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# Lithuanian Papers

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ANNUAL JOURNAL OF THE LITHUANIAN STUDIES SOCIETY  
AT THE UNIVERSITY OF TASMANIA



**MISS TASMANIA 1992: Simone Goss (right), photographed with Miss Tasmania Fundraiser, Mary-Lou Di Bari. - See Story, Page 3.**

Photo: by courtesy of *The Mercury*.

# Lithuanian Papers

Volume 5 - 6

1991 - 1992

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LITHUANIAN PAPERS are published annually by the Lithuanian Studies Society at the University of Tasmania (Australia).

The Society's central aim is to make Australians more aware of Lithuania and its heritage. Films and lectures on Lithuanian topics are presented at the University of Tasmania regularly during term. Workshops are arranged to demonstrate traditional Lithuanian crafts. A language class for beginners started in 1992.

Academic papers emanating from the Society's activities are published in this journal and in separate books.

Established in 1987, the Lithuanian Studies Society encourages and helps with academic research on all topics connected with Lithuania. Some tangible results have already been achieved at the University of Tasmania: an Honours thesis on Lithuania's environment was completed in 1990 (Ms. Amanda Banks, First Class Honours); three postgraduate theses on Lithuanian topics are in progress now (one Master's, two Ph.D.).

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*May the peace and joy of Christmas  
be with you now  
and throughout the coming New Year*



## Special Honour



A former President of the Lithuanian Studies Society at the University of Tasmania was awarded a prestigious international prize in April this year.

Simon Taškūnas, a fourth year Commerce/Law student, won the Eugenijus Kriaučeliūnas Prize for 1991. The award was made by a select panel of judges in Chicago, USA, after considering a short list of ten candidates from all continents.

The Eugenijus Kriaučeliūnas prize of \$1000 is given annually to a young person anywhere in the world who is deemed to have best represented and publicised Lithuania.

Simon was President of the Lithuanian Studies Society at the University of Tasmania for three years, from 1989 to 1991. Under his chairmanship, the Society doubled its membership and expanded its activities on the Sandy Bay campus. During those years, the Society ran lunchtime lectures, published three highly acclaimed books on Lithuania, sponsored guest speakers from interstate and overseas, and staged a variety of other cultural events.

This is the first time ever that the E. Kriaučeliūnas Prize has come to Tasmania, and only the second time for Australia as a whole.

## Miss Tasmania 1992



This year's president of the Lithuanian Studies Society, Simone Goss (*pictured*), was also crowned Miss Tasmania 1992. She won this prestigious title in the nationwide quest run annually by the Spastics Association.

Before becoming president, Simone was Secretary of the University's Lithuanian Studies Society last year. In September 1991, she read a paper on a Lithuanian theme at the Baltic Studies Conference, at the University of Melbourne.

Simone's Lithuanian interests attracted a lot of attention from the judges and from the media, during the rigorous interviews and preselection rounds for the Miss Tasmania title.

### *An Open Invitation*

*Non-members are welcome at all functions arranged by the Lithuanian Studies Society at the University of Tasmania. (TUULSS). Do not wait for personal invitations - just come.*

*You may join the Society at any time. If you are a student at the University of Tasmania, your student membership will cost you only \$5 per annum. This includes subscriptions to **Lituanus** and **Lithuanian Papers**.*

*Outside the University, you may become a supporter of TUULSS by donating \$20 or more each year.*

## Report on Activities

The Lithuanian Studies Society (TUULSS) has been very busy at the University of Tasmania, during the past two years, 1991-92.

The Society's activities on and off the campus covered a number of varied fields, including: (1) craft and cultural workshops; (2) lunchtime lectures on topics concerning Lithuania; (3) invitations to visiting lecturers from interstate and overseas; (4) films and video presentations on Lithuania; (5) books and publications specialising in Lithuania; (6) language classes; and (7) encouragement of academic research in any area connected with Lithuania.

The Easter Egg Colouring Workshop, run by the Lithuanian Studies Society, has become an indispensable annual event. With the encouragement of the University's authorities, the Workshops are now held in the Arts building on the last Monday night before Easter. This event caters for all ages, and has proved very popular with students and townspeople alike.

The Society's weekly lunch-hour lectures continue to cover new ground. Here are just a few samples of the 1991-92 lecturers and their topics:

- \* Professor Barrie Rose, *Lithuania's Historical Background*.
- \* Amanda Banks, *Lithuania's Environmental Problems*.
- \* Dr Sam Blay, *Lithuania's Self-Determination and Future Outlook*.
- \* Dr Jan Pakulski, *East European Revolutions and the Independence of Lithuania*.
- \* Dr Bruce Felmingham, *Lithuania Today: An Economist's View*.
- \* Tony Hocking, *Lithuania and the Cold Shower Effect: The Economic Challenge*.

### Books

These papers, and many others, were later included in the four books published by the Lithuanian Studies Society in 1991-92. (Please see pp.28-29 in this volume, for more details). The books attracted very favourable reviews and are nearly sold out by now.

Book-publishing is a complex business - hardly a venture one would recommend for a small student group. Nevertheless, the Lithuanian Studies Society felt that there was a serious dearth of reliable literature on Lithuania in this country. Since nobody else seemed to be publishing regularly in this area, the Society decided to make a start.

Books are not cheap to produce. It now costs around \$7000 to typeset, print and distribute one thousand copies of a good quality paperback in Australia. Fortunately, the Society did not have to bear the full financial brunt of this major undertaking. The Society's patrons helped very generously, and the Lithuanian Studies Society is indebted to them:

* Societies Council of Tasmania University Union	\$1200
* Mr C Cekanauskas (Narrogin, W.A.)	\$1000
* Australian Lithuanian Foundation, 1991	\$2000
* Lithuanian Research Foundation (Tasmania)	\$1340
* Australian Lithuanian Foundation, 1992	\$1500
* Baltic Research Foundation (Tasmania)	\$1500

Thanks to these subsidies, over 150 copies of each book were donated to major public libraries, all Australian universities and to the academics working in related areas at the University of Tasmania and elsewhere.

