

Kaleidoscope

Russia Takes Over the Soviet Union's Seat at the United Nations

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I. Background

The recent disintegration of the former Soviet Union and its splintering into more than a dozen independent States has confronted the international community with a host of legal problems. Among these is the question of the assumption by Russia of the Soviet Union's seat in the United Nations, including the Soviet permanent seat in the UN Security Council.¹ This note is devoted to a legal analysis of these aspects of the transformation, in December 1991, of the Soviet Union into the Commonwealth of Independent States.

Prior to the upheavals of 1991, the Soviet Union consisted of fifteen republics of which two – the Ukraine and Byelorussia – were original members of the United Nations.² As one of the

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¹ Similar membership problems are likely to arise with regard to Yugoslavia where, as of the time of writing (May 1992), four of the six constituent republics of that country – namely, Slovenia, Croatia, Bosnia-Herzegovina and Macedonia – have proclaimed their independence and, with the exception of the latter, have been admitted, on 22 May 1992, to the United Nations (*The New York Times*, 23 May 1992, A4, col. 1), thus leaving only Serbia and Montenegro as claimants of the continuing existence of Yugoslavia.

On 27 April 1992, Serbia and Montenegro proclaimed the establishment of a new and truncated Yugoslavia, comprising the territory (102,000 square kilometres) and population (10.5 million) of those two republics, as compared with 256,000 square kilometres and a population of 23 million of the old Yugoslavia. Under its new Constitution, the country preserves the name of Yugoslavia and its flag (without the red star of the communist era [*The New York Times*, 28 April 1992, A1, col. 3]). 'Serbian officials say the new Yugoslavia plans to claim the international privileges of its predecessor, including ... membership in ... the United Nations.' (*The New York Times*, 13 April 1992, A1, col. 1). However, the United States and the European Community have withheld recognition of 'the Serbian-Montenegrin Yugoslavia' partly in protest against the Serbs' offensive in Bosnia-Herzegovina (*The New York Times*, 29 April 1992, A4, col. 5) and the Permanent Representative of the US to the UN even questioned the UN membership status of the 'so-called Federal Republic of Yugoslavia' (*The New York Times*, 23 May 1992, A4, col. 1), without, however, formally challenging its right to occupy the Yugoslav seat.

International recognition of Macedonia has so far been withheld due to Greece's objection, on historical grounds, to the use of the name 'Macedonia' by the new State (*The New York Times*, 7 May 1992, A7, col. 3).

² Their UN membership made little sense prior to 1991 from the *legal* point of view. Since the USSR itself (incorporating as it did also the Ukraine and Byelorussia) was considered a subject of

Sponsoring Powers of the San Francisco Conference (April-June 1945) that established the United Nations, the USSR also became a permanent member of the UN Security Council.³ Of the fifteen Republics, Russia was by far the largest and most populous.⁴

Following the failed *coup d'état* in Moscow in August 1991, the independence of the three Baltic republics of the Soviet Union (Lithuania, Latvia and Estonia) was recognized by a large number of States, including most of the western European countries and the United States. Bowing to the inevitable, on 6 September 1991, the State Council of the Soviet Union released these three republics from its ranks and recognized their independence.⁵ On 17 September 1991, they were admitted to the United Nations.⁶

The remaining twelve republics, having in turn all proclaimed their independence by December 1991, then proceeded, first at the tripartite meeting of Russia, Ukraine and Belarus (the new name of the former Byelorussia) held at Minsk on 8 December 1991, and subsequently at the meeting of eleven republics,⁷ held in Alma-Ata (the capital of Kazakhstan) on 21 December 1991, to declare that the Soviet Union had ceased to exist as a subject of international law and that they would henceforth constitute the Commonwealth of Independent States. In the preamble to the two declarations adopted in Minsk by the leaders of Belarus, Russia and Ukraine, the three signatories stated that 'the USSR, as a subject of international law and a geopolitical reality, is ceasing its existence'.⁸ Likewise, the eleven participating republics at the Alma-Ata conference stated in the fifth operative paragraph of the first of five declarations adopted by them that 'with the formation of the Commonwealth of Independent States, the Union of Soviet Socialist Republics ceases to exist'.⁹ Furthermore, in Article 1 of the fifth declaration, entitled 'On UN Membership', the eleven signatories agreed that

