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FINANCIAL ASPECTS OF STATE SUCCESSION: THE SLOVENIAN CASE

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1. Background

- Ethnic tension is **WRONGLY** considered as the cause of the break-up of Yugoslavia; Causes were **FOREMOSTLY** economic and constitutional

- Under the 1974 Constitution Yugoslavia was a highly de-centralised federal state

- Preamble of the Constitution

  The peoples of Yugoslavia, on the basis of the ***right of every people to self-determination, including the right to secession*** *…. have united in a federal republic of free and equal peoples*

- Article 1

  SFRY is a federal state of voluntarily united peoples and their socialist republics and the socialist autonomous regions ...

- Slovenia was a net contributor to SFRY budget

2. *Constitutional and Economic Crisis*

- By the early 1980s Yugoslavia was already in a severe economic crisis
- Calls for independence were not mainstream in 1988 and 1989
- 1988 amendments to Yugoslav Constitution curtailed autonomy of Republics
- State of Emergency declared in Kosova after miner strikes in Feb. 1989
- Meeting of support of Kosovars in Slovenia as Serb actions in Kosovo seen as an attack on 1974 Constitution
- Serbia "adopted" a new constituion of Serbia abolishing Kosovo's autonomy 27 March 1989
- Amendment X on **right to self-determination including secession** adopted on 26 July 1989

3. *International Law on Financial State Succession*

- State Succession is the replacement of one State by another in the responsibility for international relations of a territory

- Categories of State Succession

  - **Dissolution**

  - Cession (transfer of a part of the territory of a State to another with the predecessor continuing to exist

  - **Secession** (separation of a terriroty by constituting a new state with the predecessor continuing to exist)

  - Unification

3. International Law on Financial State Succession

- There are no clear rules of customary international law (“CIL”) concerning state succession to assets and liabilities

- Normative guidance of 1983 Vienna Convention on Succession to State Assets and Debts is limited

- Principle of equitable apportionment seen as principle of CIL

- Recent cases of state succession

  - Dissolution of Socialist Federal Republic of Yugoslavia

  - Partial Dissolution of USSR on 28/10/1991

  - Dissolution of Czechoslovakia on 1/1/1993

  - Secession of South Sudan on 9/7/2011

4. *Financial State Succession: Slovenian Case*

- Agreement on Succession Issues was signed in May 2001 and entered into force on 2 June 2004
- Most of State Debts and some of State Property apportioned before
- 13 Articles and 7 annexes dealing with different categories of State Property and State Debts
- Standing Joint Committee of senior representatives of each Successor State
- Dispute Resolution mechanism:
  - Refer matter to an independent person of choice
  - Standing Joint Committee (unanimous vote required)
  - Expert appointed by agreement of the parties or by President of Court of Conciliation and Arbitration of the OSCE

5. *Concept of State of Property under International Law*

- All property, rights and interests belonging to the predecessor State (including those of public institutions) on the date of State succession **pursuant to its domestic law** (Article 8 of Vienna Convention / Article 12 of IDI Guiding Principles)

- No international law definition of State Property

- Key State Property:

  - Immovable Property (government buildings, diplomatic and consular properties abroad)

  - Foreign exchange and gold reserves at the Central Bank and in Foreign Banks

  - Military Assets

5.1 Immovable and Movable State Property

State Property located in territory of successor State

- Territorial principle: passes to the successor state in which it is located (Article 18 of Vienna Convention + CIL)
- Movable property: Territorial principle + connection
- Same rule in case of dissolution and secession

Yugoslav case:

- Majority of Immovable Assets located in Serbia: territorial principle applied no valuation undertaken and no equitable compensation
- Separate rules for apportionment for Military property (75% of total SFRY assets)
  - Overriding principle was the territorial principle
  - Distinction drawn between immovable and movable property of the army used for civilian purposes
  - No progress to date

5.2 Immovable and Movable State Property

State Property located abroad

- Case of Dissolution divide equitably amongst successor states
- Case of Secession:
  - ➢ Immovable property remains the property to predecessor (according to Art. 17 of VC and Art. 19(4) of IDI)
  - ➢ Movable Property: to be apportioned equitably under VC; property of predecessor state under IDI

Yugoslav case on immovable property:

- Represented less than 1% of SFRY total net assets
- Serbia has had use majority of such properties since 1990s
- 5 properties apportioned as at time of Agreement, IMF key adjusted in favour of BH, Macedonia and Serbia
- Equitable apportionment agreed in principle with distribution in kind
- Division of only 42 agreed to date as Serbia refuses to agree to transfer until all SFRY property is divided

5.3 Immovable and Movable State Property

Movable State Property

Slovenian case:

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

6. Method for Apportionment

- Principle of equitable apportionment is seen as a principle of CIL

- Different criteria used to determine what is equitable

- Various criteria used in Yugoslav case:
  - Population (Czech/Slovak case)
  - Economic
  - Combination of factors (USSR)

Yugoslav case: Various keys

- IMF key used to apportion all debts and most assets: Macro-economic criteria including contribution to State budget, share in social product and export earnings, as well as share of population and territory
- Different key used for Diplomatic and Consular Properties
- Different key used for Movable Assets located abroad

7. State Debt

- Definition under Article 33 of Vienna Convention

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

- Example of State Debt:

  - Debt to international institutions such as IMF, World Bank
  - Debts to Other States
  - Debts to Banks and Financial Institutions (historically not covered by rules on state succession)

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- **Yugoslav case**

  - State Debt was estimated at USD 16 billion
  - State Debts to commercial creditors included in Agreement on Succession
  - Most of the debt was apportioned by direct negotiations with creditors, outside the framework of succession negotiations

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- **State Debt to International Financial Institutions**

  - Equitable apportionment
  - Principles of Localised debt + final beneficiary rule used to draw a distinction between allocated and unallocated debt

Yugoslav case:

- Unallocated debt apportioned using IMF key
- This key was also used to apportion debt owed to other states and to commercial banks (Paris and London Club)
- Significant proportion of debt bought by Serbia on secondary market

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8. *Euskal Herritarrentzako ikasgaiak*

- Although strictly speaking the issues relating to Financial State Succession will only arise after a state is recognised, they should be considered as early as possible
- Determine the value of Spain's Assets and Debts
- Bare in mind that to extent assets pass so too do debts
- Equity is guiding principle to division
- Basque will succeed to all Immovable and Movable State Assets located in its territory
- Consider the key for apportionment (you can have more than one) and consider the value of Immovable and Movable assets located in other parts of Spain
- Negotiate an Agreement on State Succession
- In parallel negotiate terms of accession and succession with international institutions