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WORLD WAR TWO AND THE WAR DAMAGES IN YUGOSLAVIA

This article depicts the most recent attempts of FR Yugoslavia on mootng the question of regulating war damages inflicted by Germany against Yugoslavia during World War II from 1941 – 1945 (SFRY note from December 5, 1991; the response of FR Germany from April 23, 1992; subsequent note of FR Yugoslavia from August 30, 1994). Furthermore, the officially unreleased (confidential) Aide Mémoire of November 1973 is published and commented. This document was the core of the so-called Tito-Brandt Brioni Formula. The German side stipulated granting relief in funds of one billion German marks on behalf of Yugoslavia as compensation for indemnification of Yugoslav victims of Nazi repression by the obligation of the Yugoslav Government to turn in such an aide mémoire (position paper) to the Federal Republic of Germany.

As maintained by the author, regardless of the existence of the mentioned Aide Mémoire, the question of war damages in the relations between Yugoslavia and Germany still remains open. The article also raises the question of remuneration for forced labor of military prisoners of war from 1941 – 1945; suggestions are given on how to face the future succession and the partition balance of former Yugoslav republics in financial claims, et al.

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1. Following comprehensive public discourses during the late 1980s and early 1990s in the various milieus, the Government of SFRY addressed a note to the Government of FR Germany on December 5, 1991 for restoration of negotiations on the open questions from the field of Yugoslav-German relations, which ensued from WWII. Additionally, in January 1992 the demand of the Union of War Prisoners of Yugoslavia was supported, for reimbursement, for forced labor during captivity in WWII. The German side issued a negative response to the two Yugoslav notes on April 23, 1993. The following were the reasons for rejection: “For 45 years subsequent to the ending of war, the questions mentioned in these notes were resolved through the elapsed time, by transformation of the situation in Europe and the change in German-Yugoslav relations”; the lack of a precedent in this sense; the foundation of new structures; the existence of advantageous economic treaties between the two countries; the so-called Tito-Brandt Formula and approved credits for relief, et al. This negative response has never been introduced to the public. I am of opinion that it was needful to release it.

After needless hesitancy, which lasted for more than two years, the FRY Government acted in response to the aforementioned German reply of April 23, 1992 by issuing a note no sooner than August 30, 2007. I am free to state that in distinction to the anemic and colorless note of December 5, 1991, which even fails to clearly mention the term “war damages”, this note is very specific and it stresses that “the problem of war compensation in relations with FR Germany is still open”, and insists on the restoration of talks on this matter. The response of FR Germany is currently awaited.

2. The State Reparations Commission of the Yugoslav Government estimated the total war damages inflicted upon Yugoslavia in WWII at approximately USD 47 billion (1938 values: USD 1 = 44 Yugoslav dinars; Germany – 36 billion, Italy – 10 billion, Hungary – 542 million, Bulgaria – 650 million).

Under the peace treaties from 1947 Italy was the obligee to reimburse Yugoslavia 125 million for war damages, Hungary 50 million and Bulgaria 25 million, all in USD. There was no peace treaty with Germany nor was the total amount of Yugoslavia’s war damages determined by a bilateral or multilateral agreement. The current amount is ten times of that due to the devaluation of the dollar.

3. From the title of the Agreement on Friendship with Bulgaria of 1947, signed in Bled, the Yugoslav Government abandoned Bulgarian war indemnities through a unilateral act. Regardless of the fact that in July 1992 the National Assembly of the Republic of Serbia promulgated the Declaration on the Annulment of the Decision on Absolving Bulgaria of Compensation for War Damages, there is no legal title under which the question of war damages inflicted by Bulgaria could be raised. I believe that the comprehension that unilateral legal acts, as it is the case with the statement from Bled absolving war damages, are obligatory for the state that issued them is justified.

I would like to add, parenthetically, that as a federal deputy during the visit of the President of SFRY Josip Broz Tito to Leskovac, it was not made possible for me to pose a question with regard to the Yugoslav Government's abandoning reparations "in the name of the people", which was to the detriment of Serbia and the Serbian people. Postponement or a moratorium would in my opinion be a meaningful solution for this international obligation of Bulgaria towards Serbia. It is the obligation of historians to ascertain the legal *raison d'être* and motives, which relevantly influenced making such a decision (the "internationalistic" debt towards the Bulgarian people, which ensued from the nature of the governmental policies in both states and was a personal promotion of the rule of Josip Broz Tito, neglected and sacrificed the interests of the Serbian people).

