

International Atomic Energy Agency
INFORMATION CIRCULAR

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**COMMUNICATION OF 30 SEPTEMBER 1996 RECEIVED FROM
THE RESIDENT REPRESENTATIVES OF BOSNIA AND HERZEGOVINA,
CROATIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,
AND SLOVENIA TO THE INTERNATIONAL ATOMIC ENERGY AGENCY**

1. On 4 September 1996, the Director General received a letter dated 29 August 1996 from the Resident Representatives of Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Slovenia [regarding certain references to "Yugoslavia" and "the Federal Republic of Yugoslavia (Serbia and Montenegro)" in the Annual Report for 1995 in connection with Agency membership and participation in international treaties] which was distributed in document GC(40)/INF/10. The text of the Director General's reply dated 17 September 1996 to that letter is reproduced in Attachment 1 hereto.
2. On 9 October 1996, the Director General received another letter from the same Resident Representatives dated 30 September 1996 referring to the Director General's letter of 17 September. As requested by the Resident Representatives, the text of this letter is reproduced in Attachment 2.



INTERNATIONAL ATOMIC ENERGY AGENCY
AGENCE INTERNATIONALE DE L'ENERGIE ATOMIQUE
МЕЖДУНАРОДНОЕ АГЕНТСТВО ПО АТОМНОЙ ЭНЕРГИИ
ORGANISMO INTERNACIONAL DE ENERGIA ATOMICA

INFCIRC/529
Attachment 1

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IN REPLY PLEASE REFER TO:
PRIERE DE RAPPELER LA REFERENCE:

DIAL DIRECTLY TO EXTENSION:
COMPOSER DIRECTEMENT LE NUMERO DE POSTE:

1996-09-17

Mesdames, Sir,

I have the honour to refer to your letter of 29 August 1996 regarding certain references to "Yugoslavia" and "the Federal Republic of Yugoslavia (Serbia and Montenegro)" in the Annual Report for 1995 in connection with Agency membership and participation in international treaties. I wish to note the following.

With respect to participation of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the Agency, you will recall that on 24 September 1992 the IAEA General Conference adopted resolution GC(XXXVI)/RES/576 on this matter. This resolution is in line with the similar resolution adopted on 22 September 1992 by the United Nations General Assembly, i.e. A/RES/47/1 which governs the position of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the United Nations.

The operative part of resolution 576 provides that the Federal Republic of Yugoslavia (Serbia and Montenegro) "cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the IAEA" and that it "should apply for membership in the Agency". The only practical consequence the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) "shall not take any further part in the work of the Board and the General Conference".

The resolution does not terminate or suspend Yugoslavia's membership in the Agency. This interpretation is consistent with the interpretation and implementation by the United Nations of the above-mentioned General Assembly resolution. In a letter to the Director General dated 29 September 1992, the United Nations Legal Counsel gave the following interpretation of that resolution:

"... the only practical consequence that the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the General Assembly, its subsidiary organs nor conferences and meetings convened by it. ... The resolution neither terminates nor suspends Yugoslavia's membership in the Organization. ... The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies ..."

As regards participation by the Federal Republic of Yugoslavia (Serbia and Montenegro) in international treaties, neither the United Nations General Assembly resolution 47/1 nor the IAEA General Conference resolution 576 addresses this question. On 29 April 1992, the IAEA Director General received a Note, N 331/92 dated 27 April 1992, from the Permanent Mission of "the Socialist Federal Republic of Yugoslavia (Federal Republic of Yugoslavia)" stating, inter alia, that "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 ... participation in treaties ratified or acceded to by Yugoslavia."

On 26 January 1993, by means of a depositary notification, the Director General brought the content of the above-mentioned statement to the attention of Member States and Parties to the international treaties for which he is depositary. The statement was also communicated to the United Nations which, by a letter dated 3 August 1994, informed the IAEA Secretariat that it was registered with the United Nations.

In the absence of a decision by a competent organ representative of the international community as a whole or by a competent treaty organ with regard to a particular treaty, the Director General as the depositary for certain treaties, cannot do otherwise than to maintain references to Yugoslavia in the status lists for those treaties. This is, of course, without prejudice to succession rights of other successor States in respect of the treaties registered with the IAEA. In fact, acts of succession which they have notified to the IAEA Director General have been duly registered.

The IAEA approach is consistent with that of the United Nations Secretary-General. The United Nations publication "Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties" (ST/LEG/8), issued in 1994, states that resolution A/RES/47/1 is without effect on the capacity of the Federal Republic of Yugoslavia (Serbia and Montenegro) to participate in treaties deposited with the Secretary-General subject to any decision taken by a competent organ representing the international community of States as a whole or by a competent treaty organ with regard to a particular treaty or convention. Further, the United Nations publication "Multilateral Treaties Deposited with the Secretary-General" (ST/LEG/SER.E/14) for 1996 refers to "Yugoslavia" in the status lists of a number of treaties. For example, "Yugoslavia" is shown as having ratified the Vienna Convention on Diplomatic Relations on 1 April 1963; the Vienna Convention on the Law of Treaties on 27 August 1970; and the 1982 United Nations Convention on the Law of the Sea on 5 May 1986. Furthermore, subsequent to the adoption of the above-mentioned resolution of the UN General Assembly "Yugoslavia" is shown as having signed and ratified, on 23 December 1993, the Protocol of 1993 Extending the International Agreement on Olive Oil and Table Olives, 1986, and as having signed on 8 December 1994 the Agreement to Establish the South Centre.

