

Fordham International Law Journal

Volume 21, Issue 5

1997

Article 2

The Status of the Federal Republic of Yugoslavia in the United Nations

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Vladislav Jovanovic

Abstract

The status and position of the Federal Republic of Yugoslavia ("FRY") in the United Nations ("UN") is a controversial issue which has elicited many comments and articles and has cast a long shadow on the legality of the measures taken by the General Assembly ("GA") and the Security Council ("SC") vis-a-vis Yugoslavia. In 1992, the SC and the GA both decided that the FRY, composed of Serbia and Montenegro, could not participate in the work of the GA and its bodies. The GA further extended the prohibition against Yugoslavian participation to the Economic and Social Council and its bodies. Throughout each of these resolutions, the SC and the GA stated that the Socialist Federal Republic of Yugoslavia ("SFRY") has ceased to exist and that the FRY cannot automatically continue the membership of the former SFRY in the UN. At the root of the unresolved status of the FRY in the UN is the question whether a succession or secession has taken place in the former SFRY. Essentially, the status question had been created by the unilateral acts of secession by the four former Yugoslav republics (Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia) and the intrusion of the geo-strategic interests of foreign factors that encouraged, made possible and rewarded these secessions by premature recognition of the new nations. Continuous political pressure against the FRY is designed to bring about legal discontinuity of Yugoslavia as a founding member of the Organization of the UN. The FRY continues to be precluded from participating in the meetings of states that are parties to those treaties. Unfortunately, the U.S. administration is not alone in erecting a new Berlin Wall on the FRY. The denial of the FRY's right to be a continuous member of the UN and other international organizations runs counter to the contrary pronouncements issued by three out of the four former Yugoslav republics in the bilateral agreements and a joint declaration on the normalization of relations with the FRY. The isolation of the FRY from the UN work and other international organizations is only one of the absurdities and frivolous abuses of international law that have been the hallmark of the involvement of the international community in the Yugoslav crisis ever since its beginning.

Part I discusses the Security Council (SC) and General Assembly (GA) decisions that the FRY, composed of Serbia and Montenegro, could not participate in the work of the GA and its bodies, and the GA's further extension of the prohibition against Yugoslavian's participation in the Economic and Social Council and its bodies. Part II addresses the root of the unresolved status of the FRY in the UN, namely the question of whether a succession or secession had taken place in the former SFRY. Part III asks whether the SFRY ceased to exist after unilateral acts of secession by the four former Yugoslav republics (Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia), and the intrusion of the geo-strategic interests of foreign factors that encouraged, made possible, and rewarded these secessions by premature recognition of the new nations. Part IV analyzes the

legal and political influences on the role of the FRY. Part V discusses the subsequent incorrect treatment of the FRY. Finally, Part VI addresses the U.S. resistance to the FRY's resumed role.

THE STATUS OF THE FEDERAL REPUBLIC OF YUGOSLAVIA IN THE UNITED NATIONS

*Vladislav Jovanovic**

INTRODUCTION

The status and position of the Federal Republic of Yugoslavia ("FRY") in the United Nations ("UN") is a controversial issue which has elicited many comments and articles and has cast a long shadow on the legality of the measures taken by the General Assembly ("GA") and the Security Council ("SC") vis-a-vis Yugoslavia.

I. SC & GA RESOLUTIONS

In 1992, the SC and the GA both decided that the FRY, composed of Serbia and Montenegro, could not participate in the work of the GA and its bodies.¹ The GA further extended the prohibition against Yugoslavian participation to the Economic and Social Council and its bodies.²

Throughout each of these resolutions, the SC and the GA stated that the Socialist Federal Republic of Yugoslavia ("SFRY") has ceased to exist and that the FRY cannot automatically continue the membership of the former SFRY in the UN. The FRY was requested to apply to become a member-State of the UN.

It is important to note that the notion of non-participation in the work of the GA and the ECOSOC is not a category that is envisaged by the UN Charter. The Charter foresees the possibil-

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1. See S.C. Res. 777, U.N. SCOR, 47th Sess., 3116th mtg., at 1, U.N. Doc. S/RES/777 (1992); G.A. Res. 47/1, U.N. GAOR, 47th Sess., Supp. No. 49, at 2, U.N. Doc. A/47/474 (1992). Security Council Resolution 777 declares that the state formerly known as the Socialist Federal Republic of Yugoslavia ("SFRY") has ceased to exist and that the claim by Serbia/Montenegro to continue automatically the membership of the former SFRY in the United Nations ("UN") has not been generally accepted. As a result, Resolution 777 concludes Serbia/Montenegro cannot continue automatically the membership of the SFRY in the United Nations, and it recommends that the General Assembly require Serbia/Montenegro to apply for membership.

