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CLAIMS OF YUGOSLAVIA AGAINST GERMANY ON THE GROUNDS OF WAR DAMAGES AFTER WORLD WAR TWO

The article faces the concepts of war damages and general substitution, followed by the illustration of Yugoslavia's claimed war compensations towards Germany as well as the total assets, which Yugoslavia received on the grounds established by the Allied Reparations Commission, and from the title of medical experiments on living people.

According to the author, two agreements on monetary relief between FR Germany and Yugoslavia, totaling 1 billion German marks that Yugoslavia received, cannot substitute nor terminate the international obligations of Germany towards Yugoslavia. The obligation of paying the reparations is founded on the signatory and customary rules of international law. The author reviews the disregard of this problem in the previous time by the Yugoslav administration and provides specific suggestions in relation to the further activities on this matter. In addition, the author provides a list of questions, both general and specific, which can be posed with regard to the potential change in the status of the Yugoslav federation under the international law and its hitherto integral parts, all pertaining to the question of indemnification.

Keywords: *War indemnity, - Reparations, - Peace treaty, - the so-called Brioni Formula*

1. Under the contemporary international law, the term “reparations” designates the war damages inflicted by unlawful acts (i.e. international delicts), which are claimed by the injured state towards another state that inflicted them. Reparations or war compensation, as a sanction for the violation of international law, long since have become a custom in international law and have a lengthy history. Initially, war reparations were paid to the victor so as to compensate the expenses of warfare, then as an instrument for the winner’s enrichment, and lastly as war indemnity, which is a claim of the factual damages suffered by natural and legal persons to which the injured state is entitled.

During WWII, the fundamental nature of the reparations acquired new distinct aspects. The Allied forces brought the decision to compel Germany to pay “to the largest extent” for the damages, and the other Hitler’s allies should bear their respective shares of liability. Reparations are also perceived as sanctions imposed due to aggressive warfare. The states that suffered the major losses and damages, and succeeded the enemy, should be the first to be redressed. Both human and material losses were virtually incalculable. Reparations also include the indemnification of the victims of Nazi persecution.

2. The institution of general substitution today is a common international standard. This institution provides that a state in international relations acts as a legal representative of the interests of its citizens (natural and legal persons), and has a special treatment in respect of reparations.

Acting as a legal representative of its citizens, the state is entitled to reach an agreement on the sum, which the defeated side is required to pay. This total can be larger or smaller than the claims of the natural and legal persons, whose rights were injured. When solving the questions on the consequences ensuing from wartime, the parties, as a rule, regulate this in the peace treaties and other international acts. Under certain circumstances, a state even may renounce its claims for war indemnity. In this case, the statements of the governmental entities that have been delegated with official capacities are effective internationally.

Another subject matter is the question of the apportionment of the received sum of war indemnities between those who suffered damages during the war. This is to be solved on the national level and not by the international law. The received resources can be also utilized by a state for public and social interests. The ways and framework of indemnification can be of different nature and the state should determine and implement them (direct payments to the injured persons, health and retirement insurance, natural assistance, special military protection, the renewal of the country and other assistance). The state does it all within its interior jurisdiction.

There is a question on whether there is the legal obligation of the state, which received the reparations, to implement the reimbursements as per individual claims of the persons, whose rights were injured. The state independently decides on how it will indemnify its citizens (natural and legal persons). It occasionally happens that it formally accepts such an obligation on the occasion of receiving the indemnities. It is the obligation of a state system to identify the best solutions. The injured persons can refer to their state and are entitled to take legal action with regard to the way in which the remedies redressed their injuries. This is the case when the injured persons allege that their state failed to carry out its obligation in an appropriate manner, and it received the indemnification in their name or it renounced it.

3. According to the assessment of the Reparations Commission of the Federative Peoples' Republic of Yugoslavia from 1945, the full amount of war damages, which Yugoslavia suffered during WWII, totaled USD 46.9 billion from 1938, calculated upon the value at the outbreak of war (exchange rate: USD 1 = 44 dinars). From this sum, the German part is USD 35.858 billion. Through the International Reparation Agency, Yugoslavia was compensated the total sum of USD 35,786,118, which represents the value of the old dismantled German factories and other industrial facilities that were transported to Yugoslavia. In response to the summons of the UN Economic and Social Council, FR Germany paid for indemnification, from the title of a special agreement with Yugoslavia, totaling 8 million German marks, on behalf of the Yugoslav citizens, who were victims of medical experiments on living people during the war. The amounts that were specified in the other international agreements with Germany from March 10, 1956, including 26 million German marks for insurance claims during and after WWII, were excluded from the reparations and are grounded on the implementation of the London Agreement on German External Debts from 1953.

