INTERNATIONAL COURT OF JUSTICE

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APPLICATION FOR REVISION OF THE JUDGMENT OF 11 JULY 1996 IN THE CASE CONCERNING *APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE (BOSNIA AND HERZEGOVINA* v. *YUGOSLAVIA), PRELIMINARY OBJECTIONS*

(YUGOSLAVIA *v.* BOSNIA AND HERZEGOVINA)

Article 61 of the Statute ¾ Application for revision ¾ Parties' arguments as to whether there is a "fact" which, although in existence at the date of the Court's Judgment of 11 July 1996, was at that time unknown both to the FRY and to the Court ¾ Whether the FRY relies on facts which fall within the terms of Article 61 of the Statute ¾ Characteristics which a "new" fact within the meaning of Article 61 must possess ¾ Admission of the FRY to the United Nations occurred well after the 1996 Judgment and cannot be regarded as such a new fact ¾ FRY's Application for revision is based on the legal consequences which it seeks to draw from facts subsequent to the Judgment ¾ Those consequences cannot, even supposing them to be established, be regarded as facts within the meaning of Article 61 ¾ Situation created by General Assembly resolution 47/1 of 22 September 1992 ¾ Sui generis *position of the FRY was known to the Court and to the FRY when the 1996 Judgment was given ¾ General Assembly resolution 55/12 of 1 November 2000 cannot have changed retroactively this* sui generis *position ¾ Legal Counsel's letter of 8 December 2000 cannot have affected the FRY's position in relation to treaties ¾ Lack of discovery of "some fact" which was "when the judgment was given, unknown to the Court and also to the party claiming revision" ¾ No need to examine whether the other requirements of Article 61 have been satisfied.*

JUDGMENT

Present: *President* GUILLAUME; *Vice-President* SHI; *Judges* RANJEVA, HERCZEGH, KOROMA, VERESHCHETIN, PARRA-ARANGUREN, REZEK, AL-KHASAWNEH, BUERGENTHAL, ELARABY; *Judges* ad hoc DIMITRIJEVIÆ, MAHIOU; *Registrar* COUVREUR.

In the case concerning the Application for revision of the Judgment of 11 July 1996,

between

the Federal Republic of Yugoslavia,

represented by

Mr. Tibor Varady, S.J.D. (Harvard), Chief Legal Adviser at the Federal Ministry of Foreign Affairs of the Federal Republic of Yugoslavia, Professor of Law at the Central European University, Budapest, and Emory University, Atlanta,

as Agent;

Mr. Vladimir Djeriæ, LL.M. (Michigan), Adviser to the Minister for Foreign Affairs of the Federal Republic of Yugoslavia,

as Co-Agent;

Mr. Andreas Zimmermann, LL.M. (Harvard), Professor of Law, University of Kiel, Director of the Walther-Schücking Institute,

as Counsel and Advocate;

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., member of the International Law Commission, member of the English Bar, Emeritus Chichele Professor of Public International Law, University of Oxford,

as Adviser;

Mr. Dejan Ukropina, Attorney from Novi Sad,

Mr. Robin Geiss, Assistant at the Walther-Schücking Institute, University of Kiel,

Mr. Marko Miæanoviæ, LL.M. (New York University),

Mr. Slavoljub Cariæ, Counsellor of the Embassy of the Federal Republic of Yugoslavia in The Hague,

Mr. Miodrag Panèeski, First Secretary of the Embassy of the Federal Republic of Yugoslavia in The Hague,

as Assistants,

and

Bosnia and Herzegovina,

represented by

Mr. Sakib Softiæ,

as Agent;

Mr. Phon van den Biesen, van den Biesen Advocaten, Amsterdam,

as Deputy Agent;

Mr. Alain Pellet, Professor at the University of Paris X-Nanterre, member and former Chairman of the International Law Commission,

as Counsel and Advocate;

Mr. Antoine Ollivier,

Mr. Wim Muller,

as Counsel,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 24 April 2001, the Federal Republic of Yugoslavia (hereinafter referred to as the "FRY") filed in the Registry of the Court an Application dated 23 April 2001 instituting proceedings, whereby, referring to Article 61 of the Statute of the Court, it requested the Court to revise the Judgment delivered by it on 11 July 1996 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections (I.C.J. Reports 1996 (II)*, p. 595).

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was forthwith communicated by the Registrar of the Court to Bosnia and Herzegovina; and in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. By letters of 26 April 2001, the Registrar informed the Parties that the Court had fixed 30 September 2001 as the time-limit for the filing by Bosnia and Herzegovina of its written observations on the admissibility of the Application contemplated by Article 99, paragraph 2, of the Rules of Court.

4. Pursuant to Article 53, paragraph 1, of the Rules of Court, a request by the Republic of Croatia for the pleadings and annexed documents to be made available to it was granted on 6 August 2001 after the views of the Parties had been ascertained.

5. By a letter of 2 August 2001, the Agent of Bosnia and Herzegovina requested the Court to extend to 1 December 2001 the time-limit for the filing by his Government of its written observations. By a letter of 17 August 2001, the Agent of the FRY informed the Court that his Government did not object to this time-limit being thus extended. By letters of 21 August 2001, the First Secretary of the Court in charge of Information Matters, acting Registrar, informed the Parties that the President had extended to 3 December 2001 the time-limit for the filing by Bosnia and Herzegovina of its written observations.

6. On 3 December 2001, within the time-limit thus extended, Bosnia and Herzegovina filed in the Registry its written observations on the admissibility of the FRY's Application.

7. By a letter of 26 December 2001, the Agent of the FRY, referring to Article 99, paragraph 3, of the Rules of Court, requested the Court to afford the Parties a further opportunity of presenting their views in written form on the admissibility of the Application. By a letter of 21 January 2002, the Agent of Bosnia and Herzegovina informed the Court that his Government was not in favour of a second round of written pleadings.

By a letter of 1 March 2002, the Registrar informed the Parties of the Court's decision that a second round of written pleadings was not necessary.

8. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise the right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case; the FRY chose Mr. Vojin Dimitrijeviæ and Bosnia and Herzegovina chose Mr. Sead Hodžiæ. By a letter dated 9 April 2002 and received in the Registry on 6 May 2002, Mr. Hodžiæ informed the Court that he wished to resign from his duties; Bosnia and Herzegovina designated Mr. Ahmed Mahiou to sit in his stead.