2. G.A. Res. 48/252, U.N. GAOR, 48th Sess., Supp. No. 49, at 2, U.N. Doc. A/47/474 (1992).

ity of expulsion and suspension from the UN,³ neither of which was used in the case of Yugoslavia. The SC followed its standard decision making policy because the decision on Yugoslavia's non-participation was a political compromise reached by the permanent members of the SC and contained within itself many legal contradictions.

The Legal Counsel of the UN, commenting at the request of Bosnia and Herzegovina and Croatia, on the scope of Resolution 47/1,⁴ declared that the resolution neither terminates nor suspends Yugoslavia's membership in the UN Organization.⁵ Yugoslavia remains a member of the UN, its nameplate is present at all meetings of the GA and its bodies, and the last flag of the SFRY is still flown in front of the UN. The privileges and immu-

3. U.N. CHARTER art. 5 (stating that General Assembly ("GA") may suspend membership when recommended by Security Council); U.N. CHARTER art. 6 (discussing procedures and ability of UN to expel members).

4. Resolution 47/1 states in relevant part that

[t]he General Assembly, Having received the recommendation of the Security Council of 19 September 1992 that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly . . . ,

1. Considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly.

G.A. Res. 47/1, U.N. GAOR, 47th Sess., Supp. No. 49, at 2, U.N. Doc. A/47/474 (1992).

5. In a letter dated September 29, 1992, the Legal Counsel of the United Nations stated that the "considered view of the United Nations Secretariat regarding the practical consequences of the adoption by the General Assembly of resolution 47/1" was as follows:

While the General Assembly has stated unequivocally that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations, the only practical consequence that the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly. It is clear, therefore, that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer participate in the work of the General Assembly, its subsidiary organs, nor conferences and meetings convened by it.

On the other hand, the resolution neither terminates nor suspends Yugoslavia's membership in the Organization.

Letter from Carl-August Fleischhauer, UN Under-Secretary-General for Legal Affairs and Legal Counsel, to Kenneth Dadzie, Under-Secretary-General, UN Conference on Trade and Development, UN Doc. A/47/485, at 2 (1992).

nities of the Mission and diplomats of Yugoslavia have been retained, and the Secretariat of the UN regularly publishes documents that the Mission of the FRY produces.

In addition, the FRY is on all official lists of the member-States of the UN and the Mission of the FRY is listed in the diplomatic handbook of Permanent Missions to the UN issued by the UN Secretariat twice a year. The Secretariat has regularly addressed official requests to the FRY to fulfill its membership obligations towards the budget of the UN and the expenditures on peace-keeping operations since 1991, when the existence of the SFRY was not contested. The Secretariat has regularly received Yugoslavia's remittances and issued official certificates to that effect.

The main argument used to justify the SC and GA resolutions⁶ was that States which emerged after the break-up of the former SFRY are new States and that, consequently, all of them have to be recognized and that they have to apply for membership to the UN.⁷ Although this was certainly true for the former Yugoslav republics (Bosnia and Herzegovina, Croatia, Macedonia, and Slovenia), which seceded forcibly from the former SFRY and clearly established themselves as new States, in the case of the remaining part of the former SFRY, such an approach was totally unjustified and unwarranted. This part of the former SFRY never expressed an intention to leave or to become a new State. On the contrary, it continued to honor, not only by its Constitution of April 27, 1992 and laws, but also indeed, all international commitments assumed by the former SFRY. This certainly includes the membership in the UN and other international organizations and agencies.

It is obvious that neither the SC nor the GA had a legal basis for their decisions on the suspension of the activities of the FRY from the work of the GA and the ECOSOC. Because these decisions are political, they are legally controversial, both vis-à-vis the

6. S.C. Res. 777, U.N. SCOR, 47th Sess., 3116th mtg., at 1, U.N. Doc. S/RES/777 (1992); G.A. Res. 47/1, U.N. GAOR, 47th Sess., Supp. No. 49, at 2, U.N. Doc. A/47/474 (1992).

7. S.C. Res. 777, U.N. SCOR, 47th Sess., 3116th mtg., at 1, U.N. Doc. S/RES/777 (1992); G.A. Res. 47/1, U.N. GAOR, 47th Sess., Supp. No. 49, at 2, U.N. Doc. A/47/474 (1992); see Paul Lewis, *U.N. Takes Step Toward Ousting Yugoslavia*, N.Y. TIMES, Sept. 20, 1992 (noting that "federation of Serbia and Montenegro, which still calls itself Yugoslavia, must reapply for United Nations membership as a new country, just as the republics that emerged from the disintegration of Yugoslavia have already done.")

Charter of the UN and vis-à-vis international law. Impartial international legal experts noticed immediately the legal shortcomings and logical inconsistencies.⁸ The question whether the SC and the GA, as branches of the UN, are competent to make statements concerning the existence of a State has never been answered.

II. SUCCESSION OR SECESSION?

At the root of the unresolved status of the FRY in the UN is the question whether a succession or secession has taken place in the former SFRY.

