

Consequences of the Molotov-Ribbentrop Pact for Lithuania of Today

International Law Aspects

by Dietrich A. Loeber

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The consequences of the Molotov-Ribbentrop Pact (henceforth "MRP") have not been overcome to this day.

I. A "Lame" Lithuanian Continuity is one of the Consequences of the MRP

At the same time there is a widespread belief that Lithuania has achieved everything necessary for determining its own future and that Lithuania's primary objective now is its integration into European structures. Unfortunately, there is one circumstance that weakens Lithuania's international status and visibly hampers Lithuania's foreign policy. This circumstance is a direct consequence of the juridical effects of the MRP which I shall call for short. What I have in mind is the matter of continuity, i.e., the question of whether the renewed Lithuania is or is not a continuation of Lithuania as its recognition status existed prior to World War Two. This involves, for example, such issues as agreements entered into as well as state properties and liabilities. If we answer the question in the negative, then Lithuania is a new state, which has separated from the USSR. As long as continuity with pre-war Lithuania is not generally recognized, Lithuania's continuity is "lamed".

The "laming" effects of continuity, and thus also the consequences of the MRP, are visible in various areas. I shall briefly deal with three of them: legal literature, state practice, and the status of Latvia in international organizations. Little has been written about in Lithuania.

1. Legal Literature

Authors of legal literature often agree with Lithuania's claim to continue pre-war Lithuania (here and subsequently, I refer to Lithuania as being representative for all three Baltic countries). However, this matter has remained controversial. Some legal writings support the contrary view. Indeed, these publications do not appear in some marginal journals, but are found in respected major legal periodicals in America, England, France, Russia and Germany. Simplifying the issue, one can state that the opponents of continuity use three arguments to support their view:

- Argument One: Continuity is a "legal fiction". The passage of 50 years is a long time which does not permit to continue a state's relationships in such a manner as these were interrupted in 1940. Real life must start anew, for example, as regards international agreements (1).
- Argument Two: The Soviet Union violated existing agreements and acted contrary to international law by presenting its 1940 ultimatum and by sending its armed forces into Lithuania. However, this does not mean that the incorporation of Lithuania into the Soviet Union was without effect, in other words, the annexation was lawful. Therefore, the Lithuania of today is a new state, which separated from the USSR on the basis of self-determination of peoples (2).
- Argument Three: The 1940 ultimatum constituted duress and a threat to use force, but international law at that time did not prohibit such conduct. Moreover, Lithuania submitted to the Soviet ultimatum and acceded to the entry of Soviet armed forces into its territory. Considering also this fact, the annexation was lawful. Moreover, it is not possible to annul an annexation retroactively (3), as was done by the Lithuania Parliament in 1990.

These three arguments are not mine, but a summary of views of opponents of continuity.

Lithuanian jurists have not responded to these arguments, neither in a widely known language, nor on a level corresponding to the standing of the periodicals referred to. (4).

Of course, the arguments of the opponents of continuity do not represent the last word on the subject, and it is possible to raise convincing counter-arguments. However, this is not my purpose here, for it would require an additional lecture.

2. State Practice

Let us now examine the second area : state practice on the question of continuity. The majority of states accord with the position of Lithuania that the present Lithuania is a continuation of pre-war Lithuania. However, some states decline to recognize continuity. (5).

- Continuity is recognized by

countries of the European Union, with certain exceptions. *Sweden* had recognized the Latvian annexation by the USSR and diplomatic relations were thus established anew. *Austria* bases its recognition on the self-determination of people (and not on regaining independence).

Of the other European states, *Switzerland* also refers to the self-determination of people, but agrees to "renew" diplomatic relations. Significant is that of the states which were formerly part of the "socialist bloc" *Czechoslovakia* (now *Czech Republic* and *Slovakia*), *Poland*, *Romania*, and *Hungary* unequivocally recognize continuity. Indeed, in stating its position, *Romania* specifically refers to the MRP.

- Continuity is not recognized

in the first instance by Russia, but also, it seems, by other formerly socialistic states such as *Albania, Bulgaria, Cuba* and *China*. Among states further removed geographically, *Egypt, India* and *Japan*, do not refer to continuity in their declarations on recognition.

- Outside of this overview

are states that have not renewed diplomatic relations, such as *Yugoslavia*. I shall discuss only those states which maintained diplomatic relations with Lithuania already in the pre-war period.

3. International Organizations

The third area in which the consequences of the MRP are visible is found in the attitude of international organizations. The President of the United Nations Security Council, in a brief statement made after the admission of Lithuania to the United Nations, mentioned the fact that Lithuania had "regained" its independence (6). This view, however, has not been applied in practice. The United Nations determined Lithuania's membership contribution on the basis of data supplied by the USSR (and not by Latvia itself). Thus, the United Nations treat Lithuania as if it were a state that had separated from the USSR and not as a state which had regained its independence. The ILO (International Labor Organization) takes a similar course (7).

