[Introduction]

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Source: *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 90, ARE INTERNATIONAL INSTITUTIONS DOING THEIR JOB? (MARCH 27-30, 1996), pp. 471-479

Published by: Cambridge University Press on behalf of the American Society of International Law

Stable URL: https://www.jstor.org/stable/25659063

Accessed: 29-11-2018 04:49 UTC

YUGOSLAVIA

The panel was convened at 2:15 p.m., on Friday, March 29, by its Chair, Ambassador Herbert S. Okun,* who introduced the panelists: Susan L. Woodward, Senior Fellow of Foreign Policy Studies at the Brookings Institution; Larry D. Johnson, UN Office of Legal Affairs; Paul C. Szasz, Adjunct Professor at New York University School of Law, and former Legal Adviser to the International Conference on the Former Yugoslavia; and Theodor Meron, Professor at New York University School of Law.

INTRODUCTORY REMARKS BY AMBASSADOR OKUN

Few conflicts in recent years have generated as much confusion, controversy and passion as the violent breakup of Yugoslavia. The conflicts in the former Yugoslavia brought back into focus issues that many had thought were off the international agenda—or at least off the European agenda—territorial integrity, internal versus external borders, religious and cultural self-determination, secession, succession and independence. Other issues emerged as well and have become salient features of the post–Cold War landscape.

In examining the tragic and bloody breakup of the former Yugoslavia, most commentators have stressed the causes of the breakup and the mediation efforts of the European Community (now the European Union), the United Nations, the Contact Group, the United States and others. Commentators have focused on the military-strategic issues, on the horrific human rights violations, and on other equally valid subjects for study and reflection. But except for the creation and work of the International Criminal Tribunal for the former Yugoslavia (ICTY), many important international law aspects of the conflict have been ignored or slighted in the welter of commentary.

This is unfortunate, but perhaps one should also note that this lack of attention to international legal norms and standards was also a hallmark of the international diplomacy that sought to solve the Yugoslav problem, particularly in the early crucial stage of 1991–1992. We have only to recall the establishment by the European Community of an extremely distinguished Arbitration Commission, headed by Robert Badinter of France, and then recall how the Community proceeded to act toward its own Commission, treating its opinions as if they were items on a *table d'hote* menu. Key instances where international law could have helped the diplomats—vital issues such as the recognition of states—were either ignored or forgotten by the diplomats. So one should not blame the lawyers, but rather learn from them.

REMARKS BY SUSAN WOODWARD**

The question asked by the theme—"Are International Institutions Doing Their Job?"—can be simply answered. We all know the answer is "No," especially in the case of the former Yugoslavia. What is more important is the reluctance to admit that, had they been doing their job or, more importantly, had there been legal norms and procedures available to states and a culture of authority around those institutions, nearly all of the violence could have been prevented. There would have been some local hostilities in Croatia and Slovenia between August 1990 and June 1991, but from then on it could have been stopped.

This is not only a topic of theoretical importance, but one of truly vital interest. My

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The opinions expressed herein are those of the author alone.
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general statement, which I will elaborate, is that we must accept and think seriously about the total and absolute disregard for precedent in international law by the major powers and by European institutions in the Yugoslav crisis. We should primarily consider the legal precedent of the territorial integrity of Yugoslavia. Now the principle of territorial integrity is being imposed upon Bosnia-Herzegovina, or you might say reinforced, without sufficient means. In either case, the effort of the international community now to defend the integrity of Bosnia would not have been necessary had the principle not been violated in the first place. This began before either Croatia or Slovenia took the step of declaring their independence on the basis of the legal/constitutional right to national self-determination under the Yugoslavia Constitution, which—as a point of constitutional interpretation within Yugoslavia—is not at all a clearly defined right. Nonetheless, it was a right that the European Parliament had already seen fit to declare a legal principle in March 1991.