9. After ascertaining the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of the Rules of Court, that copies of the written observations of Bosnia and Herzegovina and the documents annexed thereto should be made accessible to the public on the opening of the oral proceedings.

10. Public hearings were held on 4, 5, 6 and 7 November 2002, during which the Court heard the oral arguments and replies of:

For the FRY:	Mr. Tibor Varady, Mr. Vladimir Djeriæ, Mr. Andreas Zimmermann.
For Bosnia and Herzegovina:	Mr. Sakib Softiæ, Mr. Phon van den Biesen, Mr. Alain Pellet.

11. In its Application, the following requests were made by the FRY:

> "For the reasons advanced above the Federal Republic of Yugoslavia requests the Court to adjudge and declare that:
>
> there is a new fact of such a character as to lay the case open to revision under Article 61 of the Statute of the Court.
>
> Furthermore, Applicant is respectfully asking the Court to suspend proceedings regarding the merits of the case until a decision on this Application is rendered."

12. In its written observations, the following submission was made by Bosnia and Herzegovina:

> "In consideration of the foregoing, the Government of Bosnia and Herzegovina requests the Court to adjudge and declare that the Application for Revision of the Judgment of 11 July 1996, submitted by the Federal Republic of Yugoslavia on 23 April 2001, is not admissible."

13. At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the FRY,

at the hearing of 6 November 2002:

> "For the reasons advanced in its Application of 23 April 2001 and in its pleadings during the oral proceedings held from 4 to 7 November 2002, the Federal Republic of Yugoslavia respectfully requests the Court *to adjudge and declare:*
>
> — that there are newly discovered facts of such a character as to lay the 11 July 1996 Judgment open to revision under Article 61 of the Statute of the Court; and
>
> — that the Application for Revision of the Federal Republic of Yugoslavia is therefore admissible."

On behalf of the Government of Bosnia and Herzegovina,

at the hearing of 7 November 2002:

> "In consideration of all that has been submitted by the representatives of Bosnia and Herzegovina in the written and oral stages of these proceedings, Bosnia and Herzegovina requests the Court to adjudge and declare that the Application for Revision of the Judgment of 11 July 1996, submitted by the Federal Republic of Yugoslavia on 23 April 2001, is not admissible."

*

* *

14. In its Application for revision of the 1996 Judgment the FRY relies on Article 61 of the Statute, which provides as follows:

> "1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.
>
> 2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.
>
> 3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.
>
> 4. The application for revision must be made at latest within six months of the discovery of the new fact.
>
> 5. No application for revision may be made after the lapse of ten years from the date of the judgment."

15. Article 61 provides for revision proceedings to open with a judgment of the Court declaring the application admissible on the grounds contemplated by the Statute; Article 99 of the Rules makes express provision for proceedings on the merits if, in its first judgment, the Court has declared the application admissible.

Thus the Statute and the Rules of Court foresee a "two-stage procedure" (*Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 197, para. 8). The first stage of the procedure for a request for revision of the Court's judgment should be "limited to the question of admissibility of that request" (*ibid.*, para. 10).

16. Therefore, at this stage the Court's decision is limited to the question whether the request satisfies the conditions contemplated by the Statute. Under Article 61 of the Statute, these conditions are as follows:

(a) the application should be based upon the "discovery" of a "fact";

(b) the fact, the discovery of which is relied on, must be "of such a nature as to be a decisive factor";

(c) the fact should have been "unknown" to the Court and to the party claiming revision when the judgment was given;

(d) ignorance of this fact must not be "due to negligence"; and

(e) the application for revision must be "made at latest within six months of the discovery of the new fact" and before ten years have elapsed from the date of the judgment.

17. The Court observes that an application for revision is admissible only if each of the conditions laid down in Article 61 is satisfied. If any one of them is not met, the application must be dismissed.

The Court will begin by ascertaining whether there is here a "fact" which, although in existence at the date of its Judgment of 11 July 1996, was at that time unknown both to the FRY and to the Court.

* *

18. In this regard, in its Application for revision of the Court's Judgment of 11 July 1996, the FRY contended the following:

> "The admission of the FRY to the United Nations as a new Member on 1 November 2000 is certainly a new fact. It can also be demonstrated, and the Applicant submits, that this new fact is of such a nature as to be a decisive factor regarding the question of jurisdiction *ratione personae* over the FRY.
>
> After the FRY was admitted as a new Member on 1 November 2000, dilemmas concerning its standing have been resolved, and it has become an unequivocal fact that the FRY did not continue the personality of the SFRY, was not a Member of the United Nations before 1 November 2000, was not a State party to the Statute, and was not a State party to the Genocide Convention . . .
>
> The admission of the FRY to the United Nations as a new Member clears ambiguities and sheds a different light on the issue of the membership of the FRY in the United Nations, in the Statute and in the Genocide Convention."

The FRY further stated that, according to the official listing of 8 December 2000, *"Yugoslavia"* had been listed as a Member of the United Nations since 1 November 2000 and that *"the explanatory note makes it clear that this is a reference to the FRY"*. The FRY concluded that "this is a new fact of such a nature to be a decisive factor, unknown to both the Court and to the Applicant at the time when the Judgment of 11 July 1996 was given".

19. In its oral pleadings, the FRY did not invoke its admission to the United Nations in November 2000 as a decisive "new fact", within the meaning of Article 61 of the Statute, capable of founding its request for revision of the 1996 Judgment. The FRY claimed that this admission "as a new Member" as well as the Legal Counsel's letter of 8 December 2000 inviting it, according to the FRY, "to take treaty actions if it wished to become a party to treaties to which the former Yugoslavia was a party" were

> "events which . . . revealed the following two decisive facts:
>
> (1) the FRY was not a party to the Statute at the time of the Judgment; and
>
> (2) the FRY did not remain bound by Article IX of the Genocide Convention continuing the personality of the former Yugoslavia".

It is on the basis of these two "facts" that, in its oral argument, the FRY ultimately founded its request for revision.

20. The FRY further stressed at the hearings that these "newly discovered facts" had not occurred subsequently to the Judgment of 1996. In this regard, the FRY states that "the FRY never argued or contemplated that the newly discovered fact would or could have a retroactive effect".