Latvia, on the other hand, is attempting to obtain recognition, within the system of the United Nations, that Latvia was "occupied" in 1940. To this end, in 1998 the Latvian Parliament charged the government with the task to suggest to the United Nations that this organization requests the International Court of Justice in The Hague to give an advisory opinion. The question which Latvia seeks to clarify is which international obligation were violated by the USSR through its 1940 "occupation of Latvia, and what juridical

consequences attended to these violations" (8). I am not sure that this objective will be achieved.

The European Parliament in Strasbourg, already in 1983, supported the position that Lithuania should regain its independence. The Council of Europe in the same city also proceeds from the concept of a renewal of independence.

II. Attempts to Eliminate the Consequences of the MRP

An analysis of legal literature, state practice, and the policy of international organizations, leads to the conclusion that the juridical consequences of the MRP are still with us and are one of the factors which determine Lithuania's real situation. Russia, for example, also regularly protests against Lithuania's decision to link its security with NATO, arguing that Lithuania, "as a former Soviet republic", is within Russia's sphere of interest (10).

In order to remove the remnants of war attaching to Lithuania, both the victors and losers of the war have at least two roads open to them: one is the traditional path of signing a peace treaty; the other is the innovative variation of leaving the matter in the hands of the victim countries themselves, who then face the task of making arrangements with their neighbors on a bilateral basis.

1. The Traditional Path

has been followed by European nations that are outside of the region of the victim countries of the MRP, such as *France* and *Belgium*. These re-obtained the territory that

had been annexed by Germany during the war. Germans were expelled from *Czechoslovakia*. The sovereignty of *Austria* was renewed. German war criminals were brought to justice.

We see the traditional solution also within the region of the MRP victim countries as well. At the Conferences of Yalta and Potsdam, *Poland* was given territory in the West to compensate for territory that was taken away from her in the East. The German inhabitants were expelled. In the case of *Finland* and *Romania*, territorial questions were resolved by peace treaties. The MRP itself was condemned as a violation of basic principles of international law by both the Federal Republic of Germany as well as the USSR.

2. The Innovative Path, on the other hand,

has been applied to Lithuania by the Pact on Stability in Europe. This agreement was adopted in Paris in 1995 by the 52 States of the OSCE (Organization for Security and Cooperation in Europe), including Lithuania and Russia. This same organization was also entrusted to implement the agreement (11). The Pact is based on the so-called "Copenhagen Criteria", which the European Council (not to be confused with the Council of Europe) had adopted two years earlier as prerequisites for membership in the European Union (11).

We must recall that, at the time of negotiating the Stability Pact, the armed forces of Russia were still present in Lithuania. For that reason Lithuania's joining the Pact on Stability in Europe was essential in order to obtain the support of Western states for a withdrawal of Russian troops from Lithuania (13).

The basic idea of the Stability Pact is that candidate states, prior to membership in the European Union, must "overcome the problems inherited from the past". This is a smart diplomatic language. If decoded it means in plain language nothing else than this: the candidate states have to "overcome" the problems inherited from the MRP and they have to

do it themselves. A central position in the Pact is taken by the provisions on "good-neighborly relations", which include two requirements:

- protection of national minorities, and
- respect for internationally recognized frontiers.

The situation for Lithuania is not critical with regard to minorities and frontiers, but the essence and the practical effect of the Stability Pact is that Lithuania is expected to waive its rights that derive from the consequences of the MRP.

This means injustice. In World War Two, the victor nations retained well their right to demand indemnity for wrongs committed against them (*restitutio in integrum*). Similar wrongs were suffered also by the victim states of the MRP. But Lithuania is asked to forget past injustices and to cross them out from its historical record (15). In other words, in this respect, Lithuania is supposed to continue Soviet Lithuania which disregarded all moral and material losses suffered by pre-war Lithuania due to MRP. with respect to its territory and composition of inhabitants. The effect of the Stability Pact is therefore that it conserves this Soviet inheritance while at the same time it freezes the consequences of the MRP. This result of the Stability Pact shows an asymmetry in European structures. Such inequality does not promise stability.

