some 127 items), tentatively valued at the equivalent of us dollars 260 million, in accordance with a scale for distribution (see below). the distribution is envisaged as a phased process, to be carried out at a single session of the succession wg, if possible this year:

- (1) each party presents a list of the properties it desires,
- (2) the properties are considered one by one in an order specified by the rules,
- (3) on property desired by only one party lots are drawn, and finally the undesired properties are distributed,
- (4) a party may participate in (3) until the value of the properties assigned to it exceeds by 50/0 the product of the total value of the properties and the percentage assigned to that party on the agreed scale,
- (5) the result of the process is to be recorded in a list to be signed by the delegations of successor states, witnessed by the chairman of the working group and the co-chairmen of the icfy and registered with the secretary-general of the un, as part of a procedure to facilitate the transfer of legal title to and actual pos-

session of the properties.

while progress towards agreement on these procedural arrangements was relatively smooth, it proved impossible to agree on the key issue: the scale for distribution of the properties among successor states.

the croatian draft that served as the basis for discussion had stipulated that distribution should be based on the same scale as the one established by the international monetary fund for the purpose of succession of rights and obligations of the former sfrj within that organization. both other delegations present rejected that basis. the slovenian delegation favouring a scale based on contributions of former republics to the federal budget, while the macedonian delegation argued that the main criteria for establishing the scale of distribution should be population and territory.

the discussion showed that particularly the macedonian delegation was quite firm in its opposition to use of the imf scale, while the other delegations showed some flexibility towards the idea of adjustment of their favoured principle on grounds of equity. some criteria were mentioned as possible ingredients in a compromise. besides the ones presented by macedonia: viability of successor states, avoidance of undue enrichment or advantage to any one successor state. damage suffered during the war (although use of this criterion was probably not meant as a serious suggestion and was strongly contested by macedonia).

it was argued that several considerations could justify a reduction of the share falling to serbia/montenegro. which had the advantage of possession of most other assets of the

former story. one way to achieve the same objective. it was suggested. could be to include among the assets to be distributed also property in belgrade administered by the federal secretariat for foreign affairs.

to break the deadlock it was decided to ask the wg on economic issues to provide. for the next session of the working group on succession issues. some alternatives to the scale established by the imf as a basis for distribution of properties abroad. the expectation was that the economic wg could be able to illustrate the effect on the scale for distribution of the use and relative weighting of different criteria relevant to the purpose of achieving an equitable distribution.

the assumption more or less implicitly underlying the decision of asking the economic wg to provide this input was that the wg on succession would. in case of renewed failure to reach agreement on a scale for distribution, try to establish a basis for having the question submitted to binding arbitration.

(in this context it should be noted as a signal of what should be expected when discussion is resumed on the basis of an input from the economic wg that. when the agenda for the next session of the economic working group came up for discussion at the joint meeting of the two working groups on friday. 12 march, it appeared that the delegation of croatia - in what looked like a retreat from its more flexible position during discussion of the question in the succession wg - made it clear that croatia continued to regard the imf scale as the relevant basis and to oppose the use of different distribution keys for different areas of the succession process.)

on pension obligations, a rapprochement was achieved, since the macedonian delegation gave up its opposition to the principle favoured by all other delegations except fry, i.e. that the obligation to pay federal pensions falls to the successor states on the basis of the new citizenship.

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on friday, 12 march, a joint meeting was held of the working groups on succession issues and on economic issues, in which the representation of the successor states coincides to a large extent.

the purpose of the joint meeting was to take stock of the implications for the future work of the two working groups of the presentation by the chairman of the economic wg of his report on the valuation of the assets and liabilities of the sfry and his recommendation to the co-chairmen of the steering committee of the conference that all work relative to state succession be passed to the succession working group.

while the members of the working groups recognized that the decision on distribution of tasks among the working groups was up to the co-chairmen, the prevailing view among them that it would be preferable to have the economic working group continue its effort to reach a more precise and agreed inventory of the assets and liabilities of the former sfry. to this the chairman of the economic working group replied that the potential benefits for the succession process of a continuation of this effort had to be compared to the costs, and that practical feasibility should prevail over academic perfection. he added that the economic wg, while still available for assistance to the wg

on succession whenever the latter would need an input of economic expertise, would have important, forward-looking work of its own to do if the expectations of progress in the peace process were fulfilled.

When the decision to hold the joint meeting of the two working groups was taken, it had been hoped that it could have provided an opportunity to make progress towards agreement on the definition of state property subject to succession, thereby allowing a considerable reduction of that part of the inventory which relates to disputed items. (the fry position in this area has so far been to insist on the inclusion of every asset which at any time received financial support from the former sfry, while other successor states consider the property of the former sfry in a much more limited way). However, due to the absence from the meeting of a delegation representing the fry there could be no meaningful discussion of this subject.

In return, the meeting provided the opportunity for an exploration of possibilities for approaching a distribution of financial assets and liabilities, mainly hard currency assets frozen in foreign banks - a problem which had been frequently referred to during the preceding meeting in the succession working group.

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the main reasons why the non-fry delegations set such high priority to the two categories of assets dealt with in this week's meetings - property and hard currency resources abroad - are, firstly, that these assets, while representing only a small percentage of the total assets of the former sfry, are the only assets not totally controlled by the fry and therefore accessible for distribution among

the other successor states with help from the international community. and, secondly, that further depletion of their volume and value may occur through the continued, though in most cases limited, possibility of the belgrade authorities to dispose of them.

more generally, concern and discontent was expressed by several delegations over the continued de facto possibility for fry to act as sole successor to the former sfry. as an example, it was pointed out that the dissolution of sfry had not affected in practice the functions of the 'national bank of yugoslavia' as the agent to confirm transactions with the former yugoslav debts on the secondary market.

various concrete proposals were made regarding assistance that the icfy could give to alleviating the problems which are connected with the refusal of the fry to co-operate on partial settlements in the succession process:

-could the icfy assist in obtaining - probably through the bank of international settlements - information on assets frozen in foreign banks?

-could the icfy issue a statement addressed to the international banking and financial community that all monetary resources and other assets of the former sfry are subject to the succession procedures within the icfy, and that any disposition of such assets in contradiction with this principle must be terminated and those who benefited from such use must pay compensation?

-could the arbitration commission be asked - under its new rules - for advisory opinions on such questions as the right of other successor states to take over properties abroad if the fry does not cooperate on the succession

process?

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as it will be seen from the brief summary above, the working group on succession issues is increasingly preoccupied by the need to break the de facto continuity between the former sfry and the fry, which is felt to be at variance with the determination by the badinter commission of the de jure dissolution of the sfry. frustration is caused by the ability of the fry by setting the (slow) pace of proceedings to continue enjoying the advantages of control over assets which are to pass, through the succession process, to other successor states.

further thought and discussion will be devoted in the coming weeks to exploring possible solutions to these problems, whether through pressing for consensus by persuasion at higher levels than that of the working group, by using the authority and prestige of the icfy to influence de facto conditions, or by seeking remedy through legal procedures, such as recourse to the arbitration commission for advisory opinions or binding decisions.



COMMISSION
OF THE EUROPEAN
COMMUNITIES

Brussels,

EXTERNAL RELATIONS

International Conference on the Former
Yugoslavia: Working group of Economic Issues

Discussion Paper: Criteria for the Distribution of Property Overseas
Points of Reference

As for other questions regarding succession, the 1983 Vienna Conventions are taken as a point of reference. As regards property overseas, the relevant part of the Conventions recommends that this property should be divided in equitable proportions and that specific historical links between certain properties and successor states should be taken into account. The present paper is concerned with the first half of this recommendation - the question of what constitutes "equitable proportions".

Economic significance of the Division of Property Overseas

In economic terms, the distribution of former Federal property overseas among the successor states represents a transfer to each from the former common pot. The assets in question, although embodied in buildings and equipment, are to varying degrees fungible and so the transfer could be considered to be a simple one-off financial payment into the state budgets of each of the successor states. However, in practice, the transfer of such property, as a transfer in kind, is likely to have a somewhat different impact than the simple transfer of money as the buildings concerned represent recognised representational facilities, are not perfectly liquid, and are in themselves assets likely to offer a return through rising property prices. It is likely that most of these will be retained by Republics in their current use rather than being sold to realise an immediate financial benefit. This implies that it will be necessary to bear in mind the use and nature of the property in question when considering criteria for distribution.

Towards an Equitable Principle

There are two principal positions from which to view different criteria for the division of assets;

- a. to consider how the assets were accumulated; an ex ante perspective
- b. to treat the assets as given; an ex post perspective

The implications of these different approaches are outlined below;

- 2 -

a. The ex ante perspective

This would involve distributing property abroad in accordance with the manner in which this property was accumulated. As the responsibility of the Ministry of Foreign Affairs the assets in question were paid for from the Federal Budget and so it is to this that we should look in deciding upon criteria for division. In 1990 revenues to the Federal Budget came from the following sources;

Customs Duties	43.5%
Turnover Tax	47.7%
Contributions From Republics and Autonomous Regions	7.8%
Others	0.9%

It is clear that a true picture of the contribution of each Republic to this budget will not be given simply by looking at direct Republican contributions since these formed a small part of total Federal revenue. Instead it will be necessary to find a proxy which reflects more closely real contributions. Given the significant proportion of revenues from the turnover tax and customs duties, and that direct contributions were related to relative wealth, the percentage of Yugoslav GDP produced by each Republic would provide a useful proxy. An example of the sort of distribution this would produce is given in Table A of the annex.

However, examining the distribution of Federal property abroad in this way concentrates on only one aspect of the problem. It might be suggested that while GDP is a useful criteria to focus on, distribution in terms of it neglects the reasons why contributions were made on this basis. In other words, the contributions reflected the ability of Republics to pay into the Federal budget and do not reflect the need of different Republics to benefit from it. This notion brings us to consideration of another perspective which treats the stock of Federal property as given and instead examines the needs of different Republics in relation to this stock of property.

b. The ex post perspective

This involves the assumption that the stock of Federal property abroad is given and then looks at the rights and needs of Republics on this basis. Such an assumption could be justified on the grounds that the property was formerly held in common through the SFRY, a state of which each of the successor Republics were equally part.

To use this approach requires the development of criteria for assessing the needs and rights of Republics in relation to the assets in question. The different possibilities considered below implicitly treat Federal property abroad as a group of assets which are not perfectly liquid and so take into account the nature of the property to be distributed. This means that not all the criteria suggested would be immediately applicable to other types of property.

The question of what criteria need to be used to reflect the rights and needs of Republics in relation to Federal property abroad is not amenable to a single, uncontroversial answer, but there are, broadly, three types of response:

- a. a neutral position; this would avoid discrimination among republics on economic, political or other grounds, by simply recognising the classic liberal principle that each individual has wishes of equal value and that equal weight should be given to these wishes. This implies that each state has a right to representation precisely as a function of the number of individuals in that state (or citizens of that state). Thus, this principle demands that property be divided in proportion to the population of each Republic. An example of the results of such a division is given in Table B of the Annex.
- b. a positive position; developing the principle of equal representation of individuals, it could be recognised that factors other than property owned abroad affect the ability of states to express the interests of their citizens. These factors are highly complex and need certain simplifications to be made in order that they can become tractable. The most helpful simplification is to recognise that influence tends to increase with economic well-being, and so is some function of wealth, or for example GDP per head. In this case, it would be necessary to correct the division according to the population principle to compensate for the less advantageous position of the economically weaker states. This implies a composite criterion, with division being in direct proportion to population and indirect proportion to GDP per capita. An example of such a division is given in Table C.
- c. an economic position; it could be argued that the need for representation abroad flows not from the equal right of individuals to express their interests, which recognises after all only a potential need rather than actual needs, but rather

- 4 -

arises from the extent to which different states have dealings abroad. Those which have a greater interaction with other states have a corresponding greater need for the facilities to represent themselves abroad. Again, measuring such a propensity for international interaction would be a highly complex exercise, however, by simplifying to deal purely with economic indicators, a useful proxy might be found. It would, for example, appear sensible to argue that the greater the openness of a country to trade, the greater its need for representation abroad and the more it would benefit from such facilities. In this case, an adjustment relating to the dependency of the republican economy on exports could be made to an initial distribution made on population. (Example Table D).

Alternatively, based on a similar approach it could be argued that those Republics with the lowest export propensity are the very ones which would benefit most from a favourable distribution of representational facilities abroad and so the distribution should be amended to reflect the inverse of export propensity as a proportion of GDP. (Example Table E).

Conclusions

There are a range of possible means of distributing property outlined in this paper, examples of which are included in annex. Also given in the annex is the result of distribution according to the shares used by the IMF. No conclusions are drawn here as to which of the above criteria, or combinations thereof (or indeed other possible criteria) would be most suitable for use in dividing Federal property abroad.

Annex 1Implications of Different Criteria for the Value
of Assets Allocated to Each Republic

Total value of Federal property abroad, both immovable assets and equipment is estimated to be YD 3414 million.

N.B. Figures are estimates and percentages may not always add up to 100 due to the effects of rounding.

TABLE A

Criterion : % of GDP (1989)

<u>Republic</u>	<u>Percentage</u>	<u>Value</u> YD million
FRY	37.28	1272.7
Croatia	25.60	874.0
Bosnia-Herzegovina	12.45	425.0
Macedonia	5.46	186.4
Slovenia	13.83	642.9

Source : Plan. Econ.

TABLE B

Criterion : Population (1989)

<u>Republic</u>	<u>Percentage</u>	<u>Value</u> YD million
FRY	44.23	1510.0
Croatia	19.69	672.2
Bosnia-Herzegovina	18.96	647.3
Macedonia	8.96	305.9
Slovenia	8.20	279.3

TABLE C

Criterion : Composite of Population and Inverse of GDP per capita (1989)

<u>Republic</u>	<u>Percentage</u>	<u>Value</u> YD million
FRY	52.6	1796
Croatia	15.2	519
Bosnia-Herzegovina	28.8	983
Macedonia	14.7	502
Slovenia	3.5	119

Source : Plan. Econ.

TABLE D

Criterion: Composite of Population and Relative Export Propensity (1989)
 (% of population x Republican Export as % of GNP/Average Exports
 as % of GNP)

<u>Republic</u>	<u>Percentage</u>	<u>Value</u> YD million
FRY	39.50	1348.5
Croatia	16.07	548.6
Bosnia-Herzegovina	21.13	723.1
Macedonia	7.91	270.0
Slovenia	10.59	361.5

Source : Plan.Econ.

TABLE E

Criterion : Composite of Population and Inverse of Relative Export Propensity
 (1989)

<u>Republic</u>	<u>Percentage</u>	<u>Value</u> YD million
FRY	49.54	1691.3
Croatia	24.14	824.1
Bosnia-Herzegovina	16.99	580.0
Macedonia	10.14	346.2
Slovenia	6.35	216.8

Source : Plan Econ.

TABLE F

Criterion : IMF

<u>Republic</u>	<u>Percentage</u>	<u>Value</u> YD million
FRY	36.52	1246.8
Croatia	28.49	972.6
Bosnia-Herzegovina	13.20	450.6
Macedonia	5.40	184.4
Slovenia	16.39	559.6

SUMMARY TABLE OF CRITERIA FOR

DIVISION OF ASSETS

Republican Shares

Criterion	FRY	Croatia	Bosnia- Herzegovina	Macedonia	Slovenia
1. Population and Inverse of GDP per capita	52.6	15.2	28.8	14.7	3.5
2. Population	44.23	19.69	18.96	8.96	8.20
3. % of GDP	37.28	25.60	12.45	5.46	18.83
4. IMF	36.52	28.49	13.20	5.40	16.39
5. Population and relative export propensity	39.50	16.07	21.18	7.91	10.59
6. Population and Inverse of relative export propensity	49.54	24.14	16.99	10.14	6.35

11 March 1993
final draft

RULES FOR THE DISTRIBUTION OF IMMOVABLE AND MOVABLE PROPERTIES
[ABROAD] ADMINISTERED BY THE FEDERAL SECRETARIAT FOR FOREIGN
AFFAIRS OF THE FORMER SFRY

1. The following Rules define the method of distributing immovable and movable properties of the former SFRY [that are situated abroad], including rights to rented properties, administered by the Federal Secretariat for Foreign Affairs of the former SFRY.

2. ALTERNATIVES

[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 properties, their size and their assessed values in US Dollars, is to be used as the basis for the distribution of these properties. The table prepared on 10 March 1989 by the same Directorate is to be used as the basis for the distribution of buildings.]

[The table prepared by the Consultant, KPMG Peat Marwick, which lists the values of land, buildings and movable property, is to be used as the basis for the distribution of these properties.]

3. The values specified in the table[s] cited in paragraph 2 above are to be used only in the application of these Rules.

4. The total value of the properties listed in the table[s] cited in paragraph 2 above amounts to US\$.....

5. The properties covered by these Rules shall be distributed among the successor States to the former SFRY on the basis of the following scale,

[which was established by the International Monetary Fund for the purpose of succession of rights and obligations of the former SFRY within that organization:

Bosnia and Herzegovina	13.20%
Croatia	28.49%
Macedonia	5.40%
Serbia and Montenegro	36.52%
Slovenia	16.39%]

[based on contributions of the Republics of the former SFRY to the Federal Budget in the period.....]

[based on the criteria of territory and population]

The value of the properties 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 properties shall be distributed in six stages, according to the following groups of countries, considered in the indicated order: OECD Members; rest of Europe; Latin America and Caribbean; Northern Africa; Africa South of the Sahara; Asia. The value of the properties distributed according to these groupings need not correspond to the scales specified in paragraph 5 above.

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

8. Each successor State shall present a list of the properties it desires at the session of the Succession Working Group during which the distribution is to be made. In this list, properties to which title is desired shall be enumerated separately from rental properties.

9. Should only one successor State be interested in obtaining a particular property, then such property shall be allocated to that State.

10. Should two or more successor States be interested in a particular property, such property may be divided by agreement among these States. If agreement is not reached the ownership shall be determined by drawing lots. These determinations shall be made in the order of the groups specified in paragraph 6 above, using the English alphabetical order of countries listed in the property table[s] cited in paragraph 2 above for distributions within a group.

11. A successor State shall lose its right to participate in the distribution process specified in paragraph[s 9 and] 10 above as soon as the value of the property allocated to that State exceeds [by 5%] the share to which it is entitled according to the scale set out in paragraph 5 above. [Should it be determined that a particular property has been allocated to a successor State which thereby exceeds [by more than 5%] the share to which it is entitled, then such property shall be reallocated to a successor State that is entitled to obtain such property by exercising its rights specified in paragraph 5 above.] The successor State, whose portion of property exceeds its share defined in paragraph 5 after completing the final distribution, shall [promptly and effectively] compensate the exceeded amount to those successor States which are below its share limit.

12. Any property in which none of the successor States shows interest shall be distributed after all other properties have been distributed, among those successor States that have not yet reached the limit specified in paragraph 5 above, by following the above-mentioned order of groups and the English alphabetical order of countries within them.

13. The limits specified in paragraphs 5 and 11 above are not applicable to the distribution of rights to rented properties.

14. If successor States desire to exchange certain properties after the distribution has been completed, they may do so by bilateral civil law contract. Such exchanges are outside the scope of these Rules.

15. Movable property [,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,] contained in or associated with a particular immovable property including rented property shall belong to the successor State that becomes the owner of that property. [This Rule is without prejudice to any agreement among the successor States relating to the restitution of objects of art.] A detailed list of movable properties as of 31 December 1990, specified by individual locations on the basis of information presented by the Federal Secretariat for Foreign Affairs of the former SFRY, shall be submitted by the FRY during the session of the Succession Working Group from to....1993.

16. The distribution of property and rental rights according to these Rules shall be carried out during a session of the Succession Working Group to be held ...1993. At the conclusion of that session a final list of the properties distributed shall be signed by the heads of the delegations of the successor States, witnessed by the Chairman of the Working Group and by the Co-Chairmen of the Steering Committee of the ICFY, and registered with the Secretary-General of the United Nations pursuant to Article 102 of its Charter.

17. The Co-Chairmen shall inform the Governments of all countries in which are located properties distributed pursuant to these Rules, with the request that they cooperate in the implementation of the distribution.

18. Legal title to properties distributed pursuant to these Rules shall pass to the appropriate successor State 14 days after the list specified in paragraph 16 above has been signed. The transfer of actual possession shall take place without undue delay and not later than 30 days after that signature.

19. These Rules were adopted during the session of the Succession Working Group held in Geneva, from...to....1993. They shall enter into force upon signature.

[Signatures of the duly authorized representatives of the successor States.]

10 March 1993
final draft

DRAFT REPORT OF THE WORKING GROUP ON SUCCESSION ISSUES

SUCCESSION OF THE EX-YUGOSLAV STATES IN
RESPECT OF STATE ARCHIVES

1. According to Article 20 of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts:

"For the purposes of the articles in the present Part, 'State archives of the predecessor State' means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose."

2. The predecessor State was the "Socialist Federal Republic of Yugoslavia" ("SFRY") which, according to Opinion No. 8 of the Arbitration Commission of 4 July 1992, no longer exists. In its Opinion No. 10 of the same date the Arbitration Commission furthermore concluded that the Federal Republic of Yugoslavia (Serbia and Montenegro) "is a new state which cannot be considered the sole successor of the SFRY". The UN Security Council reached essentially the same conclusion in resolution 777 (1992).

