The Methodology of State Succession in the 20th Century

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INTRODUCTION

We may define federalism as an international, social and state organizing principle, a diverse and complex phenomenon. Especially in the 19th–20th centuries several versions of it have developed. Up to the present we have no unified theory which could be uniformly applied. Integration and disintegration are inseparable phenomena, they were present in 20th century Europe at the same time, this had classic cases of state succession. 20th century offers five classic examples of the way in which international law regulates state succession:

1. The Turkish Empire (after the First World War)
2. The Austro-Hungarian Monarchy (after the First World War)
3. The dissolution of the Soviet Union (from 1990)
4. The disintegration of Czechoslovakia (1993)
5. The disintegration of Yugoslavia (from 1991 to present day)

THE DISSOLUTION OF THE TURKISH EMPIRE

Mustafa Kemal's successful military campaign compels the Antant to revise the peace treaty of Sévres. The Lausanne peace treaty on July 24, 1923, approving the secession of Arabic territories guarantees the sovereignty of the Turkish government over Anatoly, the former European Turkish territories, and the Straits within certain limits imposed by the international committee. Turkey loses 61% of its pre-war territories and 31% of its pre-war population. The Turkish-Greek peace ordains population exchange.

Articles 46–57 of the treaty signed in Lausanne on the 23th of July 1923 by Turkey, Great-Britain, France, Russia, Japan, Greece, Romania and the State of Slovenes, Croates and Serbs regulated the transfer of general financial debt. This regulation conformed to the similar points of the Treaty of Trianon and the Treaty of Saint-Ger-

main.[1] The transfer of state property assets and the financial compensation for expropriated state property was regulated by article 60.[2]

THE DISSOLUTION OF THE AUSTRO-HUNGARIAN MONARCHY

Countries grown from the land transfers following the dissolution of the Monarchy had inherited not only territories, but the peace treaty also ordained them to partake in shouldering the outstanding debt of the Dualist era which they were reluctant to comply with.Its assessment corresponds the most to the subsequent modern international principles of property and debt distribution laid down by the Vienna Conventions.The ordinance of the peace treaties concerning war debt was essentially different, its fulfillment was debited on the Austrian Republic and the Hungarian Monarchy.[3]

The liquidation of former central offices were carried out in the frame of international liquidation by three organizations: 1) council of delegates, 2) international liquidation committee, and 3) the college authorized to liquidate central offices. During the year 1920 Austria and Hungary made provisional agreements on the liquidation of central offices, central military offices, property assets of military (naval) administration formely in foreign countries, and the joint military administration concerning former foreign demands.[4]

Several documents of assorted Austro-Hungarian arbitration panels dealt with specific details of the debt which started with the submission of a Hungarian lawsuit on the subject of outstanding debt.[5] Article 186. of the Treaty of Trianon and article 203. of the Treaty of Saint-Germain ordained the proportionate distribution of the pre-war debt of Austro-Hungarian Monarchy among successor states. According to the ordinance each state had to take over a portion of the former debt as big as the Reparation Commission saw fit based upon the performance of certain branches of revenue, and the middle rates of fiscal years of 1910, 1912 and 1913. The above ordinance concerned both secured and unsecured debt and took the date July 28, 1914, as authoritative to measure the amount of debt.[6]

Based on these the Reparation Commission has set the Austrian secured debt in 2 ¼ billion crown (the yearly average was 36 million crown). In the case of Hungary,

1 I. SZÁSZY, *Az államok közötti utódlás elmélete. Nemzetközi jogi tanulmány*, Budapest 1928, p. 157.

2 Ibidem, p. 224.

3 F. SZÁVAI, *Die Folgen des Zerfalls der Österreichisch-Ungarischen Monarchie*, St. Katharinen bei Bad Kreuznach 2003, p. 266.

4 Österreichisches Staatsarchiv — Archiv der Republik — Bundesministerium für Finanzen (ÖStA-AdR-BMfF). Dept. 17 Karton 94. 1932 (2). 52653/31. számú irat. 14. old. Klageschrift der königlich-ungarischen Regierung gegen die österreichiche Bundesregierung, in welcher sie ihre aus der vermögenschaftlichen Liquidation der ehemaligen Österreichisch-Ungarischen Monarchie ergebenden Ansprüche geltend macht, Budapest 1930.