It would seem to me that, as a profession, international lawyers have a task that has not yet been grasped—to act as lobby. One hears all the time about professional groups lobbying for different interests. On the question of what will happen and should happen, for example, with Macedonia, some argue that the U.S. military has very clear interests as they are already on the border of Macedonia. Their mission is to protect Macedonia's territorial integrity from threats that might come from the north or from the west. Many who are concerned about war erupting in the Southern Balkans believe the U.S. military should act as a lobby and be encouraged to act as such. But you never hear that international lawyers should act as a lobby in support of those principles they helped to write and defend.

Let me say specifically what happened in the case of Yugoslavia. First, there is an absence of procedure, meaning an accepted, legal and formal procedure for recognizing states peacefully maneuvering their dissolution. The Badinter Commission (chaired by distinguished jurist Robert Badinter of the French Court of Justice) was established at the suggestion of the Slovene government to resolve and arbitrate economic questions. It was established in August 1991, prior to the establishment of the first of three peace conferences. As Robert Badinter himself has said, such a commission, particularly with its mandate to arbitrate economic questions, can *not* arbitrate questions as fundamental as the fate of a people. It was inappropriately used and its advice to the European Union foreign ministers on the conditions for recognizing the sovereignty of each of the four applying republics was ignored.

In the case of the EU, the procedure to recognize first the independence of Slovenia and then of Croatia was not only done preemptively, without any formal procedure devised in advance, but was also a procedure denied to the other four remaining republics of Yugoslavia. The procedure was assumed to follow from principles already built into European regional institutions, namely, crisis intervention. Good offices would be provided—on the basis of mediation or arbitration presuming equal parties to a conflict—to enter and negotiate, for example, over borders between Yugoslavia, on the one hand, and one subunit of Yugoslavia, on the other. There is a series of never-ending, self-fulfilling prophesies resulting from the proposition that they were equal parties to the conflict and that it was only a matter of finding some arbitrated compromise between the two—ignoring the fact, for example, that there was no possible compromise once the conflict was accepted to be over borders and that if Slovenia won, Yugoslavia (the other party) would cease to exist (not to mention the implications for others in former Yugoslavia who were not represented in the arbitration). Finally, the absence of procedure is most clear in the apparent principle of the right to self-determination. The Germans won in the political struggle within Yugoslavia over recognition. Germany's idea was based upon its own experience at the time, and it assumed that a referendum for the union of two previously

united but then dissolved parts of Germany was appropriate, as well, to the disunion of a country. But these are two fundamentally different acts.

Let us turn to the proposition that there was and that there still is a set of legal principles that guarantee European security. They are embodied in the Helsinki Accords of 1975 and the Conference on Security and Co-operation in Europe (CSCE), now Organisation for Security and Co-operation in Europe (OSCE). These principles are considered legal principles and include: (1) territorial integrity of states, (2) national self-determination, (3) the peaceful change of borders (no recognition of change of borders that is not peaceful and agreed) and (4) the principle of human rights as a principle superseding the sovereignty of states. Those four principles are in conflict in the case of the former Yugoslavia, and there is no body of interpretation, not even on the basis of the political experience of the past four years, on how to set priority among these four principles. Moreover, there remains a total unwillingness of states to deal with the issue of who has a right to be a state. The Badinter Commission advised the EU that only two of the former six republics met the criteria that they had then drawn up: Slovenia and Macedonia, not Croatia. And yet Macedonia has only now been recognized after a process of long, tortuous, diplomatic negotiation, which is just now coming to an end, and Croatia—against all legal advice—was recognized immediately.

This may seem simply an academic question and, yet, what of Kosovo? There is no procedure in place to deal with the autonomous province of Serbia called Kosovo that is striving for independence. There are many that even propose that the de facto partition of Bosnia-Herzegovina will require nations to withdraw recognition. Yet we have no procedure to deal with that question without the resumption of war when the NATO-organized Implementation Force (IFOR) leaves Bosnia.