3. In this situation the applicable legal principles are those set out in Article 31 of the 1983 Vienna Convention, which relate to the dissolution of the predecessor State. The documents of the International Council of Archives and other established archivistic standards should give guidance for the implementation of these principles.

4. The subject matter of State succession in respect of the archives of the former SFRY should, by application of the definition in Article 20 of the 1983 Vienna Convention, only be State archives and other documentary materials which were produced or received by the former Central Government and its institutions since 1918, or by the Federal Government and its institutions since 1945, in the exercise of their functions.

5. The principle set out in paragraph 4 is equally applicable if one adopts a broad interpretation of the definition of State archives in Article 20. If it is supposed that the State archives of the former SFRY include all other archives which belonged to the former Federation according to its internal law and were preserved by it directly or under its control, then, after all those parts of the archives in the broader sense are passed to the respective successor States by application of the principle in paragraph 1(b) of Article 31 of the 1983 Vienna Convention, the volume of State archives would again be reduced merely to those that were produced or received by Central or Federal State agencies.

6. It is understood that the term "documents" within the meaning of Article 20 of the 1983 Vienna Convention, includes film, audio and video tapes and other recordings, as well as any form of computerized records.

7. In light of the above, the following Rules shall apply:
- A. Parts of State archives (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.
 - B. Parts of State archives 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.
 - C. 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.
 - D. If more than one State is entitled to certain archives pursuant to Rule A, B or C, these States shall agree which of them shall receive the original, while the others are entitled to make copies.

- E. 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.
- F. Each successor State shall have the right to make copies from any original document referred to in Rule E.
- G. 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 1 December 1918, shall have the originals returned to where they had been produced or to their owners, according to the international principles of provenance, without any compensation or other conditions.
- H. All rights and obligations under bilateral treaties in force between the former SFRY and neighbouring States (Austria, Bulgaria, Italy, Hungary, 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.
- I. The current possessor of the original of any archival document that is required to be transferred pursuant to these Rules may, at its own cost and for its own use, make copies of such document.
- J. A successor State entitled to make copies shall bear the costs of doing so. The costs of transporting originals of documents shall be borne by the successor State which receives them pursuant to these Rules. The State holding or transferring originals shall assist in reducing these costs as far as possible.

090/2

*Permanent Mission of the Federal Republic
of Yugoslavia to the United Nations Office
6, ch. Thury, 1206 G e n e v a
Phone: 346.44.33 and 346.68.66
Fax: 346.44.36 Telex: 427-764*

BY FAX
VERY URGENT

Date: 4 MARCH 1993

TO: Mr. Cyrus VANCE and
Lord David OWEN
Co-Chairmen of the International Conference
on the Former Yugoslavia (ICFY)
United Nations Office - Geneva
fax: 917-00-79, 917-00-80

FROM: Dr. Vladimir PAVICEVIC
Deputy Head of Delegation
of the FRY to the ICFY, and
Ambassador, Chargé d'Affaires a.i.
Permanent Mission of the F.R.Y. to the U.N.O. - Geneva
fax: (41-22) 346-44-36

No. of pages (cover included): 3 (three)

MESSAGE

Please find attached a copy of the letter addressed to
Ambassador J. Bojer, Chairman of the Working Group on Succession
Issues - ICFY, by H.E. Dr. V. Pavicevic, of the F.R. of
Yugoslavia, concerning a request of the Government of the F.R. of
Yugoslavia for a postponement of the meeting of the WG on
Succession Issues scheduled from 8 to 12 March 1993.

*Permanent Mission of the Federal Republic
of Yugoslavia to the United Nations Office
6, ch. Thury, 1206 G e n e v a
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No. 264

4 March 1993

Dear Ambassador Bojer,

Referring to the meeting of the Working Group on Succession Issues scheduled from 8 to 11 March 1993, as well as the proposal submitted on 1 March 1993 by you and the Chairman of the Working Group on Economic Issues, Ambassador Durrieux, that the said meeting be followed by a joint meeting of both WGs on Economic and Succession Issues, I would like to transmit herein the request of my Government that the said meetings be postponed to after 22 March 1993.

As you are well aware, a new government of the F.R. of Yugoslavia has just been constituted. The new Government shall do its utmost to adopt as soon as possible a Platform for the participation of the Yugoslav delegation in the work of the respective Working Groups and shall designate the members of the delegation.

./...

Ambassador Jorgen BOJER
Chairman
Working Group on Succession Issues
International Conference
on the Former Yugoslavia
United Nations Office
G e n e v a

cc.: - Mr. Cyrus Vance and
Lord David Owen
Co-Chairmen of the ICFY
- Ambassador Jean DURRIEUX,
Chairman
WG on Economic Issues - ICFY

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Bearing in mind our common interest to contribute to the utmost to the Working Groups successful and efficient deliberations, we trust this postponement shall be useful to all.

Thanking you in advance for your understanding, please accept, dear Ambassador Bojer, the assurances of my highest consideration.

Dr. Vladimir Pavicevic
Dr. Vladimir Pavicevic
Deputy Head of Delegation of the
FRY to the ICFY and
Ambassador, Chargé d'Affaires a.i. of
the F.R.Y. to the U.N.O. at Geneva



MISSION PERMANENTE DE LA R.S.F.
DE
YUGOSLAVIE
AUPRÈS DES NATIONS UNIES
A GENÈVE

5, chemin Thury - Tél. 46 44 33

26 February 1993

Dear Sirs,

I have the honour to transmit herein for your information a copy of the "Comments" of the F.R.Y. submitted on February 19, 1993, by Dr. Radoje Kontic, Vice-President of the F.R. of Yugoslavia, to Mr. Jean Durrieux, Chairman of the Working Group on Economic Issues of the ICFY, concerning the Report on the Valuation of Assets and Liabilities of the Former SFRY.

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

Dr. Vladimir Pavicevic
Deputy Head of Delegation of the
FRY to the ICFY and
Ambassador, Chargé d'Affaires a.i.
of the FRY to the UNO at Geneva

Mr. Cyrus Vance and
Lord David Owen
Co-Chairmen of the
International Conference
on the Former Yugoslavia
United Nations Office
G e n e v a

FEDERAL REPUBLIC OF YUGOSLAVIA

C O M M E N T S
ON THE BASIC PREMISES AND CONCLUSIONS OF THE
REPORT ON THE VALUATION OF ASSETS AND LIABILITIES
OF THE FORMER SFRY

BELGRADE

February 1993

1. DEPARTURES FROM THE AGREEMENT ON VALUATION IN THE SUCCESSION
PROCEDURE AND PREJUDGMENT OF THE QUESTION OF THE CONTINUITY OF
THE FEDERAL REPUBLIC OF YUGOSLAVIA UNDER INTERNATIONAL LAW

The Report on the Valuation of Assets and Liabilities of the former SFRY makes uncalled for departures from the agreement reached at the meeting of the Group for Valuation held on May 27, 1992, in Brussels, which defined the place of the valuation of assets and liabilities in the integral succession procedure for the former SFRY. In terms of this agreement, valuation should be a technical operation of establishing the facts about the assets and liabilities of the former SFRY. Therefore, the valuation of assets and liabilities cannot and must not prejudice the arrangement to be made for their division. Division would be carried out according to legal rules which in this case would be formulated under an agreement between the Federal Republic of Yugoslavia, as the predecessor state, and the newly independent republics of successors. What is more, without such rules, valuation would be difficult to carry out, even as a technical operation. In the absence of a criterion for determining what is "state property," the property subject to valuation has not been identified, with the result that the valuation is reduced to an aggregated inventory of all the individual proposals.

The Group agreed to put aside the question of succession (separation or dissolution) until a competent legal ruling has been made on this question. Such a ruling is prejudged in this Report. In many places in the text and in a variety of ways (explicitly or by implication), the Report questions the

international continuity of the Federal Republic of Yugoslavia (e.g. by using such terms as "the former Yugoslavia" or "the republics as successor states"; by treating Serbia and Montenegro separately; or by stating that the SFRY has ceased to exist and that it has been divided up into a number of successor states, etc.). FR Yugoslavia's consent and willingness to submit the jointly acquired assets and liabilities of the SFRY to a financial audit and division are thereby being abused, for FR Yugoslavia is thus transformed into a successor state and equated with the republics which were former federal units of the SFRY, even though FR Yugoslavia is incontrovertibly the predecessor state in the eyes of international law. FR Yugoslavia considers such an approach to the question of assets and liabilities unacceptable. Furthermore, it deems such an approach unconstructive, because it precludes an agreement on assets and liabilities, which can and must be treated as a separate issue from the question of the international status of the Federal Republic of Yugoslavia and the former republics of the SFRY.

2. THE KEY CONCEPT IN THE VALUATION HAS NOT BEEN DEFINED

The essential prerequisite for an authoritative valuation of the assets and liabilities of the former SFRY is to define the category of "state property." Unfortunately, the Group has not moved from square one in this respect. Since the Report uses such terms as "army property," "federal property," "financial assets and liabilities," etc., it can be inferred that the authors of

the text consider these categories relevant to the succession procedure. There is no legal justification for such a ploy.

These concepts can only be of technical significance for the valuation process, as book-keeping categories within the general and indivisible category of "state property." In support of this argument we need only mention that these categories are not known to either customary international law or to the Convention on the Succession of States in Respect of State Property, Archives and Debts, which is invoked by some of the parties as applicable in this matter. The attempt to portray these categories as relevant to the procedure of succession betrays an intention to supplant succession as a legally regulated procedure with an arbitrary, mechanical dividing up of assets and liabilities.

In short it is essential to define the category of "state property." For a definition of this type of property, international law refers us to the municipal law of the predecessor state, so that in this instance this category is defined on the basis of the national legislation of the SFRY which was in force at the moment of succession. Since the municipal law of the SFRY did not contain the concept of state property, the various forms of property known to Yugoslav law will have to be reconciled with the traditional concept of state property according to rules on the interpretation of legal norms. With due respect for the principle of justice and the need to prevent any unfair advantages, and mindful of the unique character of the regime of public, socially-owned property as the

principal for of property under the 1974 Constitution of the SFRY, we believe that the definition of "state property" supplied by the delegation from the Republic of Macedonia provides a correct basis and framework for elaborating the concept of "state property." This definition reads: "State property includes not only the property of the Federation and its institutions, but any such property formally owned by the Republics or by their nationals that has been fully or partially made of and financed by federal funds, or by other Republics."

3. UNJUSTIFIED REDUCTION OF THE ASSETS FOR DIVISION

There is no good reason for calculation of assets and liabilities to be based on just the final year or last several years. As shown by the division of property among Uganda, Tanzania and Kenya (after the dissolution of the East African Community), the only limit on how far back into the past one can go is the availability of records. There can be no justification for not including in the division everything financed by joint resources, especially since accurate data are readily available. There are detailed accounts of investments for the period 1952-1965, which were wholly financed from the Federation's funds, regardless of the republic in which they were made. This statistical data can be taken as a basis for the division: 1) because they are based on the original bank orders for the payments which were made through the National Bank, 2) because they are expressed in constant 1972 prices, and 3) because they

show where the investments were made. It is not difficult to establish the sources of financing for all major capital investment projects after 1965, if they were financed by Federal funds. By ignoring these arguments, the Report unjustifiably reduces the amount of assets and liabilities earmarked for division, the upshot being that some republics of the SFRY would unfairly receive a bigger share than others.

For the sake of preventing unfair advantages, investment policy in the SFRY prior to 1952 should also be taken into account, notably the relocation of industries from Serbia to other republics, and prohibition of new capital investment projects, primarily in Vojvodina but also in other parts of Serbia, because of the conflict with the Cominform countries. It is possible on the basis of existing records to determine with a considerable degree of accuracy the damage which specific regions suffered as a result of Yugoslavia's global policy.

The attempt to interpret the constitutional reform of 1974 as a division of assets and liabilities is technically incorrect and totally unacceptable, for it has been made with an eye to excluding a large portion of assets and liabilities from the division. Namely, the devolution of legal powers to regulate the management and disposition of property from federal to republican authorities did not change the nature of property rights of the property which remained as before socially-owned property. The socially-owned property remained unchanged in its conception after 1974, as uniform and indivisible in the SFRY, based on the explicit constitutional prohibition for anyone to acquire

property rights to it (Article 12 of the 1974 Constitution) and on the collective right of all workers to manage socially-owned property (Article 13).

The hastily drawn conclusion that there is no information concerning certain items of the inventory, and the assertion that information is being gathered all too slowly, are apt to bring about an unjustified reduction of the assets and liabilities subject to division. The argument that a speedy settlement is required because the European Community's budget does not have enough funds for negotiations is unpersuasive. It should be remembered that the division of the assets and liabilities of the east African Community took seven and a half years, and that data on virtually all the essential items in Yugoslavia's assets and liabilities have been collected in just four months. Therefore, the Report's criticism of the Yugoslav delegation for collecting information too slowly not only fails to stand up to scrutiny but is at odds with the expert group's praise for its successful presentation of voluminous and high quality data. The fact that information has been collected in just four months indicates that the distribution can be effected in a reasonable length of time without imposition of deadlines.

4. DEPARTURES FROM THE PRINCIPLE OF THE INDIVISIBILITY OF ASSETS AND LIABILITIES

Prevention of unfair advantages is the fundamental principle proposed by the Delegation of Croatia, which should form the basis both for the entire negotiating process and for

the future agreement on a just division. Consistently applied, this principle requires that all items in the SFRY's assets and liabilities should be expressed in prices obtaining at the end of 1990, so that a uniform balance sheet can be drawn up as the sole way of reducing different physical magnitudes to a common denominator of value. It is at the same time the basis for a final and precise settling of accounts. Such a balance sheet postulates determination of how much of the total value of the SFRY's assets and liabilities is "located" in the territory of each of the parties concerned, and how much of this total value, according to agreed criteria for a fair division, should "belong" to each. Any difference that might arise would be dealt with in compensation arrangements.

In disregard of these requirements, the entire undertaking of collecting data on individual items and their valuation is envisaged in the Report as a partial, physical apportionment of property and obligations according to selected priorities. It is suggested to the Group for Succession that instead of working on establishing principles and criteria for a fair distribution it should rather concentrate on the physical division of the concrete nominal units of the individual items in the inventory. Unless the total assets and liabilities are calculated at December 1990 prices and the criteria for a fair division are properly defined, prejudice will be done to that phase of work in which the interested parties are to formulate the legal rules to be followed in the division of assets and liabilities. These

rules might also come in handy to regulate forms of mutual compensation (in money, goods, or concrete material objects).

5. MISUSE OF THE IMF EXECUTIVE BOARD'S DECISION OF DECEMBER 14, 1992

The decision taken by the Executive Directors of the International Monetary Fund on December 14, 1992, is an ad hoc arrangement in keeping with the character of the Fund as an independent international financial institution. This decision cannot serve as a precedent for decisions at the Conference on Yugoslavia, neither as regards the accounting ratios used (quotas, etc.), nor as a legal rule determining the Federal Republic of Yugoslavia's status as the predecessor state. Above all, this decision cannot be taken as a precedent for FR Yugoslavia's acceptance of so-called partial balance sheets for the division of the assets and liabilities of the Socialist Federal Republic of Yugoslavia.

6. INCORRECT USE OF THE TERM "WAR DAMAGES"

In a number of places in the Report the damage caused by the civil war in the former SFRY is referred to as "war damages." The use of this term in the case of Yugoslavia has no legal basis whatsoever. In international law the term "war damages" is used to refer to damage caused by an armed conflict between sovereign and independent states, while in the case of Yugoslavia we have a typical civil war. Therefore, the term "war

damages" should be replaced in the Report with the phrase "damages caused by the civil war." The term "peace treaty" is also unsuitable, for the actual accord was a political agreement to end the civil war.

There is no doubt that these damages should be compensated, so that conditions can be created to normalize life in the territories of the former SFRY. The damages produced in the course of the civil war should be regulated in line with established international custom, which has also been sanctioned in the draft code on state responsibility. It is clear from the rules of international law governing compensation of damages caused by civil war that these questions have nothing to do with succession. The proper place for considering this matter and adopting decisions would be a Conference on the economic reconstruction of the economic area of the former SFRY.

7. DISREGARD FOR THE AGREEMENT ON THE METHODOLOGY FOR ASSESSING THE VALUE OF THE PROPERTY AND OBLIGATIONS OF THE SFRY

According to the original programme of work, the first step was supposed to have been to draw up an inventory of assets and liabilities; next the methodology for making the valuation would be decided upon, and finally a balance sheet would be prepared. However, the work on the inventory has not been completed, and the phase of deciding on methodology has simply been skipped over. The delegations were not given the opportunity to comment on the proposed methods of assessing the value of property, so that the methods proposed in the Report reflect an unbalanced and

defective methodology. Such an approach fails to satisfy the requirement that all items on the inventory should be expressed in uniform prices and makes it impossible to make calculations on a uniform basis.

CONCLUSIONS

The foregoing comments of the Federal Republic of Yugoslavia on the Report on the Valuation of Assets and Liabilities of the Former SFRY point to the basic shortcomings of efforts made to date. The following improvements are needed:

- 1) valuation should be confined exclusively to a technical assessment of the value of assets and liabilities, which as such would in no way prejudice the final arrangements, which are to be made on the basis of agreement of all the interested parties;

- 2) the basic legal relationship between the predecessor state and the successors is to be agreed upon by them;

- 3) a proper valuation of assets and liabilities can only follow a precise definition of "state property" in line with the constitutional system of the SFRY at the moment of succession;

- 4) succession should, of course, be speeded up, but not by setting unrealistic deadlines for collection of data, by restricting the time period to which the succession applies, or by cutting back the European Community's budget for the purpose, for otherwise the sum total of assets and liabilities would be objectively reduced and some parties would receive more than their fair share;

5) the valuation of assets and liabilities should produce uniform criteria for division and final accounting of individual items and not for the purpose of partial division of real property or value:

6) the decision by the IMF Executive Board of December 14, 1992, cannot serve as a precedent for FR Yugoslavia's acceptance of what is described as a partial balance sheet, nor can it affect the country's international status;

7) a debate and common agreement on the methodology for valuation of the assets and liabilities of the SFRY should be a top priority in the next stage of the Group's work;

8) since in this case damages have been caused by a civil war and therefore are not war damages stricto sensu, the question of compensation for this type of damages should be excluded from the succession procedure;

9) as regards archives, it is of the utmost importance to adopt a precise definition of State Archives to serve as a guideline in their classification and determination of the status of various types of these archives.

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INTERNATIONAL CONFERENCE ON THE FORMER
YUGOSLAVIA



COMMISSION
OF THE EUROPEAN
COMMUNITIES



UNITED NATIONS

CHAIRMAN'S REPORT ON THE VALUATION
OF THE ASSETS AND LIABILITIES OF THE
FORMER SFRY

Group 5 (Economic Issues)

CHAIRMAN'S REPORT ON THE VALUATION OF ASSETS
AND LIABILITIES OF THE FORMER SFRY

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26 February 1993

EXECUTIVE SUMMARY

The report presents the results of a valuation of the assets and liabilities of the former SFRY carried out under the auspices of the International Conference on the Former Yugoslavia, co-sponsored by the United Nations and the European Community. The valuation is the result of work carried out by six (6) expert subgroups, assisted by teams of consultants, on the basis of an inventory of assets and liabilities prepared within the Economic Working Group of the Conference. The inventory contains both items which are agreed by Republics as forming part of the State succession and items which are not, each of which has been valued without prejudice to legal questions regarding inclusion in the inventory and the definition of State property. The contents of the report are presented under the sole responsibility of the Chairman of the Working Group on Economic Issues, M. Jean DURIEUX, and do not necessarily reflect to the views of each delegation. The comments of the delegations on the previous draft are attached in Annex 1.

Where there is an established and recognised market, assets are valued on the basis of the open market value. Where no such market exists, assets are valued on the basis of depreciated replacement cost. All valuations take as a reference date 31 December 1990 and are given in Yugoslav Dinars. This date should not be confused with the as yet undetermined date of the state succession. From a conceptual point of view, the choice of methodology has posed a number of problems. These were most acute in the military assets category where it is difficult to give a meaningful valuation in financial terms since the value of military assets lies not in their cost but in their operational potential. Nevertheless a detailed inventory of military assets has been produced and where there are a large number of similar items, the distribution of assets might be carried out on a purely numerical basis according to a fixed ratio (as in the former CSFR) without reference to a financial valuation.

Other problems relate primarily to a lack of necessary information to perform a robust valuation. Notably for financial assets and liabilities, information on pensions and medical insurance was insufficient, making valuation of this potentially significant item impossible. There were important gaps too in the information regarding debts owed to the former Federation which made it impossible to estimate what provision for bad debts would be required. In the Infrastructure, Transport and Communications category, the estimated valuation remains very tentative due to the limited accuracy of the information presented. This situation is further complicated by continuing disputes over the scope of the inventory in this category.

Subject to the serious methodological and data restrictions outlined in the report, the values obtained for each category are as follows:

	YD million (31.12.90)	YD million (31.12.90)
Financial Assets	215,000	
Financial Liabilities		(374,000)
Assets of Federal Government, Its Secretariats & Agencies	15,000	
Other Assets	3,000	
Military Assets	745,000	
Infrastructure	19,000	
Total Assets	997,000	
Total Liabilities		(374,000)
TOTAL NET VALUE	623,000	(US\$ 60 bn. or ECU 50 bn.)