In his preface to *Lithuania in 1991*, the Vice-Chancellor of the University of Tasmania, Professor Alan D. Gilbert, commented, "In a University which does not teach Lithuanian Studies, it is little short of astonishing that the Society has generated such support and attracted such interest, both inside the University and beyond".

### Visitors

The Lithuanian Studies Society is continuing its policy of bringing, from time to time, visiting lecturers from outside Tasmania.

Russian journalist Vitali Vitaliev, now living in Melbourne, addressed a capacity audience at the University of Tasmania on Monday 15 April, 1991. He spoke on "Lithuania Today".



Three months later, Alexander Kabakov, Deputy News Editor of *Moscow News* and a well-known novelist, gave two talks at the University of Tasmania. During the lunchhour break on Thursday July 25, he spoke to the students about Lithuania. On the same night, Mr Kabakov gave a public lecture which attracted a broad cross-section of Hobart's citizens.

There was general agreement amongst those who came that visiting lecturers reinforced the Society's work and added to the credibility of the local research findings.

## Lithuanian Research

From the very start, the Society's central aim has been to encourage academic research into all topics connected with Lithuania. It is very pleasing to report that quite a lot is already happening at the University of Tasmania:



Last year, the University of Tasmania Library donated 400 books to Vytautas Magnus University in Lithuania. The Lithuanian Studies Society (TUULSS) helped in the selection of books, then packed them and paid the postage (\$710). A large part of the Society's expenses was later re-imbursed by Australian Lithuanian Foundation.

*Pictured, from left:* Despatching the books on August 7, 1991 - TUULSS committee member Audronė Beržanskas, postal manageress Deidre Parker, University librarian Christine Crocker, TUULSS treasurer Al Taškūnas and University's reference librarian Graeme Rayner.

\* **Amanda Banks** successfully completed her Honours thesis, *Lithuania's Environmental Problems*, at the end of 1990 and was awarded First Class Honours in the Department of Geography and Environmental Studies. Her work was published by the Lithuanian Studies Society, as a separate book, in 1991.

Amanda is now enrolled for the Ph.D. degree, in the same Department. She is currently on a five months' fact-finding visit to Lithuania. Her Ph.D. thesis will deal with the economics and environment in independent Lithuania. Amanda's supervisor is Dr John Todd.

\* **Genovaitė Kazokas** is nearing the completion of her Ph.D. thesis in the Department of History. Her work will be entitled "Lithuanian Artists in Australia 1950-1990". This comprehensive work discusses the life and work of 148 artists in the context of their historical and social background. Her supervisor is Dr Richard Ely.

\* In the Department of Education, **Algirdas Makarevičius** is researching the "Problems of Business English Teaching to Lithuanian Students". He is planning to submit his Master's thesis by the end of 1993 and then return to his language lecturing position at Vytautas Magnus Univeristy in Kaunas (Lithuania).

## Membership

The Lithuanian Studies Society at the University of Tasmania had 47 financial student members and one associate member, as at 19 March, 1992. Outside the University, the Society had eight supporters and four patrons.

According to the Society's rules, a student member must be enrolled at the University of Tasmania. He or she pays an annual membership fee of \$5. A non-student actively participating in the Society's activities at the University of Tasmania may be accepted as an associate member, on payment of an annual fee of \$20 (of this amount, \$14 goes to the Student Union).

Outside the University, anyone may become a supporter or a patron of the Society. A supporter donates at least \$20 per annum. A patron makes at least one donation of \$1,000 or more.

## What Is It?



*"Like a bird, like a tree, like a creature..."* Hand-built ceramics by Audronė Beržanskas. Audronė is now studying fine art at the University of Tasmania. In 1993, she is planning to continue her studies at the Vilnius Academy of Art, in Lithuania.

## Lithuania's Economic Outlook

In September, 1992, Lithuania's Prime Minister Aleksandras Abišala presented a memorandum dealing with his country's immediate economic outlook. The document was read to the Lithuanian Supreme Council (Parliament) on the first day of its autumn session. Our report is not comprehensive: it covers only the main features of Mr Abišala's paper.

Lithuania's real gross national product fell by more than 30 % during the eighteen months from the end of 1990 to mid-1992, Mr Abišala said. Inflation of consumer goods prices reached 50% per month, during January - February 1992. Price increases slowed down to 30% in March, and averaged 10% in April - June.

Inflation rose again in July, as the prices of imported energy resources jumped suddenly. Between the end of 1991 and early August 1992, these energy resource prices increased 100 times.

It has been estimated that prices will increase 280 times during the twelve months to the end of 1992. As at 1 September, 1992, administrative price control was still operating in certain spheres of private spending: housing rents, community services, public transport, fuels, and any goods supplied by monopolies.

The consumer price index rose by approximately 1700% between January 1991 and June 1992. The average wages increased by a similar amount. Mr Abišala's memorandum states, "In this respect, Lithuania has maintained a somewhat high standard of living, in comparison with some of our neighbouring states."

This is notwithstanding that the volume of imports has diminished significantly from non-rouble countries. There has also been a marked drop in the goods and services that had previously enjoyed large subsidies.

In relation to the Republic's monetary policy, Prime Minister Abišala pointed out that Lithuania was not yet operating an independent monetary policy of its own.

*Litas* (the Lithuanian currency unit) could have been introduced earlier, but the government decided to wait. In the meantime, the macroeconomic stabilisation policy had to be mapped out, so that stable price levels could be attained.

