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## YUGOSLAVIA'S MEMBERSHIP "SUCCESSION" TO GATT AND THE WTO

*This article examines how the issue of State succession was interpreted and applied in the case of membership in General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) of the former Yugoslav republics, focusing on the claim of continuity by the Federal Republic of Yugoslavia (FRY) and the reactions of other states and international organizations. The article aims to (1) provide a historical overview of Yugoslavia's accession, membership, and suspension of its membership in GATT, as well as the FRY's assertion of identity and continuity with respect to the Socialist Federal Republic of Yugoslavia (SFRY) before the WTO; (2) analyze the legal arguments and political factors that influenced the decisions of the GATT and WTO bodies regarding the FRY's status; and (3) compare the accession processes and outcomes of the six former Yugoslav republics under the WTO framework. The article posits that FRY's assertion of continuity was rejected by both GATT and WTO, mirroring the stance of the UN, viewing FRY as a new State obligated to reapply for accession. Simultaneously, the transition from GATT to WTO coincided with the emergence of six distinct new States from the former Yugoslavia, each following a unique trajectory and timeline for accession to GATT/WTO.*

Key words: *Yugoslavia, GATT, WTO, membership, succession, accession*

### INTRODUCTION

The dissolution of the Socialist Federal Republic of Yugoslavia ("SFRY") in the early 1990s was a complex and contested process that raised numerous legal

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and political issues concerning the status and rights of its successor States in the international arena. One significant issue was the membership of the former Yugoslav republics in international organizations. While the topic of United Nations (“UN”) membership has been extensively examined by scholars, the membership of Yugoslavia and its dissolving States in the General Agreement on Tariffs and Trade (“GATT”) and its successor, the World Trade Organization (“WTO”), has received less attention.

The article thus aims to examine Yugoslavia’s membership in GATT, particularly during its disintegration, focusing on the Federal Republic of Yugoslavia’s (“FRY”) claims of identity and continuity with the SFRY. It aims to analyze the events that led to the suspension of Yugoslavia’s membership in GATT and the subsequent accession processes of its successor States to GATT and the WTO. The article begins with a brief overview of the rules applicable to State membership in international organizations amid dissolution, supplemented by significant examples from State practice. To assess GATT’s and WTO’s understanding of the continuity argument of SFRY, the article follows the positions of the UN on SFRY’s succession and reviews statements made at the meetings of the GATT Council of Contracting Parties and WTO Members. Finally, the article outlines the accession processes to the WTO of the former SFRY countries, specifically during the transition from GATT, which occurred alongside the independence movements of the former Yugoslav republics.

The main sources of information and evidence used in this article are the official statements from GATT and WTO General Council meetings, as well as the UN resolutions, which dealt with the legal and political aspects of the dissolution of Yugoslavia and the status of its successor States. These sources provide a valuable insight into the positions and arguments of different actors, as well as legal and political factors that influenced the outcomes of the GATT and WTO accession processes. Additionally, the article draws on secondary sources that offer further analysis and evaluation of the matter.

#### STATE SUCCESSION AND MEMBERSHIP IN INTERNATIONAL ORGANISATIONS

State succession takes place when one State, successor, replaces another, predecessor State, with respect to sovereignty over a given territory.<sup>1</sup> It is a complex

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<sup>1</sup> James Crawford, *Brownlie’s Principles of Public International Law*, 9th Edition, Oxford University Press, Oxford, 2019, 409: “State succession occurs when there is a definitive replacement of one state by another in respect of sovereignty over a given territory, that is, a replacement in

area of international law that involves not only the transfer of rights and obligations between two states but also the broader implications of this change on relations with other states and the international community as a whole. Efforts to establish clear rules and norms to govern these transitions gained traction after World War II, in particular as part of decolonialisation processes. Still, State succession has historically been and continues to be an area of uncertainty with only a limited set of rules emerging from codification efforts.<sup>2</sup>

One landmark development, with respect to treaty matters, was the Vienna Convention on Succession of States in Respect of Treaties, adopted in 1978.<sup>3</sup> A second notable advancement took place in 1983, with the adoption of the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts.<sup>4</sup> It is, however, the topic of State succession in respect of membership in international organizations that the International Law Commission ("ILC"), in 1967 "left aside for the time being, without [assigning] to [it] a Special Rapporteur".<sup>5</sup> The topic

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conformity with international law." It is noted that when a territory is occupied in circumstances not in conformity with international law, there can be no succession. Succession as a term is employed only in the context of legal transition, in accordance with international law. See also Vienna Convention on Succession of States in Respect of Treaties, 1978, United Nations, Treaty Series, Vol. 1946, Article 2(b): "[S]uccession of States' means the replacement of one State by another in the responsibility for the international relations of territory." See Oppenheim's definition as well: "A succession of International Persons occurs when one or more International Persons take the place of another International Person, in consequence of certain changes in the latter's condition.", Lassa Francis Lawrence Oppenheim, *International Law: A Treatise*, 3rd Edition (Ed. R. Roxburgh), 1920, 145.

<sup>2</sup> J. Crawford, *op. cit.*, 410.

<sup>3</sup> Vienna Convention on succession of States in respect of treaties, United Nations, Treaty Series, Vol. 1946, 3, C.N.354.2008. See also Hanna Bokor Szegö, "Continuation et Succession en Matière de Traités Internationaux", *Dissolution, continuation et succession en Europe de l'Est* (Eds. G. Burdeau, B. Stern), Paris, 1994.

<sup>4</sup> Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, Doc. A/CONF.117/14. C.N.358.2008. Treaties-1, 6 May 2008.

<sup>5</sup> See Yearbook of the International Law Commission, 1967, Vol. II, A/CN.4/SER.A/1967/Add.1, United Nations, New York 1969, 368, para. 41: "The third aspect of the topic, succession in respect of membership of international organizations, was considered to be related both to succession in respect of treaties and to relations between States and intergovernmental organizations. It was therefore left aside for the time being, without being assigned to a Special Rapporteur". See also Konrad G. Buhler, *State Succession and Membership in International Organizations – Legal Theories versus Political Pragmatism*, Kluwer Law International, 2001, 1–4. See also Milan Bartoš, "Rad Potkomiteta Komisije OUN za međunarodno pravo na kodifikaciji pravila o sukcesiji država i vlada", *Međunarodni problemi*, No. 1, Vol. 9, 1963, 167–169; Duško Dimitrijević, "Sukcesija članstva u Ujedinjenim nacijama – slučaj SFR Jugoslavije", *Međunarodni problem*, No. 1,

has not been advanced in a more systematic way since then.<sup>6</sup> This has meant that situations relating to States' membership in the international organisations amidst dissolution, most notably in the UN, required a case by case approach, relying on the constitutive instruments of international organisations which contain the rules governing accession processes.<sup>7</sup> However, rarely do such rules provide explicitly for becoming a member by way of succession.<sup>8</sup>

Furthermore, in instances where States have claimed automatic membership in international organizations upon disintegration or separation, commonly raised arguments were tied to concepts of "identity" and "continuity", whose proponents sought to distinguish them from the idea of "succession".<sup>9</sup> Even though the topic is highly theorised, the "continuity" could be said to denote cases where the same State continues to exist (with the term of "identity" representing only its static notion),<sup>10</sup> while "succession" is referring to the replacement of one State by another.<sup>11</sup> If the same State "continues" to exist, issues of succeeding into rights

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Vol. 59, 2007, 71–100; Stevan Đorđević, "Rad UN na kodifikaciji pravila o sukcesiji država i vlada", *Anali Pravnog fakulteta*, br. 1–3, Beograd, 1972.

<sup>6</sup> See e.g. Yearbook of the International Law Commission, 1993, Vol. II, Part Two, A/CN.4/SER.A/1993/Add.1 (Part 2), United Nations, New York and Geneva 1995, 95–96, paras. 425–427.

<sup>7</sup> K. G. Buhler, *op. cit.*, 31. It is also widely considered that, even though international organisations are constituted through international treaties, "principles of succession to *treaties* have no application to membership of international organizations." J. Crawford, *op. cit.*, 413 (emphasis added). See also Yearbook of the International Law Commission, 1962, Vol. II, A/CN.4/SER.A/1962/Add.1, United Nations, New York 1964, 101, 106; Yearbook of the International Law Commission, 1968, Vol. II, A/CN.4/SER.A/1968/Add.1, United Nations, New York 1970, 1; Yearbook of the International Law Commission, 1969, Vol. II, A/CN.4/SER.A/1969/Add.1, United Nations, New York 1970, 23. See also Juraj Andrassy, Božidar Bakotić, Budislav Vukas, *Međunarodno pravo*, knjiga prva, Školska knjiga, Zagreb, 1998, 272.