Despite the limitations of data and methodology the valuations do provide a basis on which to begin discussion of the division of assets and liabilities. The aggregate figures provide an estimate of the size of the assets and liabilities in question, which represents a position from which further refinements can be made. In some areas, such as property abroad, estimates are robust down to a low level of aggregation, allowing detailed discussion of particular parts of the inventory. Nevertheless, delegations from the Republics have argued that the work of valuation should be continued in order to produce more refined and consistent results.

As expected, the most significant sums are to be found in the Financial Assets and Liabilities and Military Assets categories, which will, therefore, be priority areas. The relative significance of the other areas is small, their total value constituting some 2-3% of the absolute value of all items (ie.: assets plus liabilities).

Regarding National/State Archives, the nature of the exercise has been rather different. The main tasks of this group have been to provide an inventory of archives, to identify archives at risk and to establish an action plan for their preservation and protection and to estimate the costs of reproduction, handling and transportation of archival materials.

The valuation presented gives a snapshot of assets and liabilities at the reference date of 31 December 1990. It will be necessary to take account of events which have taken place since this date, particularly in the field of financial assets and liabilities, where continued debt servicing and the introduction of new currencies will impact on the valuation.

As originally conceived, the inventory of assets and liabilities consisted of seven chapters, the seventh being War Damages. This issue is related to the other six categories, since, clearly, the war will have had an input on the value of assets and liabilities, particularly in the military chapter. The continuation of hostilities has made it impossible to date to come to an assessment of war damages.

Discussions on succession should now advance in the light of the valuation performed so far, although this is not complete. Given the advancement of this work and the relative size of the various assets and liabilities, it would be useful to examine the possibility of seeking preliminary settlements in such areas as property abroad and financial assets and liabilities, in particular foreign liabilities and monetary reserves. Attempts should also be made to reconcile the agreed and non-agreed parts of the inventory into a single agreed list.

CHAIRMAN'S REPORT

SECTION I. BACKGROUND

Preliminary Work

This report presents a valuation of the assets and liabilities of the former SFRY undertaken on behalf of the UN & EC sponsored International Conference on Former Yugoslavia. As part of the work of the Conference the Working Group on Economic Issues, chaired by Mr. Jean DURIEUX, was instructed in the autumn of 1991 by Lord CARRINGTON to draw up proposals for the economic chapter of the draft treaty. Later the group turned its attention to the question of dismantling trade barriers and the removal of restrictions on the movement of capital. In the course of consultations in London in late January 1992, on the insistence of the delegation of Croatia and, in particular, Slovenia, Lord CARRINGTON asked the group to examine certain aspects of the succession of States.

It was ultimately decided that the work would be carried out in two fora. A working group responsible for defining the criteria by which questions of succession could be settled was created. This group, firstly chaired by Ambassador de VALE and then by Mr. Henry DARWIN, has, following the latter's death, been placed under the authority of the Danish Ambassador BOJER. For its part, the Economic Working Group has undertaken the development of an inventory of assets and liabilities of the former SFRY which is the subject of the present report. The inventory consists of a number of different chapters, some of which all Republics are agreed should be the subject of succession discussions and others which are disputed by one or more of the Republics, reflecting the lack of an agreed definition of state property. Work on the inventory has been performed on both the agreed and non-agreed chapters simultaneously. This has been acceptable on the grounds that the work would not cover discussion of legal questions. (See Section II, General Reservations).

It was agreed to take 31 December 1990 as the date of reference for the valuation. This date was considered the most appropriate as 1990 was the last year in which the former Yugoslavian Federation produced accounts and for which official documents are readily available.

The contents of the report were discussed with all delegations in Brussels on 20 and 21 January and delegations were given the opportunity to comment on a subsequent draft. The report is produced in the light of these comments, but under the sole responsibility of the Chairman of the Working Group on Economic Issues and does not necessarily reflect the views of the delegations.

Comparisons

(a) Succession of States

While the dissolution of the former SFRY has raised questions concerning the division and allocation of assets and liabilities which are unique in certain respects, there is a contemporary parallel which may offer comparisons in the division of the Former Czech and Slovak Federal Republic (CSFR) at the end of 1992.

On 1 January 1993, the former Czech and Slovak Federal Republic separated into two independent States. By common agreement of the authorities of the Czech and Slovak Republics, the assets and liabilities of the former CSFR were divided on the basis of a ratio of 2:1, in favour of the Czech Republic, reflecting the ratio of the populations. In certain areas where there are a large number of identical assets, this methodology has allowed the distribution of such assets on a purely numerical basis without reference to a financial valuation. Were an acceptable ratio for the distribution of assets of the former SFRY to be identified, this process might be applied to certain categories of assets without further refinement of the inventory. This is particularly the case with regard to military assets where a detailed inventory of individual items has been prepared in addition to a financial valuation.

However, it should be noted that there are still significant differences between the two situations. The separation of the former CSFR was carried out under peaceful conditions and through bilateral negotiations between the two new Republics. In the former SFRY, on the other hand, the situation is complicated by the participation of 6 former Yugoslavian republics with the break-up of the former Federation being marked by armed conflict and occurring over a period of time. In addition, the Yugoslavian process is being pursued through the offices of the joint UN & EC sponsored Conference on Yugoslavia, rather than directly through bilateral negotiations between the independent Republics.

(b) Accounting Practices

A somewhat different but related exercise has recently been carried out as part of widespread public sector reform in New Zealand. The country has become the first to publish a set of government accounts which includes a balance sheet of its assets and liabilities and an accrual-based operating statement of income and expenses (similar to the accounts of a public company).

Under the cash-based method of accounting which governments have traditionally used to measure their budget deficits, revenue and expenditure are recorded when cash is received or paid out. This does not give a picture of the assets and liabilities of the State. Accrual accounting, however, records spending and taxes when they are incurred, regardless of when the money actually changes hands. This should provide a more accurate picture of a government's financial position because it keeps track of the changing value of assets and liabilities. (For example, future pension obligations, which had previously been excluded, would now count as a liability). For the purpose of the exercise, State firms were valued at the lower of historic cost or current market value, land and buildings at current market value, and roads at depreciated replacement cost.

The result of this reform showed an excess of government liabilities over assets of some US\$ 7.8 billion at the end of December 1991.

Organisation of the Valuation Work

The Economic Working Group of the UN & EC sponsored International Conference on Former Yugoslavia prepared a single draft inventory (dated 8 August 1992) of the assets, archives and liabilities of the former Yugoslavia (SFRY), divided into seven (7) distinct chapters. The Working Group then established six (6) subgroups to examine different categories of the draft inventory, leaving work on the seventh chapter, War Damages, to a later date. The task of these subgroups was to undertake the technical work of valuation without prejudice to the legal and political aspects of the Succession, which are being dealt with by the Working Group on State Succession.

The subgroups were chaired, at the request of the delegations, by officials of the Commission of the European Communities and consisted of teams of experts from each of the successor states. The heads of the delegations from the Republics were as follows :

Dr. Zecevic (Federal Republic of Yugoslavia)
Dr. Marendic (Croatia)
Dr. Miljovski (Macedonia)
Dr. Derviskadic (Bosnia-Herzegovina)
Dr. Mejak (Slovenia)

It is important to record here that overall responsibility for all aspects of State Succession for the Republic of Bosnia-Herzegovina was to have been the task of Vice-Prime minister Hakja TURAJLIC, who was assassinated in Sarajevo Friday 8 January 1993.

A horizontal coordination unit was set up, consisting of European Commission officials, to act as a secretariat and oversee logistical arrangements, the transfer of documents and notably the drafting of reports.

Finally, following a public tender, external consultants were appointed to carry out the technical valuation work and allocated to each of the asset categories as follows :

- # Financial Assets and Liabilities: KPMG Peat Marwick
- # Assets of the Government, its Secretariats and Agencies: KPMG Peat Marwick
- # Infrastructure, Transport & Communications: Zeller et Associes
- # Military Assets: CREST (Ecole Polytechnique)
- # Other Assets: KPMG Peat Marwick
- # National Archives: SUMMA Business Integration Consulting

(Terms of reference are provided in annex)

IMF Decision of 14 December 1992

On 14 December 1992, the International Monetary Fund revoked Yugoslavia's membership of the organisation and laid down the conditions for the successor Republics to become members, on the grounds that the SFRY had ceased to exist. The decision specifies the quota that each successor Republic should bear of the assets and liabilities of the SFRY in the Fund. SFRY liabilities to the Fund amount to about US\$ 217 million. The quotas are as follows :

Republic of Bosnia-Herzegovina	13.20%
Republic of Croatia	28.49%
Former Yugoslav Republic of Macedonia	5.40%
Republic of Slovenia	16.39%
Federal Republic of Yugoslavia	36.52%

Each Republic must not only agree to take responsibility for its share but must be up to date with payments to the Fund and be found by the Fund to be able to meet its obligations. The shares allocated by the Fund may be challenged before an arbitral tribunal. For their part, the FRY delegation and the delegation of Macedonia insist that the arrangements made with the IMF are ad hoc and should not be treated as a precedent for the division of other items.

The World Bank is expected to announce similar measures in the near future. In any case, most of the World Bank's US\$ 2 billion in loans to Yugoslavia involve specific projects, and liabilities may therefore be assigned on a geographical basis rather than on a quota distribution.

SECTION II. RESERVATIONS

It must be borne in mind when considering the present report that the work has been carried out subject to a number of reservations on the part of the participating Republics. These are both general and specific in nature.

General Reservations

The delegation from Serbia (when Serbia and Montenegro were represented separately) originally agreed to proceed with the valuation only after stating that they had a general reservation as to the appropriateness of the Group's work.

Furthermore, the delegation of the Federal Republic of Yugoslavia insisted that the inventory be treated as a single document in order to avoid any implication that the Group was working towards partial settlement of the former Federation's assets and liabilities. The FRY delegation has consistently favoured a global settlement, a 'package deal'.

Similarly, it should be noted that due to the present situation in Sarajevo, it has often been difficult for the representatives of Bosnia-Herzegovina to participate fully in the work of the group. This problem has now been mitigated by the agreement of UNPROFOR to allow regular travel between Sarajevo and Zagreb for members of the delegation. Nevertheless, the delegation maintains that it can only accept the results of work in which it has been able to participate.

In addition to these reservations, the delegations have reserved the right to add to the inventory any relevant items which have not yet been identified.

Reservations on Specific Items

Beyond the general reservations, delegations have expressed reservations on a number of specific items which, therefore, figure in the part of the inventory which is called 'non-agreed'. These reservations are marked beside the items on the inventory list.

In large part, these reservations arise from the fact that there are two different conceptions underlying the inventory of assets and liabilities. Croatia, Bosnia-Herzegovina, Slovenia and Macedonia have, in general, considered the property of the former SFRY in a limited way. Most state owned/funded items are, they argue, Republican property under the 1974 Constitution, with only those items with a clearly Federal ownership being the subject of State Succession. This is of particular importance in the Infrastructure, Transport and Communications category which, in addition to reservations placed by Republics against specific items, is subject to a general reservation on the part of Croatia and Bosnia-Herzegovina on the grounds that the abolition of the General Investment Fund and the 1974 Constitution gave all responsibility for such items to the Republics.

As a result, all delegations have reserved the right to amend the existing inventory in light of decisions on this issue taken in the Working Group on Succession Issues.

The Federal Republic of Yugoslavia, by contrast, has based its approach upon a much more extensive conception of the inventory, including as Federal property every asset which at any time received financial support from the former SFRY and rejecting the argument that the 1974 Constitution changed the status of property. In addition, it is argued, investment policy before 1952 should also be taken into account. The question of which approach will finally be adopted remains to be resolved.

Furthermore there are reservations placed against a number of specific items for a variety of other reasons. An example is the reservation placed by Bosnia-Herzegovina and Croatia against the inclusion of gold and precious metals taken from NBY branches in the territory of the Independent State of Croatia during World War II. Such questions also remain outstanding.

The present valuation has been carried out on all items whether a reservation has been placed or not. This does not in any way prejudge the question of inclusion or exclusion from the final inventory.

SECTION III - METHODOLOGY

General Principles

The inventory is made up of a combination of financial assets and liabilities and physical items. Financial assets and liabilities are valued, as far as possible, according to international accounting standards. Cash is recorded at face value, amounts due to the SFRY from third parties are recorded at face value less any required provision, and liabilities are recorded at face value. For physical assets the basic methodology employed is as follows :

1. Where there is an established and recognised market, assets are recorded on the basis of the open market value.
2. Where no such market exists, assets are recorded on the basis of depreciated replacement cost (DRC).

All valuations take as a reference date 31 December 1990, providing a snapshot of relevant assets and liabilities at that date.

Valuations are given in Yugoslav Dinars as at 31 December 1990, with foreign currency balances translated into Dinars at the official exchange rate at that date (US \$ = YD 10,657).

Methodological Problems

In an ideal situation, valuation of assets and liabilities would be a relatively straightforward exercise. Each item would simply be valued at the price at which it is was freely traded on the open market since this is the actual cost agents are willing to pay for it. Unfortunately, this is clearly not possible for the majority of items in the present valuation, due both to the nature of the items in question and the characteristics of the SFRY economy. For the most part, therefore, an approach other than market valuation has had to be found.

The approach chosen, as indicated above, has been to value items at the price which would have to be paid to replace them in their current condition. This means estimating the cost of the item as new, and then depreciating this value to take into account the condition of the item (age is normally used as a proxy for condition). While this approach is a widely used method of valuation, it has the weakness of not being able to reflect the use-value of items. The value of individual items may, therefore, be either understated or overstated as the case may be.

Nevertheless, on the assumption that on average state property does not reflect a systematic misallocation of resources, the valuations produced by this approach are, on aggregate, valid.

A recurrent problem, given the history of the Yugoslav dinar, is the rate of exchange used for the conversion of items denominated in hard currency. For the purposes of this report, the official exchange rate given by the IMF at 31 December 1990 has been used; however, this was only one of a number of exchange rates in use at various times. To address this problem it may be useful, particularly as regards financial assets and liabilities, to maintain a distinction between internal and external items, denominating the latter in hard currency.

Beyond such general difficulties, there are a number of specific conceptual problems which have had to be dealt with. These are particularly important in the area of military assets where it is not clear that a value can be meaningfully expressed in financial terms. Military items are not, by their nature, economically productive but serve the security and defence needs of the State. As a result, their value lies not in their cost but in their operational capacity. The value of any particular item therefore depends heavily on, among other things, the military context and formation in which it is used. Furthermore, the prices which are paid on the market for military items are subject to a high degree of variability reflecting the strategic circumstances of the contract. Nevertheless, despite these problems, a financial value for military items is still useful and necessary in order to achieve an equitable division, although, as suggested elsewhere in this report (see section 1, Background), were an acceptable ratio to be identified, certain areas where there are a large number of identical items might be distributed on a purely numerical basis without further reference to the financial valuation (as in the former CSFR).

More difficult is the case of items such as national treasures, which figure in the inventory under "Other" Assets, where neither the concept of market price nor of replacement cost can be applied in a meaningful way. In order to deal with this problem, the delegates from the Republics agreed that, rather than attempting to attach a financial value to these items, they would instead simply be listed and given a nominal value on the clear understanding that Republics will proceed on the basis of restitution in kind. The basis of restitution in kind shall be understood as the principle of returning the items of national treasure to that Republic from which they originate.

Strengths and Weaknesses of the Valuation

The robustness of the valuations proposed for individual items on the inventory is subject to a high degree of variability. The most reliable valuations were obtainable for items where there exists the most highly developed markets. This is the case for property located outside the territory of the former SFRY such as embassies and representational premises whose value can be obtained through local property markets. For these items it was possible to supplement information obtained from Republics with knowledge of property prices in the area thus further strengthening the valuations.

Where it was not possible to apply the concept of market price valuation, it was necessary to use a depreciated replacement cost approach (see above). For the most part, data used in estimating values by this method has been obtained from sources in the Republics and it has not been possible to supplement this by on-site inspection. This raises the problem of having to rely on those in possession of certain assets for information on these assets, which has caused the Republics of Slovenia and Macedonia, in particular, to call into question the reliability of such information. Nevertheless, in many cases data provided from a number of different Republican sources has provided the same valuation, which can therefore be considered reliable.

In a number of cases, valuations are subject to a greater degree of uncertainty. This is true of military assets (for the methodological reasons outlined above) and for "Other" Assets. In addition to the question of items such as national treasures, the work on valuing many of the sundry items in this category (such as property and legal issues) has been severely inhibited by lack of data. These gaps in information will need to be filled before the valuation can be completed. Nevertheless, while these problems are serious on the level of individual items, on an aggregate level they are far less important, since, based on the information submitted by the delegations to date, the sums involved are too small to be material to the overall valuation.

As regards such materiality, the category of Financial Assets and Liabilities is clearly very important. Where figures have been obtainable from NBY or Federal Government sources, estimates of value in this field should be, in principle, reliable as regards liabilities and assets already in possession of the SFRY at that date. Outside of this, there are a number of areas within this category where problems have arisen.

Firstly, there are a number of outstanding items for which estimations cannot yet be provided and whose order of magnitude is unclear. The most important represents claims for pensions and medical insurance and outstanding obligations towards employees of Federal bodies and the JNA. With rapid provision of outstanding data this problem should be quickly resolvable. Furthermore, it is possible that a practical solution to the problem of pensions and medical insurance can be found amongst the Republics in the relatively near future.

Secondly, there are a number of items on this part of the inventory which it would be extremely difficult to value, in principle. These relate to the impact of historical events such as the currency reforms of 1921 and 1941, and the removal of gold from NBY branches during World War II. However, while the sums involved in these items may well turn out to be quite large in themselves, they will have little overall effect relative to the net balance of assets and liabilities of the former SFRY.

Thirdly, a significant proportion of the assets of the ex-SFRY consists of debts and obligations owed from abroad. The estimates provided for these items relate only to the face value of the outstanding debts, and do not include provision for bad debts. This may, however, be necessary since the recoverability of all the amounts owed is questionable.

Fourthly, analysis of certain items on the accounts of the NBY have yet to be received and so the valuations given are subject to a further degree of uncertainty. In particular, it is emphasised that explanation and analysis of balances in the accounts of the NBY relating to dinar money supply are essential in order to deal properly with these major components of total assets and liabilities and to agree an appropriate methodology for their elimination. Significant amendments to total assets and liabilities may be necessary once this information is available.

Despite these difficulties, the valuations given in this report, although not comprehensive or complete, do offer a partial basis on which to begin discussions on the division of assets and liabilities. The aggregate level figures provide an estimate of the size of the assets and liabilities in question, which represents a position from which further refinement can be made. In some areas, such as property abroad, estimates are robust down to a low level of aggregation, allowing detailed discussion of particular parts of the inventory.

SECTION IV - CONDITIONS OF THE WORK

Despite the manifest difficulties of the political situation now existing in the former SFRY, it should be stressed that the work of valuation of the assets and liabilities has been carried out within a generally cooperative atmosphere. This has been particularly evident during the three plenary meetings of expert sub-groups in Brussels, in which the approach of delegates on all sides has remained very business-like.

Nevertheless, much difficulty has been encountered in obtaining the information needed for the valuation. The sheer number of different items and their geographical spread has meant a large degree of dependence upon the Republics for the provision of information. Unfortunately, this information has rarely been received on time, according to the deadlines which the delegations agreed at meetings in Brussels. Part of this problem, clearly, has been due to the political situation in the former SFRY, which has aggravated significantly the physical problems inherent in gathering information on this scale. Nevertheless, given that the vast bulk of the information is held in Belgrade and that many of the assets in question are under the sole control of the Federal Republic of Yugoslavia, it has been the responsibility of the FRY delegation to provide most of the data. The incomplete nature of the information from this source and the apparent lack of urgency with which it has been provided have seriously hampered the valuation.

Specific mention should be made here of the difficulties faced by the Republic of Bosnia-Herzegovina. Due to the difficulties involved in leaving Sarajevo, the delegation was unable to participate fully in plenary meetings in Brussels, and their work in Sarajevo has clearly been hampered by the prevailing situation there. It was possible, however, through the offices of UNPROFOR to arrange for a visit of the delegation to Brussels in November where useful discussions were held on the progress made so far. Following that meeting, an arrangement was made with UNPROFOR to allow regular travel for delegates between Sarajevo and Zagreb.

In addition to the plenary meetings in Brussels and the visit of the delegation of Bosnia-Herzegovina, a number of visits to Republics were undertaken by the Consultants in order to deal with specific problems which arose. CREST visited Zagreb in October to discuss military assets with a large team of experts assembled by the Government of Croatia, while KPMG visited Belgrade to discuss financial assets and liabilities with representatives of the NBY. In addition SUMMA participated in a meeting in Belgrade between the archivists of four Republics and the President of the expert sub-group on Archives.

The problems of gathering information have been aggravated by the difficulty of keeping efforts focused upon valuation of the assets and liabilities, without being side-tracked on to issues concerning division of assets.