In the case of the former SFRY, the question turns on the relationship of the members of the former Yugoslav federation which unilaterally proclaimed their sovereignty and independence vis-a-vis the international personality of Yugoslavia.⁹ Has Yugoslavia's personality under international law been lost as a

8. Yehuda Z. Blum, *UN Membership of the "New" Yugoslavia: Continuity or Break?*, 86 AM. J. INT'L L. 830, 832-33 (1992).

9. See *Croatia and Slovenia Declared Their Independence From Yugoslavia*, WALL ST. J., June 26, 1991, at A1 (reporting Yugoslavia using army intervention as means to prevent Croatia and Slovenia from declaring independence); Chuck Sudetic, *Yugoslavia Breaks Apart, 2 Rebel Republics Secede*, INT'L HERALD TRIB., June 26, 1991, at 1 (stating that Croatia and Slovenia had declared their independence from Yugoslavia). On June 24, 1991, the Assembly of the Republic of Slovenia adopted the Constitutional Act on the Sovereignty and Independence of the Republic of Slovenia which states, in pertinent part:

[t]he proposal for a bilateral disunion and initiation of discussion on new forms of relations on the basis of a bilateral disunion and formation of sovereign States was not accepted within the reasonably allotted time, except by the Republic of Croatia. The Republic of Slovenia was thus compelled to pass the Constitutional Act. . . . The Republic of Slovenia as a sovereign and independent State hereby proclaimed: - that the Constitution of the Socialist Federal Republic of Yugoslavia is no longer in force on the territory of the Republic of Slovenia.

Tanjug Focus SI/92, Jan. 14, 1992, at 93.

Article 4, para. 2, of the Constitutional Law on the Enforcement of the Constitutional Act on the Autonomy and Independence of the Republic of Slovenia reads: "The competences of the organs and organizations of the SFRY . . . shall in accordance with this law be transferred to the organs and organizations of the Republic of Slovenia . . ." *Id.* at 101. It is obvious that the Assembly of Slovenia understood its Act of Independence as an act of withdrawal from the Yugoslav Federation and not as an act causing the disappearance of the Federation.

The Assembly of Croatia at the session of October 8, 1991 made the following decision: "I. As of 8 October 1991, the Republic of Croatia severs the State-legal ties on the basis of which, together with the other republics and provinces, it constituted the hitherto SFRY. II. No bodies of the hitherto Federation - The SFRY - are considered legitimate or legal in the Republic of Croatia . . ." *Id.* at 179.

result of the acts of secession of some of its republics, or has it continued to exist in spite of the changes which have occurred?

There is sufficient ground to claim that the FRY represents the continuity of the former SFRY for the following reasons:

(1) Since the creation of the UN, there has been a strong and consistent tendency for states from which a section or sections have seceded to retain their continuity under international law, for example, India and Pakistan, Pakistan and Bangladesh, Egypt and Syria, and Ethiopia and Eritrea.

(2) The conclusion of the Badinter Arbitration Commission,¹⁰ that the changes that took place in the SFRY can be qualified as the dissolution of that state, is unfounded. It is clear that Slovenia, Croatia, and Bosnia and Herzegovina seceded forcibly from the SFRY, while in the case of Macedonia the separation was peaceful. At the same time, the remaining loyal part of the Federation, the republics of Serbia and Montenegro, constituted themselves, after the secession of the four republics, under the name of the FRY which made abundantly clear that it shall continue the international legal personality of the former SFRY.

(3) The FRY has continued to honor, not only by its proclamations but also in practice, all international obligations assumed by the former SFRY, including those concerning the membership in the UN and other international obligations.

(4) There is no rule of international law that prohibits the FRY from continuing the international legal personality of the former SFRY. The established rules of international law further this proposition because the diminution of territory or of population, changes in the constitutional order, or other internal changes do not affect the international personality of a state.

(5) The FRY has continued to maintain diplomatic relations with almost all States without entering into new agreements with the States which previously maintained diplomatic relations with the former SFRY.¹¹

10. *Conference on Yugoslavia Arbitration Commission: Opinions on Questions arising from the Dissolution of Yugoslavia*, 31 I.L.M. 1488 (1992); see *International Conference on the Former Yugoslavia Documentation on the Arbitration Commission under the UN/EC (Geneva) Conference: Questions submitted to the Arbitration Commission and Statements relating to their submission*, 32 I.L.M. 1579 (1993) (detailing proceedings before Badinter Arbitration Commission).

11. The FRY maintains diplomatic relations with 170 countries. Eighty countries have embassies in Belgrade, forty-three of them at the level of ambassador, three at the

(6) Between April 27, 1992, when the FRY was constituted on the part of the SFRY which remained after the unilateral secession of the four federal units, and September 22, 1992, when the GA adopted Resolution 47/1, the FRY exercised all the rights of a member State and actively participated in the work of the UN, including regular voting. This is borne out by the fact that the FRY was tacitly accepted as a member State continuing the international legal and political personality of the former SFRY. If there had existed any valid historical, legal, moral, or political reasons to contest it, it would have been done either immediately or within the so-called first psychological second, then certainly within the period of almost five months that elapsed between the two aforementioned dates.