The questions of war compensation, as they were specified in the peace treaties from 1947 with Italy and Hungary, were finally resolved through bilateral agreements of Yugoslavia with Italy (1954) and Hungary (1956).

4. Until now, Germany reimbursed the amount of USD 35,785,418 as war compensation (the thousandth part of estimated war damages), which represents the value of dismantled German factories and other facilities that were transported to Yugoslavia. It also reimbursed 8 million German marks for Yugoslav citizens individually, who were victims of medical experiments on living people during the war.

Negotiations between the delegations of SFRY and FRG, as well as the Tito-Brandt talks, resulted in the harmonization of the Protocol on Monetary Relief in 1972 (unpublished) and the Agreement on the Approbation of Monetary Relief in 1974 totaling one billion German marks under firmly favorable terms. Yugoslavia paid off two smaller installments and the payments were reprogrammed and postponed several times.

There are some controversies with regard to the interpretation of the legal nature of this agreement. An analysis of this matter points to a typical bilateral onus contract, taking into account the title of the agreement as well as the provisions on multiple matters, including the object of the agreement, parties, amount of credit, interest rate, terms of use, paying the credit off and deciding on which party would enforce this agreement.

However, in the introduction of the Agreement from 1974 it was declared that “in terms of the approval expressed in the Communiqué anent the visit of Chancellor Brandt to Yugoslavia, the remaining open questions from the past should be resolved through long-term cooperation in the economic and other fields with the objective to definitely fulfill this consensus”. This was an indirect way to associate the credit with the reparations through the so-called Tito-Brandt Brioni Formula.

For almost two decades the Yugoslav public was not aware of the existence of the 1973 Aide Mémoire (a declaration of the Yugoslav Government), which was the condition of the German negotiators for this credit. The existence of the Aide Mémoire was also concealed in the statement of the Federal Secretariat of Foreign Affairs from January 1990, which was issued due to a series of public requests and inquiries of the deputies of both federal and state assemblies on the payment for war damages.

According to my information, the content of the Aide Mémoire is as follows:

“In principle, the Government of SFRY accepts the proposal of the Government of FRG to compensate the indemnification of Yugoslav victims of Nazi repression in the total sum of one billion German marks in terms of monetary relief (Kapitalhilfe).

On the occasion of making this decision, the Government of SFRY takes into account the good faith, which was formed through the progressive and fruitful cooperation amongst SFRY and FRG, as well as the interests of the two countries to successfully and universally enhance their relations, what without doubt represents a contribution for broader international cooperation.

The Government of SFRY understands that the aforementioned credit shall be given under the most favorable terms, which are provided for credits of this kind. These means shall not be subject to any objects.”

5. As maintained by V. Brandt, the so-called Brioni Formula is an “indirect solution” for the payment of reparations through long-term economic cooperation; because of this the President of SFRY Josip Broz Tito and his coworkers gave their consent. Prior to this and at that time the ongoing negotiations, on indemnification of the victims of Nazi repression, agreed upon the number 950 thousand. In reality, it was much larger considering the victims in occupied Yugoslavia and beyond it, and especially in the so-called Independent State of Croatia. There was a possibility that Yugoslavia could receive 2,200 German marks per victim, which would total over 2 billion marks. This would be the implementation of the so-called French model, in accordance with what FR Germany already in the 1960s paid the victims of the other countries, especially Western countries (Israel and the Jewish victims were indemnified earlier).

In the place of such direct remedies, as it was the case with the other countries, a credit of 1 billion with the obligation to pay back was received at the insistence of Germany and by means of the enforcement of the so-called Brioni Formula.

There is a question which I, parenthetically, do not feel competent to make any judgments upon, which is about those individuals, who were by that time leaders of the Yugoslav Government, who through their actions and conduct were responsible for contributing to such a solution for the reimbursement of war damages by the German side.

6. The Agreement of 1974 (as well as the one from 1972) precisely specifies the framework on how the loans will be utilized. In the aforementioned statement of the Federal Secretariat of Foreign Affairs from January 1990 it was set forth that the major part was spent on the construction of a 380 KW circular long-distance electrical relay (funds that were allotted to the banks and public electricity companies in Sarajevo, Titograd, Zagreb, Skopje, Ljubljana, Belgrade and Novi Sad). Similarly, solidarity funds were the same in terms of merchandise credit for procurements from FR Germany, and for maintaining liquidity in international payments, as well as for increasing the reserves in foreign currency.