21. For its part, Bosnia and Herzegovina maintains the following:

> "there is no 'new fact' capable of 'laying the case open' to revision pursuant to Article 61, paragraph 2, of the Court's Statute: neither the admission of Yugoslavia to the United Nations which the applicant State presents as a fact of this kind, or in any event as being the source of such a fact, nor its allegedly new situation vis-à-vis the Genocide Convention . . . constitute facts of that kind".

22. In short, Bosnia and Herzegovina submits that what the FRY refers to as "facts" are "the consequences . . . of a fact, which is and can only be the admission of Yugoslavia to the United Nations in 2000". It states that "Article 61 of the Statute of the Court . . . requires that the fact was 'when the judgment was given, unknown to the Court and also to the party claiming revision'" and that "this implies that . . . the fact in question actually did exist 'when the judgment was given'". According to Bosnia and Herzegovina, the FRY "is regarding its own change of position (and the ensuing consequences) as a new fact". Bosnia and Herzegovina concludes that this "'new fact' . . . is subsequent to the Judgment whose revision is sought". It notes that the alleged new fact can have "no retroactive or retrospective effect".

23. Bosnia and Herzegovina further adds that the FRY is merely relying on a "new 'perception' of the facts of 1993 in the light of those which took place in 2000 and 2001". Bosnia and Herzegovina submits that a "perception" is not a fact and that "in any event, the 'perception' of Yugoslavia's new situation with respect both to the United Nations and to the 1948 [Genocide] Convention, occurred subsequently to the Judgment under challenge".

* *

24. Before turning to the examination of the "facts" which the FRY has relied upon in its pleadings in order to justify the revision of the 1996 Judgment, the Court will recount the background to the case with a view to providing the context for the contentions of the FRY.

*

25. In the early 1990s the SFRY, made up of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, began to break up. On 25 June 1991 Croatia and Slovenia both declared independence, followed by Macedonia on 17 September 1991 and Bosnia and Herzegovina on 6 March 1992. On 22 May 1992, Bosnia and Herzegovina, Croatia and Slovenia were admitted as Members to the United Nations; as was the former Yugoslav Republic of Macedonia on 8 April 1993.

26. On 27 April 1992 the "participants of the joint session of the SFRY Assembly, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro**"** adopted a declaration, stating in pertinent parts:

> "*The representatives of the people of the Republic of Serbia and the Republic of Montenegro,*
>
> Expressing the will of the citizens of their respective Republics to stay in the common state of Yugoslavia,
>
> . . . . . .
>
> Wish to state in this Declaration their views on the basic, immediate and lasting objectives of the policy of their common state, and on its relations with the former Yugoslav Republics.
>
> . . . . . .
>
> 1. The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the SFR of Yugoslavia assumed internationally,
>
> . . . . . .
>
> Remaining bound by all obligations to international organizations and institutions whose member it is . . ." (United Nations doc. A/46/915, Ann. II.)

27. An official Note of the same date from the Permanent Mission of Yugoslavia to the United Nations, addressed to the Secretary-General of the United Nations, stated *inter alia* that:

> "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 and the legitimate decisions by Serbia and Montenegro to continue to live together in 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 Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia." (United Nations doc. A/46/915, Ann. I.)

28. On 19 September 1992, the Security Council adopted resolution 777 (1992) which read as follows:

"*The Security Council,*

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Considering that the state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist,

Recalling in particular resolution 757 (1992) which notes that 'the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted',

1. *Considers* 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 therefore *recommends* to the General Assembly that it decide 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;

2. *Decides* to consider the matter again before the end of the main part of the forty-seventh session of the General Assembly." (United Nations doc. S/RES/777.)

29. On 22 September 1992 the General Assembly adopted resolution 47/1, according to which:

"*The General Assembly,*

Having received the recommendation of the Security Council of 19 September 1992 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,

1. *Considers* 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 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;

2. *Takes note* of the intention of the Security Council to consider the matter again before the end of the main part of the forty-seventh session of the General Assembly." (United Nations doc. A/RES/47/1.)

30. On 25 September 1992, the Permanent Representatives of Bosnia and Herzegovina and Croatia addressed a letter to the Secretary-General, in which, with reference to Security Council resolution 777 (1992) and General Assembly resolution 47/1, they stated their understanding as follows: "at this moment, there is no doubt that the Socialist Federal Republic of Yugoslavia is not a member of the United Nations any more. At the same time, the Federal Republic of Yugoslavia is clearly not yet a member." They concluded that "the flag flying in front of the United Nations and the name-plaque bearing the name 'Yugoslavia' do not represent anything or anybody any more" and "kindly request[ed] that [the Secretary-General] provide a legal explanatory statement concerning the questions raised" (United Nations doc. A/47/474).

31. In response, on 29 September 1992, the Under-Secretary-General and Legal Counsel of the United Nations addressed a letter to the Permanent Representatives of Bosnia-Herzegovina and Croatia, in which he stated that the "considered view of the United Nations Secretariat regarding the practical consequences of the adoption by the General Assembly of resolution 47/1" was as follows:

"While the General Assembly has stated unequivocally that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations, 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. It is clear, therefore, that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer *participate* in the work of the General Assembly, its subsidiary organs, nor conferences and meetings convened by it.

On the other hand, the resolution neither terminates nor suspends Yugoslavia's *membership* in the Organization. Consequently, the seat and nameplate remain as before, but in Assembly bodies representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot sit behind the sign 'Yugoslavia'. Yugoslav missions at United Nations Headquarters and offices may continue to function and may receive and circulate documents. At Headquarters, the Secretariat will continue to fly the flag of the old Yugoslavia as it is the last flag of Yugoslavia used by the Secretariat. The resolution does not take away the right of Yugoslavia to participate in the work of

organs other than Assembly bodies. The admission to the United Nations of a new Yugoslavia under Article 4 of the Charter will terminate the situation created by resolution 47/1." (United Nations doc. A/47/485; emphasis added in the original.)

32. On 29 April 1993, the General Assembly, upon the recommendation contained in Security Council resolution 821 (1993) (couched in terms similar to those of Security Council resolution 777 (1992)), adopted resolution 47/229 in which it decided that "the Federal Republic of Yugoslavia (Serbia and Montenegro) [should] not participate in the work of the Economic and Social Council".