III. *DID THE SFRY CEASE TO EXIST?*

It is evident that Member states who raised questions regarding the status of the FRY in the UN, and subsequently in other international organizations, were motivated exclusively by political reasons and interests. Nevertheless, the FRY status question was only formally raised in the UN. Essentially, the status question had been created by the unilateral acts of secession by the four former Yugoslav republics (Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia) and the intrusion of the geo-strategic interests of foreign factors that encouraged, made possible, and rewarded these secessions by premature recognition of the new nations. Attempts to dismember the SFRY initially were made by way of the formula of the disassociation of the six federal republics on which the northern republics of Slovenia and Croatia insisted. The aim of that formula was to invest the dismemberment of the SFRY with the semblance of free will so that the states desiring to secede could neatly circumnavigate the secession recognition reefs. Once that attempt foundered through the refusal of Serbia and Montenegro, the republics loyal to the SFRY, in order to abandon the common state, the concept of the dissolution of the SFRY came to the fore.

The elaboration and explication of the concept was entrusted to the so-called Badinter Arbitration Commission, the ad-

level of charge d'affaires, nineteen at the level of charge d'affaires ad interim and one at the level of gerent (Pakistan). The FRY has 100 embassies and consulates around the world.

visory body of the International Conference on Yugoslavia¹² ("Conference"), convened by the European Community ("EC"), in The Hague on September 7, 1991. Although the Conference was a result of the good offices of the EC and presented as a common effort "to reestablish peace for all in Yugoslavia and to achieve lasting solutions which respect all legitimate concerns and legitimate aspirations,"¹³ it was quickly transformed into an arbiter which took decisions and meted out punishments authoritatively.

All four proposals of the Chairman of the Conference, Lord Carrington, favored the four federal units that had expressed desire to exit the SFRY and disfavored the two federal units that had expressed full loyalty to the SFRY and opted to continue to live in it. The first group was granted the right to become new independent states and to be recognized by the EC once they fulfilled certain conditions, whereas the other group was denied the right to remain in the former federation. In other words, the right to secede was recognized as a right more powerful than the right to remain loyal to one's own State. Although they represented one half of the population of the SFRY and lived on a large part of its territory, the Serbs and Montenegrins were requested, according to the decree,¹⁴ to set up a new State and, upon fulfilment of specific conditions, to request international recognition. Lord Carrington was explicit: a common State of Serbia and Montenegro may be called Yugoslavia again, but it has to be a new State and may have nothing in common with the former SFRY. The refusal of Serbia and Montenegro to abandon the SFRY was dubbed a lack of cooperation and was taken as a pretext by the EC to impose economic sanctions on them on December 2, 1991.¹⁵ Four days before punishing the loyalty to the SFRY, on November 29, 1991 the "advisory" Arbitration Commission made public its deadly Opinions on the SFRY.¹⁶ In a very simplified way and riding roughshod over a number of

12. The Badinter Arbitration Commission was assembled by the European Community to decide legal issues related to the Yugoslavian conflict to which its members could not agree. *Conference on Yugoslavia*, *supra* note 10, at 1488.

13. *Id.* at 1521.

14. *Id.* at 1524-25.

15. Laura Silber, *EC Lifts Yugoslav Sanctions, Expects Serbia, Montenegro*, WASH. POST, Dec. 3, 1991, at A9.

16. *Conference on Yugoslavia*, *supra* note 10, at 1488.

important legal and political facts, the Opinions proceeded to aver that “the SFRY is in the process of dissolution.”¹⁷ Seven months later, on July 4, 1992, after the four seceding republics had already been recognized by the EC and had become member States of the UN, the Arbitration Commission officiated, at the request of the Chairman of the International Conference on Yugoslavia, the last rites for the SFRY in the form of its three last Opinions: it established that the process of the dissolution of the SFRY had come to an end and that the SFRY no longer existed,¹⁸ that the membership of the SFRY in international organizations should be terminated,¹⁹ and that the FRY was a new State.²⁰

In order to reach these opinions, it was necessary to turn a blind eye to the resolve of the Serbs and Montenegrins to remain in Yugoslavia as their common State and to deny them the right to self-determination which was granted to Slovenes, Croats, Bosnian Muslims, and Macedonians. It also was necessary to deny the representation and legitimacy to federal organs. This was accomplished through the synchronized withdrawals of the representatives of the four seceding republics from the highest organs of the Federation. The aim of reducing the SFRY to the so-called rump Yugoslavia was to provide force to the argument that the organs of the Federation had ceased to function, which led to the conclusion that the State of the SFRY had ceased to exist.²¹ Even if that argument was true, it would still be

17. *Id.* at 1497.