Agreements had to be reached with the rouble-zone countries, as to trade and settlement procedures. Foreign currency had to be accumulated. The commercial bank functions had to be separated from the central bank operations in the Bank of Lithuania. At the same time, the organisational structure of the central bank had to be changed to allow effective administration of the monetary policy and fiscal supervision.

Lithuania's official cash reserves at the end of June 1992 totalled \$US76 million. This amount included the gold reserves returned by France and by the United Kingdom. The gold weighed 5.1 tonnes and was worth approximately \$US58million at world market prices. In July 1992, Sweden provided compensation for 1.2 tonnes of Lithuania's gold, valued at \$US14.5 million. The government of Lithuania holds the view that it must not borrow from abroad more than what its economy can bear.

When Lithuania's independence was restored, its government had no foreign debt. However, as preparations are now being made to obtain foreign loans, steps are taken to centralise the registration and management of foreign debts.

Prime Minister Abišala outlined the most important economic policy aims for the next 9 months. He stated the need to adapt rapidly to the seriously worsening trade conditions; averting the negative influence on production; the introduction of *litas*, and a strong cut in the rate of inflation. The economic reform programme makes provision for the accumulation of a foreign currency reserve, to ensure the reliability of Lithuania's new currency. The programme also aims to limit any deficit in Lithuania's balance of payments.

During the remaining months of 1992 and throughout the first half of 1993, the government of the Republic of Lithuania must try and balance the state budget, Mr Abišala said.



Reprinted from *Miśdzi Pastożyński*, No.45, November 9, 1992

Priority is to be given to those measures that will help to perfect the control of expenditure, tax administration and budget planning.

The Prime Minister admitted that it was imperative to simplify and to co-ordinate Lithuania's government taxes. By mid-1993, the taxation system will be simplified for business and for personal income. Uniform tax concessions were envisaged for all taxpayers. Wages and salaries will be taxed on the same basis, but progressive tax scales will apply. Unearned income will also be taxed uniformly.

The government of the Republic of Lithuania is undertaking to liberalize pay rates, and has legalised collective bargaining agreements in all enterprises that are not directly financed from the state budget.

Lithuania has no import quotas or licensing requirements, and does not propose to introduce such restrictions. The quantities of goods imported will not be limited, except where limits have to be imposed in the interests of national security or health.

For export goods, all quotas and licences will be eliminated by 1 November, 1992, with the exception of certain energy resources and local wood products. All remaining quantity restrictions will be eliminated by January 1, 1993, except for any goods that are subject to import controls, controlled prices or restrictions placed by the Government on the grounds of health or security.



Where the export restrictions are connected with price controls, export quotas on such goods will be replaced by export duties. Other government charges affecting trade will be reviewed and simplified by the end of 1992. These will include excise fees which depend on whether the goods are exported, or sold on the domestic market.

The Prime Minister expressed his hope that structural changes in production and strong competition will soon increase exports significantly. In the immediate future, however, the balance of foreign payments will become much worse, because of the adverse effects of structural changes, deteriorating trade conditions and the 1992 drought.

During the year that this program is carried out, the deficit in the current accounts will amount to \$US500 million. A part of the deficit will be compensated by the flow of private capital, mostly through direct investments. It is envisaged that the remaining deficit will be cleared by the International Monetary Fund, World Bank, European Development and Reconstruction Bank, and also through bilateral creditors. A large portion of this aid, including the whole of the IMF aid, will come from the joint official international accumulated currency reserves. By the end of June 1993, they will total up to \$US120 million.

All foreign loans (excluding borrowings from the International Monetary Fund) will amount to less than \$US150million by December 31, 1992; and less than \$US350million by March 31, 1993.

In view of this, the Government of the Republic of Lithuania will not guarantee and will not seek any foreign loans that are repayable in less than one year, with the exception of normal trade credits.

On the other hand, it is anticipated that the longer-term net foreign debts, repayable within one to five years, will not exceed \$US50 million on December 31, 1992, and \$US125 million by March 31, 1993.

- Translated from the Lithuanian by AL TAŠKŪNAS.  
The original article was published in *Europos Lietuvis*, Sept.24, 1992.

## Lithuania and Soviet Treaties

*The impact of the developing law prohibiting the forcible seizure of territory upon the Law of Succession of States in respect of Treaties: The Case of Lithuania*

Stephen WALDREN  
University of Tasmania

The Supreme Council of the Republic of Lithuania, expressing the will of the Nation, resolves and solemnly proclaims that the execution of the sovereign power of the Lithuanian State, heretofore constrained by alien forces in 1940, is *restored* and henceforth Lithuania is once again an independent state.<sup>1</sup>

Lithuania was formally admitted to the U.N. General Assembly on September 17, 1991, at which time President Landsbergis proclaimed: 'Today, like the mythical phoenix, we are *reborn* from the ashes.'<sup>2</sup> The use of these words on the part of the Lithuanian government intends to convey the continuity between the Republic of Lithuania forcefully incorporated into the Soviet Union in 1940 and the emergent state in 1990.

The annexation by the Soviet Union of Lithuania in 1940, prompted the first major application of the Stimson Doctrine of non-recognition of forcible seizure of territory by the world community. This paper will assess the impact of this doctrine as applied to the case of Lithuania, its development as customary international law and the consequences of application upon Lithuanian treaty obligations subsequent to independence. Finally the paper will address some of the wider ramifications of this doctrine for the law governing succession of states in respect of treaties.