<sup>8</sup> P. Dumberry, "State Succession to Multilateral Investment Treaties and the ICSID Convention" *European Investment Law and Arbitration Review Online*, 2018, 14–15. There are, however, few exceptions, relating to financial institutions. See A. Goia, "State Succession and International Financial Organizations", *State Succession: Codification Tested Against the Facts* (Eds. P. M. Eisemann, M. Koskeniemi), Martinus Nijhoff, 2000, 331; See also Paul R. Williams, "State Succession and the International Financial Institutions: Political Criteria v. Protection of Outstanding Financial Obligations", *International and Comparative Law Quarterly*, Issue 4, Vol. 43, 1994.

<sup>9</sup> J. Crawford, *op. cit.*, 412–413. See also Brigitte Stern, "Rapport préliminaire sur la succession d'États en matière de traites", *ILA Report of the Sixty-Seventh Conference held in Helsinki*, 1996, 658.

<sup>10</sup> Krystyna Marek, *Identity and Continuity of States in Public International Law*, Librairie E. Droz, Geneva, 1954, 6.

<sup>11</sup> J. Crawford, *op. cit.*, 412–413.

and obligations of a predecessor do not arise,<sup>12</sup> and State responsibility could be assumed to exist for the continuing State.<sup>13</sup> However, qualifying a situation as one or the other may present difficulties especially in the cases of radical changes to a State's territory, government, or population.<sup>14</sup> It has thus been argued that criteria for considering the existence of "identity" or "continuity" of a State encompasses factors such as retention of a "substantial amount of territory [...], the majority of the state's population, resources, and armed forces, the seat of government or the name of the former member",<sup>15</sup> as well as a State's claim of continuity being recognised by other States.<sup>16</sup>

Notwithstanding a Special Rapporteur not being designated for the topic of succession, the ILC touched upon the *membership* succession as part of its discussion on Draft articles on succession of States in respect of *treaties*. In 1974, the ILC identified the existence of a "formal process of admission" into an international organisation as a criterion for whether a simple membership succession claim may be admitted or not. The ILC noted that inexistence of such formal accession process allows for a new State to become a member of the association and party to a treaty by mere "transmitting of a notification of succession to the depositary".<sup>17</sup> The stronger the association of the parties in an international organisation, with a more stringent accession process put in place, a mere succession claim seems not to suffice.<sup>18</sup> An example provided by the ILC is that of Pakistan's (new State's) admission to the UN in 1947, and India's continuing membership status.<sup>19</sup>

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<sup>12</sup> *Ibidem*.

<sup>13</sup> See however ILC's recent work on Succession of States in respect of State responsibility: [https://legal.un.org/ilc/summaries/3\\_5.shtml](https://legal.un.org/ilc/summaries/3_5.shtml), 14. 5. 2024.

<sup>14</sup> J. Crawford, *op. cit.*, 412–413.

<sup>15</sup> Edwin Williamson, "State Succession and Relations with Federal States, Panellist's Remarks", *American Society of International Law Proceedings*, 1992, 10; K. Marek, *op. cit.*, 18.

<sup>16</sup> *Ibidem*.

<sup>17</sup> Yearbook of the International Law Commission, 1974, Vol. II, Part One, A/CN.4/SER.A/1974/Add.1 (Part 1), United Nations, New York, 1975, 177–178.

<sup>18</sup> *Ibidem*.

<sup>19</sup> *Ibidem*: "International organizations take various forms and differ considerably in their treatment of membership. In many organizations, membership, other than original membership, is subject to a formal process of admission. Where this is so, practice appears now to have established the principle that a new State is not entitled automatically to become a party to the constituent treaty and a member of the organization as a successor State, simply by reason of the fact that at the date of the succession its territory was subject to the treaty and within the ambit of the organization. The leading precedent in the development of this principle was the case of Pakistan's admission to the United Nations in 1947. The Secretariat then advised the Security Council that Pakistan should be

According to the ILC, “[n]ew States have [...] been regarded as entitled to become Members of the United Nations only by admission, and not by succession”.<sup>20</sup> This is in line with the general rule of public international law, whereby, in the context of decolonisation, it is recognised that the continuing State will assume the membership of the predecessor State and the newly independent State will seek membership anew.<sup>21</sup> In the case of *dissolution*, however, it was unclear which State should claim the title “continuing” and which one “new”.<sup>22</sup>

While for a long time the only available examples were those from the arena of decolonisation, the dissolution of the Union of Soviet Socialist Republics (“USSR”) provided a new case study. It has been widely accepted that the Russian Federation *continued* the legal personality of the former USSR when it came to UN membership and most importantly, Russia’s permanent seat on the UN Security Council.<sup>23</sup> On the other hand, despite insisting on its claim that it was not a “new state” but rather a continuing one, FRY (Serbia and Montenegro) was denied automatic UN membership, as will be discussed in more detail below.<sup>24</sup> Another example of State *succession* was the dissolution of Czechoslovakia, where neither part was considered as continuing – both the Czech Republic and Slovakia were new disparate successor states, and new UN member states (after re-application).

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considered as a new State formed by separation from India. Acting upon this advice, the Security Council treated India as a continuing member, but recommended Pakistan for *admission* as a new member: and after some debate, the General Assembly adopted this solution of the case. [...] New States have, therefore, been regarded as entitled to become Members of the United Nations only by admission, and not by succession.”

<sup>20</sup> *Ibidem*, 178.

<sup>21</sup> P. R. Williams, op. cit., 784 citing Daniel Patrick O’Connell, *State Succession in Municipal Law and International Law*, Vol. II, Cambridge University Press, London, 1967, 184–187.

<sup>22</sup> *Ibidem*, 198–200.

<sup>23</sup> Matthew Craven, *The Decolonization of International Law – State Succession and the Law of Treaties*, Oxford University Press, Oxford, 218–219; Yehuda Blum, “Russia takes over the Soviet Union’s Seat at the United Nations”, *European Journal of International Law*, Issue 2, Vol. 3, 1992, 354, 359.

<sup>24</sup> Michael P. Scharf, “Musical Chairs: The Dissolution of States and Membership in the United Nations”, *Cornell International Law Journal*, No. 1, Vol. 28, 1995, 218–219. See also Edwin D. Williamson, John E. Osborn, “A U.S. Perspective on Treaty Succession and Related Issues in the Wake of the Breakup of the USSR and Yugoslavia”, *Virginia Journal of International Law*, 1993, 261, 270 et seq. See also Yehuda Blum, “UN Membership of the ‘New’ Yugoslavia: Continuity or Break”, *American Journal of International Law*, No. 4, Vol. 86, 1992; Roland Rich, “Recognition of States: The Collapse of Yugoslavia and the Soviet Union”, *European Journal of International Law*, No. 1, Vol. 4, 1993.

It is within this context of overlapping rules of international law regarding the succession/continuity of states and accession to international organizations that State practice has been slowly crystallized over the years, with broad consistency. Accession to GATT and the WTO, however, seems to have escaped detailed analysis by authors delving into this cross-section of fields. It has thus proven valuable to explore how the process of Yugoslavia's accession, suspension, and later re-accession efforts unfolded.

In this respect, it merits first highlighting that GATT came into existence as an agreement, rather than an institution. On 30 October 1948, GATT was signed by its 23 founding members,<sup>25</sup> providing legal principles for a rules-based world trade order.<sup>26</sup> GATT emerged as a result of the failure to create the International Trade Organization, proposed at the 1944 Bretton Woods Conference, in the aftermath of World War II. Despite its institutional deficiencies, from 1948 until 1994, GATT managed to lead eight rounds of multilateral trade negotiations aimed at reducing tariffs and tackling trade barriers. These efforts culminated with the Uruguay Round and the Marrakesh Agreement,<sup>27</sup> that established the WTO,<sup>28</sup> providing for an institutional framework to GATT principles.<sup>29</sup>

By the end of its eighth and last round before the WTO, GATT had managed to attract 128 States as its Contracting Parties.<sup>30</sup> In 1994, GATT was updated to take into account the substantive changes negotiated in the Uruguay round ("GATT 1994").<sup>31</sup> Eventually, on 1 January 1995, the WTO replaced GATT.<sup>32</sup> Upon signing

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<sup>25</sup> GATT members are denoted as "Contracting Parties" (irrespective of whether founding or not).