Despite the fact that it was repeatedly stressed that the current exercise was concerned only with providing a valuation of assets and liabilities, much time appears to have been dedicated on the part of the Republics to gathering and presenting information on the source and history of assets and liabilities which might have a bearing on the final division. This has become clearer as the work has progressed, and in particular during the mission to Belgrade, where the source of particular assets and liabilities was a subject to which officials repeatedly returned. This tendency to anticipate further stages of the work before the initial valuation is completed has resulted in a diversion of already limited resources and has hindered the pursuit of the present task.

SECTION V. THE VALUATION

The valuations of assets and liabilities, item by item, are contained in the inventory below. Aggregate valuations, covering both agreed and non-agreed items, for each category as at 31 December 1990, are as follows :

	YD million	YD million
Financial Assets	215,000	
Financial Liabilities		(374,000)
Assets of Federal Government, Secretariats & Agencies	15,000	
Other Assets	3,000	
Military Assets	745,000	
Infrastructure	19,000	
Total Assets	997,000	
Total Liabilities		(374,000)
TOTAL NET VALUE	623,000	(US\$ 60 bn or ECU 50 bn.)

While the total net value given is of limited significance, the results of the valuation exercise show, as expected, that the most significant sums are to be found in the Financial Assets and Liabilities and Military Assets categories. The relative significance of the other areas is small and so the main focus of this section will be on the two largest areas, for it is these which will be most important to the succession negotiations.

- (a) In accordance with the inventory of assets and liabilities of 8 August 1992, the financial assets and liabilities of the SFRY are estimated to be as follows as at 31 December 1990.

	YD million	YD million
Total Financial Assets	214,868	
Total Liabilities		(374,438)
NET BALANCE		(159,570)

This is given subject to the serious informational and methodological problems outlined above. More specifically, there are a number of items on the inventory which have not been estimated; of these, claims for pensions and medical insurance and outstanding obligations towards employees of Federal bodies and the JNA are likely to affect the final figure significantly.

Necessarily, the valuation is subject to change if further and better information becomes available, but it does, nevertheless, provide a broad measure of the quantum involved.

On the assets side, the largest item is the assets of the NBY (National Bank of Yugoslavia), estimated to be some YD 89,197 million (although this estimate is the subject of some dispute). This does not include the foreign currency reserves and reserves of gold and other precious metals in the treasury of the NBY and in foreign banks, which are accounted for separately. These reserves are estimated at YD 59,234 million. The other large item on the assets side of this category consists of claims by the Federal Government and the NBY for contracts completed and sales and loans as yet unpaid. This covers amounts due in respect of trading transactions with Comecon and non-aligned countries, totalling some YD 22,612 million as at 31 December 1990. Within this total, outstanding amounts due from the former Soviet Union account for YD 20,359 million. Excluded are amounts due from Iraq which, although due to Yugoslav enterprises, were apparently not guaranteed by the NBY and so repayment risk remained with individual enterprises. The role played by the former Federal government in this matter will need to be assured by the appropriate successor States.

On the liabilities side, the largest item consists of credits, funds and guarantees awarded to the SFRY by international organisations totalling YD 146,938 million. This does not include the liabilities of JUBMES or the unallocated debt which are included elsewhere in the inventory. It seems that this money was allocated to specific projects and so these debts are not direct Federal liabilities but rather have largely been guaranteed by the Federal government. These debts are, therefore, for the most part held by commercial banks and enterprises. Similar in size are liabilities arising from missing household savings in foreign currency deposited with the NBY by local commercial/retail banks, estimated at YD 132,905 million. The next largest item is the unallocated external debt, shown on the NBY balance sheet to be worth YD 37,076 million at 31 December 1990. These three items must, clearly, be seen as a priority in succession discussions since between them they represent more than 85% of the value of the former Federation's liabilities.

- (b) Similarly, division of Military Assets should be seen as a priority given the size of the sums involved. While this subject is likely to be both sensitive and complex given the current situation, the estimated value of these assets as at 31 December 1990 of some YD 744,870 million underlines the need to find a fair and acceptable way of addressing this issue.
- (c) As regards the remaining categories of Federal Government Assets, Infrastructure, Transport and Communications and 'Other' Assets, their total value is in the region of YD 35,000 million, less than 3% of the absolute value of total assets and liabilities. Therefore, while individually the items in these categories are important to Republics, their significance in the overall picture should not be overstated.

The total value of the Assets at the Federal Government, Secretariats and Agencies is estimated at YD 15 billion (US\$ 1.4 billion). A substantial proportion of this total is attributed to Federal property located abroad, worth an estimated YD 2,845 million (US\$ 267 million), and is currently largely under the control of the FRY. On the territory of the former SFRY, are federally owned dwellings, flats and garages amounting to YD 5,876 million (US\$ 551 million) and office buildings and premises worth YD 3,354 million (US\$ 315 million). In Belgrade itself, the value of office buildings and premises amounts to some YD 2,757 million (US\$ 259 million).

Estimates of the value of Infrastructure, Transport and Communications items included on the inventory are in the region of YD 19 billion. However, this estimate is very tentative due to a lack of information. Furthermore, the decision of the Working Group on Succession Issues regarding the scope of this category of the inventory is likely to affect radically this figure.

Similar difficulties have existed in the "Other" Assets category where lack of information has limited the scope and robustness of the valuation. As regards the inventory tables below, a value of nil means only that insufficient information has been made available to prepare a valuation. The tables should, therefore, not be regarded as giving final answers but rather as an indicative summary of work to date based on simplified valuation criteria.

For a detailed breakdown of the figures, see the inventory below.

26th February 1993INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIAWORKING GROUP ON ECONOMICISSUES

A DRAFT SINGLE INVENTORY OF THE
ASSETS AND LIABILITIES OF THE
SOCIALIST FEDERATIVE REPUBLIC
OF YUGOSLAVIA

AS AT 31 DECEMBER 1990

As amended following 20 and 21 January 1993
meeting of sub-group on valuation

Abbreviations used

R = reservation
S & M = Serbia & Montenegro
C = Croatia
Mc = Macedonia
Sl = Slovenia
BH = Bosnia & Herzegovina

The cross-reference listed below could prove useful. Basically, the set of tables is divided into two sections. The first seven pages refer to agreed items. The next, and last, eleven pages refer to non agreed items.

Financial Assets and Liabilities

- | | |
|-----------------------|---|
| I. Agreed Items: | A. Financial Assets and Banks
C. Liabilities |
| II. Non-Agreed Items: | C. Financial Assets and Banks
E. Liabilities |

Assets of the Federal Government, Its Secretariats and Agencies

- | | |
|-----------------------|---|
| II. Non-Agreed Items: | B. Assets of the Federal Government,
Its Secretariats & Agencies |
|-----------------------|---|

Other Assets

- | | |
|-----------------------|--------------------------------|
| I. Agreed Items: | B. Other Assets
D. Sundries |
| II. Non-Agreed Items: | F. Sundries |

Military Assets

- | | |
|-----------------------|--------------------|
| II. Non-Agreed Items: | A. Military Assets |
|-----------------------|--------------------|

Infrastructure

- | | |
|-----------------------|--|
| II. Non-Agreed Items: | D. Key Infrastructure/Transport/Communications |
|-----------------------|--|

I. ASSETS AND LIABILITIES AGREED UPON BY ALL DELEGATIONS
AS BELONGING TO THE INVENTORY

(Subject, however, to two general reservations submitted by Serbia & Montenegro and one technical reservation submitted by Bosnia-Herzegovina)

A. FINANCIAL ASSETS / BANKS

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Property of National Bank of Yugoslavia (NBY), movable & immovable	Cash-face value Fixed assets open market or depreciated replacement cost	Financial statements of NBY	89,197
2. Foreign currency reserves + reserves of gold and other precious metals	Market values Official Exchange rates as at 30.12.90	Financial statements of NBY	59,234
a) in treasury of National Bank of Yugoslavia			
b) in foreign banks			
3. Assets of the Yugoslav Bank for international economic cooperation (JUBMES)	Asset values on balance sheet	JUBMES ACCOUNTS	7,690
4. Republican obligations which were assumed by the Federation legal raids on the Yugoslav monetary system Cash value	Cash value	Financial Statements of NBY	5,318
5. Illegal raids on the Yugoslav monetary system by various Republics	Cash value	Report of Board of Governors NBY	15,028

A. FINANCIAL ASSETS / BANKS (continued 2.)

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
6. Assets of the Postal Savings Bank of Yugoslavia	Cash-Face value fixed assets open market/depreciated replacement cost	Accounts of Postal Savings Bank	838
7. The Military Service (Institute attached to NBY)	Cash-Face value fixed assets open market/	Accounts of Military Service	687

B. OTHER ASSETS

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Property of (a) the Tourist Association of Yugoslavia, and the (b) Youth Hostel Association, both abroad and on the territory of Yugoslavia	Depreciated replacement cost	Records held in each Republic	(a) 399 (b) 0
2. Assets of :	Depreciated	- " -	(a) (i) 0
a) the Socialist Alliance of the Working People of Yugoslavia & the Alliance of the Trade Unions of Yugoslavia	Replacement cost		(a)(ii) 34
b) The League of Socialist Youth of Yugoslavia			(b) 28
c) The Union of Veterans of Yugoslavia			(c) 509
3. TANJUG and its representative offices in Yugoslavia and abroad	Depreciated replacement cost	- " -	149
4. Property of the League of Communists of Yugoslavia (LCY)	Depreciated replacement cost	- " -	928
5. Assets of the Chamber of Economy of Yugoslavia, including branch offices in Yugoslavia and abroad	Depreciated replacement cost	- " -	397

C. LIABILITIES

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Classification & evaluation of unallocated external debt - i.e. debt not specifically earmarked for projects in any of the Republics. This includes debt to all foreign countries, commercial/international banks, international organisations/funds	Value at Official Exchange Rates	NBY Foreign Exchange Balance Sheet & Creditor Banks	37,076
2. Liabilities of Yugoslav Bank for International Economic Cooperation (JUBMES)	Cash value	JUBMES ACCOUNTS	6,921
3. Missing household savings in foreign currency, deposited with NBY by local commercial / retail banks	Cash value	NBY ACCOUNTS	132,905
4. Liabilities of non-profitmaking sports related organisations			

D. SUNDRIES, etc.

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Property and legal issues among Republics a) Unfulfilled contractual obligations of outstanding debt in sales/purchase agreements b) Protection of investments in other Republics c) Denationalisation in respect of new legislation	Insufficient Information	None	

[Illegally confiscated property of physical and legal persons to be discussed elsewhere - subject to agreement of Macedonia and Bosnia-Herzegovina]

E. ARCHIVES

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
<p>1. National /State Archives</p> <p>a) produced by Central & Federal State agencies since 1918, as defined by Article 31(1) & (2) of the 1983 Vienna Convention</p> <p>b) Archives, films & other documentary materials, situated in Belgrade & not belonging to the category of Federal archives</p>			(**)

(**) Given the special nature of archival material and the difference between the value of the information 'per se', the value of the medium on which it is stored and the cost of its reproduction, it was decided to limit the parameters of the valuation to estimating the costs of reproduction handling and transportation of the archival documents.

II. ASSETS AND LIABILITIES NOT AGREED UPON BY ALL DELEGATIONS AS BELONGING TO THE INVENTORY

A. MILITARY ASSETS

N.B. Information has not been compiled according to the classification in the original inventory due to the nature of the data sources. Data is presented according to the classification agreed by delegations on 14 and 15 September in Brussels.

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Base and Infrastructure of the JNA	Republican estimates/Equivalent Market prices	Republican and Federal Defence Ministries	248,290
2. Industrial Defence Facilities	- " -	- " -	15,902
3. Military Equipment	- " -	- " -	348,221
4. War Reserves	- " -	- " -	132,457

B. ASSETS OF FEDERAL GOVERNMENT SECRETARIATS/AGENCIES

N.B. Information has not been compiled according to the classification in the original inventory due to the nature of the data sources. Data on Federal assets and liabilities is held according to the following classification

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Land	Depreciated replacement cost	FSJA Report on Socially Owned Assets	329 (*)
2. Office Buildings and Premises in Belgrade	Depreciated replacement cost	FSJA Report on Socially Owned Assets	2,757
3. Office Buildings and Premises outside Belgrade	Depreciated replacement cost	FSJA Report on Socially Owned Assets	597 (*)
4. Dwellings, Flats and Garages	Market value or Depreciated replacement cost	FSJA Report on Socially Owned Assets	5,876 (*)
5. Other Facilities	Depreciated replacement cost	FSJA Report on Socially Owned Assets	35
6. Property of Federal Secretariat for Foreign Affairs	Market Value or Depreciated Replacement cost	Review of Real Estate Abroad	2,845

B. ASSETS OF FEDERAL GOVERNMENT SECRETARIATS/AGENCIES (2.)

ITEM/S	BEST METHOD OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
7. Special Purpose Immovable Assets	Depreciated replacement cost	FSJA Report on Socially Owned Assets	62 (*)
8. Representational Assets	Depreciated replacement cost	FSJA Report on Socially Owned Assets	241
9. Community Service Facilities	Depreciated replacement cost	FSJA Report on Socially Owned Assets	included under 7
10. Means of Transport	Depreciated replacement cost	FSJA Report on Socially Owned Assets	732 (*)
11. Equipment			
- located in property abroad	20% of value of property		804
- in the former Yugoslavia	20% of value of property		569
12. Commodity Reserves			
(*) Values are based on Federal Government sources and are indicative.			

C. FINANCIAL ASSETS / BANKS

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Reserves of gold & other precious metals taken from the treasuries of the branches of the NBY located in the territory of the Independent State of Croatia during World War II	R entered by BH + C			No info.
2. Outstanding Republican dues to the Federal Budget	R entered by BH, C, Sl		Federal Accounts	12,735
3. Continuing implications of the currency reforms of 1921 & 1941 for the Serbian dinar (cost of currency	R entered by C, Mc, BH, Sl			No info.
4. Capital (including quotas, unexpired membership fees, etc...) paid by Yugoslavia, in its capacity as a sovereign State, to international organisations: IMF, World Bank, BIS, UN, UNESCO,	R entered by S & M		NBY and International Institutions	1,529
5. Claims by Federal government & NBY for contracts completed/sales/loans, etc... as yet unpaid	R entered by S & M		Accounts of NBY Accounts of JUBMES Federal Institutions of special reserves	22,612

C. FINANCIAL ASSETS / BANKS (continued 2.)

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
<p>6. Claims by the NBY & the Republics resulting from</p> <p>a) inflationary consequences of inflow of dinars from Republics who had introduced new currencies</p> <p>b) expenses involved in replacement of bank notes</p> <p>c) claims by the Republics who had introduced new currencies due to surplus of dinars after the introduction of their own currencies</p>	<p>R entered by C, Sl, Mc, BH</p> <p>R entered by S+M</p>			
<p>7. The Federal Fund for the accelerated development of underdeveloped regions- its property & outstanding dues to it</p>	<p>R entered by Sl + Mc</p>	<p>Federal Fund for Accelerated Development</p>	<p>Insufficient Information</p>	

D. KEY INFRASTRUCTURE / TRANSPORT / COMMUNICATIONS (General Reservation to the entire chapter from Croatia, Slovenia & Bosnia-Herzegovina)

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Property of Yugoslav Power Management Community (JUGEL)		Depreciated replacement cost	JUGEL	108.3
2. Oil and gas :				
a. Oil pipelines and equipment	Cr & Sl	Depreciated replacement cost	Company records	1,545.3
b. Oil Terminals	Cr & Sl	Depreciated replacement cost	Federal Archives	
c. Gas pipelines and Equipment	Cr & Sl	Depreciated replacement cost	Federal Archives	
d. Gas Terminals	Cr & Sl	Depreciated replacement cost	Federal Archives	
d. Gas Terminals	Cr & Sl	Depreciated replacement cost	Federal Archives	
e. Refineries	Cr & Sl	Depreciated replacement cost	Federal Archives	
3. Transport infrastructure :				
a) Yugoslav National Airlines (JAT)	S & M, BH	Depreciated replacement cost	JAT	
b) Property of Community of Yugoslav Railways	Sl & Cr	Depreciated replacement cost	Community of Yugoslav Railways	

D. KEY INFRASTRUCTURE / TRANSPORT / COMMUNICATIONS (Continued 2.)

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
c. Titograd-Skadar Railway	Sl + BH + Cr	Depreciated replacement cost	Federal Government	
d) Roads & Highways	Sl + BH + Cr			
4. Postal service & Telecommunications				
a. Property of Community of Yugoslav Post & Telecommunications (ZJPTT)		Depreciated replacement cost	ZJPTT	
b. Telecommunications equipment		Depreciated replacement cost	ZJPTT	191.0
c. Radio Yugoslavia		Depreciated replacement cost	ZJPTT	31.4
d. Yugoslav Radio & Television		Depreciated replacement cost	Record of JRT	
5.				
a. Hydropower plant Zvornik				
b. Hydropower plant Bajina Basra				
c. Hydropotential of River Drina exploited by HPP Zvornik and HPP Bajina Basra			Electroprivreda Bosnia-Herze- govina Sarajevo	1,381.6

(*) These items have been added subsequent to 21 January 1993 upon request of the Delegation of Bosnia Herzegovina. Other Delegations have not yet been able to express their views.

E. LIABILITIES

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Outstanding claims on the Federal Budget	R entered by Sl, BH + C		Federal Accounts	17,728
2. a. Claims for retirement disability, and veterans' pensions	R entered by S + M			Insufficient Information
b. Medical insurance claims				
c. Outstanding obligations towards employees of Federal bodies & of the JNA				
3. Outstanding claims on Federal Fund for accelerated development of underdeveloped regions	R entered by Sl + Mc		Federal Fund for Accelerated Development	Insufficient Information
4. Federation's obligations still outstanding under :	R entered by Sl +Mc			Insufficient Information
a. International agreements on compensation for nationalisation of foreign owned property				

E. LIABILITIES (continued 2.)

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
b. The Treaties with Italy of 1947 & 1954, concerning compensation to Italians who opted to leave Yugoslavia following definitive fixing of the border and the Osimo Accords			Official Gazette No. 7, 1985	1,082
5. Credits, funds, guarantees, etc... awarded to Yugoslavia by international organisations : IMF, World Bank, BIS, UN, UNESCO, etc..	R entered by Sl, BH + C		Ministry of Finance/Donor Organisations	146,938

F. SUNDRIES, etc.

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
1. Transfer of many industrial facilities to other Republics, in early years of SFRY, after World War II	R entered by Sl, BH, Cr, S + M ?	Insufficient Information	None	
2. General Investment Fund	R entered by BH, Sl + Cr	Insufficient Information	None	
3. Law suits to which SFRY is a party: a) claims by the SFRY against any legal person b) claims by legal persons against the government of SFRY	R entered by BH, Sl + Cr	Insufficient Information	List of cases provided by S + M only	

G. WAR DAMAGES (to be analysed in a separate chapter)

ITEM/S	RESERVATIONS	BEST METHOD OF OF VALUATION	BEST AVAILABLE SOURCES	APPROXIMATE VALUE (YD million)
<p>1. War damages in compensation for damage caused:</p> <p>a) during World War II</p> <p>b) during the current hostilities</p> <p>2. Property (mainly Serbian & Jewish) sequestered by Independent State of Croatia during World War II, subsequently part of nationalised property of SFRY</p>	<p>R entered by BH + Cr</p> <p>R entered by BH + Cr</p>			

SECTION VI. NATIONAL/STATE ARCHIVES

Valuation Methodology

Within the context of its mandate, the subgroup on Archives identified three main purposes which differ significantly from the requirements in other categories of the inventory, as follows :

1. To provide an inventory of the archives necessary for the succession of the Republics of the former Yugoslavia (SFRY) and required by the administrative bodies and institutions of those Republics in order to continue their normal activities (at a political, technical, economic and administrative level).
2. To identify the archives at risk (from the impact of the present regional situation, destruction and other damage caused by the war, poor conservation and protection conditions) and establish an action plan for the preservation and protection of those archives which are of particular importance for the succession of the former Yugoslavia and constitute an essential common heritage for the study of European history.
3. To establish criteria for the evaluation of the different archives and develop a methodology for the elaboration of the inventories.

In establishing the most suitable criteria for the valuation of the archives, which differ greatly from other assets in their unique nature and historical, artistic and cultural value, the following considerations were taken into account :

A clear distinction should be made between the value of the information per se recorded in any archival medium, the value of the original medium itself on which that information is stored and the cost of its reproduction.

It was considered that, given the special nature of archival material and the particular regional situation in which these archives are at present preserved and processed, it would be impractical to value the information per se for its potential usefulness or the originals for their historical and artistic value.

It was therefore decided to limit the parameters of the evaluation to providing best estimates of the costs of reproduction, handling and transportation of the archival documents.

Results

During the first plenary meeting of the subgroup for archives, held in Brussels on 14 & 15 September 1992, the participants arrived at a preliminary estimation of the volume of archives of 360,000 linear metres. Of these, it was considered that 121,000 were at risk and should be treated as a priority for security microfilming and preservation (including 100% of those located within Bosnia Herzegovina). Phase I of the security microfilming programme would cover a volume of 50,000 linear metres (ie.: 10,000 metres per Republic). An analysis of the costs of equipment and of security microfilming and preservation has been made, with a total estimated cost of US\$ 41,434,670.