A further legal problem is the insistence by international organizations—the International Monetary Fund (IMF), the World Bank, the EU, the United Nations—on having legal counterparts with which they must deal. But what if there is no state, or if the core of the conflict is about the existence and jurisdiction of a government? In the current economic reconstruction package for Bosnia-Herzegovina—on which peace will depend—the international financial institutions and donors must find counterparts before they can dispose of money. That money must be granted as part of a country program so that the debt will be repaid, even if it takes several decades. You cannot have a country program without a country and that country must include the de facto control of the territory claimed to be ruled.

In the UN peacekeeping and humanitarian missions in Croatia under the UN Protection Force (UNPROFOR) or in Bosnia-Herzegovina or Macedonia, because they were member states of the United Nations, diplomats and heads of the UN operation could talk only to the governments of the countries to which they were assigned, because of the principle of sovereignty. For example, in Croatia one could talk only to the Zagreb government and not to the political authorities in Knin who were party to the cease-fire. Even now U.S. legislation to give aid to the former Yugoslavia is so trapped in legalisms and legal prohibitions concerning sovereign authorities that almost nothing has happened on the ground to support the election process and move economic aid when and where it is needed.

The International Criminal Tribunal is the one conscious effort to revive and enforce international law, though it also aims to create new law, in the former Yugoslavia. And so far there is more attention to the processes in The Hague and the unwillingness of IFOR to arrest and detain indicted war criminals than there is to the resolution of the unresolved legal and political issues of Bosnia-Herzegovina.

Finally, I would raise the question of what precedents have now been set in the former Yugoslavia? What precedents have been set for a Chechnya? Does it have a right to be

an independent state, or does it not? I would like to hear how this tragedy can be prevented in the future. It is too late for Yugoslavia, but not for the rest of the world.

Remarks by Larry Johnson*

I would like to focus on a few legal questions that were not the result of the Dayton peace process and have yet to be resolved. Such questions relate to the status of Yugoslavia in the United Nations: Is it a member or is it not? Has the Federal Republic of Yugoslavia (FRY) taken over the seat of the former Socialist Federal Republic of Yugoslavia and, if not, why not? What is the status of multilateral treaties entered into by the former Yugoslavia? These questions of course are only a few of the succession-of-states questions arising from the dissolution of the former Yugoslavia. The more general aspects of state succession, including succession to state property (financial assets, archives and debts) were under discussion in a State Succession Working Group of the International Conference on the Former Yugoslavia (ICFY). With the winding up of ICFY, work on state succession issues will now continue under the auspices of Carl Bildt, the High Representative under the Dayton Agreements (S/1996/190, para. 9). I will not comment on those issues.

The claim. On April 27, 1992, the joint session of the Assembly of the Socialist Federal Republic of Yugoslavia, the National Assembly of Serbia and the Assembly of Montenegro adopted a declaration in which it is stated that "the Federal Republic of Yugoslavia, *continuing the state, international, legal and political personality of the Socialist Federal Republic of Yugoslavia*, shall strictly abide by all the commitments that the SFR of Yugoslavia assumed internationally."[1] In its note to the Secretary-General, the new Federal Republic of Yugoslavia stated that:

> *Strictly respecting the continuity of the international personality of Yugoslavia*, the Federal Republic of Yugoslavia shall continue to fulfill all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international organizations and participation in international treaties ratified or acceded to by Yugoslavia.