<sup>26</sup> See The GATT years: from Havana to Marrakesh, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm), 14. 5. 2024.

<sup>27</sup> Marrakesh Agreement Establishing the World Trade Organization, 1 January 1995, UNTS Volume Numbers. 1867, 1868, 1869, [https://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm), 14. 5. 2024.

<sup>28</sup> About the WTO in general, see John H. Jackson, "The WTO as international organization: institutional evolution, structure, and key problems", in *Sovereignty, the WTO, and Changing Fundamentals of International Law*, 81–133, Cambridge University Press, Cambridge, 2006.

<sup>29</sup> See World Trade Organization, The GATT years: from Havana to Marrakesh, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm), 14. 5. 2024.

<sup>30</sup> See WTO, The 128 countries that had signed GATT by 1994, [https://www.wto.org/english/thewto\\_e/gattmem\\_e.htm](https://www.wto.org/english/thewto_e/gattmem_e.htm), 14. 5. 2024.

<sup>31</sup> See WTO/GATT Chronology of Achievements, 48%2C%20GATT,Kingdom%20and%20the%20United%20States, 14. 5. 2024.

<sup>32</sup> See World Trade Organization, The GATT years: from Havana to Marrakesh, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm), 14. 5. 2024.

the new WTO agreements, which included the updated GATT 1994, the Contracting Parties became known as WTO Members.<sup>33</sup> Until 1993, Yugoslavia was one of the GATT's Contracting Parties.<sup>34</sup>

#### YUGOSLAVIA'S MEMBERSHIP IN GATT

In 1950, when Yugoslavia,<sup>35</sup> at the time known as the Federal People's Republic of Yugoslavia, first considered applying to become a Contracting Party to GATT, its economy was a non-market one.<sup>36</sup> For this reason, Yugoslavia first applied to GATT with the aim to obtain "observer" status. Allowing observer status or accession of non-market economies into GATT has been the subject of cautious assessment of GATT Contracting Parties since the primary aim of GATT was to use tariffs as a preferred method of regulating trade, which communist and socialist countries normally did not employ.<sup>37</sup> Given that GATT did not provide for specific rules regarding accession of non-market economy countries, such countries acceded at different times and under different conditions, each time Contracting Parties carefully negotiating import commitments, quotas in case of market disruption and periodic reviews of these countries' trades.<sup>38</sup>

Yugoslavia obtained its observer status in 1950.<sup>39</sup> Over the next nine years, the country took steps to decentralize its economy, which resulted in GATT "associated

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<sup>33</sup> See WTO, The 128 countries that had signed GATT by 1994, [https://www.wto.org/english/thewto\\_e/gattmem\\_e.htm](https://www.wto.org/english/thewto_e/gattmem_e.htm), 14. 5. 2024.

<sup>34</sup> See WTO, The 128 countries that had signed GATT by 1994, [https://www.wto.org/english/thewto\\_e/gattmem\\_e.htm](https://www.wto.org/english/thewto_e/gattmem_e.htm), 14. 5. 2024.

<sup>35</sup> The term "Yugoslavia" is used to describe both the FPRY in the period of 1945–1963 and later the SFRY, existing from 1963 to 1992.

<sup>36</sup> There have been few non-market economies that obtained either observer status or became Contracting Parties in GATT: Bulgaria, China, Czechoslovakia, Hungary, Poland, Romania, Soviet Union and Yugoslavia. United States General Accounting Office, Fact Sheet for the Chairman, Committee on Finance, US Senate, International Trade, GATT Treatment of Nonmarket Economy Countries, August 1990, 7, <https://www.gao.gov/assets/nsiad-90-206fs.pdf>, 14. 5. 2024.

<sup>37</sup> United States General Accounting Office, Fact Sheet for the Chairman, Committee on Finance, op. cit., 7–8.

<sup>38</sup> United States General Accounting Office, Fact Sheet for the Chairman, Committee on Finance, US Senate, International Trade, GATT Treatment of Nonmarket Economy Countries, August 1990, op. cit., 1.

<sup>39</sup> United States General Accounting Office, Fact Sheet for the Chairman, Committee on Finance, US Senate, International Trade, GATT Treatment of Nonmarket Economy Countries, August 1990, op. cit., 11.



membership" in 1959.<sup>40</sup> The news about Yugoslavia's recently acquired limited membership was placed on the pages of the New York Times which reported how:

"Yugoslavia's participation will be limited because, like most Communist countries, it has no customs tariffs to negotiate, officials said. Meanwhile, Communist Poland also applied for admission to the 1960 World Tariff Conference, even though 'a Polish customs tariffs does not exist.'"<sup>41</sup>

During its associated membership, Yugoslavia worked further on decentralising its economy, introducing tariffs, abolishing multiple exchange rates, and becoming a multilateralist in its trade relations.<sup>42</sup> As a consequence, Yugoslavia, at the time known as SFRY, obtained its full GATT membership in 1966.<sup>43</sup> Although a socialist country, at the time, the United States of America considered Yugoslavia as a market economy with whom it enjoyed full GATT relations.<sup>44</sup>

SFRY held its full GATT membership status while trading with Contracting Parties under the applicable regime and being an active participant of Uruguay Round negotiations until 1993.<sup>45</sup> During this period, it occurred once, by the end

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<sup>40</sup> United States General Accounting Office, Fact Sheet for the Chairman, Committee on Finance, op. cit., 11. See also Kazimierz Grzybowski, "Socialist Countries in GATT", *The American Journal of Comparative Law*, No. 4, Vol. 28, 1980, 539–554; Francine McKenzie, "GATT and the Cold War: Accession Debates, Institutional Development, and the Western Alliance, 1947–1959", *Journal of Cold War Studies*, No. 3, Vol. 10, 2008, 78–109.

<sup>41</sup> New York Times, 18 November 1956, 66, <https://timesmachine.nytimes.com/timesmachine/1959/11/18/81515769.html?pageNumber=66>, 14. 5. 2024. "YUGOSLAVIA ENTERS ACCORD WITH GATT. Tokyo, Nov. 17(AP) – Communist Yugoslavia has entered into limited relations with the nations of the General Agreement on Tariffs and Trade GATT. A spokesman said two-thirds of GATT's 37 contracting nations had accepted an agreement providing for Yugoslav participation in the trade-regulating body and for an annual review of trade with Yugoslavia. The United States, which has backed Yugoslavia's application, was not listed among nations signing the agreement. Yugoslavia's participation will be limited because, like most Communist countries, it has no customs tariffs to negotiate, officials said. Meanwhile, Communist Poland also applied for admission to the 1960 World Tariff Conference, even though 'a Polish customs tariffs does not exist.'"

<sup>42</sup> United States General Accounting Office, Fact Sheet for the Chairman, Committee on Finance, op. cit., 11–12.

<sup>43</sup> See Communication from Mr. E. Wyndham White to GATT Contracting Parties, GATT/AIR/554, 14 June 1966, <https://docs.wto.org/gattdocs/q/GG/GATTAIR/554.pdf>, 14. 5. 2024.

<sup>44</sup> United States General Accounting Office, Fact Sheet for the Chairman, Committee on Finance, op. cit., 12.

<sup>45</sup> Boriša Vuković, "Elementi pristupa Jugoslavije Svetskoj trgovinskoj organizaciji", *Jugoslavija i Svetska trgovinska organizacija – uslovi i mogućnosti uključivanja u Svetski trgovinski sistem* (Ed. T. Popović), 1996, 34.

of its membership, that Yugoslavia presented a request for consultations and consequently for setting up a panel to resolve a dispute with another GATT Contracting Party. The dispute emerged with the European Economic Community (“EEC”), and it was closely related to the political developments that led to Yugoslavia’s dissolution and EEC’s imposition of sanctions due to “non-economic reasons”.<sup>46</sup> Yugoslavia explained that, on 11 November 1991, the EEC adopted a series of measures deviating from the previously granted trade concessions, while later also applying selective measures in favour of “those parties which contribute to progress toward peace”.<sup>47</sup> At a meeting of the GATT Council on 18 March 1992, both Yugoslavia and EEC presented their positions (Yugoslavia emphasising that lifting the sanctions would help the peace process),<sup>48</sup> and the GATT Council agreed to establish a panel to solve the dispute unless the two parties came to an agreement in the following twenty days.<sup>49</sup> Ultimately, the panel had not been established.<sup>50</sup> Meanwhile, Yugoslavia’s disintegration ensued.<sup>51</sup>

As will be shown in continuation, during the period of dissolution, in its interactions with international organisations FRY was insisting on its identity and

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<sup>46</sup> See GATT Disputes, Yugoslavia’s Request for Consultations under Article XXIII:1, 13 January 1992, DS27/1, <https://gatt-disputes.wto.org/index.php/dispute/gd-260>, 14. 5. 2024: “[C]onvey the request for consultation under Article XXIII:1 of the General Agreement on Tariffs and Trade. This request refers to the trade measures taken by the European Communities for non-economic reasons against the Socialist Federal Republic of Yugoslavia notified to the GATT and contained in document L/6948, as well as the additional measures taken by the Council of Ministers of the European Communities on 2 December 1991. The Yugoslav authorities believe that expeditious consultations are desirable and therefore would like to consult with the European Communities at the earliest possible date.”