In order to facilitate the identification of the most important archives to be treated in Phase I, each delegation of the Republics of the former Yugoslavia prepared two lists, the first categorising those archival documents and records most at risk and the second requesting those archival documents and records necessary for the succession of the former Yugoslavia and for the administrative purposes of each Republic, but located outside the specific Republic.

Furthermore, an inventory of existing equipment for the reproduction, preservation and restoration of archives and for computer systems applications was established. In addition, a programme of visits was developed in order to assess 'in situ' the volume and preservation conditions of archival documents and records held in various repositories throughout the former Yugoslavia. To date, the subgroup participants have visited various sites in Belgrade.

Lastly, in order to build upon the cooperative atmosphere that prevailed throughout the meetings and work of the subgroup and to normalise relations between the archival services of the various Republics, it was proposed to organise a series of seminars in Vienna on different archival topics and through other measures to promote the progressive integration of the personnel involved in the former Yugoslavia into the body of European archivists.

Action Plan

In the course of discussions within the subgroup and with the full approval of the delegates of the Republics of the former Yugoslavia, the following plan of action has been developed by the consultants :

1. Implement immediately security microfilming in accordance with internationally accepted standards of archives at risk (top priority is to be given to archives in Bosnia-Herzegovina) and organise, if necessary, transfer of these archives to safe locations.
2. Establish a follow-up group (with the participation of professional archivists and the possible assistance of neighbouring countries) to oversee the implementation of the following proposals for action.

3. Establish common technical standards for the reproduction, preservation and restoration equipment to be used by the Republics and draw up plans for the duplication, preservation and restoration of documents, including: equipment requirements, reconstruction and modernisation of buildings, personnel training, timing and transportation requirements.

In this context a series of training seminars should be carried out, starting with a specific seminar "security microfilming and restoration" in Vienna (National Archives of Austria) in early 1993 open to all Republics of the former Yugoslavia. Furthermore the follow-up group should make a series of visits (fact finding missions) to the main archives of the different Republics of the former Yugoslavia (Ljubljana, Zagreb, Split, Skopje, etc.). In this respect invitations have been forwarded by the delegations of Slovenia, Croatia and Macedonia at the subgroup meeting of 20-21 February 1993.

4. Design and implement a common archival electronic database and automated systems network integrated by compatible systems developed on Republican level and by all the Archives of the former Yugoslavia (SFRY) with particular regard to material relevant for State Succession.

In addition, when appropriate, it might be desirable to study the feasibility of the establishment and progressive development of a suitable administrative structure for the management and protection of the Federal archival heritage of the former Yugoslavia, and if eventually agreed upon, sharing resources between all the Republics concerned (although this point was not agreed by all delegations). It is possible that the Commission of the European Communities could envisage providing some financial assistance to this follow-up work.

Agreement

In addition to the proposals outlined above, the participating delegations reached many points of agreement, the most important of which were the following :

'For all parties involved, the right of free access will be granted to all Federal and Republican Archives'.

During the subgroup's visit to Belgrade, the agreement to allow open access was confirmed and demonstrated in practice.

Furthermore, and fundamental to the operational approach, it was agreed that

'Archives constitute the common heritage of mankind and above any consideration about their property, there is a real need to preserve them'.

Lastly, all agreements and discussions within the forum of the subgroup have been based on the broad definition of National Archives as

'consisting of all documents and records, both current and non current, produced or received by Federal authorities or any other relevant agency, regardless of their physical support'.

An aide-memoire covering points agreed at a meeting in Brussels on 20 and 21 January 1993 and an action-plan proposed for Bosnia-Herzegovina are included in an annex to this report.

SECTION VII. CONCLUSIONS

Developments Since Valuation Date

The valuations presented in this report and in the consultants' work represent a snapshot of assets and liabilities on 31 December 1990, albeit an incomplete one. Developments since that date, however, are clearly going to have an effect on the final settlement of the succession and these will need to be taken into account in future work.

War Damages

The most important of these developments, obviously, is the war which broke out on the territory of the former SFRY from 1991. At present the extent of the damage which the war has caused is unknown. In particular, however, the effect on the military assets of the former Federation can be expected to be large as a result of destruction and appropriation of material and the use of weapons and ammunition. This will need to be assessed. Furthermore, war damages include the effect on items which do not figure on the current inventory and this will also need to be examined.

The inventory of assets and liabilities was conceived as consisting of seven (7) chapters, of which valuation work has now been carried out on six (6) with the exception of war damages. The continuation of hostilities has made it impossible to date to come to an assessment of war damages and it is clear that without the cessation of armed conflict it will not be possible to complete this work.

The delegations take different positions regarding the approach which should be taken to these matters. The delegation of the Federal Republic of Yugoslavia considers the war to be a civil war and, therefore, that the damages caused are not war damages *stricto sensu* and should be excluded from the succession process. Slovenia and Macedonia also would like the issue of war damages to be considered separately on the grounds that they are not within the scope of state succession. Croatia, on the other hand, would like the work to begin immediately in this group with consideration of methodological and organisational questions and valuation where possible in Slovenia and Croatia. It seems that the delegation of Bosnia Herzegovina takes a similar position.

Given that the evaluation of war damages is likely to be a complex and protracted exercise and that the scope of the question goes far beyond the inventory of assets and liabilities prepared within the Working Group on economic issues, it would seem that this should be undertaken as a separate exercise.

Other Developments

For the most part, effects of the war aside, it can be supposed that the valuation of the physical items contained in the inventory will not have changed substantially since the valuation date. Although minor adjustments may be required to some items, on the whole the valuations given should still be a useful guide.

The same is not, however, true for financial assets and liabilities, whose value can change very rapidly overnight. In the case of the former SFRY where enormous changes in the monetary system have taken place since 31 December 1990 (and are still not complete), this is likely to be particularly true. The introduction of new currencies in the region and the problems resulting from this are a good example. Similarly, the external debt position of the former SFRY is likely to have changed over this period since debt servicing has continued. For practical reasons no attempt is made in the current valuation to take these developments into account. To do so would have unnecessarily complicated matters at this stage. Nonetheless, such developments will need to be taken into account.

Although the impact of the 'Other' Assets category is likely to be relatively small in terms of the overall valuation, it is nonetheless important to address the substantial gaps in information which remain. It would greatly facilitate the process of valuation if Republics would immediately submit the information to which they committed themselves in the forum of subgroup meetings in Brussels. In particular, data on those assets (or groups of similar assets) with a value greater than US\$ 1 million (YD 10 million) as at 31 December 1990 should be provided as soon as possible.

Belgrade remains the most important source of information, in particular regarding certain organisations whose property falls within this category (such as the League of Communists of Yugoslavia) and whose head offices are located in the former Federal capital.

Progress towards an Agreement

Owing to the issues mentioned above and the different problems encountered in various areas of the valuation, it is clear that work is more advanced in some areas than in others. This raises the question of what approach needs to be taken to achieving a settlement. The FRY delegation has insisted that all issues should be dealt with on the basis of a global agreement. For such an agreement to be possible, delegations have argued that the work of valuation should be continued in order to produce more refined and consistent results. Other delegations, while supporting continuation of the work, have been more favorably disposed to a series of partial solutions, reaching agreements on specific issues as and when this is possible.

Although work continues with the goal of a resolution for all outstanding issues in mind, the valuations performed to date increase the possibility of achieving partial settlements in the interim. Besides the fact that work in some areas is more advanced than in others, the existence of estimates for the whole inventory provides a context within which proposed partial settlements might be assessed. Republics can now give their opinions on particular areas with an eye on how these fit in to the overall picture. An advantage of proceeding in this fashion is that the achievement of agreement in one area can often provide a model for finding solutions to other outstanding problems.

Bearing in mind the state of advancement of the work, external circumstances such as the IMF decision of 14 December 1992 and the relative size of the various assets and liabilities, it would seem that the most likely areas for seeking preliminary or partial settlements might be as follows :

Property held abroad.

Financial Assets and Liabilities (and in particular foreign liabilities and monetary reserves).

Furthermore, as suggested in Section I, Background, the distribution of assets according to a fixed ratio regardless of any financial valuation, as in the former CSFR, might be applied to those categories of the inventory where there are a large number of identical assets, without further refinement of the valuation. This may be particularly relevant to the category of military assets, where a detailed inventory of individual items has been produced in addition to a financial valuation. A number of delegations have identified this category as a particular priority for rapid resolution.

There remains also the problem of an inventory divided into agreed and non-agreed parts, although the size of this problem is somewhat mitigated since significant parts of financial assets and liabilities figure on the agreed part of the inventory. This is essentially a legal/political question although the estimates provided in the valuation may assist in finding a solution. By indicating the magnitude of the different items at stake, the valuation will allow Republics to make informed decisions about possible compromises which could open the way to a single agreed inventory.

During the course of the valuation and meetings in Brussels, a number of possible solutions were proposed by the consultants with the aim of reducing the inventory to a single agreed document. While this is not strictly part of the valuation, it is a subject to which the delegates have returned throughout the process. It would therefore be sensible to note here some of the possible solutions proposed.

On the basis of the fact that it is now clear that the SFRY has ceased to exist and has split into a number of successor states, it may be possible now to accept a number of currently non-agreed items as forming part of the state succession. These might include :

- # The assets of the Federal Government, Secretariats and Agencies;
- # Capital paid by the SFRY to international organisations and the corresponding liabilities;
- # Claims by the Federal Government and NBY for contracts completed, sales, loans etc.;
- # Federation's obligations still outstanding under various international agreements.

As regards the category of Infrastructure, Transport and Communications, which is subject to a general reserve, much debate has centred around the 1974 Constitution which placed responsibility for most infrastructure investment on a Republican level. It was agreed that information would be presented only on those items which one or more Republics considered as Federal property. It might therefore be assumed that a number of specific items on which no information has been provided might be removed from the inventory since they do not constitute Federal property. Nevertheless, there are a large number of items which, although not Federal property, were built jointly by enterprises from different Republics, and it will be important to bear in mind the need to ensure the fulfillment of contracts governing such items.

There are a number of items relating to claims on and payments due to Federal funds which might be amenable to solution together. These are :

- # Outstanding Republican dues to and claims on the Federal Budget;
- # Outstanding dues to and claims on the Federal Fund for the Accelerated Development of Underdeveloped Regions.

It has been suggested that a solution may be to consider an appropriate succession date for each Republic and to use this as the date up to which claims and dues should be settled, reflecting the fact that Republics were still governed by SFRY laws up to this date.

Further, there are a number of items which refer to events which might be considered inappropriate to an inventory of assets and liabilities as at 31 December 1990, and owing to the difficulty of estimating their value might be best dealt with outside the current inventory. It should, however, be noted that the FRY delegation denies that good estimates for items will be difficult to obtain.

These are as follows :

- # Reserves of gold and other precious metals taken from NBY branches in the territory of the Independent State of Croatia during World War II;
- # Continuing implications of the currency reforms of 1921 and 1941;
- # Claims by the NBY and Republics resulting from the introduction of new currencies (which took place after 31 December 1990);
- # Transfer of many industrial facilities to other Republics, in the early years of the SFRY, after 1948.

In light of this, it may be helpful to remove these items from the current inventory, and to deal with them in another form, as suggested by the delegation of Bosnia-Herzegovina.

Jean DURIEUX



INTERNATIONAL CONFERENCE ON THE FORMER YUGOSLAVIA

Palais des Nations, 1211 Geneva 10

Office of the Co-Chairmen

090/2 37/93



FAX TRANSMITTAL

TO: AMBASSADOR HERBERT S. OKUN
ROOM S-3327

DATE: 18 February 1993

FAX NO: 001 212 963 1992

FAX-OUT NO: 37/93

FROM: STRANG

PAGE: 1 OF 3

FAX NOS:
(41-22)-917-00-79
(41-22)-917-00-80

You may wish to have the attached report on the meeting of the WG on Economic Issues held in Geneva on 17 February, which has just been received by fax.

Regards.

INTERNATIONAL CONFERENCE
ON FORMER YUGOSLAVIA

WORKING GROUP ON
ECONOMIC ISSUES

Subject: report on the 17 February meeting in Geneva

1. The Bosnia-Herzegovina delegation did not attend the 17 February proceedings of the working group on economic issues, chaired by Mr. Jean DURIEUX. The main item on the agenda was again the proposed high level conference on the economic future of the countries of former Yugoslavia. Procedural questions were debated in the morning sessions while points of substance were taken up in the afternoon. A discussion paper on the subject, now in its seventh draft, had been circulated among the participants: it was subjected to a detailed review at the afternoon session.
2. The chairman drew the following conclusions:
 - the proposed conference was seen by all delegations except the Slovenian one as serving a useful purpose
 - but a number of conditions will need to be satisfied before the decision to convene the conference is taken (an effective ceasefire, clarifications on the status and names of the different participants, emergence of a global political settlement and responses to a number of associated questions relating to the lifting of sanctions and the activation of the PHARE programme)
 - the republics will be asked to provide written submissions stating their views on present economic conditions and on what reconstruction and recovery should entail (the delegations asked that these submissions be given the status of official Conference papers to be published on the same basis as the statements delivered by the speakers)

- 2 -

3. At the next session of the group, due to be held in the week beginning 22 March, the chairman will be presenting a four page executive summary of the discussion paper. An eighth draft would follow, but Mr. DUBREUX also made the point that further useful work on the preparation of the conference would now have to wait on a number of expected political developments. A joint meeting of the State Succession and Economic Issues group will probably be held in the week beginning 8 March.

cc. Ambassador Peter HALL
Ambassador BOJER
Ambassador OKUN
Mr. BOOTHBY
Ms Bolette NYROP

Annex 1Delegations Comments on Draft of 26 January 1993

- (a) Croatian Delegation
- (b) Macedonian Delegation
- (c) Delegation of the Federal Republic of Yugoslavia
- (d) Slovenian Delegation
- (e) Delegation of Bosnia-Herzegovina.

N.B. Detailed comments and data on specific parts of the inventory are not included.

DELEGATION OF
THE REPUBLIC OF CROATIA

Mr Jean Durieux,
President of the Working
Group on Economic Issues

Dear Mr. Durieux,

We are glad to inform you that we are generally satisfied with the text of the Report on the Valuation of the Assets and Liabilities of the Former SFRY. We noticed with pleasure that most of our suggestions on its previous text were taken into account. We equally hope that our suggestions and proposals explained in various expert sub-groups of the Working Group of Economic Issues will be equally useful.

We have still some minor remarks which we are proposing to be considered:

(1) Due to its contents, the title of this document should be more appropriate to be "Progress Report".

(2) At several places of this Report the values of assets and liabilities are added by groups and in total, although its text suggests with reason that it is not appropriate to do so.

(3) Some experiences from Czecho-Slovakia and New Zealand at pp.2-3 are explained. It was suggested there again that they are inadequate for the case of succession of the former SFRY. It would therefore be better not to mention them. The same goes with mentioning of the Privatization Law of Slovenia at page 5. It seems suitable to refer to some more appropriate issues such as legal principles and categories of property set forth in the 1983 Vienna Convention on State Succession.

(4) The importance of claims for pensions and medical insurance by the Federal Civil Servants seems to be at page 10 somewhat exaggerated because a practical solution of this problem is in sight.

- (5) It was mentioned at page 23 that Republics have "seceded from the SFRY", what is not accurate at all. The Opinions Nos 1 and 8 of the Arbitration Commission deal with the process of dissolution of the former SFRY.
- (6) It was stressed with good reason at page 20 that the work on war damages should begin as soon as possible (e.g. in Slovenia). We are of view that it can start in regard to some areas of Croatia as well. That what is more essential is that this group should start at once considering methodology and organizational questions of evaluation of war damages.
- (7) It was said at page 15 that amounts of trading transactions with Iraq are excluded because not being guaranteed by the National Bank of Yugoslavia. Yet the former Yugoslav Federation has itself reprogramized this debt and relations. As a consequence, the acquired rights of enterprises from its successor States should be fully assured in the process of State succession towards the State of Iraq.
- (8) It was said at page 6 that the Republic of Slovenia has reserved its right to add to the inventory any relevant items which have not yet been identified. The Republic of Croatia reserves the same right to rise new claims in regard to items on which it subsequently gathers information and documents.
- (9) Finally, at page 17 concerning State Archives a new paragraph 4 should be added as follows:

"4. Succession of State Archives of the former SFRY should be carried out on the basis of legal principles enshrined in Article 31, paragraphs 1 and 2 of the 1983 Vienna Convention on Succession of States."

Paragraph 4 in pages 19 should rather read as follows:

"4. Design and implement a common electronical database and system network for all archival materials in regard to the succession of the State Archives of the former SFRY;"

The following point 5 should rather be deleted from this Report until final agreement of Successor States is reached.

We hope, Mr. President, to achieve a further progress in our efforts in an atmosphere of mutual trust;

Sincerely yours,

/Božo Marendić/



РЕПУБЛИКА МАКЕДОНИЈА
Министерство за односи со странство

REPUBLIC OF MACEDONIA
Ministry of Foreign Relations

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ТЕЛЕФАКС ПОРАКА FAX MESSAGE

ТЕЛЕФАКС БР. _____

FAX NO. 99 32 2 296 43 04

ДО: COMMISSION OF THE EUROPEAN COMMUNITIES

TO: Mr. Jean Durieux;
Chairman of the economic Group

ОД: MINISTRY OF FOREIGN RELATIONS OF THE REPUBLIC OF MACEDONIA

FROM: _____

БРОЈ НА СТРАНИЦИ (ВКУПУВАЈКИ ЈА И ОВАА):

NUMBER OF PAGES (INCLUDING COVER SHEET): _____

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COMMENTS OR ADDITIONAL INSTRUCTIONS: _____



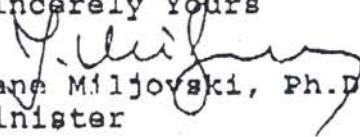
GOVERNMENT
OF THE REPUBLIC OF MACEDONIA
Cabinet of the Minister
Jane Miljovski, Ph.D.
29-441/1

Dear Sir,

Please find enclosed the Standpoints of the Government of the Republic of Macedonia concerning the Report of the Economic group - 5 for the valuation of the assets and the liabilities of the former SFR Yugoslavia.

Please accept the assurances of my highest consideration.

Sincerely Yours


Jane Miljovski, Ph.D.
Minister

Mr. JEAN DURIEUX
Chairman of the economic group
BRUSSELS

STANDPOINTS OF THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA
REGARDING THE REPORT ON VALUATION OF THE ASSETS AND
LIABILITIES OF FORMER SFR YUGOSLAVIA

We consider that it is necessary to extend our gratitude to the European Community regarding its work on the issues on succession of former Yugoslavia in general and to the Economic Group and its subgroups, and to point out the spirits of cooperativeness, respect and tolerance during the work performed.

We consider that an important task has been fulfilled creating a solid base to end the complicated issue of succession of a such a complex state as was the former Yugoslavia. In this respect we shall refer to the problems which we consider as a key obstacle to complete the work in a satisfactory manner.

On page 1 under the title "Preliminary report", paragraph 1, we believe that it is wrongly stated that the Peace Conference was instructed by Lord Carrington. The Conference for succession on former Yugoslavia was instructed by Lord Carrington. At that time the war in Croatia had just started but it was believed that, the same like the conflicts in Slovenia, it was a result of the uncontrolled manner of dissolution of one state. Due to this its work was mostly directed towards preventing further spillover of the conflict. So, the Conference did not have a character of a peace conference but a character of a conference on succession. We consider important to give emphasis do this difference because in this manner the view regarding the primary tasks of the Conference is clarified. It is still working as a conference on succession.

We believe that it should be so, because a peace conference is quite different than a conference on succession, it implements different methodology, gives different consequences, different results, and in this case, two republics: Slovenia and Macedonia have not been involved in the war. Because of this we believe that it would be correct to point out that the Conference consists of two parts: one dealing with the succession affecting all states that were republics of former Yugoslavia, and peace conference involving four republics of former Yugoslavia.

Therefore, it is persistently insisted on approach which de facto wants to resolve two entirely different matters:

1. Dissolution of the former state of the SFR Yugoslavia.
2. A peace conference for those states of former Yugoslavia involved in the war.

Consequently, the proposal of the Government of the Republic of Macedonia is: to separate the discussion about the succession from the part of the Conference dealing with the peace, and these two parts not to be put together.

The report of the chairman of the economic group also clearly states that the task assigned at the London Conference is "to examine certain aspects of the succession of states" that the war damages are not subject to this working group.¹

- The category "war damages" (page 2 in the "Report") and page 2 of the Inventory, annex to the "Report") should be unconditionally and entirely omitted from the succession. This problem does not belong to the question of succession dealt with in the above stated document. It is a problem of the peace conference which, by its character, by its legal nature, the composition of the participating parties and other elements, is different from the succession problems in which took part all the states established after the dissolution of SFRY.

On page 1 it is stated that where market exists, the assets are valued according to their market value. The Macedonian delegation agrees that during the work of the Economic Group it was agreed to this methodology, but, regretfully we must state that it was not done so during the work of the sub-groups. Consequently, this task of assets valuation remains to be done in the future. Without this additional effort, the result of the work of the expert sub-groups and consultants can not be considered serious and acceptable.