### Background

The Stimson Doctrine was first proposed by U.S. Secretary of State Henry L. Stimson in response to the Japanese occupation of Chinese

<sup>1</sup> Para. 1 of *Act on the Restoration of the Lithuanian State*, a resolution of the Supreme Council of the Republic of Lithuania, Vilnius, March 11, 1990. Reprinted in *Lituanus: The Lithuanian Quarterly*, 1990, Vol. 36, No. 2, p. 11. [My emphasis]

<sup>2</sup> Lithuanian President Vytautas Landsbergis, in 'Baltic Countries Are Admitted to the U.N. General Assembly', *New York Times*, September 18, 1991. p. 8. [My emphasis]



Manchuria in 1931.. In a note to both governments, Stimson referred to Article 10 of the League of Nations Covenant<sup>3</sup> protecting the territorial integrity of members, and of the principles in the Treaty of Paris<sup>4</sup> which condemned recourse to war as an instrument of international relations. The U.S. refused to recognise the legality of the occupation or of any agreement or treaty concerning the territory.<sup>5</sup> The position was affirmed by the League of Nations<sup>6</sup> and applied intermittently by States in the period up until World War II in response to other annexations.<sup>7</sup>

On August 23rd. 1939, in Moscow, the Soviet and German Foreign Ministers concluded a Treaty of Nonaggression (known as the Molotov/ Ribbentrop Pact).<sup>8</sup> Attached was a Secret Protocol defining the respective spheres of influence of the parties in eastern Europe.<sup>9</sup> In December 1990, the The Congress of People's Deputies of the Soviet Union acknowledged that the pact was void ab initio.<sup>10</sup> At the time of signature, Lithuania was a legally recognised independent state and the pact

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<sup>3</sup> Article 10, cited in William J. Hough III, "The Annexation of the Baltic States and its Effect on the Development of Law Prohibiting the Forcible Seizure of Territory" in *New York Law School Journal of International and Comparative Law*, Vol. 6, No. 2, Winter 1985. p. 326.

<sup>4</sup> Treaty of Paris, August 17, 1928, Text : 4 U.S.T. 5130. See Articles I and II. Cited in Hough *ibid*.

<sup>5</sup> Identical Note to Chinese and Japanese Governments (January 7, 1932), reprinted in Department of State Press Releases, Jan-June 1932, at 41-42. Cited in Hough *op. cit.* p. 327.

<sup>6</sup> League of Nations O.J. Special Supplement 101 at 87 (1932). Cited in Hough *op. cit.* p. 328.

<sup>7</sup> Hough *op. cit.* , p. 329. p. 332-345.

<sup>8</sup> *ibid.* p. 346.

<sup>9</sup> *ibid.* See also Albert N. Tarulis, *Soviet Policy Toward the Baltic States: Estonia Latvia and Lithuania 1918-1940*, University of Notre Dame Press, Indiana, 1959. Interestingly, Lithuania was confined to the German sphere of influence.

<sup>10</sup> Linas Kucinskas, 'Lithuania's Independence: the Litmus Test for Democracy in the U.S.S.R.' in *Lituanus* *op. cit.* Vol. 37, No. 3., 1991 p. 9. Also Vytautas Landsbergis, 'Sovereign State or Hostile Captive?' in Taskūnas & Doyle eds. *Lithuania at the Crossroads*, Sandy Bay, Tasmania, T.U.U. Lithuanian Studies Society, 1991 p. 65.

was a violation of the non-aggression treaty concluded between the Soviet Union and Lithuania.<sup>11</sup>

On February 6th. 1918, the Lithuanian Council declared Lithuania an independent republic.<sup>12</sup> The legal existence and independence of Lithuania was expressly recognised by Russia in subsequent treaties between the two nations. In particular, the Russo-Lithuanian Peace Treaty, July 12, 1920<sup>13</sup>, the Treaty of Non-aggression, September 28, 1926<sup>14</sup>, and the Treaty of Mutual Assistance, October 10, 1939, in which the parties covenanted to abide by '...the principles of non-intervention in internal affairs'.<sup>15</sup>

Lithuania was admitted into the League of Nations on September 22, 1921,<sup>16</sup> and was recognised by, and concluded treaties with, member states after that date.<sup>17</sup>

On June 15, 1940, 300 000 Soviet troops occupied the Baltic States under the pretext of fulfilling (unilaterally interpreted) terms of the Treaty of Mutual Assistance. There is overwhelming evidence of Soviet coercion and intimidation of Lithuania during subsequent events and little evidence of the 'acts hostile to the Soviet State' used to justify the aggression.<sup>18</sup> It was also clear that the level of intimidation used in concluding the Treaty of Mutual Assistance rendered it void under

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<sup>11</sup> Treaty of Non-aggression, September 28, 1926. Cited in Tarulis *ibid*.

<sup>12</sup> John Joseph Lapinski, 'A Short History of Diplomatic Relations Between the United States and the Republic of Lithuania', in *Lituanus* *op. cit.* Fall, 1990. p. 11.

<sup>13</sup> Article 1 of which is cited in Tarulis *op. cit.* Ch. 1

<sup>14</sup> *ibid.* p. 10

<sup>15</sup> Art. VII of Treaty of Mutual Assistance, October 10, 1939. Cited in *ibid.* pp. 187-188.

<sup>16</sup> Lapinski. p. 10.

<sup>17</sup> Treaties were concluded with the United States (Lapinski *op. cit.* pp. 11-12.) and Great Britain (D.P O'Connell, *State Succession in Municipal and International Law, Volume II : International Relations*, Cambridge, at the University Press, 1967. p. lxxxvii.), during the period up until 1939.