18. *Id.* at 1521 (“[a]ddressing the question of whether dissolution of the SFRY was complete, the Commission replied that the dissolution was complete and that the SFRY no longer exists.”).

19. *Id.* at 1525 (stating that “the SFRY’s membership of international organizations must be terminated according to their statutes and that none of the successor states may thereupon claim for itself alone the membership rights previously enjoyed by the former SFRY. . .”).

20. *Id.* at 1526 (noting that “the opinion of the Arbitration Commission is that: the FRY (Serbia and Montenegro) is a new state which cannot be considered the sole successor to the SFRY . . .”).

21. In Opinion No. 8, the Arbitration Commission decided that the existence of a federal state, which is made up of a number of separate entities, is seriously compromised when a majority of these entities, embracing a greater part of the territory and population, constitute themselves as sovereign states with the result that federal authority may no longer be effectively exercised. . . . the common federal bodies on which all the Yugoslav republics were represented no longer exist: no body of that type has functioned since

Id. at 1522-23. However, the view expressed in this Opinion does not accurately reflect

very difficult to explain why the collapse of State authority in Afghanistan, Albania, or Somalia for instance, did not lead to the disappearance of those States.

IV. LEGAL AND POLITICAL INFLUENCES ON ROLE OF THE FRY

The GA resolution of September 22, 1992 was adopted at the recommendation of the SC without the invocation of the Main Committee. Also, the text of Resolution 95²² was transferred almost *ad literam* from the recommendation of the SC. As already stated, neither the recommendation of the SC nor the resolution of the GA are based on any Article of the Charter of the UN. Before they were made and adopted, no international organization questioned the status of the FRY which, by adopting the Constitution and Declaration of April 27, 1992,²³ proclaimed that it represented the member State continuity in the SFRY, the international legal personality of the SFRY, and that it recognized and accepted all the international agreements and obligations of the SFRY.

It is clear that neither the SC nor the GA had legal grounds for their decisions. The Charter of the UN provides only for expulsion from, and suspension of, membership.²⁴ The Charter of the UN does not provide for the suspension of participation in the work of the UN. It is obvious that both the SC and the GA could not decide to exclude the FRY from UN membership on the basis of Article 6 of the Charter of the UN.²⁵ In order to bring such a decision, the SC and the GA first would have had to recognize the continuity between the SFRY and the FRY for a

the facts relevant either in the case of the former SFRY or in the case of other similar instances. The Yugoslav federal state consisting of six federal units and reduced to two federal units did not cease to exist because of the secession of its four federal units. After all, Yugoslavia existed also as a unitary state for the first 23 years of its existence. Thus, a transformation of a unitary state into a federation or vice versa does not affect the international personality of that State.

22. G.A. Res. 95/1, U.N. GAOR, U.N. Doc. (1946).

23. U.N. SCOR, 47th Sess., Annex, U.N. Doc. S/23877 (1992).

24. U.N. CHARTER art. 5 (providing authority to suspend membership in UN when recommended by Security); U.N. CHARTER art. 6 (providing authority to expel members from UN).

25. U.N. CHARTER art. 6. Article 6 of the UN Charter states that "[a] Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council." *Id.*

non-existent state cannot be excluded from UN membership. For the same reasons, the SC and the GA could not bring a decision on suspending the membership of the FRY from the UN on the basis of Article 5 of the Charter of the UN because it would have amounted to the recognition of the continuity of the SFRY and the FRY.²⁶ The position taken by the Secretariat of the UN immediately after the adoption of GA Resolution 47/1, in which it is said that it “neither terminates nor suspends Yugoslavia’s membership in the Organization”²⁷ and that its practical consequence was that the representatives of the FRY can no longer participate in the work of the GA, its subsidiary organs, nor conferences or meetings convened by it, is therefore very logical.²⁸ Because it was impossible to remove the FRY from the world Organization under any Article of the Charter of the UN, recourse was left to political pressure in an attempt to compel the FRY to do it itself and then to apply for admission, but as a new State. General Assembly Resolution 47/1 created a basis for that undertaking by its provision stating that the FRY cannot continue automatically the membership of the former SFRY and that the SFRY should apply for membership in the UN. Thus, what can-

26. U.N. CHARTER art. 5. Article 5 of the UN Charter states that

[a] Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council . The exercise of these rights and privileges may be restored by the Security Council.

Id.

