

Raffi Gregorian: The State Property Inventory is a Routine and Technical Question



In the coming weeks, teams of OHR lawyers will be compiling an inventory of state property. This is a long overdue step that can and should be carried out on schedule in advance of the next meeting of the Peace Implementation Council.

Although compiling the inventory should be a routine, technical exercise, much disinformation has been circulating about what is entailed. For this reason, it is necessary to explain clearly what state property is and what it is not and why the OHR is now conducting a task that should have been carried out by the domestic authorities some time ago.

What therefore *is* State Property? Firstly, it is

part of the legal succession from the Socialist Republic of Bosnia and Herzegovina (SRBiH), to the UN-recognized Republic of Bosnia and Herzegovina, to Bosnia and Herzegovina (BiH). This is in accordance with Article 1 of the Constitution of Bosnia and Herzegovina, that is Annex 4 of the Dayton Peace Agreement.

The Constitution provides the basis for the sovereign state and its two-entity structure. Questioning the legal succession in Article 1 is therefore akin to questioning the fact that BiH is a State made up of two entities. Contrary to some claims, the Dayton Peace Agreement and Annex 4 did not apportion state property to the entities.

Second, we are principally talking about two categories of state property: properties that as of 31 December 1991 were registered in the name of the SRBiH and its bodies, and properties that belonged to the Socialist Federal Republic of Yugoslavia (SFRY), whether situated within Bosnia or abroad, that the SFRY Succession Treaty specifically apportioned to BiH ., .

State property is, for the most part, military property such as barracks, but also certain government buildings, and summer residences of senior officials under the former system.

As important as what state property is, is what it is not.

Many politicians have wrongly assumed that “state property” is the same as “public property”. It is not. The Council of Ministers clearly defined the scope of state property in 2004. In this way, it does not extend to include property owned by companies disposed of through privatisation legislation, construction land allocated by the municipalities, and the like. The process for apportioning state property in accordance with requirements for permitting the transition from OHR to EUSR is not about determining how rivers, forests, parks and other property held for the “public good” are resolved. To the degree that ownership of these other properties and resources are subject to dispute, that will have to be resolved as appropriate by the judicial and legislative authorities of this country, not by the OHR.

In 2004, the SFRY Succession Treaty entered into force and laid out how the movable and immovable assets of the former SFRY would be distributed among the former republics. Only after that did it really become practically possible to resolve these matters within BiH itself.

Despite efforts in 2004 by the Council of Ministers to begin dealing with these issues, entity governments nevertheless continued to sell and dispose of state property. For this

reason, in March 2005 the High Representative prohibited the entities and the state from disposing of any such properties until the State Property Commission could resolve the matter.

Political disputes over the past four-and-a-half years have prevented the Commission from completing its work, and so the ban on disposals remain in place.

In February 2008, the PIC Steering Board defined a resolution to the State Property issue as a priority objective and ever since has been calling for an inventory, a law, and an agreement between the state and the entities that would finally apportion this property in a manner that ensures that each level of government in BiH owns the property needed to carry out its public functions.

An accurate and complete inventory of state properties is obviously fundamental to doing this. Still, it took more than a year of urging by the PIC and the OHR to get the BiH Council of Ministers even to establish an Inventory Working Group, which was given a six-month mandate. With only a month left to complete its task, the Working Group has so far failed even to agree on a methodology.

Since the High Representative announced his intention to conduct the inventory, various commentators have provided reasons why it cannot be achieved. Some have said that the process would take years rather than months.

It seems that some politicians do not want an inventory to be taken. They want the ownership of this property to remain unclear. In some cases, this may allow them to continue profiting from exploitation of this property, even though it doesn't belong to them but to the people of Bosnia and Herzegovina, and even though the issue of what properties the state and other levels of government will own going forward is a matter for political agreement.

Without an inventory, there can be no political agreement, and

without such an agreement, there can be no transition from the OHR to the EUSR. Despite all the lofty talk about wanting the OHR gone, politicians have failed to do anything to fulfil the state property objective in time for the November meeting of the PIC Steering Board.

Given the failure of politicians in BiH to act in line with their obligations, the High Representative decided to have the OHR conduct the inventory by obtaining documents available to any citizen. Once collected, this data will be made public, and the people of this country will have a clearer picture about the property that can and should be used for their benefit, not for the personal agendas of those in power.

The inventory is just an inventory. The OHR will not decide who owns what; the authorities in BiH will have to do that. But with the inventory completed, the room for excuses shrinks and it will become crystal clear who wants the OHR to transition to the EUSR, and who does not.