<sup>18</sup> *ibid.* pp. 185-189. Also Hough *op. cit.* at pp. 375-377.

international law.<sup>19</sup> Lithuanian President Smetona and many members of his government fled the country, thousands were arrested, detained or deported and a 'puppet' government established which voted overwhelmingly for incorporation into the Soviet Union.<sup>20</sup> It is widely accepted that such incorporation was illegal being in violation of prohibitions upon the use of force, principles of self determination of peoples,<sup>21</sup> and the treaties safeguarding territorial integrity between Lithuania and the Soviet Union.<sup>22</sup>

### Application of the Stimson Doctrine

The annexation of Lithuania and the other Baltic States saw the first widespread application of the Stimson Doctrine by the world community.<sup>23</sup> The behaviour of the United States illustrates the form of this application. Following a declaration of its support for the doctrine on July 23, 1940<sup>24</sup> the U.S. froze Baltic assets, refused Soviet demands for

<sup>19</sup> Hough *ibid.* p. 373. See also Article 51 of The Vienna Convention on the Law of Treaties 1969, in D. J. Harris, *Cases and Materials on International Law*, London, 1983, (3rd. ed.) p. 565 ff

<sup>20</sup> Lapinski *op. cit.* p. 14. Also Hough *op. cit.* pp 380-384., and Tarulis, *op.cit.*, esp. Ch. 16 'Independence Extinguished', pp. 236-256.

<sup>21</sup> The Soviet Union clearly endorsed the principle in 1918 in negotiations with Germany over Self determination in Lithuania that this right of peoples could not be validly exercised in the prescence of the armed forces of a foreign state. (Tarulis, *op.cit.*, at p.16 cites the position adopted by the Russian delegate to the Russo-German Conference of 1918).

<sup>22</sup> See Hough *op. cit.*, Tarulis *op. cit.* and Lapinski *op. cit.* throughout their papers. Also world reaction discussed below.

<sup>23</sup> The following States have applied the Doctrine to the Baltic annexations : the United States; Britain; West Germany; Ireland; Canada; Australia (except for a brief period in 1974-75 under the Whitlam Labor Government); France; Yugoslavia; Denmark; Belgium; Spain; Portugal; the Vatican; Malta; Greece; Italy; Luxembourg; Turkey; Norway; New Zealand; The Netherlands; Switzerland; Finland; the European Parliament and numerous American and Asian States (including both Chinas). [ Hough *op. cit.* pp. 412-446]

<sup>24</sup> Statement by the Acting Secretary of State Sumner Welles on the Baltic Republics, reprinted in 3 Dep't State Bull. 48 (1940). Cited in Hough *op. cit.* pp 391-92 and also in Lapinski *op. cit.* pp. 15-16.

their return<sup>25</sup> and continued to recognise diplomatic and consular missions.<sup>26</sup> Subsequently Presidents Truman (1952), Eisenhower (1957), and Vice-President Humphrey (1966), reaffirmed the U.S. condemnation of the annexations and adherence to the Stimson Doctrine.<sup>27</sup>

Suggestions that the signature by the United States of the Final Act of the Conference on Security and Cooperation in Europe at Helsinki in 1975 constituted de-facto recognition of Soviet sovereignty over Lithuania and the other Baltic states,<sup>28</sup> were rejected by President Ford<sup>29</sup> and the House of Representatives on November 13, 1975.<sup>30</sup> On June 13, 1983, President Reagan, in proclaiming Baltic Freedom Day, reaffirmed that : 'the government of the United States has never recognised the forced incorporation of the Baltic States into the Soviet Union and will not do so in the future.'<sup>31</sup>

### The Stimson Doctrine as Law

There is considerable evidence that the doctrine of non-recognition of forcible seizure of territory has acquired the character of customary international law.<sup>32</sup> This requires that the practice is uniform and consistent

<sup>25</sup> Hough *op. cit.* p. 393.

<sup>26</sup> *ibid.* p. 392. Also William Urban, 'Implications of the Past for the Future of the Baltic States', *Lituanus*, 1991, Volume 37, No. 4 at 68-69. Indeed President Smetona had instructed consuls to continue to function in the event of invasion prior to his flight. (Lapinski *op. cit.* p. 15). In 1980 provision was made by the U.S. government for the continuing reappointment of Lithuanian diplomats. (Hough *op. cit.* p. 412.).

<sup>27</sup> *ibid.* p. 405-406.

<sup>28</sup> Lapinski *op. cit.* p. 18.

<sup>29</sup> Speech to the representatives of 'Americans of East European Background' 2 Pub. Papers 1032 (1975). Cited in Hough *op. cit.* p. 407-408 in which he states that the Final Act provides that 'no acquisition of territory in violation of international law will be recognised as legal'.

<sup>30</sup> 121 Cong. Rec. 38, 128, (1975) . Cited in Hough *ibid.* p. 408.

<sup>31</sup> United States Mission to the U.N. Press Release (July 19, 1990). In Hough *ibid.* pp. 411-412.

<sup>32</sup> Hough *ibid.* pp 447-480, esp. 449.



and be reflective of the general practice of states accepted as law.<sup>33</sup> The United Nations has reflected the principles underlying this doctrine in Article 2(4) of its Charter which forbids the use of force against the territory or political independence of a state.

The fundamentals of the doctrine were reflected in the restoration of independence to Albania, Austria, Czechoslovakia and Poland at the conclusion of World War II.<sup>34</sup> Subsequently it has been applied in both principle and practice in response to: the Israeli occupation of the West Bank (since 1967) by the U.N.<sup>35</sup>; the Moroccan occupation of the Western Sahara by the O.A.U.(1976) and the U.N.(1979)<sup>36</sup>; the Indonesian annexation of East Timor (1975) by the U.N. General Assembly and Security Council in repeated resolutions<sup>37</sup>; the Vietnamese invasion of Cambodia (1980) by the U.N.<sup>38</sup>; and in the Soviet invasion of Afghanistan (also 1980) by the U.N.<sup>39</sup>

Clearly these applications reflect a universality and consistency prevented from complete uniformity only by the presence of the Cold War and a veto power in the hands of the Soviet Union and China as Permanent Members of the Security Council. As such it fulfills the prima facie requirements of customary international law.<sup>40</sup>

<sup>33</sup> Ian Brownlie, *Principles of Public International Law* 4th ed., Clarendon Press, Oxford, 1990, pp. 5-6. Also the opinion of the International Court of Justice in the *The Asylum Case* ICJ Reports (1950) at 276-7, *The Fisheries Case* (1951) at 116 and 131 both cited in *ibid.* pp.5-6 Also the *North Sea Continental Shelf Case* 1969 ICJ Reports 3 at p. 44. Cited in Hough *op. cit.* pp. 448-449. and most recently *Nicaragua v United States (Merits)* ICJ Reports (1986) p.98 & p.86. Cited in Brownie, *ibid.*, p.6.