27. Letter from Carl-August Fleischhauer, UN Under Secretary-General for Legal Affairs and Legal Counsel, to Mario Nobile, Permanent Representative of the Republic of Croatia to the United Nations, UN Doc. A/47/485 (1992). The letter states in pertinent part that

General Assembly resolution 47/1 deals with a membership issue which is not foreseen in the Charter of the United Nations, namely, the consequences for purposes of membership in the United Nations of the disintegration of a member State on which there is no agreement among the immediate successors of that State or among the membership of the Organization at large. . . . [T]he resolution neither terminates nor suspends Yugoslavia’s membership in the Organization. Consequently, the seat and nameplate remain as before. . . . At Headquarters, the Secretariat will continue to fly the flag of the old Yugoslavia. . . . The resolution does not take away the right of Yugoslavia to participate in the work of the organs other than Assembly bodies. The admission to the United Nations of a new Yugoslavia [Serbia-Montenegro] under Article 4 of the Charter will terminate the situation created by resolution 47/1.

Id.

28. *Id.*

not be done by the GA of the UN, can, should, and must be done by the FRY itself: renounce its membership in the UN; proclaim itself a new state; and submit an application for admission into the membership of the UN. In hindsight, one can notice that such an unprincipled position vis-a-vis the FRY has been much in evidence in the unprincipled policy of some foreign political factors towards the continued existence of the former SFRY since the outset and throughout the unfolding of the Yugoslav crisis. Continuous political pressure against the FRY is designed to bring about legal discontinuity of Yugoslavia as a founding member of the Organization of the UN.

V. INCORRECT TREATMENT OF THE FRY

Although GA resolution 47/1 is silent on multinational treaties, the overbearing political pressure was quickly transferred and expanded to include all multilateral treaties as well, including those concluded after September 22, 1992 and to which the FRY acceded after that date. The FRY continues to be precluded from participating in the meetings of states that are parties to those treaties. This exclusion is continuing even though the Secretariat of the UN took the position that resolution 47/1 "did not address the question of the status of Yugoslavia as party to multilateral treaties deposited with the Secretary-General"²⁹ already at the time when the status of the FRY began to be disputed. It went on to say that "the Depository continues to accept treaty actions taken by Yugoslavia"³⁰ and to list them cumulatively in the publication of Multilateral Treaties Deposited with the Secretary-General without differentiating between those taken by the SFRY and those taken by the FRY. The pinnacle of legal inconsistency and arrogant arbitrariness is the insistence by some states that are parties to the treaties that the FRY must fulfill its obligations, including those made in its absence and without its consultation, even though the FRY is precluded from exercising its rights. The principle of free will in acceding to international treaties and the principle of equality in the treatment of their parties have been inexplicably brushed aside.

29. Amy J. Berks & Kara Zivin, *Yugoslavia*, 90 AM. SOC'Y INT'L L. PROC. 471, 478 (1996).

30. *Id.*

VI. *U.S. RESISTANCE TO THE FRY'S RESUMED ROLE*

The conclusion of the peace accords in Dayton, Ohio,³¹ which put an end to the civil and fratricidal war in Bosnia and Herzegovina, eliminated the reasons for maintaining the UN sanctions against the FRY, including its isolation from the international community. Considering the FRY's key contributions to the success of the Dayton Accord, it was only logical to expect that all retribution measures taken against the FRY during the conflict would be discontinued. The lifting of those measures is required by the interests of the strengthening of peace and stability and the encouragement of economic development in the Balkans.

Unfortunately, this did not come to pass. Following certain delay, the SC eventually lifted all economic and trade sanctions against the FRY.³² Contrary to the general trend, however, the United States decided to maintain the so-called outer wall of sanctions. This was a bad omen and an indication that Yugoslavia's road back to international life was not going to be smooth. Proceeding from the important positive developments that had taken place in the Yugoslav crisis and the major contribution of the FRY to the crisis' resolution, the International Contact Group for Bosnia and Herzegovina, consisting of France, Germany, Great Britain, Italy, Russia, and the United States, was of the opinion, with the exception of the United States, that the SC should be recommended to enable the FRY to resume its regular activities in the work of the GA and the ECOSOC. Yet, due to the negative position of the United States, that useful initiative was not carried through.

The U.S. position is difficult to understand because they did agree that the FRY should figure under its full official name in the General Framework Agreement for Peace in Bosnia and Herzegovina, as well as in the SC resolution on the lifting of all sanctions against Yugoslavia. The Dayton peace accords put an end to the tragic war in Bosnia and Herzegovina, yet it failed to do away with the outdated policy of retribution against the FRY in

31. General Framework Agreement for Peace in Bosnia and Herzegovina With Annexes, Dec. 14, 1995, 35 I.L.M. 75 (1996) [hereinafter GFA]. The GFA was negotiated at the Dayton Peace Accords in Dayton, Ohio and signed in Paris, France in December of 1995.

