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## THE SOVIET-GERMAN SECRET PROTOCOLS OF 1939—1941 AND THEIR CONSEQUENCES IN THE CONTEXT OF INTERNATIONAL LAW

At least three sets of problems can and should be discussed in connection with the Soviet-German Secret Protocols of 1939—1941:

- (1) the meaning of the protocols,
- (2) the link between the protocols and subsequent events which led, among others, to the incorporation of the Baltic States into the USSR, and
- (3) the present status of the protocols under international law.

### 1.

Probably few people in the world today are prepared to defend the Secret Protocols legally, politically or morally. Those who ever were so prepared in the past are by now dead. In our times not only legal scholars but also diplomats and politicians are in agreement that the Secret Protocols are in violation of international law. Many reasons can be advanced to support the view that the protocols are illegal, but one is obvious: the Secret Protocols affected the fate of third countries and violated their sovereignty. In fact, the protocols amount to an agreement to commit international crimes against third countries. Although not expressly stated in the text of the protocols, each side made its aggressive intentions known to the other party and also intimated that it will tolerate corresponding actions of the other side. As a result, the Secret Protocols can be seen as a conspiracy for committing international crimes, and at the same time as a mutual “amnesty”. This is the political essence of the Secret Protocols.

In legal terms the question has been posed here at the Congress as to the meaning of a division into spheres of interest. The Monroe doctrine has been cited by Rein Müllerson as a precedent permitted under international law. Such view amounts to the suggestion that 166 years ago the USA committed an act similar to concluding the Secret Protocols. The comparison is misleading because the Monroe doctrine was of a different nature. The aim of the USA was not, for instance, to annex or occupy Brazil. In presenting its doctrine, the US Government merely warned third countries not to interfere in Latin and Central America. In the Secret Protocols, on the other hand, two dictatorships divided a region among themselves with the intent to seize territories in their respective spheres of interest.

In the collection of the materials on my subject which I have prepared for distribution to participants of this Congress I have included documents, articles and references to literature. The materials indicate that the Secret Protocols have been widely published and discussed in the West for more than 40 years.

### 2.

Let us now turn to the second question: what was done by the parties of the Secret Protocols to put them into life and did the events that followed result from the Secret Protocols? It is well known that the USSR

forced Mutual Assistance Pacts on the three Baltic countries in 1939, demanded a change of government in these states in June 1940 and annexed them six weeks later. The USSR also occupied parts of Poland in 1939, waged a war against Finland in 1939—1940 and annexed Bessarabia and North Bukovina from Rumania in 1940. Germany acted similarly in its sphere of influence and attacked Poland in 1939, which led to the Second World War.

The issue is whether these events are related to the Secret Protocols. According to one view which can be called the "separation theory" no link exists between the Secret Protocols and the events that followed. The latter are independent from the former. According to the opposite view the Secret Protocols and the subsequent events are interrelated, not only historically, but also legally and politically. This view can be called the "linkage theory".

The linkage theory comes close to reality. I believe it is correct. The transfer of population from Estonia and Latvia which took place soon after the Secret Protocols were signed can serve as a telling illustration of the relationship. Even more; it proves such relationship. In September 1939 Molotov and Ribbentrop envisioned a population transfer in a Confidential Protocol. Already a month later Germany requested the governments of Estonia and Latvia to agree to such transfer. Germany anticipated a takeover of the Baltic States by the USSR and wished to evacuate in time the Baltic Germans in Estonia and Latvia from the Soviet sphere of influence.

The attitude of the world community toward a scheme for moving entire population groups like the one described has been rather neutral up to now. But it seems an outrage that two states agree among themselves as to where citizens of a third state should reside. To illustrate my point I invite you to consider the following scenario. The United States and Japan agree in a secret protocol on a division of the Pacific region, assigning Latin America to the US sphere of interest and East Asia to the Japanese sphere of influence. Thereupon, the United States and Japan reach an understanding that the Japanese living in Brazil are to be transferred to Japan. I am talking about those many thousands of Japanese who have lived in Brazil for centuries and who hold Brazilian citizenship. According to my scenario, Japan would approach Brazil and require that all ethnic Japanese move to Japan. I think those involved would be shocked, but this is what happened to Estonia and Latvia in 1939.

The Pacts of Mutual Assistance signed in 1939 between the Soviet Union and Estonia, Latvia and Lithuania respectively also demonstrate the correctness of the linkage theory. Published documents and the literature, as well as the presentation by Endel Lippmaa today show that a relationship exists between the Secret Protocols and the Soviet moves in 1939—1940. (I have cited from the relevant documents of the German Foreign Office in an article published after this Congress in "Edasi" on 12 September 1988).