international law and was a member of the United Nations, there was no legal justification for the UN membership of any of its constituent republics, just as none of the states of the United States ever sought or acquired UN membership. If, on the other hand, the Ukraine and Byelorussia were considered independent nations for the purpose of UN membership, then all the other constituent republics of the USSR – but not the Soviet Union itself – should have been considered as subjects of international law and as such should have been admitted to the UN. However, political rather than legal considerations carried the day: US President Roosevelt and British Prime Minister Churchill, in an effort to allay the suspicions of Soviet Premier Stalin that the future international organization would be totally dominated by the western powers, consented at the Yalta summit conference of February 1945 to the UN membership of the Ukraine and Byelorussia, thus assuring the Soviet Union of three votes in the UN General Assembly. For a criticism of the situation thus created, see Hazard, 'Soviet Republics in International Law', in R. Bernhardt (ed.) *Encyclopedia of Public International Law*, Instalment 10 (1987) 418, 420-3 (including references).

³ See Article 23(1) of the UN Charter.

⁴ The Russian republic's territory (17,075 million square kilometres) constituted 76% of the total territory of 22.4 million square kilometres of the Soviet Union and its population (148 million) constituted 51% of the total population of 288.7 million of the Soviet Union. If one takes into account that five of the fifteen republics of the former Soviet Union (Ukraine, Belarus and the three Baltic republics) with a combined population of 70.1 million and a territory of 986,000 square kilometres were already members of the UN at the time of the Soviet Union's dissolution, Russia's share in the population of 218.6 million of the remaining ten republics rises to almost 68% and its share in the territory of those republics to almost 80%.

⁵ *The New York Times*, 7 September 1991, A4, col. 1.

⁶ 28 *UN Chronicle*, No. 4 (December 1991) 49.

⁷ Georgia attended the Alma-Ata conference as an observer and has not yet joined the Commonwealth of Independent States.

⁸ *The New York Times*, 9 December 1991, A8, col. 4.

⁹ *The New York Times*, 22 December 1991, Sect. 1, Part 1, p. i2, col. 3.

‘Member states of the Commonwealth support Russia in taking over the USSR membership in the UN, including permanent membership in the Security Council.’¹⁰

The fate of the Soviet Union was finally sealed on 25 December 1991 with the resignation of its President, Mikhail S. Gorbachev.¹¹ One day earlier, on 24 December 1991, the Permanent Representative of the USSR to the United Nations, Ambassador Y. Vorontsov, transmitted to the Secretary-General of the United Nations a letter from the President of the Russian Federation, Boris N. Yeltsin, stating that:

the membership of the Union of Soviet Socialist Republics in the United Nations, including the Security Council and all other organs and organizations of the United Nations system, is being continued by the Russian Federation (RSFSR) with the support of the countries of the Commonwealth of Independent States. In this connection, I request that the name ‘Russian Federation’ should be used in the United Nations in place of the name ‘the Union of Soviet Socialist Republics’. The Russian Federation maintains full responsibility for all the rights and obligations of the USSR under the Charter of the United Nations, including the financial obligations. I request that you consider this letter as confirmation of the credentials to represent the Russian Federation in United Nations organs for all the persons currently holding the credentials of representatives of the USSR to the United Nations.¹²

The Secretary-General thereupon circulated Mr. Yeltsin’s request with Ambassador Vorontsov’s cover letter among the UN membership, adding that he had ‘informed the President of the General Assembly and of the Security Council of these letters, as they relate to matters of interest to all organs and organizations of the United Nations system...’¹³