32. S.C. Res. 1074, U.N. SCOR, 3700th mtg. (1996).

the form of the so-called outer wall of sanctions and the deferment of the normalization of its status in international organizations. In light of Yugoslavia's full cooperation in the peace process, such a policy is not only unnecessary and unjust, but also is contrary to the declared goals of the international community of achieving a speedy and lasting stabilization of the region. It is unlikely that the international community will achieve that worthy goal any time soon if the FRY, the country in the geographical and strategic center of the Balkans, is sapped economically and weakened politically. SECI, the U.S. initiative aimed at strengthening economic cooperation in the Balkans based on the private sector, will remain hobbled if the United States continues to insist that the FRY be kept out of the process of negotiation and agreement making. After all, poverty and social tension, to which Yugoslavia is doomed unless the outer wall of sanctions is removed and its status in international financial institutions, primarily in the International Monetary Fund and the World Bank, is regulated, have never before been a fertile soil in which to plant the seeds of democracy and to carry out the process of privatization. Modern history has no memory of destabilization ever bringing about stabilization.

Unfortunately, the U.S. administration is not alone in erecting a new Berlin Wall on the FRY. It is supported by some militant and neighboring Islamic countries which have found their own, not readily detectable interests in the Yugoslav crisis. Their bandwagon is joined by the four former Yugoslav republics, the original secessionist sin of which is a perennial source of their opposition towards the FRY.

VII. *FRY'S EXCLUSION FROM THE UN IN LIGHT OF RECENT EVENTS*

The denial of the FRY's right to be a continuous member of the UN and other international organizations runs counter to the contrary pronouncements issued by three out of the four former Yugoslav republics in the bilateral agreements and a joint declaration on the normalization of relations with the FRY.

Article 4 of the Agreement on the regulation of relations and the promotion of cooperation between the FRY and the Republic of Macedonia, concluded in Belgrade on April 8, 1996 states, *inter alia*:

In the light of the fact that Serbia and Montenegro had existed as independent States before the creation of Yugoslavia, and in view of the fact that Yugoslavia continued the international legal personality of these States, the Republic of Macedonia respects the state continuity of the Federal Republic of Yugoslavia.³³

Article 5 of the Agreement on the normalization of relations between the FRY and the Republic of Croatia, concluded in Belgrade on August 23, 1996 states, *inter alia*:

Proceeding from the historical fact that Serbia and Montenegro existed as independent States before the creation of Yugoslavia, and bearing in mind the fact that Yugoslavia has continued the international legal personality of these States, the Republic of Croatia notes the existence of the State continuity of the Federal Republic of Yugoslavia.³⁴

In paragraph IV of the Joint Declaration signed by Presidents Slobodan Milosevic and Alija Izetbegovic in Paris on October, 3 1996, it is stated, *inter alia*, that "Bosnia and Herzegovina accepts the State continuity of the FRY."³⁵

VIII. *UNEQUAL TREATMENT OF FORMER SFRY REPUBLICS*

The isolation of the FRY from the UN work and other international organizations is only one of the absurdities and frivolous abuses of international law that have been the hallmark of the involvement of the international community in the Yugoslav crisis ever since its beginning. The internal administrative divisions among the republics of the SFRY have been made into international borders, whereas the internationally recognized borders of the SFRY, solemnly guaranteed by the 1975 Helsinki Final Act,³⁶ were forcibly torn apart and sacrificed. The right to self-determination, granted to peoples by the UN Charter³⁷ and

33. Macedonia-Federal Republic of Yugoslavia: Communique and Agreement on the Regulation of Relations and Promotion of Cooperation, UN Document S/1996/291, Annex (1996).

34. Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia, UN Document A/51/318 S/1996/706, Annex (1996).

35. Lynn Terry, *Bosnia, Serbia Sign Diplomatic Pact*, BOSTON GLOBE, Oct. 4, 1996, at A2.

36. Final Act of the Conference on Security and Co-Operation in Europe, Aug. 1, 1975, 14 I.L.M. 1292 (1975).

37. U.N. CHARTER arts. 1(2), 55.

the Helsinki Final Act,³⁸ were recognized by the Badinter Arbitration Commission and the EC to former Yugoslav republics alone, whereby the autochthonous Serbian people living in republics other than Serbia were deprived of their inalienable right to self-determination. The right to secession was recognized as stronger than the right to remain loyal to the Federation. Such double standards abounded, especially during the years of the war in Croatia and Bosnia and Herzegovina. More often than not, they were aided and abetted by an unprecedented demonization of one people and one side in the civil war by some influential media and political factors.

Particularly absurd is the fact that the four seceding republics, two of which (Slovenia and Macedonia) have no State tradition at all, while the other two (Croatia and Bosnia and Herzegovina) have no modern State traditions, became UN member States. Serbia and Montenegro, on the other hand, the constituent units of the present-day Yugoslavia with long historical³⁹ and modern State traditions and recognized subjects of international law even before the creation of Yugoslavia in 1918, are artificially kept outside the activities of international organizations and outside multilateral treaties.

