

The Fight to Inherit Yugoslavia: State Succession and Continuity

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The Socialist Federal Republic of Yugoslavia’s (SFRY) collapse in 1991 and 1992 created a problem that international law had rarely confronted before: when a State disintegrates, who—if anyone—inherits its legal identity? Slovenia and Croatia declared independence within months of each other. Bosnia and Herzegovina and the Republic of Macedonia followed. What remained was Serbia and Montenegro, newly styled as the “Federal Republic of Yugoslavia” (FRY), and its government made an unambiguous claim: it was not a new State at all, but the continuation of the Socialist Federal Republic of Yugoslavia itself (United Nations Treaty Collection, n.d.). That claim would have carried real consequences—a seat at the United Nations, continued party status under dozens of treaties, and a diplomatic standing that the other successor States would each have to establish without the advantages claimed by the FRY (Scharf, 1995).

The dispute matters beyond Yugoslavia itself because it raises the broader question of how international law determines whether the international legal personality of a predecessor State continues following major territorial and constitutional change. The answer depends first on how the underlying event is legally classified—whether as continuation with territorial change, separation or secession, or complete dissolution—and

on the evidence relevant to that classification. In the case of Yugoslavia, the diplomatic record, the practice and resolutions of the United Nations, and the subsequent arrangements between the successor States are therefore relevant not merely to whether the FRY could claim continuity, but to determining the legal character of the State transformation itself. The treatment of the FRY as one successor State among several followed from that broader assessment rather than from the mere fact of territorial fragmentation (Arbitration Commission of the Conference on Yugoslavia, 1992a, para. 4; Arbitration Commission of the Conference on Yugoslavia, 1992b, para. 5; Scharf, 1995).

The FRY's Continuator Claim

When Slovenia, Croatia, Bosnia and Herzegovina, and the Republic of Macedonia declared independence from the SFRY in 1991 and 1992, Serbia and Montenegro took a different position. Rather than presenting themselves as newly independent States, they declared on 27 April 1992 that the newly formed Federal Republic of Yugoslavia would continue the international legal personality of the SFRY (United Nations Treaty Collection, n.d.). Such a claim, however, did not automatically determine all of its legal consequences. The continuation of a State's international legal personality is distinct from its membership in an international organisation, which depends on the organisation's own rules and practice, and from succession in respect of particular treaties, which depends on the nature of the treaty and the applicable rules of treaty succession. The FRY therefore sought to maintain the SFRY's position at the United Nations, continue its existing treaty relations, and preserve its diplomatic representation abroad, but each of these issues had to be considered separately (Scharf, 1995). For Belgrade, the claim to continuity was therefore of significant legal and political importance, as acceptance of the claim would have allowed the FRY to retain the international position of the SFRY rather than having to establish a new position as a newly independent State.

The International Response

Belgrade's continuity claim did not survive contact with the rest of the world for long. The UN Security Council addressed it directly in Resolution 777 of September 1992, stating: "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 recommends to the General Assembly that it decide 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. (United Nations Security Council, 1992, para. 1)"

The General Assembly followed with Resolution 47/1, which decided: "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 should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly. (United Nations General Assembly, 1992, para. 1)”

Resolution 47/1 did not expel the FRY from the UN outright, nor did it suspend or terminate its membership as such; it simply barred the FRY from participating in the work of the General Assembly (as interpreted by the United Nations Office of Legal Affairs, 1992). The European Community’s Badinter Arbitration Committee, established on 27 August 1991 specifically to advise on the legal consequences of the Yugoslav breakup, concluded in 1992 that the SFRY had ceased to exist entirely: “The process of dissolution of the SFRY referred to in Opinion No. 1 of 29 November 1991 is now complete and the SFRY no longer exists” (Arbitration Commission of the Conference on Yugoslavia, 1992a, para. 4). It also concluded that the FRY could not legally be considered a continuation of the former SFRY, but was a new State: “The FRY is a new State which cannot be considered the sole successor to the SFRY” (Arbitration Commission of the Conference on Yugoslavia, 1992b, para. 5).

The FRY spent the better part of a decade in a strange legal situation as a result: present at the UN in some practical respects but formally excluded from the General Assembly, unable to claim the SFRY’s old seat, and unable to participate as a member in its own right either. This situation was ultimately resolved when the FRY applied for United Nations membership in October 2000 and was admitted as a new Member State on 1 November 2000 (United Nations General Assembly, 2000). The International Court of Justice subsequently described the FRY’s position during the period 1992–2000 as *sui generis*. Between 1992 and 2000, the FRY occupied an ambiguous and exceptional position within the United Nations: its claim to continue the legal personality and membership of the SFRY was not accepted, yet the Organization did not consistently treat it as an ordinary new State, with the legal consequences of its status being determined on a case-by-case basis. Importantly, however, the Court clarified that this expression was descriptive rather than prescriptive: it did not establish a distinct legal category or entail predetermined legal consequences, but merely reflected the ambiguous and unsettled nature of the FRY’s position during that period. Moreover, the Court held that the FRY’s admission in 2000 did not operate retroactively (International Court of Justice, 2004, paras. 72–78).