<sup>47</sup> GATT Disputes, Yugoslavia’s Recourse to Article XXIII:2, 10 February 1992, DS27/2, <https://gatt-disputes.wto.org/index.php/dispute/gd-260>, 14. 5. 2024.

<sup>48</sup> GATT Council, Minutes of Meeting held in the Centre William Rappard on 18 March 1992, 10 April 1992, 14, <https://gatt-disputes.wto.org/index.php/dispute/gd-260>, 14. 5. 2024.

<sup>49</sup> GATT Council, Minutes of Meeting held in the Centre William Rappard on 18 March 1992, 10 April 1992, 18, <https://gatt-disputes.wto.org/index.php/dispute/gd-260>, 14. 5. 2024.

<sup>50</sup> See GATT Disputes, WTO Website, <https://gatt-disputes.wto.org/index.php/dispute/gd-260>, 14. 5. 2024.

<sup>51</sup> The dissolution of Yugoslavia was a result of a series of political and ethnic conflicts that erupted in the late 1980s and early 1990s, leading to the declaration of independence by four of its six constituent republics: Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia. The remaining two republics, Serbia and Montenegro, formed the FRY in 1992, claiming to be the sole or main successor of the SFRY and inheriting its international personality, rights, and obligations. See e.g., Kosta Mihailović, *Sukcesija i kontinuitet Savezne Republike Jugoslavije*, Institut za međunarodnu politiku i privreda, Beograd, 2000.

continuity with the former SFRY. In June 1992, amidst the inability to ascertain if FRY could assume SFRY's GATT membership, SFRY's membership was suspended. Out of six countries that came to existence as a consequence of Yugoslavia's dissolution, only Slovenia acceded to GATT membership shortly after its independence, as a Contracting Party. Almost simultaneously, transition from GATT to the WTO formalised the process of accession to the WTO through Article XII of the Marrakesh Agreement ("Article XII Accession Process").<sup>52</sup> Upon the emergence of the WTO, all the States that maintained their status of GATT Contracting Parties, automatically gained their new status as a WTO Member.<sup>53</sup>

The Article XII Accession Process seemingly lengthened the process of joining the organisation for the remaining ex-Yugoslav countries non-GATT Contracting Parties. Croatia and North Macedonia (at the time only Macedonia or the Former Yugoslav Republic of Macedonia, "FYROM") acceded as WTO Members shortly after its establishment, after extensive multilateral and bilateral negotiation rounds with WTO Members. After its separation from FRY, Montenegro succeeded in joining the WTO six years later. As of 2024, Serbia and Bosnia and Herzegovina are still acceding countries under the Article XII Accession Process.<sup>54</sup>

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<sup>52</sup> Marrakesh Agreement Establishing the World Trade Organization, Article XII, "Article XII Accession 1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto. 2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO. 3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement." See WTO Analytical Index on Article XII Marrakesh Agreement, [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/wto\\_agree\\_art12\\_oth.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/wto_agree_art12_oth.pdf), 14. 5. 2024.

<sup>53</sup> For comparison between GATT and WTO accession processes see Dylan Geraets, *Accession to the World Trade Organization – A Legal Analysis*, Elgar, 2018: "GATT accession was characterized by reciprocal bargaining between the government wishing to accede to the Agreement and the incumbent GATT Contracting Parties. The outcome of these accession tariff negotiations was an accession schedule of commitments. The drafting history of [Article XXXIII GATT 1947] indicates that the negotiators had a rather flexible nature of the accession process in mind". See also, See also World Trade Organization, *A Handbook on Accession to the WTO: A WTO Secretariat Publication*, Cambridge University Press, Cambridge, 2008; Marko Jovanović, "Pravni okvir pristupanja Svetskoj trgovinskoj organizaciji", *Pravo Svetske trgovinske organizacije* (Eds. S. Đorđević, M. Jovanović), Pravni fakultet Univerziteta u Beogradu, 2019.

<sup>54</sup> See WTO Status Update for Serbia, [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_serbia\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_serbia_e.htm) and WTO Status Update for Bosnia and Herzegovina, [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_bosnie\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_bosnie_e.htm). 14. 5. 2024.

Below (Table 1) shows the relevant dates for each ex-Yugoslav country's independence, and their GATT/WTO accession date, where applicable.

Table 1

No	Republic of	Referendum on Independence / Resolution on Sovereignty	Declaration of Independence	Date of Independence / Succession	GATT / WTO Accession
1.	Slovenia	Dec. 1990	25 Jun. 1991	8 Oct. 1991	30 Oct. 1994
2.	Croatia	May 1991	25 Jun. 1991	8 Oct. 1991	30 Nov. 2000
3.	FYROM	Sept. 1991	8 Sept. 1991	17 Nov. 1991	4 Apr. 2003
4.	Bosnia and Herzegovina	14 Oct. 1991/29 Feb. 1992	1 March 1992	6 Apr. 1992	/
5.	Montenegro	21 May 2006	3 June 2006	3 June 2006	29 April 2012
6.	Serbia	/	5 June 2006	5 June 2006	/

Source: Duško Dimitrijević, "Sukcesija članstva u Ujedinjenim nacijama – slučaj SFR Jugoslavije", MP1, Vol. LIX, No. 1, 2007, 85; Rodoljub Etinski, "Datumi sukcesije prema mišljenju Badinterove komisije", u: *Sukcesija i kontinuitet Savezne Republike Jugoslavije*, Institut za međunarodnu politiku i privredu, Beograd, 2000, 76–90; World Trade Organization, , 14. 5. 2024.

#### FRY'S CLAIM OF IDENTITY AND CONTINUITY WITH SFRY (UN AND BADINTER'S COMMISSION)

In 1992, the SFRY Assembly promulgated the Constitution of the FRY "on the basis of the unbroken continuing personality of Yugoslavia"<sup>55</sup> The FRY, consisting of Serbia and Montenegro, also claimed its continuity before international organizations. The FRY's letter to the UN Secretary General of 27 April 1992 reads as follows:

"The Assembly of the Socialist Federal Republic of Yugoslavia, at its session held on 27 April 1992, promulgated the Constitution of the Federal Republic of Yugoslavia. Under the constitution, on the basis of the continuing personality of Yugoslavia [...], the Socialist Federal Republic of Yugoslavia is transformed into the Federal Republic of Yugoslavia, consisting of the Republic of Serbia and the Republic of Montenegro. *Strictly respecting the continuity of the international personality of Yugoslavia*, the Federal Republic of Yugoslavia shall continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal

<sup>55</sup> Ustav Savezne Republike Jugoslavije, *Sluzbeni list SRJ*, No. 1/92 of 5. 1. 1992.

Republic of Yugoslavia in international relations, *including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia.*"<sup>56</sup>

Scharf argues that FRY persisted in emphasizing its continuity rather than succession path before the UN in particular due to the UN Security Council considering imposing economic sanctions for FRY's involvement in hostilities.<sup>57</sup> The FRY's approach was thus seen as a pragmatic decision, as it was unlikely that the Security Council would approve an application for new membership under such circumstances.<sup>58</sup>

The FRY's continuity claim encountered opposition from four other former republics (Croatia, Slovenia, Bosnia and Herzegovina, and at the time, FYROM). These countries believed that former SFRY dissolved in 1991 and was replaced by five new states as equal successors. According to them, there was a definite replacement of one state by the new states in respect of sovereignty over the territory of SFRY. This opinion was not shared by the FRY which believed that it represented the continuity of SFRY and is its sole or at least main successor (akin to the situation of Russia and the USSR), therefore being able to claim assets of the former SFRY, as well as acquire SFRY's (automatic) membership in international organisations and international agreements.<sup>59</sup>

It is important here to draw a parallel with the above-mentioned case of USSR and Russia's continuity argument. Russia was able to assume membership in the UN as a continuing State.<sup>60</sup> Unlike the situation of FRY, in Russia's case, none of the dissolving States of the USSR objected.<sup>61</sup> There was a consensus for Russia to continue carrying the legal personality of the USSR before international organisations.<sup>62</sup> This was not the case with FRY and former Yugoslav republics.