In the Yugoslav press the topic of spending this credit is often mentioned in connection with the construction of the “Krsko” hydroelectric plant. The unreleased agreement and the exchange of notes in 1972 pertaining to it, reveal that the German side has dropped the intention to assign a part of the monetary relief for projects of the “Krsko” atomic power plant. As an institution designated to implement the credits in compliance with the provisions of the agreements from 1972 and 1974, the National Bank of Yugoslavia is obligated to publicly release precise data on the pecuniary resources, including information on the purposes of making use of the credit and whether this process is in compliance with the regulations of the aforementioned agreements.

Let me notice with sorrow that the victims, for the most part from Serbia and the Serbian people, served as a title for receiving the credit, but this fact was of no influence for its use.

7. After concluding the Agreement on Monetary Relief of 1974, the efforts and interest for solving global indemnification were driven back in the mutual relations of the two countries for a long period of time. In the early 1990s attempts were made to negotiate with the government of H. Schmidt on the future of the credit payments, although with no success. As it was the case earlier, FR Germany repeatedly postponed facing the issue of reparations, referring to the London Agreement on German External Debts from 1953, which recognizes the obligation to conclude a peace treaty.

This matter was raised two times in talks between the ministers of foreign affairs of the two countries (Loncar – Genscher) prior to and after the unification of Germany in 1990. The German side rejected every effort to introduce questions of war reparations that would acquire a broader international perspective. For Germany, this matter was overcome through the overall political relations, as it also became the case with concluding a peace treaty with Germany. Germany left the question on hold for subsequent identification of a solution for specific economic conveniences and possible solutions within the overall German-Yugoslav relations... I believe that the need for further economic cooperation, which was undoubtedly needful and advantageous in those talks, in some way superseded the obligation of Germany under international law to pay for war damages.

I personally realized this in a conversation with the Minister of Foreign Affairs B. Loncar during a scholarly conference on Yugoslav-German economic relations in December 1990, which was held in Belgrade.

The Treaty on the Final Settlement with Respect to Germany (or the Two-Plus-Four Agreement), signed in Moscow on September 12, 1990, does not mention the question of war reparations (parties: the United States, USSR, Great Britain, France and the two German states). On this occasion, with the consent of the other parties, the German statesmen disposed of any implication for the need to conclude a peace treaty with Germany... At the November 1990 summit, in Vienna and Paris, of the Conference on Security and Cooperation in Europe (CSCE) that was on reparations, certain Yugoslav preparatory attempts did not succeed as well...

The fact that a peace treaty did not precede nor follow the unification of Germany does not change the international law obligation of Germany towards Yugoslavia from the title of war damages and other demands deriving from the war between the belligerent sides. This standpoint is based upon the signatory and customary rules of international law. In the international agreements concluded after WWII, due to being the provoker of war, Germany was required to pay “to the largest extent” for the war damages. As for now, this was done to the smallest extent in the case of Yugoslavia. The principle of bona fides (in good faith) imposes the obligation upon FR Germany, as a party of the London Agreement of 1953 (which was signed by Yugoslavia as well), to redress for the war damages as well as for the loss of potential profit (*lucrum cessans*).

8. FR Yugoslavia should permanently keep the question of the final resolution of war damages and the other remedies open. This should be done regardless of the weakened international capacity of the country and, on the contrary, the strongly enhanced status of Germany following the unification of the two German states. And a unified Germany was determined to solve the matter of crimes from WWII, which were committed by the German military and the subordinate forces in the occupied countries. At the same time, there is a need for disproving the aforementioned reasons of rejection. On the whole, these are allegations with fundamentally political characteristics. In this case there is no negative prescription, given that in most cases on the war crimes and consequences which derived from them, as well as the fact that the questions raised up until the 1970s and also during the last ten years, were repeatedly restored. FR Germany constantly postpones the matter of indemnification as every debtor predictably would do. However, under the international law this certainly does not mean that the duty to pay the reparations was suspended, has been prescribed or was null, because of the elapse of time, as the German Government claims. The aforementioned favorable Yugoslav-German agreements and the transfer from 1956 related to the London Agreement on German External Debts from 1953.

The least one could say with regard to the so-called Brioni Formula would be that the Aide Mémoire sets forth only one segment of indemnification, a category of persons (“indemnification of Yugoslavia’s Nazi victims”), failing to cover the total substantive and other war damages. And, withal, the war damages are not a credit that is to be paid off.