The Secretariat was requested to duly circulate the Yugoslav communication to the membership. In this case, however, the members of the Security Council, which had as usual received advance copies, decided to issue a Presidential statement on their behalf stating that the fact of its issuance "does not prejudge decisions that may be taken by appropriate United Nations bodies or their national positions on the matter."[2] There was a further reaction. A number of states registered either their nonacceptance of the FRY declaration or indicated, as was the case with the U.S. letter, that serious questions had arisen regarding whether the Federal Republic of Yugoslavia is the continuation of the former Yugoslavia for purposes of membership in the Organization and that until such time as those questions are resolved, the participation of FRY representatives in the Security Council and the General Assembly was without prejudice—as the U.S. letter put it—"to the disposition of these questions."[3]

For five months following the declaration of continuity, representatives of the Federal Republic of Yugoslavia participated in UN meetings as the representatives of a member

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Mr. Johnson's statements are made in a personal capacity and any opinions expressed are his alone and do not necessarily represent those of the Office of Legal Affairs or the Secretariat.

[1] UN Doc. S/23877 and A/46/915 (emphasis added).

[2] UN Doc. S/23878.

[3] UN Doc. S/23879.

state, Yugoslavia, it being understood that disclaimers were often registered in meetings that allowing the Federal Republic of Yugoslavia to speak was without prejudice to positions held on its claim of continuity.

Reaction of the Security Council and the General Assembly. On September 19, 1992, the Security Council took a memorable step. It adopted Resolution 777, the Preamble to which included the paragraph: "*Considering* that the state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist." The operative sections read as follows:

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 *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; . . .
2. *Decides* to consider the matter again before the end of the main part of the forty-seventh session of the General Assembly.

I will return to what was said in the Security Council in a moment, but I should indicate here that the vote was twelve in favor, none against and three abstentions.

The General Assembly reacted quickly, meeting on September 21 and adopting a draft resolution, based upon the Security Council recommendation, by a vote of 127 to 6, with 26 abstentions. Its Preamble stated only that the General Assembly had received the recommendation of the Security Council; it did not refer to any "consideration" that the state formerly known as the Socialist Federal Republic of Yugoslavia had ceased to exist. Its operative sections, however, mirrored the text coming from the Security Council: The General Assembly considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Yugoslavia in the United Nations and, therefore, decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership and that it should not participate in the work of the General Assembly. It also took note of the intention of the Security Council to consider the matter again before the end of the main part of the forty-seventh session of the General Assembly. I could note here that, since the Dayton Accords, the phrase "Serbia and Montenegro" has not appeared following "Federal Republic of Yugoslavia" in resolutions of the Security Council. However, it did continue to appear in Assembly resolutions, creating even more confusion for Secretariat editors who are now quite unsure just what the title of the country is.

The case of India/Pakistan. Before examining what all of this meant, allow me to recall that this was not the first time that the United Nations was faced with the dissolution of a state or separations from a state. Indeed, the issue arose early in its history, in 1947, when India, an original, founding member, was divided into two sovereign and independent states. As the application for Pakistan's admission to the United Nations was being considered, the question arose in the Political Committee of the General Assembly whether the "new" India could continue the membership of the former India or whether it should apply for membership on the same basis as Pakistan. While agreeing to admit Pakistan without requiring any action on India's part, the Political Committee requested the opinion of the Legal Committee on the following question: "What are the legal rules to which, in the future, a State or States entering into international life through the division of a Member State of the United Nations should be subject?" The Legal Committee replied that it had agreed upon the following principles:

1. That, as a general rule, it is in conformity with legal principles to presume that a State which is a Member of the organization of the United Nations does not cease to be a

> Member simply because its constitution or its frontier have been subjected to changes, and that the extinction of the State as a legal personality recognized in the international order must be shown before its rights and obligations can be considered thereby to have ceased to exist. . . .
>
> 3. Beyond that, each case must be judged according to its merits.

Applying the principles to the case in point, the question is: Has it been shown that the former Yugoslavia's international legal personality recognized in the international order has been extinguished?