*

33. The Court recalls that between the adoption of General Assembly resolution 47/1 of 22 September 1992 and the admission of the FRY to the United Nations on 1 November 2000, the legal position of the FRY remained complex, as shown by the following examples.

34. By a resolution of 20 December 1993 relating to the situation in Bosnia and Herzegovina, the General Assembly reaffirmed its resolution 47/1 of 22 September 1992, and urged "Member States and the Secretariat in fulfilling the spirit of that resolution to end the de facto working status of the Federal Republic of Yugoslavia (Serbia and Montenegro)" (United Nations doc. A/RES/48/88, para. 19).

35. During this period, referring to the terms of Security Council resolution 777 (1992) and General Assembly resolution 47/1, Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia consistently objected to the FRY's claim that it continued the State and the international legal and political personality of the former SFRY. In particular, they disagreed that the FRY was a Member of the United Nations and a party to the multilateral treaties to which the former Yugoslavia was a party.

36. It was in this context that, following the suggestion made by the Representative of Bosnia and Herzegovina at the 18th and 19th Meetings of States Parties to the International Covenant on Civil and Political Rights, and a vote thereon, the FRY was excluded from participating in the said meetings (United Nations doc. CCPR/SP/SR 18, p. 3; United Nations doc. CCPR/SP/SR 19, p. 8). However, in explanation of his decision to vote in favour of exclusion at the 18th meeting held on 16 March 1994, the representative of Belgium, speaking on behalf of the States members of the European Union that were parties to the Convention, and supported by the representatives of Australia and Iceland, the latter on behalf of the Nordic countries, "said that the vote of the delegations concerned was without prejudice to their position regarding the status of the Federal Republic of Yugoslavia (Serbia and Montenegro) *vis-à-vis* the Covenant or the other international obligations of the former Socialist Federal Republic of Yugoslavia". Those delegations "were of the view that the Federal Republic of Yugoslavia (Serbia and Montenegro) should abide by the obligations arising under the Covenant" (United Nations doc. CCPR/SP/SR.18).

37. In response to these protests, the FRY, claiming that it continued the international legal personality of the former Yugoslavia, at all times maintained the view that its membership in the United Nations and its status as a State party to international treaties were not affected by the adoption of Security Council resolution 777 (1992) and General Assembly resolution 47/1.

38. According to the English text of the "Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties", prepared by the Treaty Section of the Office of Legal Affairs, which was published at the beginning of 1996,

> "89. A special difficulty arose upon the adoption of resolution 47/1 of 22 September 1992, by which the General Assembly considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and therefore decided that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it should not participate in the work of the General Assembly; the resolution was interpreted by the Secretariat to apply to subsidiary organs of the General Assembly, as well as conferences and meetings convened by it. Consequently, the Federal Republic of Yugoslavia (Serbia and Montenegro), was not invited to participate in conferences convened by the Assembly (e.g., the World Conference on Human Rights). However, this was without effect on the capacity of the Federal Republic of Yugoslavia (Serbia and Montenegro) to participate in treaties, including those deposited with the Secretary-General.
>
> . . . . . .
>
> 297. In the absence of provisions which set specific conditions for succession or which otherwise restrict succession, the Secretary-General is guided by the participation clauses of the treaties as well as by the general principles governing the participation of States (see chap. V). The independence of the new successor State, which then exercises its sovereignty on its territory, is of course without effect as concerns the treaty rights and obligations of the predecessor State as concerns its own (remaining) territory. Thus, after the separation of parts of the territory of the Union of Soviet Socialist Republics (which became independent States), the Union of Soviet Socialist Republics (as the Russian Federation) continued to exist as a predecessor State, and all its treaty rights and obligations continued in force in respect of its territory. The same applies to the Federal Republic of Yugoslavia (Serbia and Montenegro), which remains as the predecessor State upon separation of parts of the territory of the former Yugoslavia. General Assembly resolution 47/1 of 22 September 1992, to the effect that the Federal Republic of Yugoslavia could not automatically continue the membership of the former Yugoslavia in the United Nations (see para. 89 above), was adopted within the framework of the United Nations and the context of the Charter of the United Nations, and not as an indication that the Federal Republic of Yugoslavia was not to be considered a predecessor State." (United Nations doc. ST/LEG/8.)

39. Subsequently, the Secretariat published an errata to the English text of the said "Summary of Practice". With regard to paragraph 89 of the English text, the last sentence was thus replaced by the following:

> "However, this 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." (United Nations doc. ST/LEG/7/Rev. 1.)

With regard to paragraph 297 of the English text of the Summary, in response to objections raised by certain States (see United Nations docs. A/50/910-S/1996/231, A/51/95-S/1996/251, A/50/928-S/1996/263, A/50/930-S/1996/260), the Secretariat deleted all reference to the FRY and changed the text to read as follows:

> "In the absence of provisions which set specific conditions for succession or which otherwise restrict succession, the Secretary-General is guided by the participation clauses of the treaties as well as by the general principles governing the participation of States (see chap. V). The independence of the new successor State, which then exercises its sovereignty on its territory, is without effect on the treaty rights and obligations of the predecessor State in its own (remaining) territory. Thus, after the separation of parts of the territory of the Union of Soviet Socialist Republics (which became independent States), the Russian Federation continued all treaty rights and obligations of the predecessor State." (United Nations doc. ST/LEG/7/Rev. 1.)

The changes set out in the above-mentioned errata, including those relating to paragraphs 89 and 297, were directly incorporated into the French text of the Summary published in 1997.

40. The General Framework Agreement for Peace in Bosnia and Herzegovina was initialled in Dayton, Ohio, on 21 November 1995 and signed by the Parties in Paris on 14 December 1995. By the terms of this Agreement, the FRY and Bosnia and Herzegovina agreed to "recognize each other as sovereign independent States within their international borders" and to "comply fully with the provisions concerning human rights set forth in Chapter One of the Agreement at Annex 6". This Annex, entitled "Agreement on Human Rights" had appended to it a list of treaties, including the Genocide Convention (United Nations doc. A/50/790-S/1995/999).

41. The FRY deposited a declaration recognizing the compulsory jurisdiction of the International Court of Justice, dated 25 April 1999, with the Secretary-General. On 30 April 1999 the Secretary-General issued a Depositary Notification informing Member States that the "above action was effected on 26 April 1999" (C.N.311.1999.TREATIES-1).