The next critical events in the Baltic States which followed from the Secret Protocols were the Soviet ultimatata of June 1940. We have paid too little attention to these notes. Nothing, for example, has been said about them in the presentations here. The ultimatata alone would suffice to dispute the legitimacy of Soviet power in the Baltic States. According to international law the use of force is prohibited and so is the threat of using force. The text of the ultimatata is itself suggestive. Even more menacing were the threats expressed orally when the Soviet leaders presented their demands to the representatives of Estonia, Latvia, and Lithuania in Moscow in 1940. The USSR insisted that the governments in power be removed and new ones appointed. This is a blatant example of

illegal interference in the domestic affairs of another country. The ultimata demanded, moreover, that Soviet troops be allowed "in sufficient number" to enter the territories of the three states.

The ultimata violated not only norms of general international law, but also treaty law. Thus, the USSR ignored conciliation procedures provided in bilateral agreements with the Baltic States. Furthermore, the Soviet actions were in conflict with the Peace Treaties and the Mutual Assistance Pacts and other bilateral agreements. The USSR also violated multilateral agreements prohibiting the use and threat of force.

### 3.

The third question relates to the present status of the Secret Protocols. As shown above, they were concluded in violation of international law. Consequently, they are null and void, both according to customary international law and to the Vienna Convention of Treaties. The question is whether the Secret Protocols are invalid from the day of signing or from some other date, for instance from the day when Germany attacked the Soviet Union in 1941. The latter view has to be rejected, because there are no reasons to uphold the legality of the Secret Protocols for the period 1939—1941. Connected with the date of the invalidity is the question whether the Secret Protocols can be denounced. Logic suggests that only a valid treaty can be denounced. If the agreement is null and void from the very beginning, there is nothing left to denounce.

What is needed, then, is a statement by the parties of the Secret Protocols on their validity or invalidity. The USSR has made a first move in this direction. In 1941 it stated in an Agreement with the Polish Government (in exile) that the Soviet-German agreements of 1939 had lost their force with regard to Poland. A hopeful sign is also the establishment of a commission of the USSR Supreme Soviet in 1989 with the task to assess the legal significance of the Molotov-Ribbentrop Pact. Germany, the other party to the protocols, has ceased to function as a state or — even if Germany should be considered to continue to exist legally — is incapable to act. Of the presently existing two Germanys, the German Democratic Republic has remained silent with regard to the Secret Protocols, until an inconclusive statement recently appeared in the GDR press. The Federal Republic of Germany (West Germany), on the other hand, has addressed the problem. The FRG Government, through its Ministry of Foreign Affairs, has responded to pertinent inquiries by members of parliament in the Bundestag. In 1984 a spokesman stated that the FRG Government considers the Secret Protocols of 1939 and 1941 to be "invalid". This formulation leaves one crucial question open: the date of invalidity.

On this problem the Munich Agreement of 1938 can serve as a useful precedent. When the FRG established diplomatic relations with Czechoslovakia in the seventies, it was necessary to come to a conclusion regarding the agreement signed between Germany and Czechoslovakia in 1938, known as the Munich Agreement. The delegations from the FRG and Czechoslovakia were faced with the thorny problem of agreeing whether the Munich Agreement was null and void from the very beginning or invalid from a certain later date or whether it could be denounced. Ultimately, the delegations found a language in the Treaty establishing diplomatic relations which satisfied both sides. Although the Munich Agreement and the Secret Protocols apply to situations of a different nature, much can be learned from this exercise in diplomacy.

The governments of the USSR, the GDR and the FRG are all still hesitant to come out with a clear, unequivocal and comprehensive state-

ment on the legal status of the Secret Protocols. Public and diplomatic pressure is needed to convince the governments concerned that such a statement is necessary not only to restore justice and historical truth, but also for furthering an international order based on international law. Such a declaration would be in the interests of all the people and countries in the world and in particular in Eastern Europe.

Summing up one can say that there is widespread agreement today that the Soviet-German Secret Protocols of 1939—1941 are in violation of international law. By establishing spheres of interest, the parties to the protocols affected the fate of third countries and violated their sovereignty. In fact, the protocols amount to an agreement to commit international crimes against third countries.

Soon after the Secret Protocols were signed, the USSR forced Mutual Assistance Pacts on the three Baltic countries in 1939, demanded a change of government in these states in 1940 and annexed them six weeks later. The USSR also occupied parts of Poland in 1939, waged a war against Finland in 1939—1940 and annexed Bessarabia and North Bukovina from Rumania in 1940. All these events are related to the Secret Protocols and follow from it ("linkage theory").