The text of the resolution. The Security Council and Assembly resolutions do not particularly help. They are internally contradictory and inconsistent. First, the General Assembly did not repeat the preambular paragraph concerning the former Yugoslavia ceasing to exist. Second, the resolutions say that the Federal Republic of Yugoslavia cannot *automatically* continue the membership of the former Yugoslavia, thus implying that it could so continue if something happened—such as a decision confirming or rejecting the claim of continuity by the relevant organs. However, the resolutions then go on to say that "therefore" the Federal Republic of Yugoslavia "should" apply for membership and that it cannot participate in the General Assembly. But that makes no sense since normally you do not continue a membership by submitting a new application for membership. So perhaps the phrase meant that only the relevant organs—not the Federal Republic of Yugoslavia unilaterally—could decide the matter and that the submission of an application for membership would be the appropriate way to reach that question.

Some say that the most logical interpretation is that, by deciding that an application should be submitted, the two organs have in effect stripped Yugoslavia of membership. After all, normally there would be no need to submit an application for membership if the state were already a member. There are two problems with that approach: First, the Charter provides in Articles 5 and 6, respectively, the procedures for suspension of the rights and privileges of membership and for expulsion from the Organization. No one claimed that the resolution in question was adopted pursuant to those Articles. Another problem with the position that the Federal Republic of Yugoslavia had been stripped of membership was the final clause of the decision: that the Federal Republic of Yugoslavia shall not participate in the work of the General Assembly.

At this point, one must allude to the legislative history in the Security Council—hardly comforting to those seeking evidence of unity and clarity of purpose. The United States made it clear—after the vote—that it considered the final clause as stating the obvious since clearly if the Federal Republic of Yugoslavia was not a member it could not participate in *any* UN body; however, two other permanent members had exactly the opposite understanding. For the Russian Federation, which spoke before the decision and voted in favor, and China, which spoke after the decision and abstained, the resolution did *not* affect Yugoslavia's membership nor did it affect the participation of FRY representatives in other organs of the United Nations, such as the Economic and Social Council (ECOSOC) and its subsidiaries, the Security Council or others. Both states in their explanations of vote explicitly stated their understanding that the resolution did not take away the nameplate of the country in UN meeting rooms, even if no one could sit behind it in the General Assembly. They also made clear their view that the resolution in no way affected the right of the Federal Republic of Yugoslavia to circulate documents and to maintain missions to the United Nations. In the General Assembly, a number of speakers expressed disagreement with, among other things, the procedure used, the ambiguity of what was being done and opposition to the decision having been initiated by the Security Council when it was the General Assembly's exclusive concern. I would point out that the British representative, when introducing the resolution in the General Assembly, stated that it meant that no representative of the Federal Republic of Yugoslavia (Serbia and Montenegro) "will sit

in the seat of Yugoslavia in any organ of the Assembly.''[4] This sounds as if the nameplate for Yugoslavia is to remain, in which case, why have a nameplate for a nonmember?

By the way, immediately following the British introduction and as the ''kick off'' speaker for the debate on the proposal, the General Assembly heard none other than Mr. Milan Panic introduced as the ''Prime Minister of the Federal Republic of Yugoslavia.''[5] To make matters even more unclear, Mr. Panic, in the middle of his speech said, ''I herewith formally request membership in the United Nations on behalf of the new Yugoslavia, whose Government I represent.'' The United Nations never received any written follow-up to that statement.

Political context. I should refer at this stage to the political context in which all of this was happening. At the same time that there were calls for additional sanctions against the Federal Republic of Yugoslavia, some states did not want to punish Mr. Panic and his chances for success in his campaign to unseat Milosevic in the upcoming elections for President of Serbia. It was said that this measure was purely temporary and if Mr. Panic won the election he would surely make good on his promise to apply for membership and the whole situation would change: Now was not the time for arcane legalities to get in the way of a political decision. That is what is behind the second paragraph of the resolution, which anticipated that by mid-December the Security Council would revert to the matter and the transitory decision taken three months earlier would be somehow set right. Well, here we are three-and-one-half years later with the same, unsatisfactory transitory situation.