There are other comparable examples in other organizations which can be cited. For example, a recent publication of the World Intellectual Property Organization (ref: 423(E) dated 1 January 1996) regarding the status of the treaties administered by it contains references to "Yugoslavia" as party to several treaties both before and after the adoption of United Nations General Assembly resolution A/RES/47/1.

I should like specifically to address now the data given on page 68 of the Annual Report for 1995. I should point out that the data in the Annual Report for 1995 about the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) are not given in any official capacity, because, as you know, the Director General of the IAEA is not depositary for that Treaty. Thus, the data in the table concerning the Federal Republic of Yugoslavia (Serbia and Montenegro) simply reflects information about the NPT as relevant to the application of the safeguards agreement in the Federal Republic of Yugoslavia (Serbia and Montenegro). In the absence of information to the contrary from the depositaries of the NPT, the IAEA Secretariat has used the latest information available to it in this regard.

Accept, Mesdames, Sir, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Hans Blix', with a stylized flourish at the end.

Hans Blix
Director General

Permanent Mission of Bosnia and Herzegovina
Permanent Mission of the Republic of Croatia
Permanent Mission of the Former Yugoslav Republic of Macedonia
Permanent Mission of the Republic of Slovenia

PERMANENT MISSION OF BOSNIA AND HERZEGOVINA
PERMANENT MISSION OF THE REPUBLIC OF CROATIA
PERMANENT MISSION OF THE REPUBLIC OF MACEDONIA
PERMANENT MISSION OF THE REPUBLIC OF SLOVENIA

30 September 1996

Director General, Excellency,

We have the honour to refer to your letter of 17 September 1996, regarding certain references to "Yugoslavia" and "the Federal Republic of Yugoslavia (Serbia and Montenegro)" in connection with Agency membership and participation in international treaties. We wish to note the following.

With regard to the status of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the IAEA our Governments would like to express their disagreement with the interpretation contained in your letter that "... the only practical consequence the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not take any further part in the work of the Board and the General Conference ..." (i.e. IAEA GC(XXXVI)/RES/576).

It has been the consistent position of our Governments that the Socialist Federal Republic of Yugoslavia has ceased to exist and that no State represents its continuation. This position is fully consistent with relevant United Nations Security Council and General Assembly resolutions as well as with the opinions of the Arbitration Commission of the International Conference on the former Yugoslavia.

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H.E. Dr. Hans Blix
Director General
International Atomic Energy Agency
V I E N N A

In Security Council resolution 777(1992) of 19 September 1992, the Council considered that "the State formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist", that "the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations" and it recommended to the General Assembly that "it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations". In General Assembly resolution 47/1 of 22 September 1992, the Assembly responded to the Security Council's recommendation and decided "that Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations". We would like to recall also the Security Council resolution 1022(1995) of 22 November 1995 in which the Council confirmed with regard to the State formerly known as the Socialist Federal Republic of Yugoslavia "that that State had ceased to exist".

In fact, five successor States have emerged from the dissolution of the SFRY, each with equal rights and duties in respect of international law dealing with the succession of States. Thus, it is incumbent upon Federal Republic of Yugoslavia (Serbia and Montenegro) to apply for membership of the United Nations if it wishes to join this World Organisation in the same manner as the other four successor States have done.

Therefore, the only consistent legal interpretation of those resolutions is that the Federal Republic of Yugoslavia is not a member of United Nations. The same interpretation should mutatis mutandis apply to the IAEA.

Our Governments would like to express their disagreement also with the reference in your letter that "... the Director General as the depository for certain treaties, cannot do otherwise than to maintain references to Yugoslavia in the status lists for those treaties ...". As far as this question is concerned similar arguments as those mentioned above might be put forward. Let us just inform you that there are examples of depositories who have applied the above mentioned resolutions to treaties to which former SFRY was a party by deleting references to Yugoslavia (Council of Europe, Hague Conference on Private International Law, etc.).


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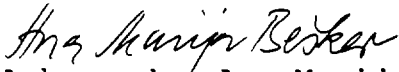
In this connection we would like to reiterate that our Governments do not object the Federal Republic of Yugoslavia participation in those treaties as one of the successor states that has officialy notified its succession, but not on a basis of claim the Federal Republic of Yugoslavia to be a sole State continuing the international personality of the former SFRY.


In this regard we would like to call your attention to the fact that in your letter there is no clear distinction made between the former SFRY and the Federal Republic of Yugoslavia with regard to participation in treaties which is a reason for our concern. Our Governments firmly believe that it is an obligation of depositories to make precise references to states party to treaties to which they have assumed the depository function and accordingly expects from depositories to make an appropriate distinction between the ratification of a treaty by former SFRY which ceased to exist and possible participation of the Federal Republic of Yugoslavia as one of the successor states of former SFRY.

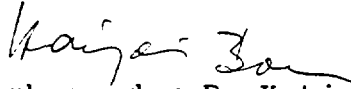
We would like to request your kind assistance in bringing the content of this letter to the attention of all Members of the IAEA, bearing also in mind the official document of the fortieth regular session of the IAEA General Conference, GC(40)/INF/10 of 16 September 1996.

Please accept, Excellency, the assurances of our highest consideration.


Ambassador Tatjana Ljujić-Mijatović
Resident Representative of Bosnia and Herzegovina


Ambassador Ana Marija Bešker
Resident Representative of the Republic of Croatia


Mr. Aleksandar Tavčiovski
Acting Resident Representative of the Republic of Macedonia


Ambassador Dr Katja Boh
Resident Representative of the Republic of Slovenia