

CONSEQUENCES OF THE MOLOTOV-RIBBENTROP PACT FOR LITHUANIA OF TODAY INTERNATIONAL LAW ASPECTS*

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The consequences of the Molotov-Ribbentrop Pact (Editor note: henceforth - MRP), concluded exactly 60 years ago, have not been overcome to this day. But, at the same time, there is a widespread belief that after regaining independence Lithuania has achieved everything necessary for determining its own future, and that the country's primary objective now is integration into European structures.

I. A "Lame" Lithuanian Continuity Is One of the Consequences of the MRP

Unfortunately, there is one circumstance that weakens Lithuania's international status and hampers its foreign policy. This circumstance is a direct consequence of the Molotov-Ribbentrop Pact (more precisely of its Secret Protocols) which I shall call for short MRP. 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 it existed prior to World War II. This involves, for example, such issues as recognition, status, state agreements as well as state property and liabilities.

Lithuania claims to have re-established pre-war Lithuania. This was proclaimed by the Supreme Council in 1990.¹ Three weeks later Estonia declared the restoration of the [pre-war] Republic of Estonia, referring to the proper legal term "restitutio in integrum."² In a similar manner the Supreme Council of Latvia expressed on May 4, 1990 its determination "to restore de facto the ... independent Republic of Latvia."³

If we answer the question of continuity in the negative, then Lithuania is a new state, which separated from the USSR on the basis of self-determination. As long as continuity with pre-war Lithuania is not generally recognized, such continuity is "lamed". Here and subsequently I refer to Lithuania as being representative of all three Baltic countries.

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¹ Lithuanian text : *Ėiniuos[News]* (1990); *Sbornik dokumentov Verkhovnogo Soveta Litovskoj Respubliki [Collection of Documents of the Supreme Council of the Republic of Lithuania]*, 1 (Vilnius, 1991), p. 21; Russian translation: *Ibid*, p. 34; *Vedomosti Verkhovnogo Soveta i Pravitel'stva Litovskoi Respubliki 1990 [The News of the Supreme Council and Government of the Republic of Lithuania 1990]*, 9, item 222; English translation: *Supreme Council of the Republic of Lithuania. The Road to Negotiations with the USSR* (Vilnius, 1990), p.33; *Revue Baltique*, 2, 1 (1991) 108; German translation: *Jahrbuch des baltischen Deutschtums 1991*, p. 164; *Die baltischen Nationen*, 2 Auflage (1991), p. 387-388. [Editor note - the Act on the Re-establishment of the State of Lithuania is publishing in this issue of the "Lithuanian Foreign Policy Review". Please, see paragraph "From the Archives"].

² *Teataja*, 1990; Russian translation: *Vedomosti Verkhovnogo Soveta Estonskoi Respubliki 1990 [The News of the Supreme Council of the Republic of Estonia]*, 12, item 180; English translation: *Restoration of the Independence of the Republic of Estonia. Selection of Legal Acts* (Tallinn, 1991), p. 22-23; *Revue Baltique*, 2, 1 (1991), 115-116 (the words "restitutio in integrum" are missing in the translated text); German translation: *Jahrbuch des baltischen Deutschtums 1991*, p. 165; *Die baltischen Nationen*, 2 Auflage (1991), p. 389.

³ *Latvijas Republikas: Ziņotājs*, 20, item 356 (1990); Russian translation: *Vedomosti...Latvijas Respubliki 1990 [The News of the Republic of Latvia]*, 20, item 356; English translation: *Revue Baltique*, 2, 1 (1991), 118-120; German translation: *Jahrbuch des baltischen Deutschtums 1991*, p. 167-169; *Die baltischen Nationen*, 2 Auflage (1991), p. 390-392.

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 in Lithuania about this subject.

1. Legal Literature

Authors of legal literature often agree with Lithuania’s claim to continue pre-war Lithuania. 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 the USA, Great Britain, 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 too long a period to continue a state’s relationships in the manner as they were in 1940. Real life must start anew, for example, international agreements have to be re-confirmed.⁴

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 the Baltic states. However, this does not mean that the incorporation of the Baltic states 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.⁵

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 agreed with the entry of Soviet armed forces into its territory. Considering also this fact, the annexation was lawful. Furthermore, it is not possible to annul an annexation retroactively,⁶ as was done by the Lithuanian Parliament in 1990.⁷

⁴ Martti Koskenniemi, Marja Lehto, *La succession d'états dans l'ex-URSS .., Annuaire Français de Droit International*, 38 (1992), p.179-219 (191-198); Rein Mullerson, “New Developments in the Former USSR and Yugoslavia,” *Virginia Journal of International Law*, 33 (1992/93), 299 (308-315); Rein Mullerson, “The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia,” *International and Comparative Law Quarterly*, 42 (1993), 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 at Helsinki* (London, 1996), p. 655-696 (668, 674, 678-680, 682-683); Richard Visek, “Creating the Ethnic Electorate through Legal Restorationism,” *Harvard International Law Journal*, 38 (1997), 315 (329-330).