The Government of the Republic of Macedonia disagree that the value of the weapons creates special valuation problems. Namely, the weapons possessed by the Yugoslav National Army on December 31, 1990, was sold on the world market (and is still sold). Thus, since it was not the task of the consultants and the sub-groups to value "their operational potential", but its market value, we confirm that, due to unknown reasons, this has not been done. Consequently, the procedure applied regarding the valuation of the value of military assets we consider as absolutely unsatisfactory, being a value which greatly underestimates the value of the military assets.

Regarding the Financial Assets we consider that even the consultants did not make efforts to apply previously agreed methodology. As a result, the estimated value of US 60 billion is unacceptable and we believe that only after a consistent use of the agreed methodology we could come out with a figure which approximatively reflects the value of the federal assets.

We consider the obtained results not enough to start a concrete agreement on division of that asset. The Government of the Republic of Macedonia believes that the principles of succession of the assets in this stage are do not depend on the assets valuation itself. Thus, we believe that the principles of succession should be discussed in principle, while the assessment of the real value of the assets will continue separately of the previous process.

Even provisional insight indicates that the value of different assets has been drastically underestimated. Such is the case with the military assets and the values of the assets of agencies and secretariats. In order to have more precise approximate value a cross check approach is required, i.e. valuation according another methodology, which would provide testing of the values acquired by one type of procedure.

The Government of the Republic of Macedonia consider that no adequate approach towards the relevant documentation has been provided or acquired (neither by interested parties nor by the professional consultants), which is an elementary condition to proceed with relevant evaluation of the assets and the liabilities. The archives and the original documentation still remains closed, which is an enormous handicap for the parties not having access or not having on disposal relevant documentation.

The absence of data and insufficient reliability of data represent a serious gap for the entire valuation procedure which has been explicitly stated in the Report (on page 10 it is stated that: "has been severely inhibited by lack of data...") In the cases where there is exclusive availability of data only by some parties, a selection of data is present, overlook or omission of certain assets, excluding and selection of the contents and the scope of different items, depending on the interest of some parties - participants in the succession.

The text in the Section dealing with the manner of resolving the membership in the International Monetary Fund (page 4) should be completely omitted, because this text implicitly suggests implementation of the same key for resolving the succession of the other categories of assets. In the case stated above a specific category of property was referred to and there are no reliable facts for this principle to be applied for other kinds of assets. Due to this reasons, this text is out of the context of the Report and should be omitted.

Also it should be mentioned here that the International Monetary Fund uses the description Former Yugoslav Republic of Macedonia. During the negotiations at the Hague, and later, at the London Conference, Macedonia always participated under the name "Republic of Macedonia". Consequently, we believe that it is necessary to point out that the use of the description of the International Monetary Fund does not give right to anyone to use the same description.³

We also consider that mentioning the Act on Privatization of the Republic of Slovenia, which creates confusion in the Report and is absolutely not clear the aim of its elaboration in the text since it affects the otherwise negative consistency of the text.⁴

Regarding the reserves, we must point out that the representatives of Macedonia have, for several times, in writing and orally, although agreeing in general with the general principle adopted by Croatia, Bosnia Herzegovina, Slovenia and Macedonia, emphasised that the infrastructure should be subject of succession, because most of the big systems were technically and technologically unified but divided among the republican organizations only for more rational management.

With reference to the methodological issues⁵, we believe that it cannot be said that the financial assets have been valued according to international accountancy standards. It would be more precise to say that such was the intention. This intention should be achieved in the further work.

² International conference on former Yugoslavia, group 5 (economic issues), Report on the valuation of the assets and liabilities of the former SFRY, Chairman's Report, Section I. IMF Decision of 14 December 1992, page 4

³ International conference on former Yugoslavia, group 5 (economic issues), Report on the valuation of the assets and liabilities of the former SFRY, Chairman's Report, Section I. IMF Decision of 14 December 1992, page 4

⁴ International conference on former Yugoslavia, group 5 (economic issues), Report on the valuation of the assets and liabilities of the former SFRY, Chairman's Report, Section I. Privatization Law of the Republic of Slovenia/IMF, page 5.

⁵ International conference on former Yugoslavia, group 5 (economic issues), Report on the valuation of the assets and liabilities of the former SFRY, Chairman's Report, Section III, Methodology, General Principles, page 8.

The same refers to the statement under 1 on the same page, where it is said that there where a recognized market exists the assets are valued on the basis of free market value. Regretfully, this intention of the Economic Group remains an unfulfilled desire which in a tragic manner was violated by all working groups but the most by the group for military assets.

The reliability of data on the basis of which evaluation is made is small. In many cases the estimation of the values relies upon the assessments by parties which are, at the same time in possession of the immovable assets and documentations referring to it (for example: the quotation on page 10- For the most part, data used in estimating values by this method has been obtained from sources in the Republics and has not been possible to supplement this by on-site inspection - our emphasizing). Under such unpermissible circular situation in the valuation (for example: for the assets of the former Federal state) serious and drastic underestimation of the aggregate value of different assets had occurred.

It is not provided even an elementary insight in the valuation procedure in the applied methodologies and in the manner of their implementation. This resulted in methodological inconsistency of the valuation procedure and serious difference in the valuation quality of different assets. On the other hand, consistency of the entire valuation procedure has not been provided.

Some methodologies (only mentioned as applied in the valuation procedure) are based on market value, where such a open market value exists. It should be understood that there was no market according to the definition since the allocation of different resources was under the strong influence of the administrative legislation. In such cases, the prices are seriously distorted, while the accountancy data have little usability.

The DRC method, on which in most of the cases the valuation was made, has many weaknesses and is seriously disputed.

Although it was insisted, many properties have not been included in the final version of the inventory: stock reserves, the Bank for International Settlement in Basel, the assets of different federal associations and similar. (Each specialized sub-group should propose supplementation to the inventory with omitted items in this respect).

The inventory does not include claims of the National Bank of Macedonia against the National Bank of SFR Yugoslavia resulting from change of currency.

The value of different assets is drastically underestimated. Evident is the case with the military assets and the values of assets of the agencies and secretariats. In order to reach more precise approximative value, cross checking is required, i.e. valuation according to different methodology which would provide testing of values acquired by one type of procedure.

Macedonia strongly complains about the valuation of assets for which there was a possibility to be done correctly. Here primarily, we refer to the property located abroad. Consequently, we cannot agree that there where free market existed the valuation was correctly done.⁶ Even in the assets of the embassies and other representative offices, the figures have nothing in common with the real values. Therefore, we come to the conclusion that the consulting groups did not do their work seriously. If the the case of property on the territory of former Yugoslavia the difficulties which the consultants had in understanding certain relations in the country having an impact of the value are justified, the problems with the property abroad cannot be justified. Consequently, for us is absolutely unacceptable the statement that success was achieved in this field as stated in the first paragraph of page 10⁷.

⁶ InternationalSection III. Methodology, Strengths and Weaknesses of the Valuation, page 10

⁷ InternationalSection III. Methodology, Strengths and Weaknesses of the Valuation, page 10.

As compared with the statement on p. 10, paragraph 2 that in many cases data supplied by different republics coincide, which in a certain manner reduced the problems arising from the unavailability of the consultants to make on-site inspection of the facilities, we consider that these cases are few in number and therefore the results achieved in this field are not satisfactory.

The total financial assets and the total liabilities is not correctly presented. Namely, the liabilities cover those which could be allocated by debtors. This leads to decrease of unallocated part. In case the liabilities are allocated according to the debtors, in that case this sum would be different and the assets would be significantly higher than the liabilities⁸. But regretfully, the Republic does not possess such data.

Regarding credit liabilities, it is good that they are presented by institutions, lenders and borrowers, but in accordance with the draft inventory of the Conference, this item should also include the classified unallocated foreign debt by different lenders of Yugoslavia which is valued to be approximately US\$ 3,5 billion.

The social product of Yugoslavia for 1990 is YD 941,7 billion and not YD 1.281 billion as stated in the reports.

The liabilities on used credits of approximately US\$ 14,0 billion, located by borrowers, should be exempted from the inventory.

We could agree that in general the work was performed in a cooperative atmosphere. Nevertheless, we cannot understand why the remarks given at many meetings of the working groups have not been presented in the report. This specially refers to the remarks by the Macedonian experts.

⁸ International Section V. Methodology, Valuation, page 14.

Our stand points, presented at many meetings, are not included neither among the reservations of different delegations nor in the methodology and valuation of different fields.

Regarding the conclusions⁹, we cannot agree that the war damages will have impact on the valuation. In fact, we believe that the date chosen, 31.12.1990, provides assessment of the value of the federal assets at the time when the war had not broken yet. What will change the values defined at this date would be the transactions going on between the republics and the Federation. This is due to the fact that the disintegration from Yugoslavia did not happen over night, but gradually by breaking many common links existing until then. The war damage, which evidently is of great importance, is something else and has nothing to do with the succession of former Yugoslavia. It is part of the peace conference where the parties participating in the war would agree about peace and about who is to bear the costs of war destructions.

We insist on the fact that no agreement was reached for the seventh working sub-group of the economic group to be a sub-group of war damages.¹⁰ We also believe that the work on the succession should not depend on the solution of the issue on war damages.

It should be pointed out that apart from the serious complaints, an important stage of the entire work regarding succession has been done, both with the help of the Community and the consulting groups, but it has not reached its final realization. Further clarification of numerous issues of dispute in future requires engagement and arbitration of the European Community.

⁹ InternationalSection VII. Conclusions, War Damages, page 20.

¹⁰ InternationalSection VII. Conclusions, War Damages, page 20.

THE FEDERAL REPUBLIC OF YUGOSLAVIA
Federal Government
Dr Radoje Kontić
Vice-President

Belgrade, February 19, 1993

Mister President,

In my letter which I have sent to You on February 9, 1993, I asked You to be so kind to accept our postponement considering the opinion of Federal Republic of Yugoslavia on the project of Report on the Valuation of Assets and Liabilities of the Former SFRY. Delegation of Federal Republic of Yugoslavia which took part on the Economics group Meeting in Geneva, on February 17, 1993, have informed me that You accepted the reasons of our postponement. Thank You for Your understanding.

Attached You will find ~~comments of Federal~~ Republic Yugoslavia on the project of Report, made by experts of FRY.

Hoping that You will accept the comments of experts of FRY, please, be so kind, Mister President, to accept the expressions of my high respect.

Dr Radoje Kontić

Vice-President

Mister
Jean Durieux, President
of Economic Group
International Conference
on Former Yugoslavia
B r u x e l l e s

Co.
Copresidents
C.Vans
D.Owen

FEDERAL REPUBLIC OF YUGOSLAVIA

COMMENTS

ON THE BASIC PREMISES AND CONCLUSIONS OF THE
REPORT ON THE VALUATION OF ASSETS AND LIABILITIES
OF THE FORMER SFRY

BELGRADE
February 1993

1. DEPARTURES FROM THE AGREEMENT ON VALUATION IN THE SUCCESSION
PROCEDURE AND PREJUDGMENT OF THE QUESTION OF THE CONTINUITY OF THE
FEDERAL REPUBLIC OF YUGOSLAVIA UNDER INTERNATIONAL LAW

The Report on the Valuation of Assets and Liabilities of the Former SFRY makes uncalled for departures from the agreement reached at the meeting of the Group for valuation held on May 27, 1992, in Brussels, which defined the place of the valuation of assets and liabilities in the integral succession procedure for the former SFRY. In terms of this agreement, valuation should be a technical operation of establishing the facts about the assets and liabilities of the former SFRY. Therefore, the valuation of assets and liabilities cannot and must not prejudice the arrangement to be made for their division. Division would be carried out according to legal rules which in this case would be formulated under an agreement between the Federal Republic of Yugoslavia, as the predecessor state, and the newly independent republics as successors. What is more, without such rules, valuation would be difficult to carry out, even as a technical operation. In the absence of a criterion for determining what is "state property," the property subject to valuation has not been identified, with the result that the valuation is reduced to an aggregated inventory of all the individual proposals.

The Group agreed to put aside the question of succession (separation or dissolution) until a competent legal ruling has been made on this question. Such a ruling is prejudged in this Report. In many places in the text and in a variety of ways (explicitly or by implication), the Report questions the international continuity of the Federal Republic of Yugoslavia (e.g., by using such terms as "the former Yugoslavia" or "the republics as successor states", by treating Serbia and Montenegro separately; or by stating that the SFRY has ceased to exist and that it has been divided up into a number of successor states, etc.). FR Yugoslavia's consent and willingness to submit the jointly acquired assets and liabilities of the SFRY to a financial audit and division are thereby being abused, for FR Yugoslavia is thus transformed into a successor state and equated with the republics which were former federal units of the SFRY, even though FR Yugoslavia is incontrovertibly the predecessor state in the eyes of international law. FR Yugoslavia considers such an approach to the question of assets and liabilities unacceptable. Furthermore, it deems such an approach unconstructive, because it precludes an agreement on assets and liabilities, which can and must be treated as a separate issue from the question of the international status of the Federal Republic of Yugoslavia and the former republics of the SFRY.

2. THE KEY CONCEPT IN THE VALUATION HAS NOT BEEN DEFINED

The essential prerequisite for an authoritative valuation of the assets and liabilities of the former SFRY is to define the category of "state property." Unfortunately, the Group has not moved from square one in this respect. Since the Report uses such terms as "army property," "federal property," "financial assets and liabilities," etc., it can be inferred that the authors of the text consider these categories relevant to the succession procedure. There is no legal justification for such a ploy.

These concepts can only be of technical significance for the valuation process, as book-keeping categories within the general and indivisible category of "state property." In support of this argument we need only mention that these categories are not known either to customary international law or to the Convention on the Succession of States in Respect of State Property, Archives and Debts, which is invoked by some of the parties as applicable in this matter. The attempt to portray these categories as relevant to the procedure of succession betrays an intention to supplant succession as a legally regulated procedure with an arbitrary, mechanical dividing up of assets and liabilities.

In short, it is essential to define the category of "state property." For a definition of this type of property, international law refers us to the municipal law of the predecessor state, so that in this instance this category is defined on the basis of the national legislation of the SFRY which was in force at the moment of succession. Since the municipal law of the SFRY did not contain the concept of state property, the various forms of property known to Yugoslav law will have to be reconciled with the traditional concept of state property according to rules on the interpretation of legal norms. With due respect for the principle of justice and the need to prevent any unfair advantages, and mindful of the unique character of the regime of public, socially-owned property as the principal form of property under the 1974 Constitution of the SFRY, we believe that the definition of "state property" supplied by the delegation from the Republic of Macedonia provides a correct basis and framework for elaborating the concept of "state property." This definition reads: "State property includes not only the property of the Federation and its institutions, but any such property formally owned by the Republics or by their nationals that has been fully or partially made of and financed by federal funds, or by other Republics."

3. UNJUSTIFIED REDUCTION OF THE ASSETS FOR DIVISION

There is no good reason for calculation of assets and liabilities to be based on just the final year or last several years. As shown by the division of property among Uganda, Tanzania and Kenya (after the dissolution of the East African Community), the only limit on how far back into the past one can go is the availability of records. There can be no justification for not including in the division everything financed by joint resources, especially since accurate data are readily available. There are detailed accounts of investments for the period 1952-1965, which were wholly financed from the Federation's funds, regardless of the republic in which they were made. This statistical data can be taken as a basis for the division: 1) because they are based on the original bank orders for the payments, which were made through the National Bank, 2) because they are expressed in constant 1972 prices, and 3) because they show where the investments were made. It is not difficult to establish the sources of financing for all major capital investment projects after 1965, if they were financed by Federal funds. By ignoring these arguments, the Report unjustifiably reduces the amount of assets and liabilities earmarked for division, the upshot being that some republics of the SFRY would unfairly receive a bigger share than others.

For the sake of preventing unfair advantages, investment policy in the SFRY prior to 1952 should also be taken into account, notably the relocation of industries from Serbia to other republics, and prohibition of new capital investment projects, primarily in Vojvodina but also in other parts of Serbia, because of the conflict with the Cominform countries. It is possible on the basis of existing records to determine with a considerable degree of accuracy the damage which specific regions suffered as a result of Yugoslavia's global policy.

The attempt to interpret the constitutional reform of 1974 as a division of assets and liabilities is technically incorrect and totally unacceptable, for it has been made with an eye to excluding a large portion of assets and liabilities from the division. Namely, the devolution of legal powers to regulate the management and disposition of property from federal to republican authorities did not change the nature of property rights of the property which remained as before socially-owned property. This socially-owned property remained unchanged in its conception after 1974, as uniform and indivisible in the SFRY, based on the explicit constitutional prohibition for anyone to acquire property rights to it (Article 12 of the 1974 Constitution) and on the collective right of all workers to manage socially-owned property (Article 13).

The hastily drawn conclusion that there is no information concerning certain items of the inventory, and the assertion that information is being gathered all too slowly, are apt to bring about an unjustified reduction of the assets and liabilities subject to division. The argument that a speedy settlement is required because the European Community's budget does not have enough funds for negotiations is unpersuasive. It should be remembered that the division of the assets and liabilities of the East African Community took seven and a half years, and that date on virtually all the essential

items in Yugoslavia's assets and liabilities have been collected in just four months. Therefore, the Report's criticism of the Yugoslav delegation for collecting information too slowly not only fails to stand up to scrutiny but is at odds with the expert group's praise for its successful presentation of voluminous and high quality data. The fact that information has been collected in just four months indicates that the distribution can be effected in a reasonable length of time without imposition of deadlines.

4. DEPARTURES FROM THE PRINCIPLE OF THE INDIVISIBILITY OF ASSETS AND LIABILITIES

Prevention of unfair advantages is the fundamental principle, proposed by the Delegation of Croatia, which should form the basis both for the entire negotiating process and for the future agreement on a just division. Consistently applied, this principle requires that all items in the SFRY's assets and liabilities should be expressed in prices obtaining at the end of 1990, so that a uniform balance sheet can be drawn up as the sole way of reducing different physical magnitudes to a common denominator of value. It is at the same time the basis for a final and precise settling of accounts. Such a balance sheet postulates determination of how much of the total value of the SFRY's assets and liabilities is "located" in the territory of each of the parties concerned, and how much of this total value, according to agreed criteria for a fair division, should "belong" to each. Any difference that might arise would be dealt with in compensation arrangements.

In disregard of these requirements, the entire undertaking of collecting data on individual items and their valuation is envisaged in the Report as a partial, physical apportionment of property and obligations according to selected priorities. It is suggested to the Group for ~~succession~~ that instead of working on establishing principles and criteria for a fair distribution it should rather concentrate on the physical division of the concrete nominal units of the individual items in the inventory. Unless the total assets and liabilities are calculated at December 1990 prices and the criteria for a fair division are properly defined, prejudice will be done to that phase of work in which the interested parties are to formulate the legal rules to be followed in the division of assets and liabilities. These rules might also come in handy to regulate forms of mutual compensation (in money, goods, or concrete material objects).

5. MISUSE OF THE IMF EXECUTIVE BOARD'S DECISION OF DECEMBER 14, 1992

The decision taken by the Executive Directors of the International Monetary Fund on December 14, 1992, is an ad hoc arrangement in keeping with the character of the Fund as an independent international financial institution. This decision cannot serve as a precedent for decisions at the Conference on Yugoslavia, neither as regards the accounting ratios used (quotas, etc.), nor as a legal rule determining the Federal Republic of Yugoslavia's status as the predecessor state. Above all, this decision cannot be taken as a precedent for FR Yugoslavia's acceptance of so-called partial balance sheets for the division of the assets and liabilities of the Socialist Federal Republic of Yugoslavia.

6. INCORRECT USE OF THE TERM "WAR DAMAGES"

In a number of places in the Report the damage caused by the civil war in the former SFRY is referred to as "war damages." The use of this term in the case of Yugoslavia has no legal basis whatsoever. In international law the term "war damages" is used to refer to the damage caused by an armed conflict between sovereign and independent states, while in the case of Yugoslavia we have a typical civil war. Therefore the term "war damages" should be replaced in the Report with the phrase "damages caused by the civil war." The term "peace treaty" is also unsuitable, for the actual accord was a political agreement to end the civil war.

There is no doubt that these damages should be compensated, so that conditions can be created to normalize life in the territories of the former SFRY. The damages produced in the course of the civil war should be regulated in line with established international custom, which has also been sanctioned in the draft code on state responsibility. It is clear from the rules of international law governing compensation of damages caused by civil war that these questions have nothing to do with succession. The proper place for considering this matter and adopting decisions would be a Conference on the economic reconstruction of the economic area of the former SFRY.