<sup>34</sup> Hough *op. cit.* p. 450.

<sup>35</sup> U.N. Security Council Resolution 242, 1967 U.N. Yearbook 257. Cited in Hough *ibid.* p. 460.

<sup>36</sup> See 30 U.N. Yearbook 738 (1976) for the O.A.U. resolution and 33 U.N. Yearbook 1063 (1979) for the U.N. Security Council resolution. Both cited in Hough *ibid.* p. 642.

<sup>37</sup> For the first resolution, see 34 U.N. Yearbook 728-734 (1980). Cited in Hough *ibid.* p. 463.

<sup>38</sup> 34 U.N. Yearbook 334-335 (1980) Cited in *ibid.* p. 464.

<sup>39</sup> 34 U.N. Yearbook 307 (1980) Cited *ibid.*

<sup>40</sup> *ibid.* p. 466.



Hand-built ceramics by Audronė Beržanskas. (See also Page 8).

The final requirement is that the practice has the required psychological element or *opinio juris sive necessitatis*. This requires that the practice is accepted as law by the states applying it, rather than applied for mere political convenience. In a case such as that at hand, the ICJ may be willing to assume the existence of such motivation because states in citing the motivation for their behaviour have made specific and uniform reference to the provisions of international law.<sup>41</sup>

### Continued Existence of the Lithuanian State

The effect of the Stimson Doctrine and the failure on the part of the overwhelming majority of states to recognise Lithuanian incorporation into the Soviet Union is the continued 'legal, although subjugated existence' of the Lithuanian state.<sup>42</sup> When Lithuania reasserted this legal right to statehood on March 11, 1990, political interests on the part of many states prevented immediate recognition in the presence of Soviet instability and resistance in Moscow.<sup>43</sup> Most States encouraged a policy of negotiated independence for Lithuania and dialogue with Moscow.<sup>44</sup> The absence of immediate recognition led some commentators to argue that 50 years of Soviet occupation had, by the doctrine of effectiveness, legitimised Soviet control of Lithuania.<sup>45</sup> These writers fail, however, to address the overwhelming evidence of state practice during that 50 year period in regard to the legal force in the developing doctrine of non-recognition which expressly conflicts with that of acquired effectiveness over time.

The failed coup of August 1991 and changes in the power structure in Moscow gave the Baltics the opportunity to further their claims.

<sup>41</sup> *ibid.* pp. 412-446, and pp. 460-466.

<sup>42</sup> Statement by the White House Press Secretary, March 11, 1990. Reprinted in *Lituanus* op. cit. p. 13.

<sup>43</sup> Urban op. cit. p. 71.

<sup>44</sup> *ibid.* The interests of the United States in this regard were widely shared with other states. Only Iceland (12/2/1991) and Denmark (28/2/1991) recognised Lithuanian independence during this period.

<sup>45</sup> R. Piotrowicz, 'Lithuania's Lust for Life: Is It Legitimate?', in Taškūnas and Doyle op. cit. p. 45. Also Lloyd Churchward, 'Lithuanian Background', *Arena* (North Carlton, Victoria) Vol. 94, 1991, pp. 44-47.

In the days following the coup a flood of nations recognised Lithuanian independence.<sup>46</sup> The Soviet Union did so under considerable international pressure on September 6, 1991.<sup>47</sup> At the time of recognition most states emphasized their adherence to the Stimson Doctrine since 1940. Prior to recognition, President Bush maintained that the U.S. 'never recognised the forcible takeover... As far as we are concerned, they are still independent.'<sup>48</sup>

The European Foreign Ministers stated jointly and in part, that members warmly welcome the restoration of the sovereignty and independence of the Baltic states which they lost in 1940. They have consistently recognised the democratically elected Parliaments and Governments of these states as the legitimate representatives of the Baltic peoples.<sup>49</sup>

The Australian Government recognised the 'restoration of [the] full sovereignty of ...Lithuania' on August 27, 1991.<sup>50</sup> The extent to which recognizing states linked the 1991 republic with that displaced in 1940 supports the proposition that Lithuanian independence was *restored* rather than granted.

### Succession to Treaties

The development of the doctrine of non-recognition of forcible seizure of territory may have considerable ramifications in the law of state succession in regard to treaties. International law has developed general

<sup>46</sup> Norway, Finland and Argentina (25/8/1991), [*New York Times*, 26/8/1991, p. 1]. The European Community (27/8/1991) [*New York Times*, 29/8/1991]. Germany and New Zealand (28/8/1991) [*New York Times*, 29/8/1991]. The United States (2/9/1991) [*New York Times* 2/9/1991].

<sup>47</sup> *New York Times* 7/2/1991, p. 1. The piece was headed 'Soviets recognize Baltic independence, Ending 51-year occupation of 3 nations'.

<sup>48</sup> *ibid.* 23/8/91, p. 1.

<sup>49</sup> Extract from Statement recognizing the independence of the Baltic States (28/8/1991) Reprinted in the *New York Times*, 28/8/1991.

