

Repertory of Practice of United Nations Organs
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Repertory of Practice of United Nations Organs
Volume I

Articles 5 and 6

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TEXT OF ARTICLE 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

TEXT OF ARTICLE 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

I. INTRODUCTORY NOTE

1. During the period under review, neither the General Assembly nor the Security Council adopted resolutions or decisions initiating procedures under Article 5 or Article 6 of the Charter.
2. Explicit references to Articles 5 and 6, however, were made in connection with adoption of the resolutions 777 (1992) and 821 (1993) of the Security Council, as well as resolutions 47/1 and 47/229 of the General Assembly. References to the Articles in the deliberations relating to these resolutions concerning the participation of the Federal Republic of Yugoslavia (Serbia and

Montenegro) (FRY) in the work of the General Assembly and of the Economic and Social Council are dealt with in the summary of practice.

3. Finally, it should be noted that, in the past, the question of participation of South Africa has been dealt with in several *Supplements* to the *Repertory* with respect to Articles 5 and 6,¹ although ultimately no action was ever taken under those provisions. During the period under review, the General Assembly, noting the end of apartheid in South Africa, noted the intention of South Africa to participate in the work of the United Nations in accordance with the purposes and principles of the Charter, and welcomed South Africa to the community of nations as represented in the General Assembly.²

II. SUMMARY OF PRACTICE

3. By its resolution 777 (1992) the Security Council, considered that the State formerly known as the Socialist Federal Republic of Yugoslavia (SFRY) ceased to exist and that the FRY (Serbia and Montenegro) could not continue automatically the membership of the former SFR; accordingly the FRY, according to the Security Council, should apply for membership in the United Nations.³ At the same time, the Council recommended to the General Assembly, that the FRY should not participate in the work of the Assembly. The Security Council, by its resolution 821 (1993), extended the recommendation with regard to the participation of the FRY in the work of the Economic and Social Council. The General Assembly, in its resolutions 47/1 and 47/229, decided accordingly. Furthermore, in its resolution 48/88 on the situation in Bosnia and Herzegovina the Assembly reaffirmed its resolution 47/1, and urged Members States and the Secretariat in fulfilling the spirit of the resolution, to end the *de facto* working status of Serbia and Montenegro.

4. During the discussions in relation to the adoption of the above resolutions, numerous references were made to Articles 5 and 6, both in the Security Council and in the General Assembly.

5. Some States considered that Security Council resolution 777 (1992) and General Assembly resolution 47/1, while containing no reference to the principles of Membership contained in Articles 4, 5 and 6 of the Charter, nevertheless amounted to a *de facto* expulsion of the FRY from the United Nations.⁴ A number of delegations in both the General Assembly and the Security Council noted that, given the fundamental importance of basic rights of membership relating to questions of admission, participation, suspension or expulsion, such questions must be dealt with the utmost

¹ See *Supplement No. 5*, under the study for Article 5, para. 3, and under the study for Article 6, paras. 5-9 and 12. See also, *Supplement Nos. 5 and 6*, under the study for Article 9, paras. 39-72 and paras. 45-48, respectively [dealing with the question of the rejection of the credentials of the representatives of South Africa by the General Assembly and its Committee on Credentials.

² G A resolution 48/258.

³ Deliberations relating to provisions of these resolutions are also discussed in the study under Article 4.

⁴ See, S/PV.3116, p. 3 (Russian Federation); A/47/PV.7, p. 167 (Kenya); A/47/PV.7, p. 168 (Botswana); A/47/PV.7, p. 172 (Zambia). However, speaking with regard to Security Council resolution 777, one delegation stated that the view that that measure did not mean the expulsion of Yugoslavia from the United Nations: the name-plate "Yugoslavia" would be kept in the General Assembly hall, and the FRY would continue its participation in the work of the United Nations bodies other than the General Assembly. S/PV.3116, p. 13 (China).

care⁵ It was also stated that the procedures envisaged in Articles 5 and 6 had not been followed and consequently the Charter was bypassed.⁶

6. According to other States, provisions of the resolutions of the Security Council and the General Assembly flow inevitably from the determination, by the Security Council, of the fact that FRY (Serbia and Montenegro) was not a continuation of SFRY, and that the resolutions stated the obvious, namely that a country which is not a member of the United Nations cannot participate in the work of the General Assembly.⁷

7. The Legal Counsel took the view that the resolution of the General Assembly neither terminated nor suspended the membership of the former Socialist Federal Republic of Yugoslavia (SFRY) in the United Nations.⁸

⁵ See S/PV.3204, p.7 (Brazil); A/47/PV.7, p. 158-160 and 162 (Ghana, noting that the Charter should guide all decisions of the United Nations: in the opinion of the delegation, strict adherence to those provisions, particularly where membership of the Organization was concerned, was the only sure source of protection for small and otherwise vulnerable States), p. 188 (Mexico).

⁶ See, S/PV.3116, p. 3 (Russia); S/PV.3116, p. 7 (India, noting, in this light, that the Charter does not authorize the Security Council to recommend to the General Assembly that a country's participation in the Assembly be withdrawn or suspended, an authority belonging to the General Assembly); A/47/PV.7, p. 176 (United Republic of Tanzania, stating that, while the effect of the draft resolution was to deprive Yugoslavia of its membership, its authors preferred not to use the relevant provisions of the Charter or any other law for the achievement of their objective; in the view of that delegation, the United Nations was setting a very dangerous precedent.); A/47/PV.7, pp. 194-95 (Jamaica), and p. 195 (Guyana, stating that it had concern about the lack of a clear legal basis for the resolution; standing as it did against the background of Articles 5 and 6 of the Charter, the important measure should have been, in its view, appropriately clothed with legal argument).

⁷ See, S/PV. 3116, p. 12 (France) and p.13 (United States), *see also* A/47/PV.7, p. 142 (United Kingdom).

⁸ United Nations, *Juridical Yearbook*, 1991, p. 460. Also, United Nations, *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, ST/LEG/7/Rev. 1, para. 89, p. 25 and para. 297, p. 89. At the same time, the Legal Counsel expressed the view that the admission of the Federal Republic of Yugoslavia (FRY) to a membership in the United Nations, in accordance with Article 4 of the Charter of the United Nations, would terminate the situation that had been created by General Assembly resolution 47/1. See A/47/485.