7. DISREGARD FOR THE AGREEMENT ON THE METHODOLOGY FOR ASSESSING THE VALUE OF THE PROPERTY AND OBLIGATIONS OF THE SFRY

According to the original programme of work, the first step was supposed to have been to draw up an inventory of assets and liabilities; next the methodology for making the valuation would be decided upon, and finally a balance sheet would be prepared. However, the work on the inventory has not been completed, and the phase of deciding on methodology has simply been skipped over. The delegations were not given an opportunity to comment on the proposed methods of assessing the value of property, so that the methods proposed in the Report reflect an unbalanced and defective methodology. Such an approach fails to satisfy the requirement that all items on the inventory should be expressed in uniform prices and makes it impossible to make calculations on a uniform basis:

CONCLUSIONS

The foregoing comments of the Federal Republic of Yugoslavia on the Report on the Valuation of Assets and Liabilities of the Former SFRY point up the basic shortcomings of efforts made to date. The following improvements are needed:

- 1) valuation should be confined exclusively to a technical assessment of the value of assets and liabilities, which as such would in no way prejudice the final arrangements, which are to be made on the basis of agreement of all the interested parties;
- 2) the basic legal relationship between the predecessor state and the successors is to be agreed upon by them;
- 3) a proper valuation of assets and liabilities can only follow a precise definition of "state property," in line with the constitutional system of the SFRY at the moment of succession;
- 4) succession should, of course, be speeded up, but not by setting unrealistic deadlines for the collection of data, by restricting the time period to which the succession applies, or by cutting back the European Community's budget for the purpose, for otherwise the sum total of assets and liabilities would be objectively reduced and some parties would receive more than their fair share;
- 5) the valuation of assets and liabilities should produce uniform criteria for division and a final accounting of individual items, ^{not for} for the purpose of a partial division of real property or value;
- 6) the decision by the IMF Executive Board of December 14, 1992, cannot serve as a precedent for FR Yugoslavia's acceptance of what is described as a partial balance sheet, nor can it affect this country's international status;
- 7) a debate and common agreement on the methodology for valuation of the assets and liabilities of the SFRY should be a top priority in the next stage of the Group's work;
- 8) since in this case damages have been caused by a civil war and therefore are not war damages stricto sensu, the question of compensation for this type of damages should be excluded from the succession procedure;
- 9) as regards archives, it is of the utmost importance to adopt a precise definition of State Archives to serve as a guideline in their classification and determination of the status of various types of these archives.



TELEFAX

No: 3038

Date / Datum: 15.2.1993

From / Od: Suzana GALE, Ministry for foreign affairs

To / Za: Mr. Durieux

Telex / Telefaks / Fax No: 99 322 2966 02

Number of pages / Število strani: 7 strani, vključno s to stranjo

This message contains _____ pages, including this one

Message / Poročilo

Dear Mr. Durieux,

Enclosed please find Remarks of the Working Group on Succession to the Report on the Valuation of Assets and Liabilities of the Former SFR Yugoslavia (Group 3 - Economic Issues).

Please accept the assurances of my highest consideration.


dr. Milan MEJAK

Principal Negotiator on Succession Issues and Head of the Delegation

OK FAX
19.2

B de
by fax

Ljubljana, 15 February 1993

REMARKS OF THE WORKING GROUP ON SUCCESSION TO THE REPORT ON
THE VALUATION OF ASSETS AND LIABILITIES OF THE FORMER
SFR YUGOSLAVIA
(GROUP 5 - ECONOMIC ISSUES)

EXECUTIVE SUMMARY:

1. Everywhere in the Report where the name Federal Republic of Yugoslavia is mentioned, "/Serbia and Montenegro" shall be added.

2. Page 1, paragraph 2: In the third sentence, the word "only partly" shall be added after the words "and are". The following sentences 4, 5 and 6 shall be deleted.

Explanation:

It is a division in terms of value and the operative value is not relevant. The applicable value is not a matter of discussions on succession. Whatever shall be divided has its physical value.

3. Page 1, paragraph 3: the first sentence shall read: "Other problems relate primarily to a lack of the necessary and credible information to perform a robust valuation".

Explanation:

The majority of valuations are based on partial and unreliable estimations and do not reflect the actual state at the end of 1990. Mr Durieux should request financial data from relevant institutions. It should be stressed that the sources are not very reliable.

4. Page 1, paragraph 3: the words "and medical insurance" shall be deleted in the second sentence.

Explanation:

It is improbable that the data are not available. The Pension and Disability Social Insurance Institute should have them. We are of the opinion that pensions and medical insurance are not the subject matter of succession.

5. Page 1, paragraph 3: the fourth sentence shall read: In the "other" assets category the lack of information was almost total, although they exist and would be available,

and although the size of the assets involved in this area will be small relative to the overall valuation".

Explanation:

The data are actually incomplete; the reason for insufficient information is that those who could submit such data retain them and/or refuse to provide them, which we would like particularly to point out by the suggested amendment of the text.

6. Page 1: the chart shall be deleted.

Page 2: the first sentence shall be deleted.

Explanation:

The chart is not in accordance with the inventory in the attached tables, the items are not comparable and cannot be summed up. Our remarks have not been entirely regarded and all items have not been assessed. The data are not accurate, both in terms of commutation and in terms of value.

For this reason, the Working Group cannot accept the attachments to this Report composed of tables containing items and values of various sub-groups.

7. Page 2, paragraph 2: the first sentence shall be changed to read: "Since the data on the valuation do not make the individualisation of assets and liabilities possible, which, however, is necessary for technical implementation of the division, the negotiations on the division of assets and liabilities can in principle not begin.

8. Page 2, paragraph 2: the second sentence shall be deleted.

9. Page 2, paragraph 3: the second sentence shall be deleted.

10. Page 2, paragraph 5: After the words "gives a", the word partial should be added.

11. Page 2, paragraph 5: the following text shall be inserted instead of the part of the second sentence following the words "since this date": "All events which had influence on assets and liabilities of the former SFRY after 31 December 1990, shall be treated in terms of the following two principles:

- War Damages shall be remunerated by those who have caused the damage.
- The period following 31 December 1990 shall be regarded as a period of disintegration of the former SFRY."

12. Page 2, last paragraph: the first sentence shall be changed to read: "Discussions on succession should now

advance, although the evaluation has not been entirely completed.

13. Page 2, last paragraph: the following paragraphs shall be added to the first sentence:

"The process of succession to the former Yugoslavia is a delicate, complicated and difficult issue, in particular in the given circumstances of violence and war in some of the successor States. The valuation of assets and liabilities of the former SFRY is the initial phase in resolving this issue. The final goal of the valuation shall be clear individualisation - allocation of assets and liabilities to be taken over by successor States. Otherwise, the division among successor States will become technically infeasible.

Although a considerable amount of work with regard to the valuation has been accomplished, which is worth admiring, we are of the opinion that the basis for discussion of the division of assets and liabilities is not yet sufficient. There are some items (like assets abroad and monetary reserves) which already contain sufficient basis for the discussion of the division. However, too many open questions remain unresolved, to mention in particular the balance sheets of the NBY and military assets, to be able to declare the phase of the valuation completed. On the other side, the every day life calls for solutions to some important issues (e.g.: pensions, foreign debt).

The existing inventory could definitely be reduced with regard to the lack of information for a great number of not yet concerted items and with regard to the fact that a number of items do not accord with the agreed date of valuation. With regard to the events following the date of 31 December 1990 and the influence of these events on the valuation, the following two principles should be taken into consideration.

- War Damages shall be remunerated by those who have caused them.
- The period following 31 December 1990 shall be regarded as the period of disintegration of the former SFRY.

Due to incomplete data and deficient data sources on the value of individual items, the work of subgroups cannot yet be concluded. The work shall continue, since the official data from balance sheets as per 31 December 1990 have not yet been provided for.

The Inventory list shall remain open also after 15 February, which should enable the inclusion of additional items in cases when their existence has been subsequently established."

14. Page 2, last paragraph: following the added paragraphs, the second sentence shall be adjusted accordingly and shall read as follows: "With regard to the advancement of this work and the relative size of the various assets and liabilities, it would be useful to examine the possibility of seeking preliminary settlements in such areas as property abroad and monetary reserves. Attempts should be made to reconcile the agreed and non-agreed parts of the inventory into a single agreed list."

CHAIRMAN'S REPORT:

15. Page 2, paragraph 2: The fourth and fifth sentence shall be deleted.

16. Pages 2 and 3: the subsection (b) Accounting Practices shall be deleted altogether.

17. Page 5: The subsection "Privatisation Law of the Republic of Slovenia" shall be deleted altogether.

Explanation:

The statements given in the Draft Final Report are unfounded and not correctly interpreted from the legal point of view. On 13 November 1992, the Parliament of the Republic of Slovenia adopted the Law on Ownership Restructuring of Enterprises (Official Gazette of the Republic of Slovenia No. 55/92). The Law regulates the ownership transformation of socially owned enterprises which have so far been operated as enterprises of social ownership according to the then valid regulations. It shall in no case be understood as state ownership of the former Yugoslavia, since these enterprises have been established by economic entities on the territory of the Republic of Slovenia. All issues with regard to the entire status and character of social ownership have been explained and cleared at the Brussels Conference. The adoption of the above mentioned Law is just a step forward in the process of bringing the economic system of the Republic of Slovenia closer to standards and solutions that are generally accepted in Europe.

18. Page 7, paragraph 2: the last sentence of the paragraph shall be deleted.

19. Page 9, paragraph 2: the last sentence shall change to read: "In addressing this problem, it may be useful, particularly as regards financial assets and liabilities, to implement the same approach, both with regard to internal and external items."

20. Page 9, last paragraph: the basis of restitution in kind shall be understood as the principle of returning the items of national treasures in kind into that Republic from which

they originate. Such approach is regarded correct and acceptable.

21. Page 10; paragraph 4: the following text shall be added at the end of the last sentence:

"The accounting practices of NBY represent a special problem, although only the non-allocated debt, i.e. that part of obligations which cannot be apportioned to particular end-users has been the subject matter of the discussions of the division."

22. Page 11, paragraph 1: the last sentence of this paragraph shall be deleted.

23. Page 11, paragraph 3: the paragraph shall be changed to read: "Despite these difficulties, the valuations given in this Report do offer a partial basis on which to begin discussions on the division of assets and liabilities. In some areas, such property abroad and foreign currency reserves estimates are robust enough to allow detailed discussion of particular parts of the inventory."

24. Page 14 to 16: Section V. The Valuation shall be deleted altogether.

Explanation:

The deletion is suggested in accordance with the decision of the Working Group to delete the chart on page 1 and is in the spirit of all remarks opposing the completion of the valuation.

25. Page 18: after the third paragraph (3.), the following text shall be added: the text of the Action Plan of Section VI does not reflect the amendments which had been adopted at the last session of the working subgroup "Archives" and shall therefore be, properly amended, included in the finally adopted report, items 1 - 4 only.

26. Page 17 (Valuation Methodology) new item 4: In this stage, we once again stress our position that Article 31 of the Vienna Convention on Succession of States in respect of State property, archives and debts (1983) shall be taken as the basis for the resolution of the succession issues with regard to the State Archives of the former Yugoslavia.

Explanation:

The text does not reflect the amendments which have been adopted by the Working Group. Mr G Hoffman explained that Mr Durieux has not sent the text in time. The Chairman Mr Durieux shall again be sent the letter in which it has been stated that Article 31 of the Vienna Convention shall represent the basis for the resolution of the issues with regard to the archives.

27. Page 19, subsection Action Plan: point 5 shall be deleted.

The following text shall be added at the end of this subsection: "This shall in particular be the case for military assets, since subsequent illegal appropriation (following 31 December 1990), the use and destruction of military property may in no respect influence the procedure of valuating assets and liabilities of the former Yugoslav Peoples' Army. The damage caused to military property shall by all means be borne by those who had such property in possession and have not preserved it in accordance with the provisions of the Vienna Convention."

28. Section VII. Conclusions: the first paragraph shall be changed to read:

"The valuations presented in this Report and in the consultants' work represent an incomplete snapshot of assets and liabilities on 31 December 1990. Due to incomplete data and non-reliable data sources on the values of individual items, the valuation has not been completed and shall continue.

"The process of succession to the former Yugoslavia is a delicate, complicated and difficult issue, in particular in the given circumstances of violence and war in some of the successor States. The valuation of assets and liabilities of the former SFRY is the initial phase in resolving this issue. The final goal of the valuation shall be clear individualisation - allocation of assets and liabilities to be taken over by successor States. Otherwise, the division among successor States will become technically infeasible.

Although a considerable amount of work with regard to the valuation had been accomplished, which is worth admiring, we are of the opinion that the basis for discussion of the division of assets and liabilities is not yet sufficient. There are some items (like assets abroad and monetary reserves) which already contain a sufficient basis for the discussion of the division. However, too many open questions remain unresolved, to mention in particular the balance sheets of the NBY and military assets, to be able to declare the phase of the valuation completed. On the other side, the every day life calls for solutions to some important issues (e.g.: pensions, foreign debt).

The existing inventory could definitely be reduced with regard to the lack of information for a great number of not yet concerted items and with regard to the fact that a number of items do not accord with the agreed date of valuation. With regard to the events following the date of 31 December 1990 and the influence of these events on the valuation, the following two principles should be taken into consideration:

- War Damages shall be remunerated by those who have caused them.

- The period following 31 December 1990 shall be regarded as the period of disintegration of the former SFRY.

Due to incomplete data and deficient data sources on the value of individual items, the work of subgroups cannot yet be concluded. The work shall continue, since the official data from balance sheets as per 31 December 1990 have not yet been provided for.

The Inventory list shall remain open also after 15 February, which should enable the inclusion of additional items in cases when their existence has been subsequently established."

29. Page 20, the subsection "War Damages" shall be deleted altogether.

Explanation:

War damages are not the subject matter of succession. These issues will be dealt with by a special working group for war damages and not within the scope of the work of Group 5 (Economic Issues).

and the last two

30. Page 21, paragraph 1: only the first ~~sentences~~ shall remain. The rest of the paragraph shall be deleted and the following text inserted in its place:

"The inventory lists should be extended to include that property of associations and societies at the federal level which has been financed from the federal budget and from the funds of associations of enterprises from the Republics of the former SFRY. Therefore, the facilities which have been financed on the basis of contracts among companies having their seat in two or more Republics of the former SFRY shall be excluded from the inventory list".

31. Page 23, paragraph 2: the date 31 December 1990 shall be added to both lines defining outstanding dues.

32. The heads of the Subgroups will sent remarks on charts.

REPUBLIKA BOSNA I HERCEGOVINA
VLADA

Direkcija za poslove drzavne sukoesije

Ul. broj: DS-90-2/83

Datum: 14.02.1993. godine

Gosp. J. Durieux
Gosp. G. Robertson
Commission des communautés d'européens
Brisel

Fax: 883222984304

Predmet: Dostava preliminarne verzije
stavova Vlade R BiH na vas izvjestaj

Postovani gospodine Durieux,
primili smo Vas inovirani izvjestaj o dosadasnjim aktivnostima na procjeni inovine i obaveza ex-SFRJ. Vas smo izvjestaj primili u Zagrebu. Od sjednica podgrupa Vase Komisije za ekonomska pitanja u Briselu 20 i 21.01.1993 godine mi se nalazimo u Zagrebu jer nismo u mogucnosti da otputujemo u Sarajevo. Prema tome, nismo bili u mogucnosti obavijestiti Vladu Republike BiH o rezultatima sastanka u Briselu kao ni pribaviti zvanicno misljenje Vlade Republike BiH o Vasem inoviranom izvjestaju.

Medjutim delegacija Republike BiH koja je bila u Briselu napravila je temeljit uvid u Vas izvjestaj i izradila SINTETICKI OSVRT koji vam dostavljamo kao radnu verziju ~~naših stavova jer ih nije razmatrala i usvojila, ni jedan nadležan organ.~~

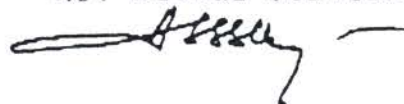
Koristimo se ovom prilikom, da Vas zamolimo da shodno tekstu izvjestaja ~~primenite aktivnost kako bi se obezbjedio ravnopravni položaj Republike BiH u odnosu na druge zemlje našeg područja.~~ Posto nam je onemogućen saobraćaj sa Sarajevom to sa ozbiljno dovodi u pitanje naš buduci rad i zauzimanje potrebnih stavova na nivou nadležnih organa. Zbog toga, ~~Vas molimo, da ucinite ve kako bi se i za našu delegaciju stekli ravnopravni uslovi za rad u ovom veoma slozenom i odgovornom poslu koji ste Vi sa svojim suradnicima do sada veoma uspjesno vodili.~~

U nadi da cete poduzeti sve neophodne aktivnosti : obezbjediti nam minimalne uslove za normalan rad unaprijed vam se zahvaljujem i ostajem

S postovanjem

Co: Gosp. Nedžad Hadžinusić
Brisel Fax: 883223451182

Direktor
Mr. Dzevad Derviskadić



REPUBLIKA BOSNA I HERCEGOVINA
VLADA

Direkcija za poslove državne
sukcesije

Vl. broj: DS-90/93

Datum: 03.02.1993.godine

MEĐUNARODNA KONFERENCIJA
O EX - YUGOSLAVIJI
Grupa 5 (ekonomska pitanja) Bruxelles

Predmet: Sintetički osvrt na izvještaj
o vrednovanju imovine i obaveze ex-SFRJ

Shodno dogovoru sa zajedničkog sastanka podgrupa za ekonomska pitanja održanog u Bruxellesu 20. i 21.01.1993.god. primili smo Izvještaj gospodina J. Durieux-a na koji dajemo naš slijedeći osvrt:

Ekspertne grupe iz Republike BiH su permanentno imale brojna ograničenja koja su ih pojedinačno i u cjelini dovela u neravnopravan položaj u odnosu na delegacije drugih republika-nasljednica bivše Jugoslavije. Ona su i sada izražena kroz saobraćajne probleme, teškoće u komuniciranju, što se ozbiljno odražava na pribavljanje neophodnih podataka i informacija bitnih za kompletiranje inventurnih listi i vrednovanje imovine i obaveza.

Najveći broj informacija i podataka se nalazi u Beogradu, pa je dobrim dijelom dinamika i kvalitet rada ovisio o spremnosti da se daju potrebne - bitne informacije.

Dosadašnji rezultati omogućuju da se dobije provizorni uvid u vrijednost ukupne imovine, što ukazuje na potrebu da se nastavi

- 2 -

daljnji rad na sagledavanju pojedinih segmenata. Na osnovu toga i uz prihvatanje parcijalnog pristupa bilo bi moguće postupno odvijanje procesa sukcesije. Na istoj osnovi uključivanje, smanjenje i procjena ratnih šteta bi omogućilo stvarno odvijanje procesa sukcesije, inače je sukcesija bez kompenzacije ratnih šteta, za neke republike, kao što su BiH i Hrvatska besmislena.

U vazii metoda procjene imovine, izostavljanja određene opreme i namještaja, te utvrđivanje praga od 1 milion dolara da se nešto uvrsti u sukcesiju za nas je teško prihvatljivo, pa zato predlažemo po grupama konkretne prijedloge za dopunu.

U izvještaju je potrebno instrumentalizirati odgovornost za zloupotrebe u raspolaganju zajedničkom imovinom uključujući i međunarodnu kontrolu, te inicirati mjere blagovremene zaštite (devizne rezerve, vojna imovina i sl.).

Smatramo da je trebalo neka pitanja o kojima je postignuta suglasnost unijeti u izvještaj.

Najveće zaostajanje i nesuglasnosti su u podgrupama: finansijska aktiva i pasiva i vojna imovina, što veoma zabrinjava, jer su radi vrijednosno o najznačajnijim podgrupama.

KONKRETNE PRIMJEDBE PO PODGRUPAMA:

1. Finansijska aktiva i pasiva

U ovoj podgrupi od ukupno 23 stavke nije postignuta saglasnost ni o jednoj. Ocijenjeni iznos aktive od 20,7 mild. US\$ i pasive od 34,6 mild. US\$ može da služi samo kao orijentaciona veličina vrijednosti. To se isto odnosi i na iznose vrijednosti ukupnog diobnog bilansa (aktiva 94,0 mild. US\$; pasiva 34,6 mild. US\$ i netto vrijednosti 60,0 mild. US\$).

Rad na poslovima ove podgrupe treba maksimalno ubrzati i trebalo joj dati prioritet.

Republika BiH podržava da se zajednički rješavaju stavke:
- imovina i neizmireni dugovi saveznih fondova na ubrzanje razvoja privredno nedovoljno razvijenih republika i

- 3 -

- neizmirene obaveze i potraživanja saveznog budžeta.

Također, podržava da se riješavaju izvan tekućih poslova državne sukcesije slijedeće stavke:

- rezerva zlata i plemenitih metala iz filijala NB u Hrvatskoj tokom II. svjetskog rata,
- produžene implikacije valutne reforme 1921. i 1941.god. arbijsanskog dinara i
- potraživanje NBY i republika po osnovu uvođenja novih valuta.

Posebno insistiramo da se uvedu kao posebne stavke u inventurnoj listi finansijske aktive i pasive:

- neizmirene obaveze bivše SFHY prema građanima BiH po osnovu agrarne reforme za period od 1918. - 1941.god. sa iznosom od 84,8 miliona zlatnih SFR (iznos treba valorizovati na 31.12.1990.god.)

Isto tako predlažemo da se inventurna lista dopuni:

- tržište kapitala Beograd,
- tržište novca i hartija od vrijednosti Beograd,
- devizno tržište,
- agencija za sanaciju banaka,
- udruženje banaka,
- jugoslavenska lutrija i sl.

2. Imovina savezne vlade, sekretarijata i organizacija

Smatramo da treba dalje upotpunjavati spisak imovine saveznih institucija u zemlji i inostranstvu uključujući i pokretnu imovinu, posebno opremu, informacione sisteme, programe i umjetničke vrijednosti.

Ponovno je ispuštena imovina - naoružanje i sistem veza Saveznog sekretarijata za unutrašnje poslove.

