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The Estonia-Russia Border Dispute

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The centennial of the Treaty of Tartu between the Republic of Estonia and Soviet Russia in February 2020 did not end the border dispute. In 1944, the Soviet authorities changed the borders and since then, 5% of the territory of pre-war Estonia remains under Russia's control. It argues the change was legally justified and that the region has not shown any willingness to adjust its borders back to those of the interwar period. Estonia, though, aims to assert its statehood, and some elites are directly raising claims. This means the continuation of the stalemate over the border, which will negatively impact bilateral relations.

Historical Context. Estonia, together with Lithuania and Latvia, became a state in the final months and in the aftermath of the First World War. In three peace treaties from the 1920s (including Tartu), Soviet Russia recognised these states' independence and renounced all rights to their territories. They gained universal international recognition, which was reflected in their accession to the League of Nations in 1921. After the outbreak of World War II, they declared neutrality. Despite this, the Soviet Union, based on the Ribbentrop-Molotov Pact with the Third Reich, began the occupation of all three countries in the mid-1940s. The Soviet authorities staged elections that purported to show the population's support for the communists, which was a common tactic to conceal forced annexation. The parliaments elected in this way then "asked" the USSR to accept the Baltic States, which soon happened. The Estonian Soviet Socialist Republic (SSR) was established in July 1940. In 1944, the Soviet authorities transferred 5% of the territory (about 2,500 km²) from the Estonian SSR to the Russian Soviet Federative Socialist Republic (SFSR), including parts of the Narva and Petseri (Pechory, Petserimaa) districts, which have been under Russian control ever since.

Legal Status. The annexation of the Baltic republics by the USSR in 1940 was contrary to international law. This was reflected in the non-recognition of annexation by third countries. However, after the end of World War II, some countries, guided by the principle of efficiency actually recognised them de facto as part of the USSR, including France, Germany, Great Britain, and Canada. Others, particularly the U.S., refused formal approval of the Soviet conquest. In 1989, the Congress of People's Deputies of the USSR (the equivalent of its parliament) in a resolution condemned the Molotov-Ribbentrop Pact and declared it invalid. After the restoration of independence, Estonia, as well as Lithuania and Latvia, took the position that they did not secede from the USSR, rather the occupation of their territories had ended. Thus, the Baltic states continued to exist as subjects of international law. They did not recognize themselves as successors of the USSR and did not take over its debts after its dissolution. This position was shared by most of the countries that maintained diplomatic relations with the pre-war republics, including the Nordic states and Poland, which restored international agreements made prior to 1940 that the parties considered still relevant. The Russian Federation, however, does not recognise the territorial effects of the Treaty of Tartu and considers it to have been terminated. Russia assumes instead that the accession of the Baltic republics to the USSR in 1940 was legally correct and that the Soviet authorities were then able to legally make territorial changes

between federation entities. It, therefore, questions the identity declared by the Baltic states with their pre-war forms.

The majority of international lawyers tend to take the view that the contemporary Baltic states are continuators of the states annexed in the 1940s. This is also indicated by the practice of other states that, before the war, maintained diplomatic relations with the Baltic states and, after they regained independence, resumed them (e.g., Poland). The Estonian claims are, therefore, viewed as legally justified. There are no standards in international law concerning the legalisation of the effects of unlawful acts that have been in place for a long time. International law also does not specify a limitation period for claims. However, this does not mean that they are perpetual. They will expire if they are not upheld by the parties concerned.

The Political Context. The genesis of the dispute regarding the sanctioning of the Russia-Estonia border dates back to the 1990s when the negotiations started. It wasn't until 2005, in Moscow, when a border agreement was signed and then ratified by the Estonian parliament a month later. However, Estonia has added a preamble to the ratification law, citing the provisions of the 1920 Tartu treaty, that undermines the current Estonia-Russia border between union republics established by the USSR. Therefore, the Russian side withdrew its signature and did not ratify the agreement.

Another agreement on the border was signed in February 2014 by foreign ministers of the respective states, Urmas Paet and Sergei Lavrov. In it, they again established the border along the line from the Soviet times. However, the parliaments of the two states did not ratify it. In January 2020, President of the Riigikogu Henn Pölluas publicly pointed out that the Estonian parliament would approve only an agreement that provides for a border in line with the provisions of the Tartu treaty. The Russians reject this solution.

Appointed in April 2019, Estonia's centre-right government has not developed a unified position towards the border dispute with Russia. The largest coalition, the Estonian Centre Party, presents a conciliatory approach. The populist Estonian Conservative People's Party (EKRE) makes ratification of the treaty conditional on recognition of the 1920 borders, which has been publicly raised by EKRE President and Interior Minister Mart Helme. Foreign Minister Urmas Reinsalu, representing the smallest coalition member of the right-wing Isamaa group, supports EKRE's position, pointing out that Estonia should not withdraw from its legal position on the Tartu peace treaty for the price of ratifying the border treaty with Russia.

This approach by the government is criticised by the opposition and the largest group in parliament, the Reform Party. It offers a pragmatic approach in this matter and indicates that territorial demands against Russia may weaken Estonia's credibility in the eyes of, among others, NATO allies. President Kersti Kaljulaid is also critical of EKRE's actions, as she sees the effect of the claims as a direct threat to Estonia's foreign policy and security.

Conclusions and Perspectives. Resolution of the dispute requires goodwill from both parties and the willingness to make concessions in order to reach compromise. In the absence of such declarations, the chances of this are slim. The status quo is favourable to Russia because it controls the territories that Estonia is demanding be returned, so it does not publicise initiatives to settle the dispute. In turn, Estonia's withdrawal of its demands would undermine its assessment of the occupation by the USSR. That is why the Estonian authorities are not giving up their request for demarcation based on the Tartu agreement.

The consequence of the lack of a border treaty increases the potential for other conflicts in bilateral relations, for example, in border cooperation and Russian minority issues in Estonia. Meanwhile, Estonia considers the security aspect to be the most important in its relations with Russia and perceives the latter's actions as hostile. The EU and NATO countries recognise the continuity of Estonia's legal and international subjectivity but do not support its territorial claims. Latvia, which was in a similar situation in 2007, gave way and ratified the border treaty with Russia, under which it withdrew its claims to the lost region of Abrene (now Pytalovo).

In response to the aggressive policy of the Russian Federation, Poland has repeatedly referred to the principle of the inviolability of borders established after World War II as a norm valid throughout Europe. This also applies to the Estonia-Russia border. It is, however, a separate matter to determine the moment at which Russia de facto legally controls part of Estonian territory and subsequent possible claims for damages.

The lack of prospects for change in the Russian position on the border with Estonia is indicated by recent statements by Russian President Vladimir Putin regarding Russia's historical policy and the role of the USSR on the eve of World War II. The glorification of Soviet times has become the foundation of today's Russian statehood narrative, both internally and internationally. Thus, recognizing the Estonian demands would not only require the return of territories but also would undermine the Russian imperial myth. On the other hand, the sharpening of the Estonian position does not promise to resolve the stalemate, either, at least in the perspective of the current balance of political forces.