42. On 27 May 1999, the Permanent Representatives of Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia sent a letter to the Secretary-General, questioning the validity of the deposit of the declaration recognizing the compulsory jurisdiction of the International Court of Justice by the FRY (United Nations doc. A/53/992).

43. On 3 June 1999, the Permanent Representatives of Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia addressed a letter to the President of the Security Council, stating:

> "We wish that this letter be understood as our permanent objection to the groundless assertion of the Federal Republic of Yugoslavia (Serbia and Montenegro), which has also been repudiated by the international community, that it represents the continuity of our common predecessor, and thereby continues to enjoy its status in international organizations and treaties." (United Nations doc. S/1999/639.)

44. In the United Nations publication of 2002 entitled "Multilateral treaties deposited with the Secretary-General; Status as at 31 December 2001", the situation during the period after the adoption of Security Council resolution 777 (1992) of 19 September 1992 is characterized as follows:

> "General Assembly resolution 47/1 did not specifically address the question of the status of either the former Yugoslavia or of Yugoslavia with regard to multilateral treaties that were deposited with the Secretary-General. The Legal Counsel took the view in this regard that the Secretary-General was not in a position, as depositary, either to reject or to disregard the claim of Yugoslavia that it continued the legal personality of the former Yugoslavia, absent any decision to the contrary either by a competent organ of the United Nations directing him in the exercise of his depositary functions, or by a competent treaty organ created by a treaty, or by the contracting States to a treaty directing him in the exercise of his depositary functions with regard to that particular treaty, or by a competent organ representative of the international community of States as a whole on the general issue of continuity and discontinuity of statehood to which the claim of Yugoslavia gave rise.
>
> Consistent with the claim of Yugoslavia to continue the international legal personality of the former Yugoslavia, the Secretary-General, as depositary, continued to list treaty actions that had been performed by the former Yugoslavia in status lists in the present publication, using for that purpose the short-form name 'Yugoslavia', which was used at that time to refer to the former Yugoslavia. Between 27 April 1992 and 1 November 2000, Yugoslavia undertook numerous treaty actions with respect to treaties deposited with the Secretary-General. Consistent with the claim of Yugoslavia to continue the international legal personality of the former Yugoslavia, these treaty actions were also listed in status lists against the name 'Yugoslavia'. Accordingly, the Secretary-General, as depositary, did not make any differentiation in the present publication between treaty actions that were performed by the former Yugoslavia and those that were performed by Yugoslavia, both categories of treaty actions being listed against the name 'Yugoslavia'." (United Nations doc. ST/LEG/SER.E/20.)

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45. The Court considers that to the above account of the FRY's special situation that existed between September 1992 and November 2000, should be added certain details concerning the United Nations membership dues and rates of assessment set for the FRY during that same period. In General Assembly resolution 43/223 of 21 December 1988 ("Scale of assessments for the apportionment of the expenses of the United Nations"), the rate of assessment for the SFRY for 1989, 1990 and 1991 was fixed at 0.46 per cent. The rate of assessment for the SFRY for 1992, 1993 and 1994 as established in 1991 was to be 0.42 per cent (General Assembly resolution 46/221 of 20 December 1991).

46. On 23 December 1992, the General Assembly, on the recommendation of the Fifth Committee, decided to adopt the recommendations of the Committee on Contributions with respect to the rates of assessment of Member States contained in paragraphs 51 to 64 of the report of the Committee on Contributions (United Nations doc. A/47/11). Paragraph 63 of this report stipulated that the rates of assessment for Bosnia and Herzegovina, Croatia and Slovenia for 1993 and 1994 should be 0.04, 0.13 and 0.09 per cent respectively. It was further stated that "for 1992, these States should pay seven twelfths of these rates, and their actual assessment should be deducted from that of Yugoslavia for that year" (para. 64 of the Report). By resolution 48/223 of 23 December 1993, the General Assembly determined that the rate of assessment of the former Yugoslav Republic of Macedonia, admitted to membership in the United Nations in 1993, should be 0.02 per cent and that its 1993 assessment should be deducted from that of the FRY. The General Assembly also decided that the rate of assessment of the former Yugoslav Republic of Macedonia should be deducted from that of the FRY for 1994.

47. As a consequence of the above-mentioned decisions regarding the rate of assessment for Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia, the rate of assessments for the contribution of the FRY to the regular budget of the United Nations for the years 1995, 1996 and 1997 was determined to be 0.11, 0.1025 and 0.10 per cent respectively (General Assembly resolution 49/19 B of 23 December 1994). By General Assembly resolution 52/15 A, the rate of assessment of the FRY for the years 1998, 1999 and 2000 was determined to be 0.060, 0.034 and 0.026 per cent respectively.

48. On 23 December 2000, the General Assembly by its resolution 55/5E decided that "the rate of assessment for the Federal Republic of Yugoslavia, admitted to membership of the United Nations on 1 November 2000, should be 0.026 per cent for the year 2000". The resolution specified that this assessment should be taken into account as "miscellaneous income in accordance with regulation 5.2 *(c)* of the Financial Regulations and Rules of the United Nations", dealing with the "contributions . . . of new Member States".

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49. Following national elections on 24 September 2000, Mr. Koštunica was elected President of the FRY. On 27 October 2000, President Koštunica sent a letter to the Secretary-General requesting admission of the FRY to membership in the United Nations, in the following terms:

> "In the wake of fundamental democratic changes that took place in the Federal Republic of Yugoslavia, in the capacity of President, I have the honour to request the admission of the Federal Republic of Yugoslavia to membership in the United Nations in light of the implementation of Security Council resolution 777 (1992)." (United Nations doc. A/55/528 S/2000/1043.)

50. On 31 October 2000, the Security Council (pursuant to the recommendations made in the Report of the Committee on the Admission of New Members concerning the application of the FRY for admission in the United Nations), "*recommend[ed]* to the General Assembly that the Federal Republic of Yugoslavia be admitted to membership in the United Nations" (United Nations doc. S/RES/1326). On 1 November 2000, the General Assembly adopted resolution 55/12, which reads as follows:

> "*The General Assembly,*
>
> *Having received* the recommendation of the Security Council of 31 October 2000 that the Federal Republic of Yugoslavia should be admitted to membership in the United Nations,
>
> *Having considered* the application for membership of the Federal Republic of Yugoslavia,
>
> *Decides* to admit the Federal Republic of Yugoslavia to membership in the United Nations."