In the absence of any objection, the delegation of the Russian Federation took over the Soviet seat in the UN General Assembly, in the Security Council and in other organs of the United Nations, with the appropriate changes of the name-plates and flag having been undertaken by the UN Secretariat. No new credentials were presented by Ambassador Vorontsov in his new capacity as the Permanent Representative of the Russian Federation. On 31 January 1992 Russian President Yeltsin himself was in the Russian Federation’s seat in the Security Council during the ‘summit meeting’ of the Council attended by heads of state and government.¹⁴

In addition to Russia, two other members of the Commonwealth of Independent States (Ukraine and Belarus) had already been, as mentioned above, members of the United Nations.¹⁵ The remaining eight members of the Commonwealth of Independent States were admitted to the United Nations on 2 March 1992.¹⁶ Georgia was admitted to the UN on 31 July 1992, under General Assembly resolution A/46/241.

10 *The New York Times*, 23 December 1991, A10, col. 1.

11 *The New York Times*, 26 December 1991, A1, col. 5.

12 See Appendix to UN Doc. 1991/RUSSIA of 24 December 1991.

13 UN Doc. 1991/RUSSIA, 1.

14 See UN Doc. S/PV.3046 of 31 January 1992, with President Yeltsin’s statement on pp. 42-8 there.

15 Under the fifth Alma-Ata declaration of 21 December 1991, the eleven participants, having expressed ‘satisfaction that the Republic of Byelorussia and Ukraine continue to be UN members as sovereign independent states’, agreed, in Article 2 of the said declaration, that ‘the Republic of Byelorussia, the Russian Federation and Ukraine will help other member states of the Commonwealth settle problems connected with their full membership in the UN and other international organizations’. (*The New York Times*, 23 December 1991, A10, col. 1).

16 *The New York Times*, 3 March 1992, A3, col. 1. The republics thus admitted were, in alphabetical

Let us now examine the legal problems arising in connection with the foregoing facts.

II. Does the Change of Name Affect a State's Membership in the United Nations?

During the past decades there have been numerous instances of member States changing their names as a result of constitutional (or unconstitutional) changes of their form of government. On none of those occasions did such a change of name *per se* affect the membership status of the State in question.

Thus, when some monarchies became republics (e.g. Egypt in 1952, Iraq in 1958 and Libya in 1968), the change from a royalist to a republican form of government, with the resulting name changes, did not entail any changes in the membership status of those countries. Likewise, when some member States decided to change their names, without necessarily changing their form of government (e.g., Congo-Leopoldville to Zaire in 1971, Ceylon to Sri Lanka in 1972; Dahomey to Benin in 1975; the Kingdom of Cambodia to Khmer Republic in 1970, then to Democratic Kampuchea in 1979 and again to Cambodia in 1990; Upper Volta to Burkina Faso in 1984;¹⁷ Burma to Myanmar in 1989), only certain administrative measures, to reflect the requirements of the English alphabet, were deemed necessary (such as changing the name-plate and flag of the State in question and moving its seat in the General Assembly and in any other organ of which it may have been a member).

Consequently, the change of name *per se* from 'Soviet Union' to 'Russian Federation' does not affect the question of the UN membership of Russia if it can be established that there is continuity and identity, for the purposes of international law, between the former Soviet Union and the Russian Federation.

III. Is The Russian Federation the Continuation of the Soviet Union?

In the history of the United Nations there have been a number of instances in which member States of the Organization lost a portion of their territorial domain as a result of the secession of a part of their population. The general practice of the United Nations in these instances has been to regard the 'parent' State's membership in the Organization as unaffected by the loss of a part of its territory, while requiring the secessionist province or provinces to apply for UN membership.

The question first arose in 1947 as a result of the partitioning of India on its accession to independence into two States – India and Pakistan.¹⁸ That development led to a memorandum by the United Nations Secretariat which stated in part that:

From the viewpoint of international law, the situation is one in which a part of an existing State breaks off and becomes a new State. On this analysis, there is no change in the international status of India; it continues as a State with all the treaty rights and obligations, and consequently, with all the rights and obligations of membership in the United Nations.

order, Azerbaijan, Armenia, Kazakhstan, Kirghizia, Moldova, Tajikistan, Turkmenistan and Uzbekistan.