4. The international agreements between FR Germany and the Allied countries (London 1953, Paris 1954) provide that the matter of many claims ensuing from WWII is postponed until reaching a “final solution of the reparations problem”, i.e. “the question of reparations will be resolved through a peace treaty between Germany and its former enemies or via the prior agreements on this matter.” FR Germany repeatedly referred to these two agreements to postpone deciding on its obligations under the international law to compensate for the war damages. It is understood that no one could prevent FR Germany and some other state that was in armed conflict with the Third Reich in WWII to regulate by a bilateral agreement, partially or as a whole, the matter of reparations, and not waiting for a peace treaty. The provisions of the London and Paris Agreements could not have been an eternal constraint to solving the problem of reparations.

5. Pursuant to the Protocol on Monetary Relief from 1972 and the Agreement on the Approbation of Monetary Relief from 1974, Yugoslavia received 1 billion marks from FR Germany: 300 million in 1972 and 700 million in 1974. Both credits were provided for the same purposes and they are bilateral legal acts upon which credit is granted under the most favorable terms (30 years term, eight-year and ten-year grace period, interest rate of two and two-and-a-half per cent). Yugoslavia is obligated to pay this credit off. Following the short reprogramming, the credit is now in the phase of amortization.

Both of the agreements in their provisions clearly introduce a standard installment loan contract (title, object, parties, credit amount, interest rate, terms of use, amortization, and deciding on which party would enforce this agreement). Nevertheless, the war indemnity was discussed at the Tito-Brandt talks and, in this regard, the introduction of the agreement provides the following:

“... 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, provided that these are federal budget resources.” In this way the credits were indirectly associated with the reparations. This is the so-called Brioni Formula, the way which Chancellor V. Brandt has previously utilized in the case of a similar credit with Poland, i.e. deciding on the remaining disputed questions from the war through economic cooperation. This is correct, but the credits are being paid off, and reparations are a debt and an obligation of those who are required to reimburse for war damages.

The obligations of Germany on the grounds of war damages are not exhausted by the enhancement of economic cooperation with Yugoslavia through the so-called Brioni Formula.

The Agreement of 1974 (as well as the one from 1972) precisely specifies the framework on how the loans were to be utilized. The major part was spent on the construction of a long-distance electrical relay. The second part was spent on solidarity funds. Resources were also provided for merchandise credits for procurements from FR Germany and increasing the reserves in foreign currency.

As the institution designated to implement the credits, the National Bank of Yugoslavia is obligated to specify these sums and give an answer to the question on whether the loans were utilized in compliance with the provisions of the agreements, for which purposes and objects.

6. The unification of Germany has reawakened the problem of paying for the war damages, both at the national and international level. The Treaty on the Final Settlement with Respect to Germany, signed in Moscow on September 12, 1990 (Two-Plus-Four: the United States, USSR, Great Britain, and France with FR Germany and the German Democratic Republic) does not mention nor closes the question of war reparations. On this occasion and upon the consent of the other parties, the German statesmen successfully disposed of any possibility for the need to conclude a peace treaty with Germany. The countries that suffered the major damages did not have the political influence to raise the question of indemnification.

The Charter of Paris for a New Europe, adopted by a summit meeting of the Organization for Security and Cooperation in Europe (CSCE) on November 21, 1990, did not relate to the matters concerning the peace treaties. In effect, the Paris Summit was the peace conference of the Cold War as well as the further framework for security and cooperation in Europe.

Germany managed to lawfully unify without concluding a peace treaty. Now there is no victor who would dictate the terms and conditions, as it usually is the case with peace treaties. However, the unsolved questions ensuing from the war remain still open. It is noteworthy that the positions of all parties concerned, subsequent to the Moscow and Paris summits, and the German unification, are different in relation to the positions held shortly after WWII.

7. Another question would be on how the lack of a peace treaty should be perceived under the international law with regard to the obligation of Germany to pay for the war damages. Will these new moments strengthen or weaken the position of Yugoslavia? Undoubtedly, a peace treaty would be a better solution, because it would more precisely specify the obligations resulting from the aggressive war of Germany towards the other countries. Nevertheless, from the perspective of international law, the lack of a peace treaty does not have any influence on the reparations and the other obligations ensued from WWII. The peace treaty was simply supposed to be the form through which would the aforementioned obligations be specified. The fact that a peace treaty did not precede or follow the German unification is of no effect. The principle of bona fides imposes the obligation upon FR Germany, as a party of the London Agreement of 1953, to redress war damages, because Yugoslavia has signed the agreement as well, and relating to the international standard that Germany will fulfill its obligation when the time for that comes.