⁵ Oliver Dörr, *Die Inkorporation als Tatbestand der Staatensukzession* [Schriften zum Völkerrecht, Band 120] (Berlin, 1995), p. 350-355.

⁶ S[tanislav] V. Chernychenko, *Kontinuitet, identichnost' i pravopreemstvo gosudarstv. Rossijskij ezhegodnik mezhdunarodnogo prava 1996-1997 [Continuity, Identity and Succession of Rights of the States. The Russian Yearbook of International Law, 1996-1997]* (St. Petersburg, 1998), p. 9-41 (19-24, 36-38, 40); see also: Stanislav Chernychenko, “Ethnic Russians in the Baltics,” *International Affairs*, 44, 3 (1998), 118-123; Stanislav Chernychenko, “1940 gada notikumi Baltijā kā krievvalodīgo iedzīvotāju diskriminācijas iegansts,” *Diena* (August 27, 1998), 11; answer: Aivars Fogels, *Diena* (August 28, 1998), 12.

⁷ “Decree of February 7, 1990,” *Vedomosti Verkhovnogo Soveta i Pravitel'stva Litovskoi Respubliki 1990 [The News of the Supreme Council and Government of the Republic of Lithuania 1990]*, 8, item 182 (1990).

These arguments, I repeat, are not mine, but a summary of the views of some opponents of continuity.

Lithuanian jurists have not responded to these arguments, either in a widely known language or on a level corresponding to the standing of the periodicals mentioned. One exception are the works of Vilenas Vadapalas.⁸ In Latvia Ineta Ziemele has published on the subject.⁹

Of course, the arguments of the opponents of continuity do not represent the last word, and it is possible to raise convincing counter-arguments. However, this is not the purpose of the article, 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 agree with the position of Lithuania that the present state is a continuation of pre-war Lithuania. But, some states decline to recognize continuity. This is shown by the language used in documents on the recognition of Lithuania after gaining independence in 1991.¹⁰

Continuity is recognized

by the countries of the European Union, with certain exceptions. Sweden had recognized the annexation of Lithuania 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. It is significant that of the states which were formerly part of the “socialist bloc” Czechoslovakia (now the Czech Republic and Slovakia), Poland, Romania, and Hungary unequivocally recognize continuity. Indeed, in stating its position, Romania specifically referred 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

⁸ Vilenas Vadapalas, *Tarptautinė teisė [International Law]* (Vilnius, 1998), p. 93, 102, 154 (MRP), 206 (Vilnius), 198-200, 226-227 (continuity), 214-217 (annexation), 221-223 (recognition).

⁹ Ineta Ziemele, *State Continuity and Nationality in the Baltic States* [Ph.D. dissertation, University of Cambridge, Faculty of Law] (Cambridge, 1998); Ineta Ziemele, “The Application of International Law in the Baltic States,” *German Yearbook of International Law*, 40 (1997), 243-279 (262-263).

¹⁰ For Latvia see: *Dokumenti par Latvijas valsts starptautisko atzīšanu ... 1918-1998* (Rīga, 1999), 543; *Starptautiskās organizācijas. Starptautiskie līgumi* [Ed. by Ineta Ziemele, Gunārs Kusiņš] (Rīga, 1996), 124.

are states that have not renewed diplomatic relations, such as Yugoslavia as well as states which maintained no diplomatic relations with Lithuania in the pre-war period.