Legally, the Secret Protocols are null and void from the day they were signed. Consequently, there is no room for denunciation. One of the parties of the protocols, the Soviet Union, has stated in an Agreement of 1941 that the Soviet-German agreements of 1939 have lost their force in respect to Poland. Germany, the other party, is unable to act. While the German Democratic Republic has remained silent with regard to the protocols, the Federal Republic of Germany considers them "invalid", leaving the date of invalidity open. What is needed is a clear statement of the USSR, the GDR and the FRG on the legal status of the Secret Protocols. Such statement will be essential in the interests of an international order based on international law.

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#### **NÕUKOGUDE—SAKSA SALAPROTOKOLLID 1939.—1941. AASTAL JA NENDE TAGAJÄRJED RAHVUSVAHELISE ÕIGUSE KONTEKSTIS**

Nõukogude—Saksa 1939.—1941. aasta salaprotokolle käsitatakse nüüdisajal rahvusvahelise õiguse rikkumisena. Fikseerinud oma huvisfäärid, määrasid asjaosalised ära kolmandate riikide saatuse ja kasutasid vägivalda nende riikide suveräänsuse vastu. Sisuliselt olid nimetatud protokollid kokkuleppe panna toime rahvusvaheline kuritegu kolmandate riikide suhtes.

Pärast salaprotokollide allakirjutamist sundis Nõukogude Liit 1939. aastal kolmele Balti riigile peale vastastikuse abistamise paktid, 1940. aastal nõudis valitsuste vahetus nendes riikides ja seejärel annekteeris viimased. 1939. aastal okupeeris Nõukogude Liit ka osa Poolast, 1939.—1940. aastal pidas sõda Soomega ning 1940. aastal annekteeris Rumeenialt Bessaraabia ja Põhja-Bukoviina.

Seaduse põhjal on salaprotokollid maksvusetud nende allakirjutamise päevast alates. Seega ei olegi võimalik neid hukka mõista. Üks asjaosalistest pooltest, nimelt Nõukogude Liit, on deklareerinud ühes 1941. aastal sõlmitud kokkuleppes, et Nõukogude—Saksa lepped 1939. aastast on kaotanud oma jõu Poola suhtes. Teine pool, Saksamaa, ei ole oma ühest suhtumist väljendanud. Saksa Demokraatlik Vabariik on nendest protokollidest vaikinud, Saksamaa Liitvabariik peab neid kehtetuks, jättes aga lahtiseks kehtetuse alguskuupäeva. On vaja Nõukogude Liidu, Saksa Demokraatliku Vabariigi ja Saksamaa Liitvabariigi selgesõnalist deklaratsiooni, mis on oluline rahvusvahelisel õigusel tugineva korra taastamiseks.

## СОВЕТСКО-ГЕРМАНСКИЕ СЕКРЕТНЫЕ ПРОТОКОЛЫ 1939—1940 ГОДОВ И ИХ ПОСЛЕДСТВИЯ В КОНТЕКСТЕ МЕЖДУНАРОДНОГО ПРАВА

В настоящее время сложилось мнение, что советско-германские протоколы 1939—1940 гг. являют собой грубое нарушение международного права. Разграничив сферы своих интересов, обе стороны определили тем самым судьбу трех Прибалтийских государств и предрешили утрату ими суверенитета. Эти протоколы собственно означали преступный сговор в отношении третьих стран.

Вскоре после того, как эти секретные протоколы были подписаны, Советский Союз принудил Эстонию, Латвию и Литву к заключению с ним пактов о взаимопомощи (1939), к смене их правительств (1940) и спустя шесть недель осуществил аннексию этих государств. Кроме того, в 1939 г. Советский Союз оккупировал часть Польши, в 1939—1940 гг. развязал войну с Финляндией, в 1940 г. присоединил к себе Бессарабию и Северную Буковину. Разворот всех этих событий стал возможным именно на основе упомянутых секретных протоколов. Такова, так сказать, «теория цепочки».

Юридически секретные протоколы недействительны со дня их подписания. Следовательно, их нельзя и подвергнуть оспариванию. Одна из сторон, подписавших протоколы, а именно Советский Союз, заявила в одном из соглашений 1941 г., что договоры, заключенные между Советским Союзом и Германией в 1939 г. касательно Польши, утратили силу. Другая сторона, Германия, несостоятельна. Если Германская Демократическая Республика вообще умалчивает эти протоколы, то Федеративная Республика Германии считает их недействительными, оставляя, однако, открытой дату их «недействительности».

Необходима четкая и ясная декларация, как со стороны Советского Союза, так и со стороны Германской Демократической Республики и Федеративной Республики Германии, по статусу этих секретных протоколов. Необходимость принятия такой декларации диктуется положениями международного права.