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<sup>56</sup> Note dated 27 April 1992 from the Permanent Mission of Yugoslavia to the UN addressed to the Secretary-General, reprinted in 48 *Comunita Internazionale* 35s (1993) (emphasis added), as cited in K. G. Buhler, op. cit., 185–186.

<sup>57</sup> M. P. Scharf, op. cit., 53.

<sup>58</sup> M. P. Scharf, op. cit., 53.

<sup>59</sup> Bozo Cerar, "State Succession after Former Socialist Federal Republic of Yugoslavia", *Revue générale de droit*, No. 4, Vol. 28, 1997, 566. See also J. Crawford, op. cit., 412–414.

<sup>60</sup> Please note that Russia joined the WTO only in 2012, so the question of membership succession in GATT/WTO does not arise in its case. See [https://www.wto.org/english/thewto\\_e/countries\\_e/russia\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/russia_e.htm), 14.05.2024.

<sup>61</sup> K. G. Buhler, op. cit., 152–153. See also Juraj Andrassy, Božidar Bakotić, Budislav Vukas, *Međunarodno pravo*, knjiga prva, Školska knjiga, Zagreb, 1998, 272–273.

<sup>62</sup> *Ibidem*. At a meeting in Alma Ata on 21 December 1992, it was agreed that "[t]he 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

Likewise, the European Communities (“EC”) and its member states could not accept this position either.<sup>63</sup> The Badinter Arbitration Commission,<sup>64</sup> in its Opinion No. 8 of 4 July 1992, stated, that “the process of dissolution of the SFRY [...] is *now complete and the SFRY no longer exists*”.<sup>65</sup> Opinion No. 9 further stated that newly created States are *all* successor States to the former SFRY, which has as a consequence 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”.<sup>66</sup> Finally, in Opinion No. 10, the Arbitration Commission concluded that the FRY could not legally be considered a sole successor to the former SFRY, but it was *a new state*.<sup>67</sup>

The UN and its member States equally denied FRY’s request to automatically continue the membership of the former state. As a consequence, on 30 May 1992,

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international organizations”. Decision by the Council of Heads of State of the Commonwealth of Independent States, Alma Ata, 21 December 1991, reprinted in 31 ILM 151, 1992, as cited by K. G. Buhler, *op. cit.*, 152–153.

<sup>63</sup> Arbitration Commission of the Conference for Peace in Yugoslavia, Opinion No. 9 on Questions Arising from the Dissolution of Yugoslavia, *International Legal Materials*, Vol. 31, 1992, 1523. See also Federal Republic and National Bank of Yugoslavia v. Republics of Croatia, Slovenia, Macedonia and Bosnia-Herzegovina, ILR Vol. 128, 1999, 627; J. Crawford, *op. cit.*, 412–414. See also Rodoljub Etinski, “Datumi sukcesije prema mišljenju Badinterove komisije”, *Sukcesija i kontinuitet Savezne Republike Jugoslavije*, Institut za međunarodnu politiku i privredu, Beograd, 2000; Milenko Kreča, “Badinterova arbitražna komisija – kritički osvrt”, *Jugoslavenski pregled*, Beograd, 1993; Milan Šahović, “Raspad SFRJ i stvaranje novih država”, *Međunarodno pravo i jugoslavenska kriza* (Ed. Milan Šahović), Institut za međunarodnu politiku i privredu, Beograd, 1996; Marc Weller, “International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia”, *American Journal of International Law*, No. 86, 1991.

<sup>64</sup> The Badinter Arbitration Commission, named after its chairman, Robert Badinter, was established by the EC in 1991 during the dissolution of Yugoslavia. Its primary task was to provide legal opinions on questions related to the recognition of new states emerging from the former Yugoslavia. These opinions were sought to guide EC member states in determining whether to recognize the newly formed states and their borders. The opinions of the Badinter Commission were highly influential, serving as a basis for many European countries and other international actors in their decisions on recognition. See more, Allain Pellet, “The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples”, *European Journal of International Law*, No. 1, Vol. 3, 1992, 178–185.

<sup>65</sup> Arbitration Commission of the Conference for Peace in Yugoslavia, Opinion No. 8 on Questions Arising from the Dissolution of Yugoslavia, *International Legal Materials*, Vol. 31, 1992, 1521, 1523 (emphasis added).

<sup>66</sup> Arbitration Commission of the Conference for Peace in Yugoslavia, Opinion No. 9 on Questions Arising from the Dissolution of Yugoslavia, *International Legal Materials*, Vol. 31, 1992, 1523 (emphasis added).

<sup>67</sup> Arbitration Commission of the Conference for Peace in Yugoslavia, Opinion No. 10 on Questions Arising from the Dissolution of Yugoslavia, *International Legal Materials*, Vol. 31, 1992, 1525, 1526.

the UN Security Council adopted Resolution 757 noting that "the claim by the [FRY] to continue automatically the membership of the former [SFRY] in the United Nations has not been generally accepted".<sup>68</sup> After the adoption of the Badinter Commission's opinions, and with fervent influence of the EC Member States and the US,<sup>69</sup> on 22 September 1992, the General Assembly adopted Resolution 47/1,<sup>70</sup> in which, after observing the recommendation of the Security Council in its resolution 777 of 19 September 1992, the General Assembly considered that:

"[T]he 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".<sup>71</sup>

At the time, FRY consistently denied the necessity to re-apply for the UN membership, insisting on the continuing nature of its status. This was FRY's position until the early 2000s. This position, held firmly by FRY throughout the 1990s, was challenged by other successor states of the former Yugoslavia. The contention peaked when, in 1996, representatives from Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia appealed to the UN Secretary-General, invoking Security Council Resolution 777 to argue that FRY must undergo the formal admission process mandated for new member states.

On 28 October 1996, the Permanent Representatives of Slovenia, Croatia, Bosnia and Herzegovina, and Macedonia wrote a letter to the UN Secretary-General in which they asserted that "[t]he FRY (Serbia and Montenegro) *has also to follow the procedure for admission of new Member States* to the United Nations which would enable the Organization to make its judgment on whether the conditions set out in Article 4 of the Charter are met."<sup>72</sup>

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<sup>68</sup> UN Security Council Resolution 757 (1992), UN-Doc. S/Res/757, 30 May 1992.

<sup>69</sup> K. G. Buhler, op. cit., 188–189. See also Obrad Račić, "SR Jugoslavija: Diskontinuitet članstva u Ujedinjenim nacijama," *Jugoslavenska revija za međunarodno pravo*, No. 1–2, 1993.

<sup>70</sup> UN General Assembly Resolution 47/1 (1992), UN-Doc. A/47/L.1, 22 September 22 1992, <http://www.un.org/documents/ga/res/47/a47r001.htm>, 14. 5. 2024.

<sup>71</sup> UN Security Council Resolution No. 777 (1992), UN-Doc. S/Resf777, 19 September 1992, <http://unscr.com/en/resolutions/doc/777>, 14. 5. 2024. (emphasis added). See also Michael C. Wood, "Participation of Former Yugoslav States in the United Nations", *Max Planck Yearbook of United Nations Law*, Vol. 1, 1997, 241.

<sup>72</sup> *Ibidem*, 245 (emphasis added). See Charter of the United Nations, 1 UNTS XVI, 24 October 1945, Article 4: "1. Membership in the United Nations is open to all other peace-loving states

The chart below (Table 2) lists former Yugoslav republics' dates of UN membership along with dates of their independence.

**Table 2**

No	Republic of	Declaration of Independence	UN Membership
1.	Slovenia	25 June 1991	22 May 1992
2.	Croatia	25 June 1991	22 May 1992
3.	North Macedonia	8 September 1991	8 April 1993
4.	Bosnia and Herzegovina	1 March 1992	22 May 1992
5.	Serbia	/	1 November 2000
6.	Montenegro	3 June 2006	28 June 2006

Source: Duško Dimitrijević, “Sukcesija članstva u Ujedinjenim nacijama – slučaj SFR Jugoslavije”, MP1, Vol. LIX, No. 1, 2007, 85; Rodoljub Etinski, “Datumi sukcesije prema mišljenju Badinterove komisije”, u: *Sukcesija i kontinuitet Savezne Republike Jugoslavije*, Institut za međunarodnu politiku i privredu, Beograd, 2000, 76–90; United Nations, <https://www.un.org/en/about-us/member-states>, 14. 5. 2024.