3. International Organizations

The third area in which the consequences of the MRP are visible is 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.¹¹ 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 Lithuania itself). Thus, the United Nations treated Lithuania as if it were a state that had separated from the USSR and not as a state which had regained its independence. The International Labor Organization (ILO) takes a similar course. Although an original member since 1921, Lithuania had difficulties proving its “qualite de continuateur, et de reconstituer retroactivement. l’evolution de leur situation - y compris financiere - depuis 1940”. For that reason Lithuania chose to apply for “admission” (rather than re-admission), stating at the same time that the application “shall in no way affect the legal consequences proceeding from the [original] membership of the Republic of Lithuania” in the organization.¹²

Latvia is attempting to obtain within the system of the United Nations the recognition that Latvia was “occupied” in 1940. To this end the Parliament of Latvia in 1998 charged the government with the task of suggesting to the United Nations that it ask the International Court of Justice in The Hague to give an advisory opinion. The question which Latvia seeks to clarify is which international obligations were violated by the USSR through its 1940 “occupation of Latvia, and what legal consequences were a result of these violations.”¹³ I am not sure that this objective will be achieved.

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

II. Attempts to Eliminate the Consequences of the MRP

An analysis of the legal literature, state practice, and the policy of international organizations, leads to the conclusion that the legal consequences of the MRP are still with us and are one of the factors which determine Lithuania’s real position in foreign policy. Russia, for example, 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.

In order to remove the remnants of war, both the victors and losers of the war have at least two roads open to them. One is the traditional path used by the victorious side to

¹¹ “The independence ... of Latvia ... was regained peacefully ...” [Official Records, 46th year, UN Doc. S/INF/47] (New York: UN Security Council, 1991), 49; Ineta Ziemele, *State*, 180, 183.

¹² “Rapport preliminaire (Brigitte Stern)... ,” p. 616-658 (625-626); Ineta Ziemele, 1998, *State*, 181-184; *Dokumenti par Latvijas*, 543;

¹³ *Latvijas Vēstnesis* (June 18, 1998), 2.

force the loser to accept the demands for indemnity, typically by signing a multilateral peace treaty. An alternative is the innovational variation of leaving the matter in the hands of the victim countries themselves, who then face the task of making arrangements with their neighbors.

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 states 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 can 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 in the East. The German inhabitants were expelled. In the case of Finland and Romania, territorial questions were resolved by peace treaties.

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 Organization for Security and Cooperation in Europe (OSCE), including Lithuania and Russia. This same organization was entrusted with implementing the agreement.¹⁴ 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.¹⁵ The criteria are focused on intensifying “good-neighborly relations” and include two requirements relevant in our context : protection of national minorities and respect for internationally recognized frontiers.

We must recall that, at the time of negotiating the Stability Pact, the armed forces of Russia were still present in the Baltic states. For that reason Lithuania’s joining the Pact on Stability in Europe was essential in order to obtain the support of Western states for the withdrawal of Russian troops from Lithuania.¹⁶

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 smart diplomatic language. In plain language, it means that the candidate states must

¹⁴ Pact on Stability in Europe, adopted on March 20, 1995 by the 52 States of the OSCE at the Concluding Conference on the Stability Pact in Paris. On the participation of Latvia : *Latvijas Vēstnesis* (March 23, 1995), 1, 3.

¹⁵ *Official Journal of the European Communities*, L 339 (1993), 1-2 (adopted on the basis of Art. J 3 of the Maastricht Treaty of 1992).

¹⁶ At the time when Lithuania was still incorporated in the USSR, the Council of the Baltic States declared in 1990 that “the full restoration of the independent statehood of Estonia, Latvia, and Lithuania must be the object of international negotiations on the liquidation of the consequences of World War Two”: *Restoration of the Independence of the Republic of Estonia. Selection of Legal Acts (1988-1991)* (Tallinn, 1991), p. 84-85; Russian text : *Vosstanovlenie nezavisimosti Estonskoj Respubliki. Podborka pravovykh aktov (1988-1991) [Restoration of Independence of the Republic of Estonia. Adaptation of the Legal Acts (1988-1991)]* (Tallinn, 1991).

“overcome the problems inherited from the Molotov-Ribbentrop Pact” and they have to do it themselves.