8. The German statesmen have now rejected every endeavor to introduce war indemnity within a broader international context. They were of opinion that it was overcome and left it for bilateral relationships. However, the German statesmen have more times stated that they condemn the war crimes from WWII, which were committed by the German army in the occupied countries and confessed the moral and political obligations in this regard. This is upright, but the obligation to pay the reparations still remains.

The economic cooperation amongst Germany and Yugoslavia has hitherto been notably expanded and should be permanently enhanced. The need for economic cooperation is very important, but it must not deny or serve as a substitute for the problem of war indemnity. This problem should be decided on discretely, because it enjoys special legal grounds. The bilateral interest for further economic cooperation cannot supersede the obligations under the international law of Germany towards Yugoslavia on the grounds of war indemnity and the other claims, which ensued from the war. I am free to state that if it comes to a judicial proceeding or arbitration on this matter, Yugoslavia would have the chance to achieve its claims, taking into account that they are grounded on the signatory and customary rules of international law.

The negotiations with Germany on the reimbursement for war damages will undeniably not be “easy” and “quick” solutions will not be drafted. Seeing that Germany categorically does not reject negotiations on this matter, but postpones them, the Yugoslav side should do its best to prepare accurate claims. The claims are legitimate and can be documented. Not wanting to be too optimistic regarding the total amount, which could be received from the title of war damages, the preparations for negotiations with Germany should be taken seriously and not as until now. Germany will also impose some limits regarding the legal grounds upon which war indemnity is to be paid (e.g. material and human losses due the Allied bombing, claims for the indemnification of the Volksdeutscher from Vojvodina – excluding those who committed war crimes, et al.). The question on how and under which title our citizens should be indemnified is a separate issue. In spite of the recognized institution of general substitution, a direct and equitable indemnification of natural persons or their heirs would be the perfect solution. The sums of received war indemnity or the unsettled claims, which ensued from war (the labor of prisoners of war, internees and other persons in forced labor by violating the rules of international law, i.e. the regulations of international conventions) should be firstly assigned to those in whose name were the claims for indemnification issued towards Germany.

9. The preceding disregard of this problem by the official Yugoslav authorities is inexcusable, but it was not the case until the early 1970s. So far, nothing was undertaken regarding this question for a long period of time nor was there a governmental body with the assignment to persistently work on this matter and carry out the preparations. The relations between Yugoslavia and FR Germany were pretty good in the latest decades, so there was an impression that the Yugoslav official authorities do not perceive the question of war damages to be timely. The unified Germany constantly postpones the matter of indemnification as every debtor would do. However, under the international law this certainly does not mean that the duty to pay the reparations is suspended, has prescribed or is null. A permanent body within the Yugoslav Government should be established to work on these matters until resolving this problem. The Interdepartmental Commission of the Federal Executive Council, which was formed due to the increased public interest for war indemnity, is incapable of performing this mission responsibly due to the limited authorization as well as temporality. The public is not being completely and timely informed on the position of the Federal Executive Council and the other political and administrative bodies on these issues. The Federal Secretariat of Finance, in cooperation with the other entities of the Federal Government, especially the Federal Secretariat of Foreign Affairs, should beyond any doubt perform this assignment mutually, including cooperation with the other countries that have similar claims towards Germany (Poland, France, Germany, et al.). I would like to emphasize the indispensable need for the governmental bodies of the Republic of Serbia to participate in this process, because the major part of the war damages has been inflicted on the territory of Serbia and the Serbian people have suffered the major losses in Yugoslavia during WWII.

Many general as well as precise questions are being raised in the Yugoslav press, at the Assembly of SFRY and especially at the Assembly of the Republic of Serbia: (1) judicial and other instruments, which are available for natural and legal persons if it comes to indemnification, (2) the possibility for Yugoslavia's natural and legal persons to enforce their rights regarding war indemnity before German judicial and other bodies, (3) the liability of Germany, as an occupier, for the damages inflicted on the territory of the Independent State of Croatia – a nonexistent international subject, and, on the other hand, the consequences of renouncing in view of the obligations of the Yugoslav Federation towards natural and legal persons in whose name was this renouncement done, and (4) the ways in which the reimbursed war damages – from Germany, Italy and Hungary – were utilized with regard to the rights of natural and legal persons from some parts of Yugoslavia in whose name the reimbursed war damages were claimed). This also refers to the possible change in the international status of the Yugoslav federation and the implementation of the institution of succession of states. All of these questions should be well thought through and the public rightfully expects us to approach these issues professionally and scholarly, and provide some answers to them.