<sup>50</sup> Statement from the Department of Prime Minister and Cabinet headed 'Recognition of the Baltic States', 27/8/1991.



principles which apply to a 'succession of states'<sup>51</sup> as to the extent to which treaty obligations pass to the emergent states. Under the Stimson Doctrine the applying states have denied the sovereignty of the Soviet Union over Lithuania and hence have denied it the power to enter into treaty arrangements binding the territory.

In relation to the large majority of states who have applied the doctrine of non-recognition, it is therefore possible to suggest that a 'succession of states' has not occurred. As regards succession to treaty obligations with these states, it is possible that Lithuania in 1992 is bound only by those treaties signed and in force prior to 1940 and those which evidence customary international law. That is the doctrine of reversion may apply because the successor state is regarded as recovering a political and legal identity displaced by an intervening period of dismemberment or colonization.<sup>52</sup> Therefore any treaty concluded between the non-recognising state and the Soviet Union cannot pass and bind independent Lithuania.

It is interesting to note that in conformity with its principle of non-recognition, the U.S. State Department continues to list Lithuania's treaties concluded prior to 1940 as 'continuing in force'.<sup>53</sup> O'Connell (1967) notes the continued existence of two treaties in Commerce (1922) and Trade (1934) between Lithuania and Great Britain.<sup>54</sup> This clearly supports the proposition that the doctrine of reversion may be the applicable law in a case of a non-recognition of forcible seizure of territory.

### International Law on State Succession

A discussion of the prevailing law in regard to state succession will serve two purposes. The first of these is to define the law which is applicable as between states which did not apply the doctrine of non-recognition to the 1940 annexation. These states may be justified in relying

<sup>51</sup> The Vienna Convention on Succession of States in Respect of Treaties (23/8/1978) Text 17 ILM (1978) 1488, Art. 2 (1), defines a 'succession of states' as: 'the replacement of one state by another in the responsibility for the international relations of territory'.

<sup>52</sup> Brownlie op. cit. p. 675

<sup>53</sup> Lapinski op. cit. p. 19.

<sup>54</sup> O'Connell op. cit. p. 1xxvii.

upon the fact that a succession of states has occurred since they recognised the legitimacy of Lithuanian incorporation. The second is to distinguish the position in law of the modern Lithuanian state in regard to treaties, from that which would apply were the ICJ to give effect to the Stimson Doctrine as suggested by this paper. If the ICJ did not find the doctrine of non-recognition to be effective in altering the obligations of the parties, then the existing international law would apply to the dispute before it.

If Lithuanian independence is found to constitute a case of state succession, the legal outcomes will depend upon whether the situation is governed by convention or customary international law. Under customary international law as established by state practice, there is a presumption of non-transmissibility of states rights and obligations.<sup>55</sup> This 'clean slate' doctrine does not encompass localised treaties or those evidencing general principles of international law.<sup>56</sup> Lithuania may therefore be bound by Soviet established borders, rights of transit, navigation and fishing, as well as laws established by the consistent and uniform practice of states.<sup>57</sup>

The Vienna Convention on the Succession of States in Respect of Treaties (1978) also purports to determine the situation. Article 34 provides inter alia that where a part of the territory of a state separates to form a new state, any treaty pertaining to the entire predecessor state<sup>58</sup> or in respect only of the seceding state passes to the successor state<sup>59</sup>. This presumption of continuity is prima facie only and may be rebutted by the subsequent agreement of the parties to the treaty or where performance

<sup>55</sup> Brownlie op. cit. p. 668. Also J.B. Starke, *Introduction to International Law*, 10th ed. Butterworths, London, 1989. p. 325.

<sup>56</sup> Brownlie *ibid.* p. 669. Starke *ibid.* pp. 329-330.

<sup>57</sup> Brownlie *ibid.* suggests they will not be so bound. D.P. O'Connell in, *State Succession in Municipal Law and International Law Volume II: International Relations*, Cambridge at the University Press, 1967, considered the seminal text in the area. suggests otherwise at pp. 12-23.

<sup>58</sup> 'The State which has been replaced by another State on the occurrence of a succession of states.' *ibid.* Art. 2 .1 .(c).

<sup>59</sup> 'The State which has replaced another state on the occurrence of a succession of states.' - *Ibid.*, Art.2.1.(d).

conflicts with the object and purpose of the treaty.<sup>60</sup> Should the Convention apply, Lithuania would remain bound by any treaty to which the Soviet Union was a party unless it either pertained specifically to some other territory, or unless Lithuania can meet one of the requirements of Art 34 (2).<sup>61</sup>

The provisions of the Vienna Convention, however, appear to be progressive in that they 'are not generally reflective of the practice of states.'<sup>62</sup> In addition, the convention does not yet appear to be in force<sup>63</sup> or endorsed by the Soviet Union.<sup>64</sup> It therefore seems likely that custom rather than the Convention would be the determinative law upon the subject.

### Effect of the Stimson Doctrine

The growing acceptance of the doctrine of non-recognition of forcible seizure of territory challenges the existing principles governing the law in regard to succession to treaties. The failure to admit the legality of Soviet control over Lithuania must result in the consequent failure of Soviet attempts to contract with other states on behalf of the Lithuanian territory. Such treaties would be void in 'conformity with the principal of all laws - that illegal acts should be barred from producing legal results'.<sup>65</sup>

Thus it would appear that the doctrine of reversion may have a much wider application in international law as a result of the increasing incidence of non-recognition of forcible seizure of territory. There remain a

<sup>60</sup> *ibid.* Art. 34.

<sup>61</sup> *ibid.* Art. 34(2)

<sup>62</sup> Brownlie *op. cit.* p. 668.

<sup>63</sup> Art. 49 provides that the convention will enter into force 30 days after the 15th ratification or accession. Bowman and Harris, *Multilateral Treaties and Current Statutes*, London, Butterworths, 1984, at p. 432, list the treaty as not yet in force.