In practical terms, the list of conditions the United States and the European Union expect the FRY to fulfill in order to be re-integrated into international organizations and financial institutions⁴⁰ is open-ended and is being constantly extended. Further, some of these conditions could well be set to a large

38. Helsinki Final Act, 14 I.L.M. 1292 (1975).

39. It would be problematic, therefore, to talk of national states at any point in the thirteenth century. But, if national identities were judged to be developing effectively in any place at the time, it could only have been in some of the small countries who had successfully segregated themselves from their neighbors. Portugal was a candidate for this, as was Denmark, and, in the Balkans, Serbia, and Bulgaria. Both Serbia and Bulgaria had re-established their independence, from Byzantium in the 1180s. More importantly, they had both created their own national Orthodox Churches with their own patriarchs—Serbia in 1219, Bulgaria in 1235. This step gave them a powerful instrument for forging a separate identity, for educating national elite, for political publicity, and for the sanctification of national institutions. It was a step that none of the countries of Latin Christendom could take until the Reformation and which Muscovite Russia did not take until 1589. It strengthened the bonds of these two Slav peoples whose cohesion would be tested through 500 years of Ottoman rule. NORMAN DAVIES, *EUROPE, A HISTORY* 380-81 (1996).

40. This list includes requests to the Yugoslav side to see to it that progress be made in the solution of the problems in Kosovo and Metohija; to implement the Dayton peace accords; extradite persons indicted for war crimes; take measures to stabilize

number of other countries as well. Yet, they are not being set, and they are not likely to be set.

The political vendetta against the FRY does not facilitate peace, stability, and development in the region. Incorporated in the system of international relations and activities, the FRY would be a much more useful vehicle for achieving these goals. The realities of the region, substantially different from those that prevailed during the war period of the Yugoslav crisis, and the irreplaceable and positive role of the FRY demand that an end be put to confrontation and that it be substituted by unconditional cooperation. This, all the more so, as the FRY has long expressed readiness to actively engage in the existing structures and organizations of the international community. Yugoslavia's continued isolation from the activities of the UN and other international organizations is therefore anachronistic and absurd and, alongside the continued pressure and setting of conditions, shackles positive developments both in Yugoslavia and the region.

A series of developments that took place during the unfolding of the Yugoslav crisis, as well as the current need and interest of the international community to have the on-going peace process evolve into general normalization, should be taken into account in solving the status of the FRY in the UN. That solution can and should be a pragmatic compromise. It is indisputable that Serbia and Montenegro have lived continuously in the common State of Yugoslavia since 1918, when they built in their own State continuity and international legal and political personality. It is also indisputable that the four former Yugoslav republics (Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia) segregated themselves in 1991 from the common state, and that in 1992 they became internationally recognized independent states. These two facts do not affect the equal rights of the four former Yugoslav republics and the reconfigured FRY regarding the division of the assets and liabilities of the SFRY.

CONCLUSION

A practical way out of the current impasse is to be found in

internal democracy; and commit itself to completing the negotiations on succession issues.

the formula of the Contact Group,⁴¹ postulated immediately after the signing of the Dayton peace accords. It takes into account the radically changed situation in Bosnia and Herzegovina and the Yugoslav crisis, takes note of the key contribution of the FRY to the successful conclusion of the accords, and points to the overall benefits of the closure of the Yugoslav crisis and the removal of its consequences. The politicized question of the membership of the FRY in the UN will be overcome by way of making practical arrangements to enable the FRY to resume its activities in the GA and other bodies of the UN that it carried out for almost five months before September 22, 1992 on a regular basis.

Such a generally beneficial outcome would be much easier to achieve if all interested parties proceeded from certain assumptions, even though they might not quite conform with their current approach.

The former Yugoslav republics could tacitly accept that the former SFRY has never disintegrated in the part making up the present FRY, and that it has continued to exist in the form of the present FRY. Considering that Croatia, Macedonia, and Bosnia and Herzegovina have already made such a concession in their bilateral agreements with the FRY on normalization of mutual relations, this would not be a new concession for them.

In return, the FRY could tacitly admit that the creation of new independent states out of the four former Yugoslav republics was also a consequence of the non-functioning of the SFRY in the territories of these republics.

On that basis, the European Union could tacitly abandon its position from 1991-92 on the complete dissolution of the SFRY, whereby it would *de facto* distance itself from the arbitrary Opinions of the Badinter Arbitration Commission.

On the basis of these compromises, the SC could recommend to the GA that it should adopt a resolution, or decide otherwise, to enable the FRY to resume its regular activities in the GA and in other bodies of the UN system.

This solution would rid the UN of a cumbersome anachronism and would not harm any state's interest. Yugoslavia's full

41. In May of 1994, France, Germany, Russia, the United Kingdom, and the United States formed the Contact Group. *The Search for Peace in the Balkans: A Primer*, N.Y. TIMES, Nov. 1, 1995, at A11.

incorporation into international political and financial life would have a very positive effect on the peace process and the overall stabilization of the situation in the region, while the universality of the UN and the noble goals of achieving global peace and cooperation would be re-affirmed in a concrete and effective way.