The admission of the FRY to membership of the United Nations on 1 November 2000 put an end to Yugoslavia's *sui generis* position within the United Nations. The President of the General Assembly, on behalf of the Assembly, "welcomed the Federal Republic of Yugoslavia as a Member of the United Nations". Other speakers emphasized the fact that the FRY was entering the United Nations family on equal terms with the other Republics of the former SFRY. The representative of France who had introduced the draft resolution stated in particular that "a hiatus of eight years [was] about to end" (see United Nations doc. A/55/PV.48, pp. 26-34).

51. On 8 December 2000, the Under-Secretary-General, the Legal Counsel, sent a letter to the Minister for Foreign Affairs of the FRY, reading in pertinent parts:

> "Following [the admission of the Federal Republic of Yugoslavia to the United Nations on 1 November 2000], a review was undertaken of the multilateral treaties deposited with the Secretary-General, in relation to many of which the former Socialist Federal Republic of Yugoslavia (the SFRY) and the Federal Republic of Yugoslavia (FRY) had undertaken a range of treaty actions . . .
>
> It is the Legal Counsel's view that the Federal Republic of Yugoslavia should now undertake treaty actions, as appropriate, in relation to the treaties concerned, if its

intention is to assume the relevant legal rights and obligations as a successor State." (Letter by the Legal Counsel of the United Nations (Application of Yugoslavia, Ann. 27).)

52. At the beginning of March 2001, a notification of accession to the Genocide Convention by the FRY was deposited with the Secretary-General of the United Nations. The notification of accession by Yugoslavia was dated 6 March 2001 and read as follows:

"WHEREAS the Federal Republic of Yugoslavia had declared on April 27, 1992, that 'the Federal Republic of Yugoslavia, continuing the State, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally',

WHEREAS this contention of continuity also included the assumption that the Federal Republic of Yugoslavia continued the membership in the United Nations of the Socialist Federal Republic of Yugoslavia,

WHEREAS the contention and assumption of continuity was eventually not accepted by the United Nations nor was it accepted by other successor States of the Socialist Federal Republic of Yugoslavia, and thus it produced no effects,

FURTHERMORE, this situation became finally clarified on November 1, 2000, when the Federal Republic of Yugoslavia was accepted as a new member State of the United Nations,

NOW it has been established that the Federal Republic of Yugoslavia has not succeeded on April 27, 1992, or on any later date, to treaty membership, rights and obligations of the Socialist Federal Republic of Yugoslavia in the Convention on the Prevention and Punishment of the Crime of Genocide on the assumption of continued membership in the United Nations and continued state, international legal and political personality of the Socialist Federal Republic of Yugoslavia,

THEREFORE, I am submitting on behalf of the Government of the Federal Republic of Yugoslavia this notification of accession to the Convention on the Prevention and Punishment of the Crime of Genocide, in pursuance of Article XI of the said Convention and with the following reservation on Article IX of the said Convention: 'The Federal Republic of Yugoslavia does not consider itself bound by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide and, therefore, before any dispute to which the Federal Republic of Yugoslavia is a party may be validly submitted to the jurisdiction of the International Court of Justice under this Article, the specific and explicit consent of the FRY is required in each case.'"

On 15 March 2001, the Secretary-General, acting in his capacity as depositary, issued a Depositary Notification (C.N.164.2001.TREATIES-1), indicating that the accession of the FRY to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide "was effected on 12 March 2001" and that the Convention would "enter into force for the FRY on 10 June 2001".

53. The Government of Croatia, on 18 May 2001, and the Presidency of Bosnia and Herzegovina, on 27 December 2001, objected to the deposit of the instrument of accession by the FRY, on the basis that as one of the successor States to the former SFRY, it was already bound by the Genocide Convention. The two States also objected to the FRY's reservation. In this regard Croatia stated that it was "incompatible with the object and purpose of the Convention" whereas Bosnia and Herzegovina stated that it was made several years after 27 April 1992, "the day on which the FRY became bound to the Genocide Convention in its entirety". On 2 April 2002, the Government of Sweden informed the Secretary-General that it considered the FRY to be one of the successor States to the SFRY "and, as such, a Party to the Convention from the date of entering into force of the Convention for the Socialist Federal Republic of Yugoslavia". Therefore, the Government of Sweden considered the FRY's reservation "as having been made too late and thus null and void" (Multilateral Treaties deposited with the Secretary-General at http://untreaty.un.org). To date there has been no further reaction from States parties to the Genocide Convention.

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54. The Court also considers that, in order to complete the contextual background, it is necessary to recall the proceedings leading up to the delivery of the Judgment of 11 July 1996, as well as the passages in that Judgment relevant to the present proceedings.

55. On 20 March 1993, the Government of Bosnia and Herzegovina filed in the Registry of the Court an Application instituting proceedings against the FRY in respect of a dispute concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide. The Application invoked Article IX of the Genocide Convention as the basis of the jurisdiction of the Court.

56. On 20 March 1993, immediately after the filing of its Application, Bosnia and Herzegovina submitted a request for the indication of provisional measures under Article 41 of the Statute. On 1 April 1993, Yugoslavia submitted written observations on Bosnia and Herzegovina's request for provisional measures in which it, in turn, recommended the Court to order the application of provisional measures to Bosnia and Herzegovina.

57. By an Order dated 8 April 1993, the Court indicated certain provisional measures with a view to the protection of rights under the Genocide Convention. In this Order the Court, referring to Security Council resolution 777 (1992), General Assembly resolution 47/1 and the Legal Counsel's letter of 29 September 1992, stated *inter alia* the following:

"18. Whereas, while the solution adopted is not free from legal difficulties, the question whether or not Yugoslavia is a Member of the United Nations and as such a party to the Statute of the Court is one which the Court does not need to determine definitively at the present stage of the proceedings;

19. Whereas Article 35 of the Statute, after providing that the Court shall be open to the parties to the Statute, continues:

> '2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court';

whereas the Court therefore considers that proceedings may validly be instituted by a State against a State which is a party to such a special provision in a treaty in force, but is not party to the Statute, and independently of the conditions laid down by the Security Council in its resolution 9 of 1946 (cf. *S.S. "Wimbledon", 1923, P.C.I.J., Series A, No. 1*, p. 6); whereas a compromissory clause in a multilateral convention, such as Article IX of the Genocide Convention relied on by Bosnia-Herzegovina in the present case, could, in the view of the Court, be regarded prima facie as a special provision contained in a treaty in force; whereas accordingly if Bosnia-Herzegovina and Yugoslavia are both parties to the Genocide Convention, disputes to which Article IX applies are in any event prima facie within the jurisdiction *ratione personae* of the Court." (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 14.)