5 H. HASELSTEINER — F. SZÁVAI (Hrsg.), *Dokumente des österreichisch-ungarischen Schiedsgerichtes von Lausanne (1930–1938)*, Frankfurt/M. 2001.

6 D. HALMOSY, *Nemzetközi szerződések 1918–1945*, Budapest 1966, pp. 118–119.

the sum was 400 million crown (the yearly average was 2.6 million crown).[7] Successor states were debited only with pre-war debt by the Reparation Commission, thus Austria with 7,767,835,764 crown and Hungary with 6,741,322,674 crown unsecured debt, besides the above secured debt. Its distribution in percentage was determined by the Reparation Commission in the following way:

TABLE 1

Austria		**Hungary**	
Austria	36.827%	Hungary	49.629%
Italy	4.087%	Romania	23.659%
Poland	13.733%	Kingd. of Serbs, Croats and Slovens	6.800%
Romania	1.610%	Czechoslovakia	17.384%
Kingd. of Serbs, Croats and Slovens	2.043%	Austria	1.716%
Czechoslovakia	41.700%	City of Fiume	0.812%

Source: The author own compilation[8]

Share from common public debt was an interesting issue. In its lawsuit Hungary pleaded on the basis of the peace treaty that Austria ought to pay compensation to the Hungarian military loan owners, because unlike Austria Hungary did not receive share from the territory of the Monarchy. Hungary submitted a claim to the arbitration panel to compel Austria to fulfill Hungary's demand for payment after state loan bonds and to even the sums generated during the clearing negotiations in the days of the Austro-Hungarian Monarchy.[9]

The Hungarian government contested the statements of the Austrian legal appearance concerning the demand generated during the international postal traffic between 1915–1918. For this purpose, the Hungarian government submitted an assessment of the legal fact. The Hungarian government was on the opinion that the Austrian government had to stand as guarantor for the amount in the legal appearance (4,457,347.12 gold frank).

Negotiations on common property entered into arbitral stage by 1925, basically from 1923 onward József Szterényi played a decisive role in them, who from the summer of 1925 was present as arbitrator. In his letter to István Bethlen he mentioned the preparations to defend Hungarian interests as best as possible, and at the same

7 ÖStA — AdR — BMfF Dept 17 Karton 142 Reparation Zl 85134/1929. Reparation Commission VII Distribution of the pre-war Austrian and Hungarian debt, pp. 11–12.

8 Reparation Commission VII Distribution of the pre-war Austrian and Hungarian debt, pp. 17–19.

9 ÖStA — AdR — BMfF Dept. 17, Faszikel 79-I-A, Karton 93. Zl.: 9904/1932., Replik der königlich ungarischen Regierung auf die Klagebeantwortung der österreichischen Bundesregierung in der Angelegenheit der aus dem internationalen Postverkehr der Jahre 1915–1918 stammenden und geltend gemachten Forderung der königlich ungarischen Regierung (Budapest, 31. Dezember 1931).

time he suggested in June 1925 the involvement of experts specifically in the matter of court property. He suggested the involvement of Árpád Károlyi, Gyula Szegfű and Ferenc Eckhard as experts. To deal with issues pertaining to public records he suggested the ministers of Culture and Foreign Affairs. Since the elected arbitrator position meant the most confidential contact he suggested Gyula Hauer deputy state secretary of the Ministry of Finance to coordinate connection. The Prime Minister granted Szterényi's request.[10]

The Hungarian state has stated a claim of more than one billion gold crowns against Austria from the quota-proportionate movable and immovable property generated during the mutual coexistence:

TABLE 2

Category	in Austria	in Hungary
Value of military assets	2,660,557,894	851,255,717
Value of military barracks	89,032,764	18,818,469
Sum total	2,749,590,658	870,074,186
Combined value on both state territories	3,619,664,844	
Value according to quotas (Austria 63.6%, Hungary 36.4%)	2,302,106,841	1,317,558,003
More and less than the quota-share	+447,483,817	–447,483,817
Sum total for Hungary	447,483,817 gold crown	