In order to assess the problems the Baltic states inherited from the Molotov-Ribbentrop Pact, it is useful to distinguish between Estonia, Latvia, and Lithuania. While the human suffering through repression was tragic and the material losses were enormous in all three states alike and under both Soviet and German rule, the consequences of the MRP with regard to territory and the influx of settlers differed. **Estonia** lost five per cent of its territory (near Narva and Petseri) to neighboring Russia on the basis of Soviet decrees in 1944 and 1957. Estonia, furthermore, has to cope with an in-migration numbering about one third of its population (of 1.5 million). The new inhabitants arrived from the Soviet Union after 1940. With the collapse of the USSR the newcomers and their descendants did not automatically acquire Estonian citizenship. They are entitled, however, to apply for naturalization after five years of residence in Estonia.¹⁷ **Latvia** has inherited similar problems. It lost three per cent of its territory (the Abrene district) to Russia in 1944. Latvia became the home for about 700,000 persons from the Soviet Union after 1940. When the USSR ceased to exist in 1991, most members of this group became stateless, but they can apply for Latvian citizenship after living in Latvia for five years.¹⁸ **Lithuania** became the subject of a deal between the Soviet Union and Germany when these two countries divided Poland between themselves in 1939. Lithuania regained its historical capital, Vilnius, which Poland had unlawfully occupied in 1920 and annexed in 1922. Lithuania also acquired some areas from the Belarus SSR. Recently, Lithuania and Poland mutually confirmed their territorial integrity, “with capitals in Vilnius and Warsaw”.¹⁹ During Soviet rule the Lithuanian leadership succeeded in preventing massive immigration. The share of non-Lithuanians in the population is estimated to be about 20 per cent (in pre-war Lithuania the share amounted to 16 per cent). Permanent residents were eligible to opt for Lithuanian citizenship.²⁰ One of the first victims of the Sovietization of Lithuania was the Church. Parallel to mass-scale repressions, the authorities moved some cultural objects to the Soviet Union and damaged the economy by exploiting it.

This short survey describes some consequences of the MRP. The Stability Pact leaves it to the MRP victim-states to find a solution. This means that it is up to the Baltic states to take the following steps :
presenting claims for regaining territories lost to Russia, (This has been done by Estonia²¹ and Latvia.²²),

¹⁷ *Law on Citizenship of 1995* (Riigi Teataja); Russian translation: *Pravovye akty Estonii 1995 [Legal Acts of Estonia 1995]*, 13, item 122; German translation by Cornelius Hasselblatt: *WGO Monatshefte für Osteuropaisches Recht*, 1-2 (1995), 79-90.

¹⁸ “Law on Citizenship of 1994 with later amendments,” *Ziņotājs* 17, item 371 (1994); English translation: *Humanities and Social Sciences Latvia 1994*, 3, 86-97; German translation by Detlef Henning, *WGO Monatshefte für Osteuropaisches Recht*, 5 (1994), 304-314.

¹⁹ “Treaty on Friendly Relations and Good Neighborly Cooperation of the Republic Lithuania and Republic of Poland,” *Lithuanian Foreign Policy Review*, 2 (1998), 161-172.

²⁰ Law on Citizenship of 1989, replaced by a Law of 1991 (Russian translation: *Vedomosti ... Litovskoj Respubliki [The News of...Republic of Lithuania]*, 36, item 977 (1991), amended 1995. English translations: *Selected Anthology of ... Legislation* (Vilnius, 1991), p. 60-68 [Law of 1989]; *Standard Acts on Citizenship of the Republic of Lithuania* (Vilnius, 1992), p. 29 [Law of 1991].

²¹ Decree, *Teataja*; Russian translation: *Vedomosti ... Estonskoj Respubliki [The News of...Republic of Estonia]*, 32, item 389 (1991)

²² Decree, *Ziņotājs*, 6-7, item 69 (1992).

integrating thousands of ex-Soviet citizens. To this end naturalization is offered, in accordance with the laws just cited, and some social programs are being implemented. seeking indemnity from both parties of the MRP (Germany and the Soviet Union) for human and material losses suffered during the occupation.²³

A realization of this task is difficult for at least two reasons :

The state-parties to the MRP do not exist any more and are succeeded by the Russian Federation and the Federal Republic of Germany, respectively.

The successor states are reluctant to acknowledge their responsibility fearing financial liabilities and unwelcome political consequences.