The Court further referred to the fact that "both Parties to the . . . case correspond[ed] to parts of the territory of the former Socialist Federal Republic of Yugoslavia" (*I.C.J. Reports 1993*, p. 15, para. 21), which signed the Genocide Convention and deposited its instrument of ratification without reservation. The Court also referred to the Declaration of 27 April 1992 adopted on behalf of the Federal Republic of Yugoslavia at the time of its proclamation as well as to the official Note of the same date from the Permanent Mission of Yugoslavia to the United Nations, addressed to the Secretary-General; and to the Notice of Succession transmitted by Bosnia and Herzegovina on 29 December 1992 to the Secretary-General of the United Nations, the depositary of the Genocide Convention. The Court then concluded as follows:

> "Whereas Article IX of the Genocide Convention, to which both Bosnia-Herzegovina and Yugoslavia are parties, thus appears to the Court to afford a basis on which the jurisdiction of the Court might be founded to the extent that the subject-matter of the dispute relates to 'the interpretation, application or fulfilment' of the Convention, including disputes 'relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III' of the Convention." (*I.C.J. Reports 1993*, p. 16, para. 26.)

58. On 27 July 1993, Bosnia and Herzegovina submitted a new request for the indication of provisional measures. On 10 August 1993, Yugoslavia also submitted a request for the indication of provisional measures; and, on 10 and 23 August 1993, it filed written observations on Bosnia and Herzegovina's new request.

59. By an Order dated 13 September 1993, the Court reaffirmed the measures indicated in its Order of 8 April 1993 and declared that those measures should be immediately and effectively implemented. In that Order of 13 September 1993 the Court confirmed that it had prima facie jurisdiction in the case on the basis of Article IX of the Genocide Convention (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 338, para. 25; p. 342, para. 36).

60. On 15 April 1994 Bosnia and Herzegovina filed its Memorial. Within the time-limit fixed for the filing of the Counter-Memorial, the FRY, referring to Article 79, paragraph 1, of the Rules of Court, raised preliminary objections concerning, respectively, the admissibility of the Application and the jurisdiction of the Court to entertain the case.

61. The Court rendered its Judgment on the preliminary objections raised by the FRY on 11 July 1996. In the reasoning of the Judgment, the Court came to the conclusion that both Parties were bound by the Convention when the Application was filed.

62. With regard to the FRY, the Court stated the following:

> "The proceedings instituted before the Court are between two States whose territories are located within the former Socialist Federal Republic of Yugoslavia. That Republic signed the Genocide Convention on 11 December 1948 and deposited its instrument of ratification, without reservation, on 29 August 1950. At the time of the proclamation of the Federal Republic of Yugoslavia, on 27 April 1992, a formal declaration was adopted on its behalf to the effect that:
>
> > 'The Federal Republic of Yugoslavia, continuing the State, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally.'
>
> This intention thus expressed by Yugoslavia to remain bound by the international treaties to which the former Yugoslavia was party was confirmed in an official Note of 27 April 1992 from the Permanent Mission of Yugoslavia to the United Nations, addressed to the Secretary-General. The Court observes, furthermore, that it has not been contested that Yugoslavia was party to the Genocide Convention. Thus, Yugoslavia was bound by the provisions of the Convention on the date of the filing of the Application in the present case, namely, on 20 March 1993." (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 610, para. 17.)

With regard to Bosnia and Herzegovina, the Court, referring to the Notice of Succession of 29 December 1992 and the Secretary-General's Depositary Notification of 18 March 1993, noted that Bosnia and Herzegovina became a Member of the United Nations on 22 May 1992 and from that date, by virtue of Article XI of the Genocide Convention, "Bosnia and Herzegovina could thus become a party to the Convention" (*I.C.J Reports 1996 (II)*, p. 611, para. 19). The Court further observed that

> "Bosnia and Herzegovina could become a party to the Convention through the mechanism of State succession. Moreover, the Secretary-General of the United Nations considered that this had been the case, and the Court took note of this in its Order of 8 April 1993 (*I.C.J. Reports 1993*, p. 16, para. 25)." (*I.C.J Reports 1996 (II)*, p. 611, para. 20.)

Referring to its Advisory Opinion of 28 May 1951 concerning *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, the Court likewise noted that

> "'The object and purpose of the Genocide Convention imply that it was the intention of the General Assembly and of the States which adopted it that as many States as possible should participate. The complete exclusion from the Convention of one or more States would not only restrict the scope of its application, but would detract from the authority of the moral and humanitarian principles which are its basis.' (*I.C.J. Reports 1951*, p. 24.)" (*I.C.J. Reports 1996 (II)*, p. 612, para. 22.)

The Court concluded as follows:

> "Whether Bosnia and Herzegovina automatically became party to the Genocide Convention on the date of its accession to independence on 6 March 1992, or whether it became a party as a result — retroactive or not — of its Notice of Succession of 29 December 1992, at all events it was a party to it on the date of the filing of its Application on 20 March 1993." (*I.C.J Reports 1996 (II)*, p. 612, para. 23.)

63. In the operative part of its Judgment the Court, having rejected the preliminary objections raised by the FRY, found that "on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it has jurisdiction to adjudicate upon the dispute" and that "the Application filed by the Republic of Bosnia and Herzegovina on 20 March 1993 is admissible".

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64. Following the 1996 Judgment on the preliminary objections, the FRY filed a Counter-Memorial on 22 July 1997, in which it submitted counter-claims. By an Order dated 17 December 1997, the Court found that those counter-claims came within the jurisdiction of the Court and as such were admissible. Bosnia and Herzegovina and Yugoslavia filed their Reply and Rejoinder on 23 April 1998 and 22 February 1999 respectively. By a letter dated 20 April 2001 and received in the Registry on 23 April 2001, the Agent of the FRY informed the Court that his Government intended to withdraw its counter-claims. No objection having been raised by Bosnia and Herzegovina in this regard, the President of the Court, by his Order of 10 September 2001, placed on the record the withdrawal by the FRY of the counter-claims submitted by it in its Counter-Memorial. On 4 May 2001, the FRY submitted to the Court a document entitled "Initiative to the Court to reconsider *ex officio* jurisdiction over Yugoslavia".