Source: The author own compilation[11]

Holding the presidency of the Austro-Hungarian arbitration panel set up on September 15 1930 has already been discussed in the summer of 1925.[12] Szterényi's letters written from St. Joachimstal shed light on the fact that this contained many tactical elements on the Hungarian side as well, featuring various names mainly from the international parliament and financial organizations. The Prime Minister from among the several Dutch, Swedish candidate baron Erik Marcus von Württemberg, former Swedish Minister of Foreign Affairs was choosen, whose appointment was supported by Bethlen, because he knew him personally.[13]

Negotiations on property continued following the Anschluss, the Hungarian Embassy in Berlin inquiring about Austrian military equipment tied its procurement to the demand of the former Austro-Hungarian military assets. Since at that time these

10 Magyar Országos Levéltár K 28. 3. csomó. 7. tétel. A továbbiakban MOL ME K 28, 419/1925. 481–485. fólió.

11 ÖStA — AdR — BMfF Dept. 17 Faszikel 79-II-A-2, Jahr(e) 1935 — Karton 105. Zl.: 74709/1935. Unterbreitung des Vertreters der königlich ungarischen Regierung beim österreichisch-ungarischen Schiedsgericht, mit welcher er die im Beschlusse des hohen Schiedsgerichtes vom 16. April 1935 bezeichnete Detaillierung der militärischen Sachgüter vorlegt (Budapest, 26. Juni 1935), p. 38.

12 F. SZÁVAI, *A Lausanne-i Osztrák-Magyar döntőbíróság működése*, in: J. GERGELY et al., *A hosszú tizenkilencedik és a rövid huszadik század: Tanulmányok Pölöskei Ferenc köszöntésére*, Budapest 2000, pp. 531–546.

13 MOL ME — K 28. 5. csomó 16. tétel 5035/1925. sz. irat

assets were under stock-taking, and the German side has not expressed its willingness to negotiate, the solution had to wait.[14]

The Hungarian peace organizations, the Hungarian peace association supporting the League of Nations and the association of feminists addressed a letter to the Prime Minister in which they adjured him to endorse the principle of Mandatory Arbitration in the resolution of disputed cases.[15]

The United States, Austria and Hungary, on the basis of the separate peace treaties and within the framework of the 'Convention' contained in the 1926. II. art. concerning the financial obligation of Hungary and Austria, have set up the Tripartite Claims Commission in Washington which started to operate on January 25, 1926. Among the array of individual clearing disputes stemming from the dissolution of the multinational state we highlight the following cases:

1) The legal defense of Hungarian real estates on detached territories. The Romanian-Hungarian, Hungarian-Czech and Yugoslav-Hungarian optant cases, their resolutions. The activity of the legal aid bureau.
2) Pensions, operation of foundations. Citizenship application of Habsburg family members.
3) Clearings in old Austro-Hungarian crown.

CURRENT REGULATION OF STATE SUCCESSION, ITS CASES AFTER 1945

The current regulation of state succession was set down in two Vienna Conventions, its basic principles determined the issues related to state succession of dissolved multinational states. Both UN Convention had been negogiated in Vienna and made important resolutions in connection with state succession.[16] The Convention of 1978 dealt with international treaties, while the Convention of 1983 dealt with the partition of state property, public records and public debt. Although they do not belong to the category of dismembratio, nonetheless after 1945 we should use the category of 'divided' states in the cases of Korea, Vietnam, or China and Germany.

In 20th century modern state practice we cannot clearly speak of cases which would correspond to the category and practice of dismembratio up until the 80s. The Swedish-Norvegian union of 1905 meant the end of Swedish hegemony, whereas the dissolution of the Austro-Hungarian state meant the end of a dynastic connection. In the case of Great Columbia and other short-lived formations it is questionable whether they are the starting point of consolidated and effectively viable states formed in the wake of their disintegration. In the followings, the big

14 MOL ME-K 28 3. csomó 7. tétel. 1938-K-17844 1938. április 28-i berlini követségi és 1938. május 11-i külügyminisztériumi levél.