¹⁷ As a non-permanent member of the UN Security Council at the time, Upper Volta presided over the Council in August 1984 and again, under its new name of Burkina Faso, in October 1984.

¹⁸ Under the Indian Independence Act, (10 and 11 Geo. 6, c. 30), the 'Independent Dominions' of India and Pakistan were 'set up in India' on 15 August 1947.

The territory which breaks off, Pakistan, will be a new State; it will not have the treaty rights and obligations of the old State, and it will not, of course, have membership in the United Nations.¹⁹

When the representative of Argentina in the First (Political) Committee of the General Assembly objected to this procedure on the grounds that it 'constituted an unfounded discrimination, since both Dominions should have been regarded as original Members, or alternatively, both should have been considered new Members',²⁰ the First Committee referred the matter to the Sixth (Legal) Committee. The latter approved the following reply to the First Committee:

1. As a general rule, it is in accordance with principle to assume that a State which is a Member of the United Nations does not cease to be a Member from the mere fact that its constitution or frontiers have been modified, and to consider the rights and obligations which that State possesses as a Member of the United Nations as ceasing to exist only with its extinction as a legal person internationally recognized as such.
2. When a new State is created, whatever the territory and the population which compose it, and whether these have or have not been part of a State Member of the United Nations, this new State cannot, under the system provided for by the Charter, claim the status of Member of the United Nations unless it has been formally admitted as such in conformity with provisions of the Charter.
3. Each case must, however, be judged on its merits.²¹

In the event, the Secretariat's position, as essentially upheld by the Sixth Committee, was accepted by the General Assembly. Thus India's membership in the United Nations was unaffected by the constitutional and territorial changes of 1947 (it is still listed as an *original* member of the Organization), while Pakistan was admitted as a new Member of the United Nations on 30 September 1947.

Some fourteen years later a somewhat similar problem arose in connection with the secession of Syria from the United Republic which had been formed in 1958 as a result of the merger of Egypt and Syria. When those two countries in February 1958 united to become a single State, the Foreign Minister of the United Arab Republic stated that 'the Union henceforth is a single Member of the United Nations.'²² Syria's secession in September 1961

¹⁹ Reproduced in 2 *Yearbook of the International Law Commission 1962* (1964) 101. See also M. M. Whiteman, 13 *Digest of International Law* (1968) 201.

²⁰ UN GAOR, 2nd session, 1st Comm., 59th meet., 24 September 1947, 5.

²¹ UN GAOR, 2nd session, 6th Comm., 43rd meet., 7 October 1947, 38 ff.

²² UN Doc. S/3976 of 1 March 1958. According to one writer, 'the UAR does not seem to have been considered by ... [the United Nations] as a new member and, consequently, it was not required to file a formal application for membership... If the UAR had been a Union involving the extinction of the personalities of Egypt and Syria, then ... it would have had to apply for membership of the United Nations in the normal manner under Article 4 of the Charter, since a new State had in fact been created. It seems, however, that the [UN] Secretariat took the view that the personalities of Egypt and Syria were not extinguished but were continuing in a combined form.' (Cotran, 'Some Legal Aspects of the Formation of the United Arab Republic and the United Arab States', 8 *ICLQ* [1959] 346, 363-4.

By contrast, it would appear that the merger of Tanganyika and Zanzibar into Tanzania in 1964 and the unification of the two German States and of the two Yemens (both in 1990), resulting in one UN membership for each union where previously there had been two members, were all in fact the absorption by the stronger partners (Tanganyika, the Federal Republic of Germany, the Republic of Yemen, respectively) of the weaker partners, thus amounting to the extinction of the latter as

did not affect the UAR's membership,²³ for as one commentator asserted, 'inasmuch as the old Syria had been a member, ... the new was, in effect, reasserting a lapsed personality. 'The emphasis in the Syrian case was on continuity rather than disruption.'²⁴

Likewise, when Bangladesh in 1971 seceded from Pakistan, the latter's membership in the UN remained unaffected by the loss of its eastern province, while Bangladesh later applied for and obtained UN membership in 1974.

