dissuade the majority of other states from following this line of reasoning. The Socialist Federal Republic of Yugoslavia is therefore the first clear case of the dissolution and disappearance of a UN member.

If it subsists as a federation and becomes willing to enter the United Nations, the newly established "Federal Republic of Yugoslavia (Serbia and Montenegro)" will be bound to satisfy the requirements for membership under Article 4(1) of the Charter. In *Admission of a State to Membership in the United Nations,* the World Court identified these conditions as follows: "an applicant must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so."[25]

VLADIMIR-DJURO DEGAN*

TO THE EDITOR IN CHIEF:

It is a well-known fact that international lawyers tend to disagree among themselves. After reading Professor Yehuda Z. Blum's piece on UN membership of the former Yugoslavia,[1] I find that I am not in a position to share many of his views.

Professor Blum questions the compatibility of the position taken by the United Nations vis-à-vis the states of former Yugoslavia with earlier UN practice on admission of new states.

While Croatia, Slovenia, Bosnia-Hercegovina and (most significantly) Serbia-Montenegro have all been treated as new states that must apply for UN membership, this was not the case with India after Pakistan broke away from it in 1947. India was then regarded as an old state (an original member of the Organization) whose treaty rights and UN membership were not affected, while Pakistan as a seceding state was treated as a new state and thus as a nonmember of the United Nations. Similarly, when Bangladesh seceded from Pakistan in 1971, the latter's UN membership was not in question, while Bangladesh had to apply as a new state. And most recently, as Blum points out, Russia took over the UN seat of the former Soviet Union, while Kazakhstan, Uzbekistan and others were admitted as new members. From this history one is supposed to draw the conclusion that rump Yugoslavia should at least be treated analogously to the India/Pakistan situations and be recognized as a continuing member state of the United Nations.

Blum, paradoxically, neglects to take into consideration at this point (1) the axiom he himself quotes from a 1947 statement of the Sixth Committee of the General Assembly, namely, that "each case must be judged on its own merits"; and (2) the legal policy character of the principle establishing a distinction between continuity of statehood and state succession. Whenever there is a finding of continuity (and identity), the legal personality and relevant treaty rights and obligations of the state in question remain the same; and whenever there is a finding of state succession, the state in question, as a new state, must go through a process of legal adaptation vis-à-vis other states. As a matter of law, there is no operative principle for determining when there is continuity and when succession. This matter is to be settled through state practice and an evolving *opinio juris.*

In a manner familiar not only to proponents of the New Haven School, old and new states advance claims as to their legal status, and these claims are accepted, rejected or modified by other state actors in accordance with the merits of each

[25] Admission of a State to the United Nations (Charter, Art. 4), 1948 ICJ REP. 57, 62 (Advisory Opinion of May 28).

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[1] Yehuda Z. Blum, *UN Membership of the "New" Yugoslavia: Continuity or Break?,* 86 AJIL 830 (1992).

case and the prevailing opinions within the international community. The actors concerned may be criticized for inconsistencies, but from a legal point of view there is not much point in criticizing the outcome of the process as such, since the absence of mandatory legal norms during the process legitimizes the result.

Russia was recognized as a continuing state in relation to the former Soviet Union because of factors relating to territory, population, political representativeness and nuclear bargaining power. Serbia-Montenegro has not been recognized as a continuation of the former Yugoslavia, inter alia, because it lacks historical and territorial representativeness. In 1917 a "Yugoslav Committee" in London drew up a pact proclaiming that all South Slavs ("Yugoslavs") would unite to form a state of their own. The different peoples had previously developed separately. The Kingdom of Serbs, Croats and Slovenes was proclaimed in 1918. In 1929 the name was changed to Yugoslavia. The Federal Constitution of 1946 declared the Federal Republic to be composed of six republics: Serbia, Croatia, Slovenia, Bosnia-Hercegovina, Montenegro and Macedonia. Thus, before the secession of Slovenia and Croatia in October 1991, the government in Belgrade represented a state, whose very essence was a "joint venture" of the different ethnic groups and regions in the area. Today Belgrade represents only two out of the six republics.

Against this background, it is not very surprising that the Security Council in its Resolution 777 of September 19, 1992, held "that the state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist." It was only logical for the Council, after reaching this conclusion, to state that Serbia-Montenegro "cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations." The Council's recommendation to the General Assembly was just as logical; namely, (1) that Serbia-Montenegro should apply for membership in the United Nations, and (2) "that it shall not participate in the work of the General Assembly." The old Yugoslavia *could* not participate in any work of the United Nations, since that state had ceased to exist; and Serbia-Montenegro *should* not participate since it was not a member state.