15 MOL ME — K 28. 1. csomó 2. tétel 7347/1924. 520-534. fólió.

16 1983 Vienna Convention on Succession of States in respect of State Property, Archives, Debts. Adopted in Vienna, Austria on 8 April 1983, http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_3_1983.pdf, [cit. 2016-09-15].

question is whether after 1985 the events and happenings in the Soviet Union, Yugoslavia and Czechoslovakia since 1990 appropriately exhaust the basic principles of international law concerning disintegration (dismembratio). Interestingly in the case of all three states a federative state with many nationalities was transformed, but in the end the statehood remained. In his book[17] Michael Silagi reached the conclusion that in a true sense after the division of Poland only the dissolution of Austro-Hungary Monarchy exhausts the international law category of dismembratio (liquidation).

But because it is unique in this respect, it cannot be part of a general typology. Thus, only a single state corresponds to the classic textbook category of liquidation, the Austro-Hungarian Monarchy, and it is unprecedented in history that while the peace treaty after the First World War just weakened and hamstrung Germany, it marked and realized as a military objective in the middle of Europe the erasure of a modern state from the map of Europe.

DISSOLUTION OF MULTINATIONAL STATES AFTER THE UN CONVENTIONS, THE SOVIET UNION

In the 1990s in Central and Eastern Europe democratic transformations took place, and multinational states broke up. Their cause was different, but the succession of former property, public debt and treaties came up everywhere. Russia proclaimed its sovereignty on June 14, 1990, but never left the former Soviet Union. The Soviet Union ceased to be on December 25, 1991, with the resignation of Gorbachev, and it was replaced by sovereign federal and nationstates. But the downfall started at least a decade before.

On December 4, 1991, decision has been made to divide the foreign state property of the Soviet Union among the 11 CIS republics on the basis of the principles of the Vienna Convention of 1983. With latter admissions succession in the property of the former empire was shared among 15 subjects:

Russia, Ukraine and Belarus had received 82.84% in total, whereas the 12 others had got 17.16%. The Russian Federation initiated bilateral relations with member states of CIS at the end of 1992, and in the proportionate share of the former Soviet Union and because of plaintiffs it recognized the foreign debts of the Soviet Union. As opposed to that member states of CIS relinquished state property of the former Soviet Union. At last with President Yeltsin's decree on February 8, 1993, Russia took over all foreign movable and immovable properties of the former Soviet Union, and also made a decision to shoulder former debt.

17 M. SILAGI, *Staatsuntergang und Staatennachfolge mit besonderer Berücksichtigung des Endes der DDR*, Frankfurt am Main 1996, pp. 55–56.

TABLE 3

States	%
Russia	61.34%
Azerbaijan	1.64%
Armenia	0.86%
Belarus	4.13%
Estonia	0.62%
Georgia	1.62%
Kazakhstan	3.86%
Kyrgyzstan	0.95%
Latvia	1.14%
Lithuania	1.41%
Moldova	1.29%
Tajikistan	0.82%
Turkmenistan	0.70%
Uzbekistan	3.27%
Ukraine	16.37%

Source: The author own compilation[18]

In the case of domestic property, they followed the territorial principle in certain matters, what they found on their territory they declared it as their own. Relatedly the majority has signed the "Agreement on mutual recognition of the rights and regulation of the relations of the property" on October 9, 1992, only Turkmenistan and Ukraine refrained from signing it. On the other hand, they have signed an agreement with Belarus and Ukraine about the ownership of specific 'technological and scientific' property assets. As far as movable property was concerned the main questions arose about the allocations of common railway, civil aviation, naval fleet, commercial fleet, former diamond property.