In spite of the Aide Mémoire of 1973 being a valid international law document, Yugoslavia is entitled to reclaim the remaining part of the total war damages from Germany, as well as the demands pertaining to the labor of the prisoners of war and other persons in forced labor in the course of WWII (captives, internees, etc.). The diplomatic negotiations should determine the further developments with regard to the Protocol on Monetary Relief from 1972 and 1974 within the framework of the existing Aide Mémoire. If the credit, set up at 1 billion marks, was the substitute for indemnification it would be hard to reconcile this with the obligation of paying off an interest for the credit, notwithstanding the favorable terms. This agreement on monetary relief (Kapitalhilfe) is only one of many attempts at solving the question of total war damages and, in my opinion, new agreements should follow... Yugoslavia should not enjoy a poorer status vis-à-vis the other countries, which achieved their rights towards Germany meeting the requirements of international law.

9. In addition, I believe that the Yugoslav Government should particularly support the claims for compensation for the labor of military prisoners of war from 1941 – 1945. The prisoner's right to compensation was established in the Geneva Convention relative to the Treatment of Prisoners of War from 1929, which was signed by the German Reich and the Kingdom of Yugoslavia. Over 250 thousand members of the Royal Yugoslav Army were imprisoned in the April War in 1941. According to the report of the Red Cross from January 1945, the number of liberated and evacuated Yugoslavs from camps totaled 137,406 – predominantly Serbs and a smaller number of Roma, Jews and Slovenians. This demand does not have much to do with the Tito-Brandt "Brioni Formula" and can be litigated discretely. The rights of the prisoners of war can also be determined by respecting human rights, given that that compensation for labor is very close to the right to life and liberty in the range of human rights. As regards to the compensation for labor of the prisoners, one of these two possible approaches for negotiating with Germany should be chosen, depending on which of them would enable Yugoslavia to demand a flat sum, on the basis of the available data on the number of prisoners of war in conjunction with their labor (the institution of general substitution). The prisoners of war and their heirs would directly receive the agreed sum of compensation for their labor. The second approach, which is more complicated, would require individuals bringing actions in court to enforce their rights. This would be more favorable for the German side in view of the difficulties to meet the preponderance of evidence standard and considering the number of missing and deceased prisoners of war. There is no time to wait for this intervention, since the age of the prisoners of war from WWII is high.

10. Lastly, the Commission of the Government of the Republic of Serbia for the Estimation and Reimbursement for the War Damages turned in the proposal to include the Bulgarian (absolved) USD 25 million (presently 250 million) within the discourse on the partition balance. The same was done with the partition balance relating to the Peace Treaty with Italy, since two thirds of the delivered war indemnities from Italy were spent on the acquisition of Italian estates that were located on the territories, which became a part of Yugoslavia after WWII. Montenegro and Serbia (Kosovo and Metohija) suffered war damages as well.

Under the same title, a similar practice could be enforced pertaining to the indemnification set by the Aide Mémoire (1 billion marks), provided that the share of FR Yugoslavia shall total 75 per cent of the full amount, in proportion to the victims, which were the title for Germany's monetary relief.

All of the aforementioned cases are subject to the institution of general substitution, as a common international standard (in international relations, the state acts as a legal representative of natural and legal persons). In compliance with the Law on Indemnification from 1978, FR Yugoslavia should, with good faith, fulfill the obligations towards the persons, which it represented.

11. Having in mind the avoidance and unsympathetic position of the German Government (with the factors of the partition balance of Yugoslavia) and not wanting to be too optimistic about the success of these claims, it is our duty to do whatever is possible, since our demands are legitimate. The litigation in the International Court of Justice (ICJ) in The Hague would currently not be the best solution, provided that its jurisdiction is not mandatory. Germany should be once more addressed regarding this matter in a diplomatic way.

Taking into consideration the termination of the prohibition of releasing information on the Agreement on the Approbation of Monetary Relief in 1974 and the so-called Tito-Brandt Brioni Formula, it is likely that other new data could be revealed. This was the case with the probability that the deputies of the Federal Council of the Assembly of the SFRY, at the meeting of December 26, 1974, were not familiar with the content of the 1973 Aide Mémoire, when they ratified this agreement. The published stenographic notes reveal that the proposal of the Law on Ratification was enacted unanimously with no nays and abstentions, and no deputies spoke on this issue. I believe that these problems will be henceforth mentioned by the top-level officials of the nation and the other politicians in their public speeches, what was not the case thus far. The significance of the matter is also important due to the forthcoming similar problems deriving from the newest civil war on the territory of the former Yugoslavia.