* *

65. The Court will now examine whether the FRY relies on facts which fall within the terms of Article 61 of the Statute.

66. As recalled above (see paragraph 19), the FRY claims that the facts which existed at the time of the 1996 Judgment and upon the discovery of which its request for revision of that Judgment is based "are that the FRY was *not* a party to the Statute, and that it did *not* remain bound by the Genocide Convention continuing the personality of the former Yugoslavia". It argues that these "facts" were "revealed" by its admission to the United Nations on 1 November 2000 and by the Legal Counsel's letter of 8 December 2000.

67. The Court would begin by observing that, under the terms of Article 61, paragraph 1, of the Statute, an application for revision of a judgment may be made only when it is "based upon the discovery" of some fact which, "when the judgment was given", was unknown. These are the characteristics which the "new" fact referred to in paragraph 2 of that Article must possess. Thus both paragraphs refer to a fact existing at the time when the judgment was given and discovered subsequently. A fact which occurs several years after a judgment has been given is not a "new" fact within the meaning of Article 61; this remains the case irrespective of the legal consequences that such a fact may have.

68. In the present case, the admission of the FRY to the United Nations occurred on 1 November 2000, well after the 1996 Judgment. The Court concludes accordingly, that that admission cannot be regarded as a new fact within the meaning of Article 61 capable of founding a request for revision of that Judgment.

69. In the final version of its argument, the FRY claims that its admission to the United Nations and the Legal Counsel's letter of 8 December 2000 simply "revealed" two facts which had existed in 1996 but had been unknown at the time: that it was not then a party to the Statute of the Court and that it was not bound by the Genocide Convention.

In advancing this argument, the FRY does not rely on facts that existed in 1996. In reality, it bases its Application for revision on the legal consequences which it seeks to draw from facts subsequent to the Judgment which it is asking to have revised. Those consequences, even supposing them to be established, cannot be regarded as facts within the meaning of Article 61. the FRY's argument cannot accordingly be upheld.

70. Furthermore the Court notes that the admission of the FRY to membership of the United Nations took place more than four years after the Judgment which it is seeking to have revised. At the time when that Judgment was given, the situation obtaining was that created by General Assembly resolution 47/1. In this regard the Court observes that the difficulties which arose regarding the FRY's status between the adoption of that resolution and its admission to the United Nations on 1 November 2000 resulted from the fact that, although the FRY's claim to continue the international legal personality of the Former Yugoslavia was not "generally accepted" (see paragraph 28 above), the precise consequences of this situation were determined on a case-by-case basis (for example, non-participation in the work of the General Assembly and ECOSOC and in the meetings of States parties to the International Covenant on Civil and Political Rights, etc.).

Resolution 47/1 did not *inter alia* affect the FRY's right to appear before the Court or to be a party to a dispute before the Court under the conditions laid down by the Statute. Nor did it affect the position of the FRY in relation to the Genocide Convention. To "terminate the situation created by resolution 47/1", the FRY had to submit a request for admission to the United Nations as had been done by the other Republics composing the SFRY. All these elements were known to the Court and to the FRY at the time when the Judgment was given. Nevertheless, what remained unknown in July 1996 was if and when the FRY would apply for membership in the United Nations and if and when that application would be accepted, thus terminating the situation created by General Assembly resolution 47/1.

71. The Court wishes to emphasize that General Assembly resolution 55/12 of 1 November 2000 cannot have changed retroactively the *sui generis* position which the FRY found itself in vis-à-vis the United Nations over the period 1992 to 2000, or its position in relation to the Statute of the Court and the Genocide Convention. Furthermore, the letter of the Legal Counsel of the United Nations dated 8 December 2000, cannot have affected the FRY's position in relation to treaties.

The Court also observes that**,** in any event, the said letter did not contain an invitation to the FRY to accede to the relevant conventions, but rather to "undertake treaty actions, as appropriate, . . . as a successor State".

72. It follows from the foregoing that it has not been established that the request of the FRY is based upon the discovery of "some fact" which was "when the judgment was given, unknown to the Court and also to the party claiming revision". The Court therefore concludes that one of the conditions for the admissibility of an application for revision prescribed by paragraph 1 of Article 61 of the Statute has not been satisfied.

73. Article 61 of the Statute lays down further requirements which an application for revision of a judgment must satisfy in order to be admissible. However, the Court recalls that "once it is established that the request for revision fails to meet one of the conditions for admissibility, the Court is not required to go further and investigate whether the other conditions are fulfilled" (*Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *Tunisia* v. *Libyan Arab Jamahiriya, Judgment, I.C.J. Reports, 1985*, p. 207, para. 29). In the present case, the Court has concluded that no facts within the meaning of Article 61 of the Statute have been discovered since 1996. The Court therefore does not need to address the issue of whether the other requirements of Article 61 of the Statute for the admissibility of the FRY's Application have been satisfied.

74. The FRY's Application for revision must accordingly be rejected.

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75. For these reasons,

THE COURT,

By ten votes to three,

Finds that the Application submitted by the Federal Republic of Yugoslavia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 11 July 1996, is inadmissible.

IN FAVOUR: *President* Guillaume; *Vice-President* Shi; *Judges* Ranjeva, Herczegh, Koroma, Parra-Aranguren, Al-Khasawneh, Buergenthal, Elaraby; *Judge* ad hoc Mahiou;

AGAINST: *Judges* Vereshchetin, Rezek; *Judge* ad hoc Dimitrijeviæ.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this third day of February, two thousand and three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Yugoslavia and the Government of Bosnia and Herzegovina, respectively.

(Signed) Gilbert GUILLAUME,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge KOROMA appends a separate opinion to the Judgment of the Court; Judge VERESHCHETIN appends a dissenting opinion to the Judgment of the Court; Judge REZEK appends a declaration to the Judgment of the Court; Judge *ad hoc* DIMITRIJEVIÆ appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* MAHIOU appends a separate opinion to the Judgment of the Court.

(Initialled) G. G.

(Initialled) Ph. C.