In addition, it was said that neither Russia nor China would support all-out suspension or expulsion under the Charter. The most, from a political and practical point of view, that they would accept was to follow the South African example—maintenance of membership, nameplate, delegates and flag—but no representation in the General Assembly. Of course, the South African case was based on rejection of Assembly credentials whereas in this case the basis was a succession-to-membership question—fairly understandable to international lawyers but not very interesting for political delegates. Needless to say, no advice was sought from UN lawyers and I would frankly be surprised if the advice of many delegation legal advisers was sought or followed.

The legal opinion. The UN Legal Counsel was required to give an opinion on the practical implications of the adoption of Assembly Resolution 47/1. The then Legal Counsel, Mr. Fleischhauer, after examining the text of the resolution and its legislative history, concluded that it did not terminate or suspend Yugoslavia's membership but had only one practical consequence: FRY representatives could not participate in General Assembly bodies (including conferences) and could not sit behind the Yugoslav nameplate. But they could continue to exercise other rights and privileges of membership since Yugoslavia had not been suspended or expelled pursuant to the relevant Articles of the Charter. Thus, they could participate in other organs of the United Nations.

In that connection, the Federal Republic of Yugoslavia participated in a few ECOSOC subsidiary meetings until late April 1993 when the Security Council and the General Assembly adopted resolutions barring FRY participation in ECOSOC in terms similar to those of the earlier decisions.[6] This time, the resolutions expressed the intention of the Security Council to revert to the matter before the end of the forty-seventh session, or before mid-September 1993, which did not happen.

[4] UN Doc. A/47/PV.7 at 147.

[5] Milan Panic was the Californian who had become the ''moderating'' influence in Serbia with a view to ousting Milosevic. As it turns out, he lost the election and, I believe, returned to California.

[6] SC Res. 821 of April 28, 1993; GA Res. 47/229 of April 29, 1993.

FRY representatives have addressed the Security Council but under a scenario by which the President simply gives the floor to a named individual (with the title Ambassador) but without indicating a country. But when the FRY representative speaks, he does so behind the Yugoslav nameplate.

In the World Court, as you know, Bosnia and Herzegovina have a case against the Federal Republic of Yugoslavia concerning the application of the Genocide Convention. In its order of April 8, 1993 on a request for the indication of provisional measure, the Court addressed whether there was a *prima facie* basis upon which the jurisdiction of the Court might be established. The Court quoted the September 1992 Council and Assembly Resolutions as well as excerpts from the opinion of the Legal Counsel. In a carefully couched statement, the Court concluded that

> while the solution adopted is not free from legal difficulties, the question whether or not Yugoslavia is a Member of the United Nations and as such a Party to the Statute of the Court is one which the Court does not need to determine definitively at the present stage. (Para. 18 of the order.)

Perhaps we shall hear more on this from the Court in the future. I should also add that most, but not all, of the Specialized Agencies adopted decisions similar to the General Assembly's.

Treaty practice. The decisions just discussed also had an impact on the practice of the Secretary-General acting as depository for hundreds of multilateral treaties. Resolution 47/1 of course did not address the question of depositary practice nor the question of treaty succession. While a Convention on Succession of States in Respect of Treaties exists, though not in force, it provides little guidance. It was decided that the depositary was not in a position to reject or disregard the FRY claim of continuity, which related to the general international law question of succession of states, absent a decision by a competent organ representative of the international community of states, or by a competent treaty organ with regard to a particular treaty or convention. Until such a decision is taken, the Secretary-General maintains the status quo and processes treaty actions from the Federal Republic of Yugoslavia in the usual manner. At meetings of states parties, however, often a decision is taken excluding the Federal Republic of Yugoslavia from participation, but no decision is taken regarding its status as a party per se.

The position. As you might imagine, the legal opinion and practice of the UN Legal Office have not met with resounding glee from all quarters. The current position with regard to membership has been termed groundless, legally indefensible, illogical, absurd, confusing and—at best—ambiguous. Such comments have come in particular from certain states in Eastern Europe and yet just last October an announcement appeared each week in the *Journal* that the Chair of the Eastern European Group of states at the United Nations for that month was—yes, it is true—Yugoslavia (represented by the Charge of Federal Republic of Yugoslavia).