As a consequence of the above developments, FRY did not participate in the work of UN organs. This, however, did not (at least initially) affect its status as a party to the Statute of the International Court of Justice.<sup>73</sup>

#### FRY'S CLAIM OF IDENTITY AND CONTINUITY WITH SFRY IN THE GATT

The period between April 1992 and June 1993 was marked by intense deliberations within GATT concerning the status and participation of FRY following the dissolution of SFRY. As FRY asserted its claim to the international legal personality of its predecessor and sought to maintain its GATT membership, the international community grappled with the implications of such a succession. The GATT Council became the arena for these discussions, where various Contracting Parties

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which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. 2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.”

<sup>73</sup> Later, the Court changed its approach. See J. Crawford, op. cit., 414; Legality of the Use of Force (*Serbia and Montenegro v Belgium*), ICJ Reports 2004, 279; Bosnian Genocide, ICJ Reports 2007, 43; *Croatia v Serbia*, Preliminary Objections, ICJ Reports 2008, 412.



voiced their positions, often marked by caution and the need for a formal resolution. The United States, in particular, played a pivotal role in shaping the discourse, challenging FRY's claim.

At the meetings of the GATT Council that took place on 27 April 1992, FRY claimed the continuity and expressed its readiness to assume its rights and obligations in GATT.<sup>74</sup> The FRY stated *inter alia* the following:

“Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfil all the rights conferred to and obligations assumed by the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia.”<sup>75</sup>

In response, by precaution, a number of GATT Contracting Parties noted that continued participation of representatives of FRY in UN bodies is without prejudice to the eventual determination of its status before GATT which requires consideration.<sup>76</sup>

In May 1992, the United States Trade Representative (“USTR”) stated that “[s]erious questions have arisen regarding whether the [FRY] is the continuation of the [SFRY] for the purpose of membership in the United Nations and other international organizations such as the [GATT]. Until such time as these questions are resolved, the participation of the representatives of the [FRY] in the activities of the GATT should be viewed as without prejudice to the disposition of these questions.”<sup>77</sup>

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<sup>74</sup> Yugoslavia's Communication to GATT, L/7000, 27 April 1992. All the GATT and WTO documents in continuation have been accessed from the following link: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S005.aspx](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S005.aspx), 14. 5. 2024.

<sup>75</sup> Yugoslavia's Communication to GATT, L/7000, 27 April 1992, 1.

<sup>76</sup> See e.g. European Communities' statement and Yugoslavia's reply under “Other Business” in the Minutes of Meeting, C/M/256, 30 April 1992, 32. Other contracting parties also issued statements in response to Yugoslavia's declaration from 27 April 1992 (L/7000). Canada placed on record, on 7 May 1992, that “current participation of representatives of the Federal Republic of Yugoslavia in all United Nations bodies *is without prejudice to the eventual determination of the status of the Federal Republic of Yugoslavia*” (L/7002, emphasis added). Hungary was of the view that “such a *unilateral statement does not create a legal basis for a decision on the continuity of the membership of the defunct [SFRY] in international organizations.*” In its opinion, “the settlement of the question on continuity should be based upon the *agreement of all successor States of the former Socialist Federal Republic of Yugoslavia*” (L/7008, emphasis added).

<sup>77</sup> USTR's Communication, L/7022, 18 May 1992 (emphasis added).

Additionally, the USTR had expressed willingness to support observer status in GATT for Slovenia, Croatia and Bosnia and Herzegovina, should these republics request such status (without prejudice to any ultimate decision on successor states).<sup>78</sup> Ultimately, in June 1992, noting that the situation in the territory of the now defunct SFRY had deteriorated since the last statement, the US declared that it cannot accept FRY's claim of continuity of the SFRY and consequently the assumed membership in GATT, asking the FRY not to participate in GATT activities.<sup>79</sup>

On 19 June 1992, following extensive informal consultations held by the Chairman, the GATT Council officially agreed that the “representative of the FRY should *refrain from participating in the business of the Council*”, without prejudice to the question of who should succeed the former SFRY in the GATT, and until the Council considered this issue.<sup>80</sup> By its 16–17 June 1993 session, the GATT Council got acquainted with the UN General Assembly Resolution 47/1 of 22 September 1992,<sup>81</sup> and decided to modify its decision of 19 June 1992 to state:

<sup>78</sup> USTR's Communication, L/7022, 18 May 1992 (emphasis added).

<sup>79</sup> The US “does not accept Serbia/Montenegro to be the continuity or single successor state” of SFRY. For this reason, the US was of the view that “*Serbia/Montenegro cannot assume the membership in GATT and must make a new application to the Contracting Parties* if it wishes to participate in the GATT either as an observer or as a Contracting Party. Until such time as such an application is accepted, the representatives of Serbia/Montenegro should not participate in any GATT activities” (L/7022, emphasis added).

<sup>80</sup> GATT Council, Minutes of Meeting held in the Centre William Rappard on 19 June 1992, contain as Item 1 of the agenda Yugoslavia's status as a contracting party (L/7000, L/7002, L/7007, L/7008, L/7009, L/7022). “The Chairman said that the break-up of the former Socialist Federal Republic of Yugoslavia had posed the question of its status as a contracting party. While the delegation speaking in the name of the Federal Republic of Yugoslavia (FRY) had laid claim to the status of successor to the former Socialist Federal Republic of Yugoslavia (L/7000), this claim had been contested by some contracting parties and some others had reserved their position on the issue. Some contracting parties had also suggested that the delegation claiming to represent the FRY as a successor to the Socialist Federal Republic of Yugoslavia (SFRY) in GATT should not participate in GATT activities until the FRY had sought fresh membership, while others held the view that its participation should be without prejudice to the FRY's claim to successor status. He had held extensive informal consultations with contracting parties and believed there was agreement that this issue would need consideration by the Council. In these circumstances, without prejudice to the question of who should succeed the former SFRY in the GATT, and until the Council considered this issue, *he proposed that the representative of the FRY should refrain from participating in the business of the Council*. The Council so agreed”. Minutes of the GATT Council Meeting, C/M/257, 19 June 1992, 3 (emphasis added).

<sup>81</sup> UN General Assembly Resolution 47/1 (1992), UN-Doc. A/47/L.1, 22 September 1992, <http://www.un.org/documents/ga/res/47/a47r001.htm>, 14. 5. 2024.

“The Council considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the contracting party status of the former Socialist Federal Republic of Yugoslavia in the GATT, and therefore *decides that the [FRY] should apply for accession to the GATT and that it shall not participate in the work of the Council and its subsidiary bodies.* The Council further invites other committees and subsidiary bodies of the GATT, including the Committees of the Tokyo Round Agreements and the Committee on Trade and Development, to take the necessary decisions in accordance with the above. The Council so agreed.”<sup>82</sup>

On the basis of the 16 June 1993 decision, the Trade Negotiations Committee of the Uruguay Round also made an analogous decision to exclude the FRY from the Uruguay Round negotiations.<sup>83</sup> With these two decisions, Yugoslavia's membership in GATT was formally suspended. A year and a half later, on 1 January 1995, GATT transitioned into the WTO.

#### FRY'S APPLICATIONS TO BECOME A WTO MEMBER

Following the dissolution of SFRY, FRY initially attempted to join the WTO by leveraging the continuity argument, thereby hoping for an expedited accession process. However, these efforts were met with resistance, particularly from Slovenia, which challenged FRY's legal stance and insisted on adherence to the standard accession procedures outlined in Article XII of the Marrakesh Agreement.

Following the lifting of UN Security Council sanctions in 1995,<sup>84</sup> in September 1996, the Government of FRY submitted its first request to “regulate” its membership in the WTO “in view of the provisions of Article XII of the Agreement Establishing the WTO.”<sup>85</sup> The political landscape at the time was conducive for FRY's membership request, notably due to the recent signing of the Dayton Agreement, which had brought peace to Bosnia and Herzegovina.<sup>86</sup>

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<sup>82</sup> GATT Council, Minutes of Meeting held in the Centre William Rappard on 16–17 June 1993, C/M/264 (emphasis added).

<sup>83</sup> Communication from FRY to the WTO, WT/L/176, 30 September 1996, 1.

<sup>84</sup> The measures imposed by the Security Council under Article 41 of the Charter were terminated on 1 October 1996 ([http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1074\(1996\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1074(1996))), having been suspended on 22 November 1995 (<https://www.nato.int/ifor/un/u951122b.htm>). See M. C. Wood, op. cit., 244.