At first glance it would appear that Russia's assumption of the UN seat of the former Soviet Union fully conforms to past practice. India, the United Arab Republic and Pakistan, for example, were all considered *identical* to the original 'parent' State and thus entitled to *continue* their UN membership unaffected by the loss of a part of their territory and population. The applicable legal construction rests on the assumption that the international legal personality of the State in question is preserved, notwithstanding its loss of territory and population. By contrast, if the new State is perceived as lacking such identity and continuity with its predecessor and as representing a new international personality, the applicable rules will be those of the law of succession. As far as membership of international organizations (including the United Nations) is concerned, the practical meaning of all this is that the new State so perceived will have to be admitted to membership in the United Nations in accordance with the requirements of Article 4 of the Charter,²⁵ as were Pakistan in 1947 and Bangladesh in 1974.

However, a closer examination of the events that took place in December 1991, leading to the dissolution of the Soviet Union, would appear to reveal important differences between the Pakistan and Bangladesh situations, on the one hand, and the Soviet-Russian situation of 1991, on the other. In the latter case all the constituent republics of the former Soviet Union adamantly and unambiguously asserted that the international legal personality of the Soviet Union had been extinguished; indeed, their very assertion of their independence rested on the claim, first articulated in the Minsk declaration of 8 December 1991,²⁶ and subsequently repeated in the first Alma-Ata declaration of 21 December 1991,²⁷ that the Soviet Union, as a subject of international law, had ceased to exist.

One might take the view that the three participants of the Minsk conference had no right to dissolve the Soviet Union (but at most a right of secession for themselves) and that, consequently, at least the nine Soviet republics that did not participate in that conference still constituted the 'Soviet Union'.²⁸ Yet the simple fact remains that on 21 December 1991, eleven of those republics declared in Alma-Ata (with the twelfth republic – Georgia – attending as an observer) that 'with the formation of the Commonwealth of Independent States

subjects of international law.

23 On the question of Syria's renewed seating in the United Nations, without resort to the admission procedure laid down in Article 4 of the Charter (on the theory that Syria, as an original member of the UN, did not require re-admission and was merely 'resuming' her former status within the Organization), see M.M. Whiteman, 13 *Digest of International Law* (1968) 204-5 and Young, 'The State of Syria: Old or New', 56 *AJIL* (1962) 482-8.

24 D.P. O'Connell, 2 *State Succession in Municipal Law and International Law* (1967) 197.

25 *Ibid.*, 187.

26 See *supra* note 8.

27 See *supra* note 9.

28 In the present view, Russia – as one of the three signatories of the Minsk declaration – would in any event have been precluded ('estopped') from asserting the continuing existence of the Soviet Union after 8 December 1991. However, for present purposes it is not deemed necessary to examine this question in greater depth.

the Union of Soviet Socialist Republics *ceases to exist*²⁹. In other words, the precondition for the emergence, on the international plane, of the various independent States, loosely associated within the framework of the new Commonwealth, was the disappearance of the former Soviet Union as an international legal personality and its extinction as a subject of international law.

The logical legal conclusion that should have been drawn from these facts thus seems to be clear: with the demise of the Soviet Union itself, its membership in the UN should have automatically lapsed and Russia should have been admitted to membership in the same way as the other newly-independent republics (except for Belarus and Ukraine). As already stated by the UN General Assembly's Sixth Committee in 1947, the rights and obligations of membership of a State cease to exist '*with its extinction as a legal person internationally recognized as such*'.³⁰

Apparently, at some point between 21 and 24 December 1991, there developed a recognition of this problem and of the resulting implications for Soviet membership in the UN in general, and in the Security Council in particular. It would seem that this belated realization also prompted the dispatch on 24 December 1991 (some 24 hours *before* Soviet President Gorbachev's resignation³¹) of Soviet Ambassador Vorontsov's letter asserting, on behalf of Russian President Yeltsin, that Russia was '*continuing*' the Soviet membership in the UN.³² This claim of the Russian Federation – made some three days (and possibly sixteen days) after the dissolution of the Soviet Union – that it was '*continuing*' the legal existence and hence the UN membership of the latter, must thus be considered – irrespective of its obvious *political* merits – as being seriously flawed from the legal point of view.