<sup>64</sup> Bowman and Harris *ibid.* do not list the Soviet Union as a signatory and it appears unlikely that they would have signed since 1984. The Soviet aversion to succession from its Federation continued into 1991 (See Jak Tremain, 'Soviet Succession Law is a Sham', *Lituanus op. cit.* Vol. 36, No. 4, 1990.) No other Federation appears to have signed.

<sup>65</sup> Hough *op. cit.* p. 480.

number of situations in which the doctrine is currently being applied and indeed it seems likely to be applied more regularly and with greater uniformity in the future. This may represent a problem for the law in regard to succession to treaties in that it is likely, with the increasing reliance upon intricate networks of treaties by states pursuant to investment and development goals, that the favoured principles in regard to continuity and certainty may not be relied upon.

Lithuanian recognition has produced practical attempts to solve the problem in terms of bilateral negotiations. The United States, following its recognition of Lithuanian statehood, sought assurances of continued compliance by Lithuania with provisions of the Conventional Arms Reduction Treaty and the Strategic Arms Reduction Treaty which may apply to Lithuanian territory.<sup>66</sup> Such bilateral agreements may not be forthcoming in all similar circumstances, however, and the problem of developing a doctrine ensuring some degree of certainty to enable reliance upon treaties affecting territories whose effective government is unrecognised, remains to be addressed.

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A map of the "Lithuanian Strip". After the secret Nazi-Soviet agreements in 1939 (see Page 14), the Germans had claimed this part of Lithuania for themselves. After lengthy negotiations, however, the Russians "bought" it from Nazi Germany for 7,500,000 gold dollars on January 10, 1941. Source: KASLAS, B.j., *The Baltic Nations: The Quest for Regional Integration and Political Liberty*. Pittston, Penn., Euramerica Press, 1976, p.267.

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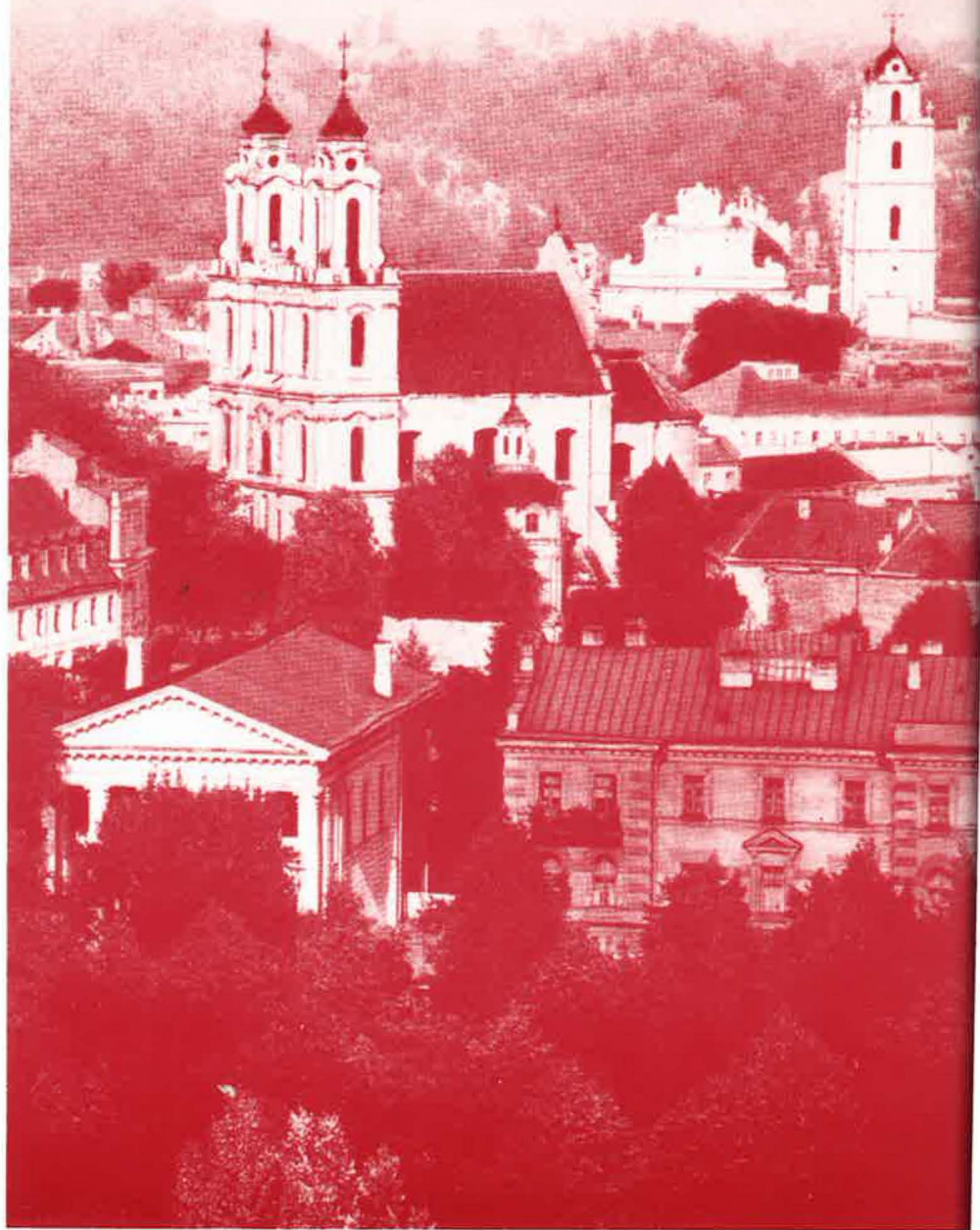
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