<sup>85</sup> Communication from FRY to the WTO, WT/L/176, 30 September 1996, 2. See also B. Vuković, op. cit., 35.

<sup>86</sup> Predrag Bjelić, *Svetska trgovinska organizacija*, Prometej, Beograd, 2002, p. 185.

Simultaneously, within the same communication, FRY also proposed “that the impossibility to regulate its membership according to the conditions in force by 1 January 1996, should be overcome by the *adoption of the clause of retroactive effect*, which could be the subject of an agreement between the Federal Republic of Yugoslavia and the WTO”.<sup>87</sup> This latter part clearly reflects FRY’s reliance on its continuity argument and aspiration for its accession to mirror that of the original GATT Contracting Parties, transitioning automatically into WTO membership. The advantage of joining as a GATT Contracting Party, rather than as a new WTO Member, lied in the anticipated expedited accession process, which would bypass the procedures under Article XII of the Marrakesh Agreement.<sup>88</sup>

FRY’s request was objected to by the delegation of Slovenia. Slovenia argued that the only way for FRY to accede to the WTO would be through Article XII of the Marrakesh Agreement, asserting that there was no legal basis for any preferential treatment of FRY with respect to GATT membership.<sup>89</sup> Given that the agreement of all WTO Members is required to commence the accession procedure, Slovenia’s objection necessitated that FRY reformulate its request to focus solely on Article XII. Consequently, FRY submitted its revised (second) request in November 1996 without mentioning a clause of retroactive effect.<sup>90</sup>

In its second request for accession, FRY relied on the decisions that led to Yugoslavia’s GATT membership suspension stating that “due to the circumstances outside its control [FRY] regrettably, could not complete the negotiations within the Uruguay Round and regulate its membership in the World Trade Organization by 1 January 1995 as provided for by Article XI of the Agreement Establishing the World Trade Organization”.<sup>91</sup> Bjelić argues that this revised request did not signify abandoning the continuity argument but rather represented a softening of the approach, with the intention of gauging the WTO’s response.<sup>92</sup>

Slovenia’s delegation to the WTO objected again, providing an even more detailed response as to why FRY’s succession of GATT membership and continuity with SFRY could not be accepted.<sup>93</sup> Slovenia argued that FRY’s claims were

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<sup>87</sup> Communication from FRY to the WTO, WT/L/176, 30 September 1996, 2 (emphasis added).

<sup>88</sup> P. Bjelić, *Svetska trgovinska organizacija*, op. cit., 186.

<sup>89</sup> Communication from the Republic of Slovenia, WT/L/181, 18 October 1996, 96-4335. See also, P. Bjelić, *Svetska trgovinska organizacija*, op. cit., 186.

<sup>90</sup> Communication from FRY, Revision, 13 November 1996, WT/L/176/Rev.1, 96-4806.

<sup>91</sup> *Ibidem*.

<sup>92</sup> P. Bjelić, *Svetska trgovinska organizacija*, op. cit., 187.

<sup>93</sup> Communication from the Republic of Slovenia, 28 November 1996, WT/L/199, 96-5038.

“at gross variance with the facts” since FRY was never the one that participated in the Uruguay Round. According to Slovenia, it was the SFRY, which had ceased to exist according to UN Security Council Resolutions 777 and 821, that participated in the Uruguay Round.<sup>94</sup> FRY’s claims being unfounded, there could be no “reintegration” of FRY into the WTO, Slovenia asserted.<sup>95</sup> Slovenia concluded that it could not consent to FRY’s request as formulated and would only accept FRY’s application for accession as a new State, under Article XII of the Marrakesh Agreement.<sup>96</sup> Eventually, FRY’s second request to join the WTO was not considered by the WTO General Council.<sup>97</sup>

It is important to note that, at the time, in 1996, FRY still denied the necessity to re-apply for UN membership, claiming its continuity, and was neither considered as continuing SFRY nor as its sole successor by the international community.<sup>98</sup> Yugoslavia’s former republics objected to FRY’s assertion of continuity before the UN, and Slovenia, as a GATT/WTO Member asserted this position before the General Council. The insistence on continuity severely delayed the process of commencing accession for FRY.<sup>99</sup>

It was not until FRY gained independent UN membership and submitted a new request for WTO accession, relinquishing the continuity argument, that the path to membership began to clear. On 2 November 2000, FRY reapplied for and gained a self-standing UN membership.<sup>100</sup> Shortly after obtaining its UN membership, in January 2001, FRY requested again, before the WTO, its accession, this time not insisting on the continuity argument, and basing its request on Article XII of the Marrakesh Agreement.<sup>101</sup> The WTO Director-General received a communication from the Government of FRY with the request that this topic be included on the agenda of the next WTO General Council.<sup>102</sup>

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<sup>94</sup> *Ibidem*.

<sup>95</sup> *Ibidem*.

<sup>96</sup> *Ibidem*.

<sup>97</sup> See P. Bjelić, *Svetska trgovinska organizacija*, op. cit., 188.

<sup>98</sup> See also Ratomir Milikić, “Članstvo Jugoslavije u Savetu Evrope – istorijski osvrt”, *Regulisanje otvorenih pitanja između država sukcesora SFRJ* (Eds. D. Dimitrijević et al.), Institut za međunarodnu politiku i privredu, Beograd, 2013, 465.

<sup>99</sup> See P. Bjelić, *Svetska trgovinska organizacija*, op. cit., 188.

<sup>100</sup> UN General Assembly Resolution No. A/RES/55/12, 10 November 2000: [https://treaties.un.org/doc/source/docs/A\\_RES\\_55\\_12-Eng.pdf](https://treaties.un.org/doc/source/docs/A_RES_55_12-Eng.pdf), 14. 5. 2024.

<sup>101</sup> Accession of the FRY, Request for Accession, WT/ACC/FRY/1, 24 January 2021.

<sup>102</sup> *Ibidem*.

In February 2001, the WTO General Council established the Working Party on the Accession of FRY,<sup>103</sup> which signalled commencement of the first steps in the accession process of FRY. However, the eventual dissolution of the state union of Serbia and Montenegro added another layer of complexity, resulting in separate accession applications for each republic. On 23 December 2004, the Director-General received a communication that the Government of the Republic of Serbia and the Government of the Republic of Montenegro had decided to apply individually for accession to the WTO. On the same occasion, the Council of Ministers of Serbia and Montenegro requested for the application lodged by the FRY in 2001 to be considered withdrawn,<sup>104</sup> and the two independent states submitted their applications separately.<sup>105</sup> This was followed by the WTO General Council's establishment of the Working Parties on the Accession of Montenegro and on the Accession of Serbia in February 2005.<sup>106</sup>

#### PENDING ARTICLE XII ACCESSION PROCESSES OF THE FORMER YUGOSLAV REPUBLICS

As of June 2024, there are 36 states or separate customs territories which have successfully completed their accession negotiations and become WTO Members through the Article XII Accession Process, raising the total WTO membership to 164.<sup>107</sup> At present, there are 24 ongoing Article XII Accession Processes.<sup>108</sup> It is worth restating that among the countries currently undergoing accession, Serbia and Bosnia and Herzegovina stand out as the only former Yugoslav states remaining outside of the WTO system. Over the years, the Article XII Accession Processes appears to have become lengthier.<sup>109</sup> Below (Table 3) presents the comparison of accession periods for all six former Yugoslav States.

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<sup>103</sup> GATT Council, Minutes of Meeting held in the Centre William Rappard on 8 and 9 February 2001, WT/GC/M/63, 2 March 2001, 6.

<sup>104</sup> Working Party on the Accession of Serbia and Montenegro – Accession of Serbia and Montenegro – Communication from Serbia and Montenegro, WT/ACC/SCG/3, 23 December 2004.

<sup>105</sup> As contained in the WTO documents WT/ACC/CGR/1 (Montenegro) and WT/ACC/SRB/1 (Serbia).

<sup>106</sup> As contained in WTO document WT/GC/M/92 from the General Council meeting held on 15 February 2005. See also Sanja Jelisavac-Trošić, Stevan Rapačić, “Status and prospects of Serbia's accession to the world trade organization”, *Međunarodni problemi*, No. 1, Vol. 67, 2015, 128–147, 130–134.

<sup>107</sup> See WTO, Members and Observers, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm), 14.05.2024; WTO Accessions, [https://www.wto.org/english/thewto\\_e/acc\\_e/acc\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/acc_e.htm), 14. 5. 2024.