IV. Is Russia Entitled to the Soviet Permanent Seat in the UN Security Council?

The conclusion arrived at in the previous section – if adhered to – might have also brought about the elimination of Soviet (and subsequently Russian) permanent membership in the UN Security Council. Such an outcome would have clearly precipitated a serious constitutional crisis for the United Nations: the resulting situation would have violated the explicit provisions of Article 23(1) of the UN Charter, as amended, under which the Council should consist of five permanent and ten non-permanent members.³³ It is reasonable to assume that considerations of this nature played a major role in prompting the Secretary-General and the UN membership to accede to Russia's claim – however flawed legally – to be the '*continuation*' of the Soviet Union.

Once this claim was accepted, it followed logically that the Soviet permanent seat in the Security Council also belonged to Russia. It is of course true that Article 23(1) designates the five permanent members of the Council (including 'the Union of Soviet Socialist Republics') by name. But here, again, it would be absurd to assume that a mere change in the name of a permanent member could bring about the termination of its seat in the Council. This provision of Article 23(1) must thus be read as referring to the names of the permanent members *at the*

²⁹ See *supra* note 9; emphasis added.

³⁰ See *supra* note 21; emphasis added.

³¹ See *supra* note 11.

³² See *supra* note 12.

³³ The disappearance of a permanent member of the Security Council would have had constitutional implications also beyond the activities of the Security Council itself: under Article 86(1) of the Charter a permanent member of the Security Council is also automatically seated on the Trusteeship Council. Under Article 108 the ratification by all five permanent members of the Security Council is one of the conditions required for a Charter amendment to take effect.

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time of the Charter's adoption and subject to subsequent name changes. This, in fact, was the practice adopted by the United Nations in 1971 when the 'People's Republic of China' replaced the 'Republic of China' (another permanent member of the Security Council). Amendment of the list of names contained in Article 23(1) was deemed unnecessary.

V. Conclusion

In a newspaper article written by Prof. Richard N. Gardner of Columbia Law School and Toby Trister Gati, senior vice-president of the US UN Association, entitled 'Russia Deserves the Soviet Seat'³⁴ it was correctly pointed out that '[i]t makes sense for Russia to assume the Soviet Union's rights and obligations at the UN, since Russia exercises authority over 150 million people and controls some 75 percent of the land mass and valuable resources of the Soviet Union'. The authors were also correct that giving Russia the Soviet seat at the UN does also 'avoid a constitutional crisis that could paralyse the UN if the [Security] Council seat were left vacant or if other members pressed for other changes in the Council'.³⁵

Their article was published on 19 December 1991, two days *before* the Alma-Ata conference, at a time when the Soviet Union arguably still existed as a legal entity. While the authors' political reasoning is still eminently valid, the developments that took place between 21 and 24 December 1991, within days after the article's publication, would appear to have somewhat detracted from the legal cogency of their argumentation. Nonetheless, there can be little doubt that for reasons of pragmatic politics and equity alike Russia was the natural candidate for the Soviet seat in the United Nations (including the permanent seat in the Security Council). The correct legal path to this end would have been for all the republics of the Soviet Union except Russia to secede from the union, thus preserving the continuity between the Soviet Union and Russia for UN membership purposes. For reasons of Soviet domestic politics such a solution was apparently not feasible. Thus resulted a practical solution which, while politically the only realistic one, remains legally suspect.

³⁴ *The New York Times*, 19 December 1991, A31, 2.

³⁵ *Ibid.*