At this point in the events, Professor Blum finds another "glaring inconsistency." If Serbia-Montenegro (the Federal Republic of Yugoslavia) is required to apply for membership in the United Nations (as was decided by the General Assembly on September 22, 1992, in its Resolution 47/1), why is the delegation representing the government in Belgrade allowed to occupy the seat of former Yugoslavia at UN meetings? The "allegedly nonexistent Yugoslavia continues to have its seat (with nameplate) in the General Assembly and the flag continues to fly in front of the UN compound, alongside those of other member states," to quote Professor Blum.[2] But there is a simple answer to this alleged inconsistency. The nameplate and flag are no longer the plate and flag of a member state (since that state has ceased to exist) but of another, so far undefined, subject of international law whose representatives are tolerated on the UN premises. It is not unheard of, of course, for different *de facto* subjects of international law, without being members of the United Nations, to be represented in the Organization as observers or otherwise. The cases of the PLO/Palestine and the African National Congress of South Africa are obvious examples, neither having attained statehood but both having been established (at one time or another) as actors in the international arena and as legal personalities (subjects of international law). These and other examples of legal personality (the Sovereign Order of Malta, Taiwan) all tend to be unique in character and background, and in that sense the case of the Federal Republic of Yugoslavia conforms to the pattern. There is no doubt, however, that Serbia-Montenegro is a state, though it is not exactly the state Belgrade purports it to be and it is not a member state of the United Nations.

[2] *Id.* at 833.

The fact that Yugoslav delegates can still attend General Assembly meetings, but not participate in them, is taken by Blum to mean that "in effect, Yugoslavia has been *suspended* from the General Assembly . . . in a manner not foreseen by the Charter and in disregard of its Article 5."[3] This statement is again not correct since (1) the former Yugoslavia has ceased to exist; and (2) the Yugoslav delegates at the United Nations cannot represent a nonexistent state, but only a new subject of international law. That legal subject (Serbia-Montenegro or the Federal Republic of Yugoslavia) is a potential new member state of the Organization. In contrast to what Professor Blum thinks, no suspension in disregard of Article 5 has taken place, since that article deals only with existing member states; at any rate, it is impossible to exclude or suspend states that do not even exist.

OVE E. BRING*

TO THE EDITOR IN CHIEF:

In the October 1992 issue of this *Journal,* Yehuda Z. Blum takes the Security Council to task for rejecting Serbia and Montenegro's claim to the UN seat of the former Yugoslavia, "[n]otwithstanding the facts, Charter law, and past UN practice."[1] Citing the precedents of Pakistan-India, Bangladesh-Pakistan, and the former Soviet Union, Professor Blum observes that the membership of a parent state in the United Nations survives a partition of its territory. Moreover, "from the legal point of view, the Yugoslav situation closely resembles the India-Pakistan and Pakistan-Bangladesh situations."[2] He further comments that "[i]n contradistinction to the case of Russia, it cannot be reasonably maintained that, as a result of the events that unfolded in Yugoslavia after June 1991, that country ceased to exist as a subject of international law."[3] These statements lead to his conclusion that Serbia-Montenegro legitimately constitutes a rump Yugoslavia whose UN membership survived the recent territorial breakup. The entire analysis, however, rests on the unsupported proposition that four of the former Yugoslav republics "have *seceded* from the Yugoslav federation," which still exists as a subject of international law.[4]

Slovenia, Croatia and Bosnia-Hercegovina never "seceded" from the Socialist Federal Republic of Yugoslavia (SFRY). Rather, these newly formed democracies emerged from a process of dissolution after their federal government ceased to exercise control through a constitutionally recognized authority.[5] Put differently, the republics of the SFRY *replaced* their parent state. As part of the European Community's Conference for Peace in Yugoslavia, an international arbitration panel confirmed this view of events when it concluded that "[t]he composition and workings of the essential organs of the Federation . . . no longer meet the criteria of participation and representativeness inherent in a federal State."[6] Security Council Resolution 777 reaffirmed this thesis of dissolution when it declared that "the State formerly known as the Socialist Federal Republic of Yugoslavia has *ceased to exist.*"[7] A secession, therefore, could not have occurred because the

[3] *Id.*

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[1] Yehuda Z. Blum, *UN Membership of the "New" Yugoslavia: Continuity or Break?,* 86 AJIL 830, 833 (1992).

[2] *Id.* at 832.

[3] *Id.* at 833.

[4] *Id.* at 830 (emphasis added).

[5] *See* M. Kelly Malone, Comment, *The Rights of Newly Emerging Democratic States Prior to International Recognition and the Serbo-Croatian Conflict,* 6 TEMP. INT'L & COMP. L.J. (1992) (galleys at 722–25 nn.124–36) (discussing the events that led to the dissolution of Yugoslavia).

[6] Conference for Peace in Yugoslavia, Arbitration Commission Opinion No. 1, para. 2(b), *reprinted in* 31 ILM 1494, 1496 (1992).

[7] SC Res. 777 (Sept. 19, 1992) (emphasis added).