They have signed an agreement on the railway on January 22, 1993, on the commercial fleet on June 22, 1992, on the division of the Black Sea fleet in June 1995. In the latter case Russia received 81.7%. Ukraine received 18.3%. About former public records and cultural wealth, the "Agreement on returning cultural and historical values to the states of their origin" on February 14, 1992, and the "Agreement on legal succession concerning the Public Records Offices of the former USSR" on July 6, 1992, whose basic principle was integrity and indivisibility.[19]

CZECHOSLOVAKIA

Former Czechoslovakia broke up at the end of 1992, on January first 1993 the UN gave membership to the Czech Republic and the Slovak Republic as international

18 U. FASTENRATHF et al., *Das Recht der Staatensukzession*, Heidelberg 1996.

19 More detalis see FASTENRATH, pp. 223–235.

legal subjects.[20] The constitution of November 13, 1992, besides separation regulated the domestic and foreign movable and immovable property (state actives, passives and foreign currency issues). In the case of domestic value the ratio of divison was 2:1, this was established on the basis of the size of the population. Interestingly they did not take into consideration as possible criteria gross domestic product or tax revenues. The above ratio prevailed in international organizations as well. Foreign currency reserve was also settled in the ratio of 2:1 within the agreement on July 15, 1993. Movable properties were accepted on September 26, 1994, based on the "principle of possession". In the case of public records offices the agreement of October 29, 1992, coming into force on January 1, 1993, has established common and shared ownership.

BREAKUP OF YUGOSLAVIA

The breakup of the federal state known as Yugoslavia formed in 1945 occurred after a national and war conflict. This process happened between 1988–2008.[21] The international conference on Yugoslavia was held in London on August 26–28, 1992. The so-called: "state succession workgroup" could not achieve meaningful result. The plan of the workgroup on February 23, 1993, was to assess the properties and debt of former Yugoslav Socialist Republic as it was on December 31, 1990, and to create a reliable cadastre of them. By May 1994 9,000 itemized and comprehensive indicators has been made, but during its making many problems arose.

The Badinter Committee made reports and mediated in the arrangement of the matter. Its result was an agreement which divided foreign immovable property in percentage. Criteria were size of population, territorial extension of succession states, contribution to federal budget, share from gross domestic product. Accordingly, the following division was brokered in percentage:

20 L. GULYÁS, *Két régió — Vajdaság és Felvidék — sorsa az Osztrák-Magyar Monarchiától napjainkig*, Budapest 2006, pp. 142–149.

21 L. GULYÁS, *Jugoszlávia széthullásának 80-as évekbeli előzményei. A jugoszláv állam széthullása I.*, in: Kapu, Vol. 11/12, 1999, pp. 61–63; L. GULYÁS, *Szlovénia születése. A jugoszláv állam széthullása II.*, in: Kapu, Vol. 1, 2000, pp. 62–64; L. GULYÁS, *Horvátország születése. A jugoszláv állam széthullása III.*, in: Kapu, Vol. 2, 2000, pp. 38–41; L. GULYÁS, *Bosznia-Hercegovina története a 90-es években. A jugoszláv állam széthullása IV.*, in: Kapu, Vol. 3, 2000, pp. 53–56; L. GULYÁS, *Montenegró (Crna-Gora) a 90-es években. A jugoszláv állam széthullása V.*, in: Kapu, Vol. 5, 2000, pp. 30–33; L. GULYÁS, *Macedónia a 90-es években. A jugoszláv állam széthullása VI.*, in: Kapu, Vol. 6/7, 2000, pp. 75–78; L. GULYÁS, *Tíz év Koszovó történetéből 1989–1999. A jugoszláv állam széthullása VII.*, in: Kapu, Vol. 8, 2000, pp. 52–55; L. GULYÁS, *A magyarok és a délszláv háborúk. A jugoszláv állam széthullása VIII.*, in: Kapu, Vol. 10, 2000, pp. 36–39.