However, the unlawful character of the MRP induced both successor-states to state that they consider the Secret Protocols to be null and void from the moment they were signed. The Federal Republic of Germany declared this in 1989 on the 50th anniversary of the outbreak of World War II.²⁴ The Soviet Union reached an analogous conclusion on Christmas Eve 1989 after having denied the existence of the Secret Protocols for almost 50 years.²⁵

Despite this, Russia refuses to recognize that the Soviet Union had occupied the Baltic states unlawfully. Russia argues that the Baltic states had agreed to the entry of Soviet armed forces in 1939 and 1940 and that with their incorporation into the USSR, the Baltic states lost their status under international law. Russia, consequently, treats the present Baltic countries as new states and refuses to accept the notion that pre-war Estonia, pre-war Latvia, and pre-war Lithuania continue to exist. For that reason Russia objects to including references to the Peace Treaties concluded with each of them in 1920. These treaties fixed the boundaries and contained, moreover, a stipulation that Russia “irrevocably” renounces all sovereign rights over the territory of the Baltic states. The closest the Soviet Union has come to acknowledging its co-responsibility for the MRP is the Christmas Eve Decree of 1989. This document states that a division of “spheres of interest” violates the independence of third states and also the agreements the USSR had concluded with the Baltic states. In the document it is further admitted that the Secret Protocols were used by Stalin for presenting ultimata and for applying pressure by force (*silovoe davlenie*). Another noteworthy formulation in this context has been used by the Russian Federation. It is embodied in its Treaty of 1991 with Lithuania. In the Preamble Russia refers to the “liquidation by the USSR of the consequences of the annexation of 1940 which violated the sovereignty of Lithuania.”²⁶

²³ The Supreme Council of Lithuania obligated in 1991 the State delegation to raise before the USSR the "question of compensation for losses suffered" between 1940-1991: *Vedomosti ... Litovskoi Respubliki [The News of...Republic of Lithuania]*, 17, item 456 (1991).

²⁴ *Erklärung der Bundesregierung am 1.September 1939, Bulletin* (Presse-und Informations-amt der Bundesregierung 1989), 34, p. 735; reprinted: *Acta Baltica*, 27 (1990), 34-35.

²⁵ *Vedomosti S'ezda narodnykh deputatov SSSR [The News of the Congress of the USSR People's Deputies]*, 29, item 579 (Moskva, 1989); reprinted: *Sovetskaya Litva [Soviet Lithuania]* (December 28,1989); German translations : *Freundschaft (UdSSR)* (December 29, 1989), 1; *Acta Baltica*, 27 (1990), 50-52; *Baltica* (March 1990), 32-34. See also the Decree of the Supreme Council of the Lithuanian SSR of February 7, 1990 on the liquidation of the consequences of the MRP for Lithuania, *Sovetskaya Litva* (February 9, 1990).

²⁶ Russian text : *Biuletten' mezhdunarodnykh dogovorov [The Bulletin of the International treaties]*, 2 (1994), 29-35; English translation: *Lithuanian Foreign Policy Review*, 1 (1998), 119-127. In this translation the quoted sentence reads as follows: “...once the USSR annuls the consequences of the 1940 annexation violating Lithuania’s sovereignty...”

Estonia and Latvia have not been able to include a statement to this effect in their border treaties with Russia which have been drafted, but not yet signed or ratified. Estonia and Latvia seem to be ready not to insist on a reference to the Peace Treaties.

The Stability Pact brushes aside these and other conflicting views on how to assess the past and tries to find a *modus vivendi* for the future, emphasizing “good-neighborly relations”. While this aim deserves support, the placing of the burden of the past unilaterally on the victim-states seems to be unfair. The Stability Pact is a political document setting forth political goals. It does not bind the parties under international law. Thus, they are free to seek a change and the assistance of the international community in reaching a just solution and in particular to hold the MRP successor states responsible for the consequences of the Secret Protocols. But if Estonia, Latvia, and Lithuania do not attempt such change or fail to attain it, the status quo would continue.

The Stability Pact expects Lithuania to waive the rights that derive from the consequences of the MRP. This results in injustice. In World War II, the victor nations retained their right to demand indemnity for wrongs committed against them (*restitutio in integrum*). Similar wrongs were suffered by the MRP-victim states. But Lithuania is asked to forget past injustices and to cross them out from its historical record.²⁷ In other words, Lithuania is supposed to continue Soviet Lithuania which disregarded moral and material losses suffered by pre-war Lithuania as a result of the Secret Protocols. The effect of the Stability Pact, therefore, is a conservation of this part of the Soviet inheritance while at the same time freezing the consequences of the Molotov-Ribbentrop Pact. The Stability Pact, thus, produces an asymmetry in European structures. Such inequality does not promise stability.

²⁷ A precedent for this is the so called "Schlussstrich-Erklärung", agreed upon between the Federal Republic of Germany and the Czech Republic in 1997. Text : *Bulletin der Bundesregierung*, 7 (1997), 61.