1) Marti Koskenniemi, Marja Lehto, La succession d'états dans l'ex-URSS., *Annuaire Français de Droit International*, vol. 38 (1992) pp. (191-198); Rein Mullerson, New Developments in the Former USSR and Yugoslavia, *Virginia Journal of International Law*, vol. 33 (1992/93) p.299 (308-315); Rein Mullerson, The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia, *International and Comparative Law Quarterly*, vol. 42 (1993) p.473 (480-487); Rapport préliminaire sur la succession d'états en matière de traités (Brigitte Stern, France), *International Law Association. Report of the Sixty-seventh Conference held in Helsinki, London, 1996*, pp.655-696 (668,674, 678-680, 682-683); Richard Visek, Creating the Ethnic Electorate through Legal Restorationism, *Harvard International Law Journal*, vol. 38 (1997) p.315 (329-330)

2) Oliver Doerr, *Die Inkorporation als Tatbestand der Staatensukzession*, Berlin, 1995, S. 350-355 (Schriften zum Völkerrecht, Band 120)

3) S[tanislav] V. Ēerniēenko, Kontinuitet, identitēnost I pravopreemstvo gosudarstv, *Rossijskij ēpegodnik meĥdunarodnogo prava 1996-1997*, Sankt-Peterburg, 1998, str. 9-41 (19-24, 36-38, 40); sk. Ari S.Chernychenko, Ethnic Russians in the Baltics, *International Affairs*, vol. 44 (1998) nr. 3, pp.118-123; Stanislavs Ēerniēenko, 1940. Gada notikumi Baltija ka krievvalodigo iedzivotaju diskriminācijas iegansts, *Diena*, 1998.g. 27. Augusts, 11.lpp.; atbilde: Aivars Fogels, turpat, 28.augusts, 12.lpp.

4) Ineta Ziemele, *State Continuity and Nationality in the Baltic States*, Ph.D.dissertation, University of Cambridge, Faculty of Law, 1998; Inete Ziemele, The Application of International Law in the Baltic States, *German Yearbook of International Law*, vol. 40(1997) pp. 243-279 (262-263)

5) Dokumenti par Latvijas valsts starptautisko atziĶanu ... 1918-1998, Riga, 1999, 543 lpp; sk. Ari Latvija, Starptautiskas organizācijas, Starptautiskie ligumi. Sastadiitaji: Ineta

Ziemele, Gunars Kusiņš, Riga, 1996, 124 lpp.

6) "The independence ... of Latvia Was regained peacefully ..." UN Security Council. Official Records, 46th year, 1991, UN Doc. S/INF/47, p.49. ; sal. Ziemele, 1998 (4.verē), pp. 180, 183

7)Ziemele, State Continuity (4, verē), pp. 181-184; Dokumenti (5.verē); Rapport interimaire ...(Brigitte Stern, 1. Verē), Report of the Sixty-eighth Conference..., London, 1998, pp.616-658 (625-626)

8) Latvijas Vestnesis 1998.g.jūnījs, 2.lpp.

9) Dietrich A.Loebner, The Russian-Latvian Territorial Dispute Over Abrene, The Parker School Journal of East European Law. Columbia University, vol. 2 (1995) 537-559; tulkojum; Latvijas Vesture 1996 nr. 5, 50-60.lpp.

10) John Quigley, Mass Displacement and the Individual Right of Return, The British Year Book of International Law 1997, 68th year, Oxford, 1998, pp. 65-125 (101-104)

11) Pact on Stability in Europe, adopted on 20 March 1995 by the 52 states of OSCE at the Concluding Conference on the Stability Pact in Paris. Par Latvijas līdzdalību: Latvijas vestnesis 1995.gada 23.marts, 1., 3lpp.

12) Official Journal of the European Communities 1993 No.I. 339, pp. 1-2 (adopted on the basis of Art. J 3 of the Maastricht Treaty of 1992); Bulletin of the European Communities 1993 Nr.6

13) Laika, kad Latvija vel atradas PSRS sastava, Baltijas valstuPadome 1990.gada deklareja, ka Baltijas valstu "pilnīga valstiskas neatkarības atjaunošana ir startautisku sarunu priekšmets", kas versts uz "Otra pasaules kara seku likvidešanu". Restoration of the

Independence of the Republic of Estonia. Selection of Legal Acts (1988-1991), Tallinn, 1991, pp. 84-85; Vosstanovlenie nezavisimosti Estonskoj Respubliki. Podborka pravovykh aktov (1988-1991), Tallinn, 1991

14) Ministrs V[aldis] Birkavs, Atbilde Saeima uz jautajumu nr. 271, Latvijas Vestnesis, 1997.g.17.decembris, 7.lpp.

15.) [Valdis] Birkavs, Intervija, Neatkariga Rita Avize, 1999.g.7. jūnijs, 3.lpp.ar noradi uz Vacijas un Ēhijas [1997.g.] deklaraciju [ta saukto "Schlusstrich-Erklaerung"]. Deklarācijas teksts: Bulletin der Bundesregierung 1997 Nr.7 S.61