TABLE 4

States	%
Bosnia and Herzegovina	13.00%
Croatia	27.20%
Macedonia	8.50%
Slovenia	16.00%
Yugoslav Federal Republic	35.30%
Sum total	100.00%

Source: The author own compilation[22]

On May 14–25, 2001, the Yugoslavia summit was held in Vienna. Here the basic problem was that no one knew the size of the real property. Milošević was on the standpoint that Serbia and Montenegro were the sole legal succession states of Tito's Yugoslavia. This also would have meant that they are the sole owners of all properties, because all other former Republic members have left Yugoslavia. Succession states have stepped up against this, because they had been equal partners of each other previously. On the other hand, they agreed on the division of 450 million dollars at the Basel bank. The division of former federal buildings was the subject of further disputes, as such the fate of the Viennese as well. Belgrad maintained that the embassy of the former Yugoslav Kingdom must be available to Yugoslavia.The proportions of financing were determined the following way: Yugoslav Federal Republic: 38%, Croatia 23%, Slovenia 16%, Bosnia and Herzegovina 15.5%, Macedonia 7.5%. The agreement was ratified on June 29, 2001.

Further questions: the paid foreign currency savings of the Ljubljana Bank deposited in Sarajevo and Zagreb and Skopje has remained in Ljubljana after the breakup. The issue had to be settled on further negatiations in Basel. The legal succession of the Yugoslav central bank had been postponed to a later date.[23]

ACTUAL PROBLEMS OF THE EUROPEAN INTEGRATION

European integration requires a political system which shows flexibility in the division of power between local, regional and central government and thus functions efficiently. Today the basic task lying ahead of Europe expanded to 28 is consolidation and maintenance of convergence processes. The Union has entered into a critical pe-

22 I. S. HOHENVELDERN, *Staatennachfolge in Vermögen, Archive und Schulden des früheren Jugoslawien*, Köln 2001, pp. 727–740.

23 F. SZÁVAI, *A bomlás virágai: A délszláv állam születése*, in: F. GYŐRI (Ed.). *A tudás szolgálatában: földrajzi tanulmányok Pál Ágnes tiszteletére*, Szeged 2012, pp. 249–260. See more details A. STANIČ, *Financial Aspects of State Succession: The Case of Yugoslavia*, in: European Journal of International Law, Vol. 12, No. 4, 2001, pp. 751–779; T. SCHWEISFURT– K. BLÖCKER, *Zur Rechtsnachfolge in Auslandvermögen der ehemaligen Nationalbank der Sozialistischen Föderativen Republik Jugoslawien*, in: D. HENRICH (Ed.), *Praxis des Internationalen Privat- und Verfahrensrecht*, Jg. 18, 1998, pp. 187–191.

riod in his development, it depends on the above tasks whether it is capable of further integration, or whether integration comes to a halt.

The cases of federal state disintegration do not provide a unified methodological solution to succession. Each case is unique, of course there are common characteristics. Despite the fact that the Unites States of America functions as a federalist union and despite the successes of cooperation between federation and member states the dysfunctions of multinational states and their subsequent disintegration in 20th century Europe are warning signs which may well be a continent characteristic. Overwhelmed by the problems Europe now faces we ask: *"Quo vadis Europe?"*

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ABSTRACT

The dissolution and succession of federal states in the 20th century was heavily influenced by international legislation. If we view it from a methodological perspective, we can see that the dissolution of the Turkish Empire and the Austro-Hungarian Monarchy was regulated by the peace treaties ending the First World War. The matter was different with the dissolution of the Soviet Union, Czechoslovakia and Yugoslavia, because the Vienna agreements of international law provided legal measures. The Vienna Convention of 1978 concerns the succession and settlements of past agreements. The Vienna Convention of 1983 deals with the succession of property and debt. In case of the breakup of a union (integration) it must remain a primary rule that the parties involved must reach an agreement on the distribution of property (archives) and debt. The pertaining Vienna agreement of 1983 has not yet come into force, and it is unlikely that it will in the foreseeable future. Despite the fact that the agreement is left to the parties, it would be desirable to regulate the process with legal means as well. In it, however, economic indicators must have an important role to play which we can see in the presented 20th century examples. On the other hand, political decisions are also present in the distribution of property and debt, in many cases at the expense of economic means. The regulation of the matter would be a common task, because it would prevent the uncertain outcomes of a series of forced decisions and agreements generating disputes just as we can witness their unregulation even today.

KEYWORDS

History of Central Europe; State Succession; Common Property; Public Debt; International Law; Vienna Conventions

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