The 2001 Agreement on Succession Issues

The uncertainty could not last forever, and by 2001 the five successor States sat down to settle matters properly through the Agreement on Succession Issues, signed in Vienna on 29 June 2001 and entered into force on 2 June 2004 (Agreement on Succession Issues, 2001). The Agreement

adopted a co-successor framework founded on the sovereign equality of the five successor States. No one State, including the FRY, inherited the SFRY's legal personality wholesale. Instead, the SFRY was treated as having ceased to exist, with specified rights, obligations, assets, and liabilities allocated among five co-successor States according to negotiated formulas—the FRY receiving no special claim to continuity, only its agreed share alongside Slovenia, Croatia, Bosnia and Herzegovina, and the Republic of Macedonia. As a result, the Agreement was signed as an umbrella agreement that included annexes on diplomatic and consular properties, financial assets and liabilities, archives, pensions, other rights, interests and liabilities, as well as private properties and acquired rights (Agreement on Succession Issues, 2001, preamble and Annexes A–G).

The 2001 Agreement did not comprehensively regulate succession to the SFRY's treaties. For multilateral treaties deposited with the UN Secretary-General, the successor States used notifications of succession and other treaty-specific actions, sometimes covering lists of instruments. The FRY took a different position on 27 April 1992, claiming that it continued the SFRY's international legal personality and that the SFRY's treaty acts were directly attributable to it (United Nations Treaty Collection, n.d.). The Secretary-General, acting as depositary, neither accepted nor rejected that continuator claim in the absence of an authoritative determination and continued to list treaty actions by both the former SFRY and the FRY under "Yugoslavia." Following its admission to the UN and abandonment of its sole-continuity claim, the FRY lodged a notification in March 2001 expressing its intention to succeed to various multilateral treaties and confirming certain earlier treaty actions (United Nations Treaty Collection, n.d.). Bilateral treaties were addressed separately, without a single UN depositary mechanism, and therefore required arrangements between the States concerned.

Continuity, Recognition, and the Limits of a Continuator Claim

The FRY's failed continuator claim does not establish that every federal breakup produces only new States—a State can lose constituent parts and continue to exist, and the outcome in any given case turns on whether the predecessor is properly classified as dissolved or as persisting through the loss. In the Yugoslav case, that classification went against continuity: the SFRY was treated as having dissolved entirely, not as having survived the departure of four republics. The UN's refusal to seat the FRY under the SFRY's old membership, the Badinter Committee's finding that the SFRY had ceased to exist, and the 2001 Agreement's co-successor framework founded on sovereign equality all point in the same direction, and they did so independently of one another and over nearly a decade (Agreement on Succession Issues, 2001; Arbitration Commission of the Conference on Yugoslavia, 1992a, para. 4; United Nations General Assembly, 1992, para. 1; United Nations Security Council, 1992, para. 1). Slovenia, Croatia, Bosnia

and Herzegovina, and the Republic of Macedonia were successor States from the outset, and the 2001 Agreement ultimately confirmed that the FRY was no different: none of the five inherited the SFRY's legal personality.

The Soviet Union's (USSR) dissolution offers a legally instructive contrast, and the reason for the different outcome lies in a basic feature of how continuator claims function in international law: a unilateral assertion of continuity is insufficient. Its effectiveness depends on the legal and factual character of the succession and is powerfully confirmed or undermined by agreements among the successor States and consistent international practice, whether expressly or through sustained acquiescence. Russia's claim met that test. The participating States of the Commonwealth of Independent States (CIS) supported Russia's position in the Alma-Ata Protocol: "The States of the Commonwealth support Russia's continuance of the membership of the Union of Soviet Socialist Republics in the United Nations, including permanent membership of the Security Council, and other international organisations" (Commonwealth of Independent States, 1991, Annex V, Decision 1). No UN Member State objected to the notification that followed, providing strong evidence of international acceptance of Russia's continuator claim (Scharf, 1995). This subsequent practice strongly supported the treatment of Russia as the continuing State of the USSR. The FRY presents a contrasting example. It maintained its claim to continuity despite the fact that its position was not accepted by the relevant international institutions, including the Badinter Committee and the UN organs. Taken together, these cases provide strong evidence that a continuator claim cannot be conclusively determined by unilateral assertion alone, but must be assessed in light of the circumstances of the succession and the subsequent response of other States and relevant international institutions. The Russian and FRY experiences therefore illustrate, rather than conclusively establish, the significance of international practice in determining how claims to continuity are treated (Scharf, 1995).

Conclusion

The FRY's claim to full inheritance failed because the SFRY was treated as having been dissolved, while the other successor States rejected the FRY's claim to sole continuity. The same approach was reflected in the practice of the relevant UN organs and the Badinter Commission, which rejected the idea of automatic continuation (Arbitration Commission of the Conference on Yugoslavia, 1992a, para. 4; Arbitration Commission of the Conference on Yugoslavia, 1992b, para. 5; United Nations General Assembly, 1992, para. 1; United Nations Security Council, 1992, para. 1).

That result carries an important lesson for future cases of State fragmentation: a State's size, institutional continuity, or continuity of government cannot by themselves establish continuity of international legal personality. The Yugoslav case shows that the legal status of a State

following territorial fragmentation must be determined through the wider assessment of the circumstances and the position taken by other States and relevant international institutions. This did not mean that recognition created the FRY's statehood, but rather that its claim to continue the international legal personality of the SFRY was not accepted. The FRY ultimately applied for UN membership as a new State in 2000 (International Court of Justice, 2004, paras. 72–78; United Nations General Assembly, 2000).

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