
Article 93

Contents

	<i>Paragraphs</i>
Text of Article 93	
Note	1–4

Text of Article 93

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.
2. A State which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Note

1. During the period under review, the General Assembly, upon the favourable recommendation of the Security Council in each case, admitted the following States to membership in the United Nations in the order in which they are listed:¹ Namibia, Liechtenstein, Democratic People's Republic of Korea, Republic of Korea, Federated States of Micronesia, Marshall Islands, Estonia, Latvia, Lithuania, Moldova, Kazakhstan, Kyrgyzstan, Uzbekistan, Armenia, Tajikistan, Turkmenistan, Azerbaijan, San Marino, Slovenia, Bosnia and Herzegovina, Croatia, Georgia, Czech Republic, Slovak Republic, the former Yugoslav Republic of Macedonia, Eritrea, Principality of Monaco, Principality of Andorra, and Palau. In accordance with Article 93 (1), those Members became ipso facto parties to the Statute of the International Court of Justice.

2. During the same period, no State which was not a Member of the United Nations became a party to the Statute of the Court in accordance with Article 93 (2). Two States that had been accepted as parties to the Statute of the Court pursuant to Article 93 (2), Liechtenstein and San Marino, became Members of the United Nations. Moreover, on 19 May 1989, the Government of the Republic of Nauru, a party to the Statute of the Court admitted pursuant to Article 93 (2), filed an Application instituting proceedings against the Republic of Australia with the Registry of the Court.² The case was discontinued on 13 September 1993.³

3. The Court referred to Article 93 (1) in its order of 8 April 1993, regarding the request of Bosnia and Herzegovina for provisional measures in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)*).⁴ Although the case was ultimately decided on other grounds,⁵ the unprecedented factual scenario in this case raised interesting questions potentially bearing on the interpretation of Article 93 (1). In particular, the Court was asked to consider the effect of General Assembly resolution 47/1 of 22 September 1992, regarding Yugoslavia's status as a Member of the United Nations,⁶ on the ability of Yugoslavia (Serbia and Montenegro) to participate in a proceeding before the Court.⁷

⁴ See *I.C.J. Reports 1993*, p. 3.

⁵ See para. 4, *infra*.

⁶ In its resolution 47/1, the General Assembly, based on the recommendation of the Security Council contained in Council resolution 777 (1992), "[c]onsider[ed] 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 decid[e] 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." In its resolution 777 (1992), the Security Council stated that it considered 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."

⁷ For a more extensive discussion of the practice relating to membership in the United Nations, see *Repertory*, vol. I, in particular Articles 4, 5 and 6.

¹ See G A resolutions S-18/1, 45/1, 46/1, 46/2, 46/3, 46/4, 46/5, 46/6, 46/223, 46/224, 46/225, 46/226, 46/227, 46/228, 46/229, 46/230, 46/231, 46/236, 46/237, 46/238, 46/241, 47/221, 47/222, 47/225, 47/230, 47/231, 47/232 and 49/63.

² See *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Application Instituting Proceedings of 19 May 1989.

³ See *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Order of 13 September 1993, *I.C.J. Reports 1993*, p. 322.

4. The Court, however, decided that “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”,⁸ because its jurisdiction *ratione personae* could be *prima facie* based on the dispute resolution provision of the Genocide Convention. It reasoned that, even if Yugoslavia were not a party to the Statute of the Court pursuant to Article 93 (1), proceedings could be validly instituted against it under Article 35 (2) of the Statute, as long as it was a party to a “special provision in a treaty in force.” The Court further noted that “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, [...] be regarded *prima facie* as a special provision contained in a treaty in force.”⁹

⁸ See *I.C.J. Reports 1993*, p. 14, para. 18.

⁹ *Ibid.*, para. 19.