- 4 -

3. Vojna imovina

Inventurna lista CREST - a bazirana je na procjeni stručnih institucija, pa je zbog toga nepotpuna. Ne vide se izvori podataka i cifre su date bez obrazloženja.

Inventurnu listu treba dopuniti sljedećim:

- vojni stanovi,
- kupljene licence,
- vlastite nove tehnologije (privreda)

Za sve ove stavke nije iskazana procijenjena vrijednost.

Također evidentirati financijska sredstva kao na pr. :

- potraživanja za izvezeno naoružanje i materijalno tehnička sredstva,
- potraživanja za izgradnju vojnih objekata u inostranstvu,
- razlika u cijeni za vojnu opremu i naoružanje proizvedeno i predano bivšoj JNA i u izvozu naplaćene vrijednosti za vojnu opremu i naoružanje i
- sredstva za školovanje kadrova.

Ocijenjuje se, da je stvarna vrijednost vojne imovine veća, ne samo zbog nepotpune obuhvatnosti, već i podcijenjene vrijednosti nekih stavki naoružanja i vojne opreme.

Poželjnije bi bilo da se na bazi dokumentacije bivše JNA uradi cjelovita inventarna lista, a poslije njenog usaglašavanja, izvrši procjena vrijednosti.

Vrijednost naoružanja i opreme Teritorijalne odbrane R BiH iznosila je 190 miliona US\$, što treba bivša JNA da isplati ili vrati Vladi R BiH izvan i prije diobe.

Opremu koja se ne vrednuje iskazati na posebnoj inventarnoj listi koju također treba usaglasiti.

Pošto se zlorabi zajednička vojna imovina, posebno se ističe odgovornost za njenu zloupotrebu.

U principu se ne prihvata naturalna dioba.

4. Infrastruktura, transport i komunikacije

1) Stavke inventara za sukcesiju odražavaju diskusije i zaključke sa sjednica ove podgrupe o tome da se zajednički finansirani objekti infrastrukture od strane preduzeća iz više republika ne uključuje u inventar. Samo tzv. SRJ insistira da naftovod i dalje ostane na listi.

Međutim, u stavke inventara nisu uključeni prijedlozi koji su iz Bosne i Hercegovine upućeni pismom od 05.01. i 27.01.1993.g. Zato insistiramo na uključivanju u inventar slijedećih stavki:

- a/ HE Zvornik
- b/ HE Bajina Bašta
- c/ hidropotencijal rijeke Drine
- d/ potraživanja od Heralcije po osnovu negativnih kursnih razlika ~~na uvoznju nafti.~~

Detalji ovih stavki dati su u našem pismu od 27.01.1993.god. upućene gosp. Robertsonu.

2) Podaci o predloženim stavkama inventara nisu ažurirani. Naime, u pismu od 27.01.1993.god. mi smo u vezi sa naftovodom predložili da se pored te stavke doda napomena:

" Republika Bosna i Hercegovina ne insistira na uključivanju naftovoda u inventurnu listu, ukoliko njena prava predviđena ugovorom iz 1974.god. budu zagarantovana i obezbijeđena u principima sukcesije."

S tog stajališta posmatrano, u rubriku "Reservations" trebalo je da se unesu rezerva Bosne i Hercegovine sa citiranom napomenom.

Također, za stavke 2 b; c; d; i e važi rezerva B i H, jer ne vidimo nikakvu opravdanost niti fundiranost za unošenje u listu inventara sukcesije.

Insistiramo i na ispravljanju podataka o izvorima finansiranja

- 6 -

naftovoda u Key Indicators i to tako da se kao finansijeri prikažu sa po 1/3 INA Zagreb, NIS - Novi Sad i ENERGOINVEST - Sarajevo.

3) Na posljednoj sjednici podgrupe ITC u Bruxellesu zauzet je stav da je predmet sukcesije u transportu, infrastrukturi i komunikacijama samo federalna imovina ili imovina formirana na federalnom nivou.

Međutim, takav stav praćen je i zaključkom da se principima sukcesije obezbjedi pravni kontinuitet, odnosno zaštita ugovora o zajedničkim ulaganjima u oblasti transporta, infrastruktura i komunikacija u smislu poštivanja prava i obaveza ugovornih strana, preduzeća iz različitih republika bivše Jugoslavije.

Zato smatramo da je u Izvještaju potrebno ovo istaći na početku 23. strane u kome se govori o transportu, infrastrukturi i komunikacijama.

5. Arhivi

U okviru točke E ukoliko se tekst o financiranju aktivnosti na zaštiti građe odnosi na ukupnu arhivsku građu koja je ugrožena, iza riječi "umnožavanje (reprodukcija)", treba dodati i riječi: restauracija i konzervacija (dalji tekst ostaje).

Ukoliko se radi o građi o izvršenju sukcesije, odnosno raspodjeli originala i kopija, onda predloženi tekst ostaje bez promjena.

U toč. 5 na str. 19 uz tekst o "zajedničkoj baštini" u dijelu u kojem se govori o upravljanju, financiranju i drugom, u tekst treba ugraditi, da se usaglašavanje vrši isključivo konsenzusom.

Prihvatamo da se Sporazum priloži uz Izvještaj, uz dopunu formulacije u točki 14, da se bilateralna saradnja ne može odnositi na građu nastalu radom federalnih organa ex-Jugoslavije, jer je ona predmet sukcesije.

6. Ostala imovina

Relativno potpuno i točno utvrđivanje inventara i vrijednosti "ostale imovine", otežano je nedostatkom potpunih i povjerljivih informacija, budući da se sjedište razmatranih subjekata nalazilo gotovo isključivo u Beogradu.

Inventarna lista sadrži imovinu svega 11 od ukupno evidentiranih 60 organizacija i asocijacija zajednički formiranih na federalnom nivou.

Delegaciju SRJ (Srbija i Crna Gora) bi trebalo zadužiti da dostavi sve relevantne podatke za sve subjekte čija imovina ulazi u ovu podgrupu.

U procjeni vrijednosti imovine koja se ovdje razmatra, akcenat je stavljen na nepokretnosti. Princip pravičnosti zahtijeva da se odrede metodi kojima će se vrijednost pokretnih stvari i prava potpuno uključiti u imovinu razmatranih subjekata.

Prag od 1 milion US\$ kao uslov za uvrštavanje u listu smatramo suviše visokim, naročito u ovoj podgrupi. Predlaže se da to bude 100.000 US\$.

Procjena vrijednosti nacionalnog blaga (B. 6) na 22,4 miliona US\$ je suviše niska, da bi se moglo ozbiljno moglo uzeti u razmatranje. Neophodno je sačiniti detaljnu listu i izvršiti ekspertsku procjenu.

Utvrdjivanje vrijednosti ilegalno konfiscirane imovine predstavlja poseban predmet i postavlja specifične probleme. Dok se precizno ne odredi organ IOFY, koji bi o njima raspravljao i postupak koga se valja pridržavati, smatramo da ovu materiju i dalje treba zadržati u podgrupi "ostala imovina".

Annex 2Documentation Received from Delegations
(too late for inclusion in this Report)

In addition to this documentation upon which the report is based, the following documents have been received too late to be included in the report.

Military Assets : Croatia Supplementary Data of the Ministry
of Defence
Macedonia Military Assets Data Submitted 15
February 1993

Infrastructure, Transport,
and Communications : Macedonia Data on Electroenergetic Facilities
1946-1955

All other documentation, including that on Financial Assets and Liabilities, Federal Government Assets and Other Assets submitted by 16 February 1993, has been analysed in the writing of this report.

Financial Contribution of the Commission
of the European Communities

In addition to the logistic support offered by the Commission of the European Communities in the provision of facilities for meetings of the sub-groups, the Commission also provided technical assistance from the PHARE programme at a cost of 550,000 ECU.

TERMS OF REFERENCE FOR THE ENGAGEMENT
OF CONSULTANTS



COMMISSION
OF THE EUROPEAN
COMMUNITIES

Brussels,
GR/fw

DIRECTORATE-GENERAL
EXTERNAL RELATIONS
I/E
Questions économiques
à caractère général

Terms of Reference for the Engagement of Consultants

Objectives

In the context of negotiations in the Peace Conference on the former Yugoslavia, delegations are seeking agreement on a just settlement of the assets and liabilities of the Federation amongst the successor republics. Essential to this process is obtaining an agreed valuation of the assets and liabilities in question. The Commission of the European Communities, on behalf of the delegations to the Peace Conference, intends to engage Consultants to provide technical assistance in this exercise.

Nature of the Consultancy Work Required

Consultants will be engaged to provide a valuation of items included in the inventory of assets and liabilities drawn up by the delegations to the Peace Conference. Their work will be carried out under the supervision of officials of the Commission of the European Communities, who will work as rapporteurs to the Conference on Yugoslavia.

The inventory contains items divided amongst the following seven categories:

1. Financial assets and liabilities of the Federation
2. National/state archives
3. Assets of the Federal government, its secretariats and agencies
4. Military assets of the Federation
5. Infrastructure, transport and communications
6. Other assets
7. War damages

It is intended that the valuation work will proceed, as soon as possible, on the first six categories simultaneously.

Within each of the categories on the inventory, the assets and liabilities to be considered are listed. It will be the task of the Consultants to provide the expertise necessary for the valuation of the assets and liabilities in the relevant part of the inventory and to advice on progress in disputed areas.

As the basis for the valuation the Consultants will receive initial input from the delegations to the Peace Conference. Specialists from each delegation will provide documentation corresponding to the valuation of the relevant assets. This documentation should be analysed with a view to identifying areas of agreement and informing the Consultant's decision on the most appropriate way to proceed in other areas. In addition much of the necessary data should be obtainable from the documentation provided.

Where there is disagreement it will be necessary to assess sources of data and to supplement the data received from the delegations from other sources. This aspect of the work will require an investigative and independent approach and a willingness to assess contradictory information and data. There is likely to be a need to travel to make assessments 'in situ'.

In order to agree the basic principles and ground rules for the work, there will be a meeting between the specialists of the delegations, the Consultants and representatives of the European Commission before the substantive job of analysis and valuation begins. This will have the dual purpose of allowing the delegations to direct work along agreed lines and to allow the Consultants to familiarise themselves with the context within which they will be working.

Output

Two principal pieces of work will be required:

a. Preliminary Report

To be produced relatively early in the exercise, the preliminary report should provide a guide to the final results reducing as far as possible the range of remaining uncertainty. It should contain a survey of the ground covered to date and the problems encountered, as well as looking forward to the areas of work and the problems which are foreseen. There should be a discussion of the category of the inventory forming the subject of the report. This would take the form of a description of each item contained in the inventory and would recommend, where appropriate, any modifications or further breakdown which the Consultants consider would be advantageous.

A methodological discussion should form part of the preliminary report, indicating the range of methodologies available and presenting the Consultant's view of the most appropriate methodological approaches to valuing items where there are methodological disputes among participants in the Conference.

As far as is possible at this stage, the preliminary report should seek to give estimates of the value of the items in the inventory. While such estimates would be provisional, they would be necessary to provide delegations with a guide to the likely outcome of the study. A provisional view should also be expressed where possible concerning disputed parts of the inventory. Findings should be summarised in an executive summary of not more than two pages.

Copies of the report should be delivered, by the deadline, to

Mr. Bertrand de LARGENTAYE
Commission of the European Communities
(DG I/E - Loi 86 - 6/46)
Rue de la Loi, 200
B-1049 BRUSSELS BELGIUM

b. Final Report

The final report will be a crucial input into negotiations over the settlement of assets and liabilities among the successor republics.

For each item in the relevant category of the inventory, it should present

- a description of the items and further breakdown where necessary;
- a description and discussion of the data sources available and used by the Consultants;
- a discussion of relevant valuation methodologies and a justification of the methodology recommended where consultants have been required to advise on methodology;
- recommendations on how to proceed on disputed items
- a best estimate of the value where possible.

The Final Report should also include an executive summary (of not more than two pages). Delivery of the Final Report will be as for the Preliminary Report.

Costs and Deadline For Tenders

Total costs will not exceed the ceiling agreed upon in the contract, with all payments conforming to such stipulations as are inserted therein, notably such clauses invoking penalties for late delivery.

In tendering, Consultants should provide an estimate of the cost of the work on a daily basis, as well as an estimate of the total cost.

Tenders should be presented by 18:00 on 4 August 1992.

Bertrand de LARGENTAYE

National/State Archives

(a) 14 Point Aide-Mémoire agreed by Delegations

- Addendum ; Letter of Prof. Zecevic of 8.02.93

(b) 3 Issues Pending for Agreement (Subgroup Meeting 20 and 21 January 1993)

(c) Letter of the Republic of Bosnia-Herzegovina 28.12.92

Aide-mémoire
on points agreed by the Working Party "Archives"
concerning the succession of former Yugoslavia.

The members of the Working Group "Archives":

Mr. Miljenko Pandzic of the Republic of Croatia
Mr. Ijubomir Gerasimov of the Republic of Macedonia
Prof. Dr. Miodrac Zecevic of the Federal Republic of Yugoslavia (Serbia-Montenegro)
Mrs. Marija Oblak-Carni of the Republic of Slovenia
Prof. Dr. Matko Koyacevic of the Republic of Bosnia-Herzegovina

In the presence of:

Mr. Hans Hermann of the Commission of the European Communities
Mr. John Sueters of the Commission of the European Communities
Mr. Carlos del Ama, expert to the Commission of the European Communities
Mr. Julio Capdepón, expert to the Commission of the European Communities

Agreed on the following points:

1. State archives are a very urgent and important issue for the solution of the question of the succession of the former Yugoslavia.
2. Archives are a very special and valuable asset constituting the common heritage of people and fostering through their accessibility the democratic functioning of society. Therefore and above any consideration about their property, there is a real and immediate need to preserve and to protect these archives.
3. The protection of the most endangered archives is a particular urgent matter. The archives in Bosnia-Herzegovina should be immediately microfilmed (security microfilming) and adequate equipment and materials should be provided as soon as possible in order to make the archival laboratories for reproduction and restoration situated in Sarajevo, Banja Luka, Mostar, Travnik and Tuzla functional for achieving the work. An action plan for security microfilming and restoration of archives situated in the other Republics should also be elaborated and implemented.

4. For technical reasons archives will be at present valued at their reproduction, handling and transportation costs.
5. For all involved parties, the right of free access will be granted for all Federal and Republican current and historical archives necessary for state succession and located on the territory of the former Yugoslavia.
6. In view of the German experience after unification, and in order to foster the democratic principles, it is considered important to assure the preservation of police, political parties, land cadastre archives and civil and church registers.
7. Duplication of the required information will be granted. Existing inventories of all record groups in repositories located on the territory of former Yugoslavia will be exchanged between the Republics.
8. The information on archival topics received from all the delegations will be distributed among these delegations.
9. A "Follow Up" committee of archivists and experts (with the possible assistance of neighbouring countries) will be formed to facilitate the information exchanges and to monitor action fostering relations in the field of archives between the Republics.
10. The committee will make a series of visits (fact finding missions) to the main archives of the different Republics of former Yugoslavia, as it was done on the 25-26th of November 1992 with Belgrade.
11. Technical standards for photographic and restoration equipment will be established to ensure compatibility among the different Republics.
12. The information system developed by the consultants to collect and analyse the information provided by the Republics should be the basis for a compatible database and automated system network integrated by compatible systems developed on Republican level and shared by all the archives.
13. The need for trained personnel has been recognised, and a series of training seminars should be carried out, starting with an specific seminar in Vienna in early 1993 open to all Republics.
14. To simplify the resolution of issues concerning only two republics, bilateral working groups will be formed.

In Brussels at 21 January of 1993

Miljenko Baradzic

Matko Kovacevic

Carlos del Ama

Miodrac Zecevic

Ljubomir Geragimov

Julio Capdepón

Marija Oplak Carni

Hans Hofmann

John Suetters

Бр. 84
8 02 1993 год.
БЕОГРАД

AIDE-MEMOIRE ON POINTS AGREED BY THE WORKING GROUP
"ARCHIVES"

Dear Mr. Robinson

You will find, herewith, enclosed the Aide-memoire which I have signed after having completed some consultations among the Yugoslav archival authorities.

Nevertheless, I have to point out that I am obliged to put a reserve on the Point 6 of the Aide-memoire concerning "the German experience after the unification".

We very clearly state that we do not have any knowledge whatsoever what the German experience after the unification might have been or is, so we cannot accept that the German experience should be counted for as relevant and as such implemented in this paragraph.

We express our full agreement with the content of the Point 6 i.e. that it is important to assure the preservation of police, political parties, land cadastre archives, and civil and church registers.

I remain

Sincerely yours

CHIEF OF THE YUGOSLAV
DELEGATION

M. Zecevic
Prof. dr. Miodrag Zecevic

During the meetings, the members of the working group "Archives" reached 14 points of agreement, being the most relevant the following.

"For all parties involved, the right of free access will be granted for all Federal and Republican archives".

Three issues pending for agreement have been identified:

1. Different views in regard to applicability of articles 30 (secession of SFRY) and 31 (dissolution of SFRY) of the Vienna Convention of 1983, having a particular impact on archival matters.
2. The apportionment of film and documentary materials now situated in Yugoslav Kineteka and in other locations on the territory of the former Yugoslavia.
3. The property of the original documents and records concerned.

We recommend:

To submit the above mentioned pending points 1, 2 and 3, due to their legal implications falling outside the present mandate of the Working Group "Archives", to the "Succession Commission" of the International Conference on the former Yugoslavia in order to find an appropriate solution as quickly as possible.

It is understood within the Working Group "Archives" that the Delegation of Bosnia-Herzegovina, Croatia, Macedonia and Slovenia favour the application of article 31 and that the Delegation of the Federal Republic of Yugoslavia (Serbia-Montenegro) favours the application of article 30 of the Vienna Convention of 1983.

TRANSCRIPT

LA REPUBLIQUE DE BOSNIE-HERZEGOVINE
LE GOUVERNEMENT
LA DIRECTION DES AFFAIRES DE
SUCCESSION D'ETAT

N/REF.: DS-57/92
Sarajevo, le 28 décembre 1992

LA COMMISSION DE LA COMMUNAUTE EUROPEENNE
A l'aimable attention de Monsieur ROBERTSON
001 86/6ème étage

B R U X E L L E S
FAX : 99 32 22 9643 04

Monsieur,

Le Gouvernement de la République de Bosnie-Herzégovine a considéré, à sa 102ème séance du 10 décembre 1992, la proposition d'évacuer d'urgence les archives de Sarajevo pour les raisons de sécurité.

A ce propos nous vous transmettons notre point de vue et notre proposition :

Vu le volume d'archives et le grand risque de transport dans les conditions de guerre avec les garanties minimales pour une évacuation sûre même d'une partie de ces archives, le Gouvernement a décidé de ne pas accepter les propositions d'évacuer les archives.

Il faudrait entreprendre toutes les mesures pour protéger au maximum ces archives et de microfilmer de toute urgence, tout ce qu'on peut microfilmer, y compris, surtout la documentation de cadastre et l'autre documentation d'importance pour la République de Bosnie-Herzégovine.

Dans ce but, nous vous prions de bien vouloir, conformément à notre demande qui vous a été transmise par l'entremise de Monsieur Trlin, nous procurer les moyens nécessaires pour mettre ces archives au sûr et pour microfilmer la documentation.

Vous remerciant par anticipation, je vous prie d'agréer, Monsieur, l'assurance de ma considération la plus parfaite.

Co: Mr Hadžimusić Nedžad
Bruxelles
fax 99 32 23 45 11 62

DIRECTEUR
Dzeved Dervaškadić

INTERNATIONAL CONFERENCE ON
FORMER YUGOSLAVIA

WORKING GROUP NO. 5 (ECONOMIC ISSUES)

MEETING IN BRUSSELS ON 20 AND 21 JANUARY 1993
OF THE SIX SUBGROUPS IN CHARGE OF VALUING THE INVENTORY
OF ASSETS, LIABILITIES AND DEBT OF THE FORMER SFRY

Summary of proceedings

The six subgroups, comprising some eighty delegates, met in Brussels under the overall chairmanship of M. Jean DURIEUX. Two plenary sessions were held, with the six subgroups meeting separately in between. The agenda was centered on a review of the latest draft of a report on the assets, liabilities and debt of the former SFRY, a report based on the findings of the six subgroups, and of the outside consultant attached to each one. At the final plenary session uneven progress was reported by the chairmen of the six subgroups: some basic information needed to value the inventory were still missing, despite repeated assurances that it would be disclosed; some estimates were contested and, more importantly, the gap between the undisputed gap of the inventory and those parts which some of the delegations felt ought not be considered in the framework of the state succession remained wide. Nevertheless there were a number of amendments made to the draft, and new information was made available, enabling the chairmen of the six subgroups to fill in most of the blanks left in the chapters of the inventory for which they are responsible.

Despite strong pressures from some of the delegates, Mr. DURIEUX held to his view that there would be no further meetings of the six subgroups, at least in the present framework, and that he considered this stage of the inventory valuation process of the Yugoslav state succession to be drawing to a close despite the fact that the valuation work was not complete. Delegations will have until 15 February to comment on a revised draft of the report and to disclose any new information. The chairman of the economic issues working group will then submit the report under his responsibility to the co-chairmen of the conference and will define with them the most adequate way to complete the work.

A representative of Ambassador BOJER, chairman of the state succession group, attended the proceedings.

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