I, for one, remain convinced that the legal opinion at the time was the right one. If the Security Council and the General Assembly adopt ambiguous and illogical resolutions, they will have to live with ambiguous and illogical results: It is not the role of the Legal Counsel to interpret illogical decisions to achieve a result that may be textually logical, such as ousting the Federal Republic of Yugoslavia from membership, but which is a result achieved not by legal opinion, but only by applying specific provisions of the Charter. In addition, given the nature and complexity of the Yugoslav conflict and the enormous difficulties of achieving success and results in negotiations between the parties, it would not have been particularly helpful for the Secretary-General to declare that one of the parties was no longer a member of the United Nations based upon a legal opinion of an ambiguous General Assembly resolution. Also, being an American lawyer, I take

some solace from the long line of constitutional law cases from the *Chinese Exclusion* case, which provide that in order for a later-in-time statute to supersede a treaty, the intent of Congress to so supersede the treaty must be clearly and unequivocally expressed. So, too, in my view, is the case with denying a claim from a state that it is continuing the international personality of a member state that has undergone constitutional and territorial changes. As is inferred from the 1947 principles from the Legal Committee, if the Security Council and the General Assembly wish to reject that claim and find that international personality has been extinguished, they must do so clearly and unambiguously. Membership is too important a matter to be left to ambiguity.

Finally, if any given legal opinion does not reflect the correct interpretation of Assembly Resolution 47/1, the General Assembly is always free—and is sometimes encouraged—to simply adopt another decision, making its interpretation clear and definitive. It has not done so here and no formal proposals have ever been circulated to that effect. The Dayton Conference did not solve this problem either.

Conclusions. What should have happened? Various options were available but not used. If a majority of the members of the Organization questioned or challenged the Federal Republic of Yugoslavia's claim of continuity, they could have asked the ICJ for an Advisory Opinion on the question, or the General Assembly could have established its own "Badinter Commission," a body of experts to examine the claim, or it could have asked for the views of its Legal Committee. In the meantime, FRY representatives would have continued to participate "provisionally," but with no diminution of rights, pending a decision on the claim. This would not be unusual, since in the General Assembly's rules it is provided that if the credentials of any representative have been challenged, that representative may be seated provisionally, with the same rights as other representatives, until the Credentials Committee has reported on the challenge and the General Assembly has given its decision (rule 29).

The Bosnian Constitution: The Road to Dayton and Beyond

*By Paul C. Szasz**

To understand and evaluate the new Constitution for the state now called just "Bosnia and Herzegovina," which was formulated last November in Dayton and entered into force upon signature of the Dayton Agreement in Paris in December,[1] it is necessary to understand what the war was all about: What did the various Bosnian parties wish to accomplish? That, in turn, requires a brief look at the circumstances under which Bosnia declared its independence in April 1992 from the already semidisintegrated Socialist Federal Republic of Yugoslavia.

Tito's Yugoslavia was a nonhomogeneous, multiethnic, federal state, in which no nationality had a majority: In 1991 Serbs constituted some 36 percent of the population, Croats nearly 20 percent and Muslims 10 percent, with the remaining third split among half-a-dozen others; thus no nationality or ethnic group could dominate the state. However, when Slovenia, Croatia and Macedonia seceded, taking with them the bulk of the Croatians, Macedonians and Slovenes in the country, the remnant population was more than 62 percent Serb. This left in a quandary the Bosnian Muslims and Croats who constituted,

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The views expressed herein are the author's alone.

[1] The Dayton Agreement appears in UN Doc. A/50/790-S/1995/999 in the form initialed in Dayton and *reprinted in* 35 ILM 75 (1966) in the form signed in Paris.