<sup>108</sup> See WTO, Summary Table of Ongoing Accessions, [https://www.wto.org/english/thewto\\_e/acc\\_e/status\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/status_e.htm), 14. 5. 2024.

<sup>109</sup> S. Jelisavac-Trošić, S. Rapačić, *op. cit.*, 135.

Table 3

No.	Country	Application for Membership <sup>110</sup>	Date of Accession	Accession Duration
1.	Slovenia	9 June 1992	30 October 1994	2 years, 4 months, 22 days
2.	Croatia	23 September 1993	30 November 2000	7 years, 2 months, 8 days
3.	North Macedonia	30 November 1994	4 April 2003	8 years, 4 months, 6 days
4.	Bosnia and Herzegovina	11 May 1999	/	Ongoing
5.	Montenegro	23 December 2004	29 April 2012	7 years, 4 months, 7 days
6.	Serbia	23 December 2004	/	Ongoing

Source: World Trade Organization, <https://www.wto.org/>, 14. 5. 2024.

Serbia's accession process has seen slow progress since its last Working Party meeting in 2013.<sup>111</sup> The most notable unresolved issue involves Serbia's Law on Genetically Modified Organisms, which prohibits their trade and growth within the country, a policy that is not compliant with WTO rules.<sup>112</sup> Additionally, the Serbian negotiating team has reportedly encountered difficulties in concessions negotiations with several WTO Members, leading to a stalemate.<sup>113</sup> Similarly, Bosnia and Herzegovina's accession process appears not to be progressing faster. Its Working Party has also met thirteen times, with the last meeting held in 2018.<sup>114</sup> For both countries, accession to the WTO is a prerequisite for their European Union membership.<sup>115</sup> However, the recurring sentiment regarding the WTO's

<sup>110</sup> Date of the reception of the request.

<sup>111</sup> See WTO, Serbia, [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_serbia\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_serbia_e.htm), 14. 5. 2024.

<sup>112</sup> Marko Jovanović, "Krizna Svetske trgovinske organizacije i pristupanje Srbije", *Pravo Svetske trgovinske organizacije* (Eds. S. Đorđević, M. Jovanović), Pravni fakultet Univerziteta u Beogradu, 2019, 272.

<sup>113</sup> S. Jelisavac-Trošić, S. Rapaić, op. cit., 128–147, 130–134.

<sup>114</sup> See WTO, Bosnia, [https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_bosnie\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_bosnie_e.htm), 14. 5. 2024.

<sup>115</sup> See European Commission, Serbia – Membership status, [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/serbia\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/serbia_en), 14. 5. 2024; European Commission, Bosnia and Herzegovina – Membership status, [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/bosnia-and-herzegovina\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/bosnia-and-herzegovina_en), 14. 5. 2024. See also Predrag Bjelić, "Značaj učlanjenja Srbije u Svetsku trgovinsku organizaciju za proces pregovora sa Evropskom unijom", Policy Brief, Evropski

existential crisis in recent years should not be overlooked when assessing the pace of the accession processes in general.<sup>116</sup>

#### CONCLUDING REMARKS

Using the example of the former Yugoslavia, this article illustrated how the issue of State succession was interpreted and applied in the case of membership in GATT, and later in the WTO. In theoretical terms, the discussion delved into general international law and the interpretation of GATT General Council meeting notes on the topic. The article aimed to present the developments characterizing Yugoslavia's accession, membership, and suspension of its membership in GATT, as well as FRY's assertion of identity and continuity with respect to SFRY before the WTO.

The article further allowed for drawing the following observations. There is a consensus under general international law, inspired by State practice from the period of decolonialisation, that a "new" State needs to apply for membership anew, while a "continuing" one succeeds into the predecessor's membership. This is particularly true when a formalized accession process has been established in the international organization's constituting instruments, which is precisely the case with the WTO and its Article XII of the Marrakesh Agreement. Unlike the situation of Russia and the USSR, upon Yugoslavia's dissolution, FRY's claim of continuity before both the UN and WTO encountered objections from other former Yugoslav

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pokret u Srbiji, 3/2015; Predrag Bjelić, Ivana Popović Petrović, "Serbia Internationally: International Trade and Integrations", *The Geography of Serbia. World Regional Geography Book Series* (Eds. E. Manić, V. Nikitović, P. Đurović), Springer, 2022.

<sup>116</sup> See e.g. Le Monde, The decline of the WTO, a threat to global stability, [https://www.lemonde.fr/en/opinion/article/2022/12/28/the-decline-of-the-wto-a-threat-to-global-stability\\_6009406\\_23.html](https://www.lemonde.fr/en/opinion/article/2022/12/28/the-decline-of-the-wto-a-threat-to-global-stability_6009406_23.html), 28 December 2022, 14. 5. 2024. See also with respect to Serbia's accession, M. Jovanović, "Krizna Svetske trgovinske organizacije i pristupanje Srbije", *Pravo Svetske trgovinske organizacije* (Eds. S. Đorđević, M. Jovanović), Pravni fakultet Univerziteta u Beogradu, 2019. In general, with respect to WTO "crisis", see Rémi Bachand, "What's Behind the WTO Crisis? A Marxist Analysis", *European Journal of International Law*, Issue 3, Vol. 31, 2020; Aseema Sinha, "Understanding the 'crisis of the institution' in the liberal trade order at the WTO", *International Affairs*, Issue 5, Vol. 97, 2021; Patrick Low, "The WTO in Crisis: Closing the Gap between Conversation and Action or Shutting Down the Conversation?", *World Trade Review*, No. 3, Vol. 21, 2022; Zdenek Drabek, "Is the WTO terminally ill? Threats to the international trading system", *Asia and the Global Economy*, Issue 1, Vol. 4, 2024. On the effects of the WTO accession, see Todd Allee, Jamie E. Scalera, "The Divergent Effects of Joining International Organizations: Trade Gains and the Rigors of WTO Accession", *International Organization*, Issue 2, Vol. 66, 2012; Chiedu Osakwe, "Contributions and lessons from WTO accessions: the present and future of the rules-based multilateral trading system", in *WTO Accessions and Trade Multilateralism: Case Studies and Lessons from the WTO at Twenty* (Eds. U. Dadush, C. Osakwe), Cambridge University Press, Cambridge, 2015.



republics, as well as from the EC and the US, which led to FRY's need to re-apply for membership in both organizations.

The coinciding occurrence of GATT's transition to the WTO and Yugoslavia's disintegration into its six republics resulted in a situation whereby only Slovenia managed to join as an original GATT Contracting Party without extensive negotiations. Croatia, Montenegro, and FYROM had to pursue accessions under Article XII of the WTO Marrakesh Agreement, achieving membership soon after. As of 2024, Serbia and Bosnia and Herzegovina have been in the process of WTO accession for nearly 20 and 25 years, respectively.

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## “SUKCESIJA” ČLANSTVA JUGOSLAVIJE U GATT-U I SVETSKOJ TRGOVINSKOJ ORGANIZACIJI

### Rezime

Članak ispituje kako je pitanje sukcesije bilo tumačeno i primenjivano u slučaju članstva u Opštem sporazumu o carinama i trgovini (GATT) i Svetskoj trgovinskoj organizaciji (STO) bivših jugoslovenskih republika, fokusirajući se na navode Savezne Republike Jugoslavije (SRJ) o identitetu i kontinuitetu i reakcije drugih država i međunarodnih organizacija. Članak ima za cilj da (1) pruži istorijski pregled pristupanja Jugoslavije, članstva i suspenzije njenog članstva u GATT-u, kao i tvrdnje SRJ-a o identitetu i kontinuitetu u odnosu na Socijalističku Federativnu Republiku Jugoslaviju (SFRJ) pred STO-om; (2) analizira pravne argumente i političke faktore koji su uticali na odluke tela GATT-a i STO-a u vezi sa statusom SRJ-a; i (3) upoređi procese pristupanja i ishode šest bivših jugoslovenskih republika u okviru STO-a. Navodi SRJ o kontinuitetu odbijeni su kako od strane GATT-a tako i STO-a, odražavajući stav UN-a, koji je smatrao SRJ novom državom koja mora ponovo aplicirati za pristupanje. Istovremeno, tranzicija iz GATT-a u STO poklopila se sa pojavom šest različitih novih država iz bivše Jugoslavije, pri čemu je svaka pratila jedinstvenu putanju i vremenski okvir za pristupanje GATT-u/STO-u.

*Cljučne reči:* Jugoslavija, GATT, STO, članstvo, sukcesija, pristupanje

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