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Volume VI

ARTICLE 93

Table of Contents

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

ARTICLE 93

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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 Kiribati, Nauru, and Tonga. In accordance with Article 93(1), those Members became *ipso facto* parties of 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). One State that had been accepted as a party to the Statute of the Court pursuant to Article 93(2), Nauru, became a

Member State of the United Nations.²

3. In 1999, the International Court of Justice was asked to consider the implications of Article 93(1) in a set of parallel cases initiated by the Federal Republic of Yugoslavia (hereinafter “Yugoslavia”) against ten Member States of the North Atlantic Treaty Organization, concerning the legality of the use of force by these States in the territory of Yugoslavia.³ For a

¹ See G A resolutions 54/1, 54/2 and 54/3 of 14 September 1999.

² See G A resolution 54/2. See also *Repertory of Practice* Supplement VII, under this Article, para. 2.

³ See *Legality of Use of Force (Yugoslavia v. Belgium)*, Application Instituting Proceedings of 29 April 1999; *Legality of Use of Force (Yugoslavia v. Canada)*, Application Instituting Proceedings of 29 April 1999; *Legality of Use of Force (Yugoslavia v. France)*, Application Instituting Proceedings of 29 April 1999; *Legality of Use of Force (Yugoslavia v. Germany)*, Application Instituting Proceedings of 29 April 1999; *Legality of Use of Force (Yugoslavia v. Italy)*, Application Instituting

second time,⁴ the Court was asked to determine the effect of General Assembly resolution 47/1 of 22 September 1992⁵ on Yugoslavia's status as a Member of the United Nations and as a party to the Statute of the Court pursuant to Article 93(1), but did not reach the issue. The issue arose because, in six of the ten cases,⁶ Yugoslavia based its

claim of jurisdiction on, *inter alia*, the declarations of the States Parties accepting the compulsory jurisdiction of the Court pursuant to Article 36(2) of the Statute of the Court.⁷ In their oral pleadings on Yugoslavia's request for provisional measures, the defending parties in those cases, Belgium, Canada, the Netherlands, Portugal, Spain, and the United Kingdom challenged this basis of jurisdiction on the grounds that, pursuant to General Assembly resolution 47/1,⁸ Yugoslavia was not a Member of the United Nations and was therefore not an *ipso facto* party to the Statute of the International

Proceedings of 29 April 1999; Legality of Use of Force (Yugoslavia v. Netherlands), Application Instituting Proceedings of 29 April 1999; Legality of Use of Force (Yugoslavia v. Portugal), Application Instituting Proceedings of 29 April 1999; Legality of Use of Force (Yugoslavia v. Spain), Application Instituting Proceedings of 29 April 1999; Legality of Use of Force (Yugoslavia v. United Kingdom), Application Instituting Proceedings of 29 April 1999; Legality of Use of Force (Yugoslavia v. United States of America), Application Instituting Proceedings of 29 April 1999.

⁴ The issue first arose in the Court's Order of 8 April 1993, 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))*. See ICJ Reports 1993, p.3, see also *Repertory of Practice*, Supplement VIII, under the present Article.

⁵ G A Resolution 47/1 states, in pertinent part, that the General Assembly, on the recommendation of the Security Council: "[c]onsiders 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."

⁶ *Yugoslavia v. Belgium, Yugoslavia v. Canada, Yugoslavia v. Netherlands, Yugoslavia v. Portugal, Yugoslavia v. Spain and Yugoslavia v. United Kingdom.*

⁷ Yugoslavia deposited a declaration recognizing the compulsory jurisdiction of the Court, dated 25 April 1999, which became effective on 26 April 1999. The Secretary-General issued a Depositary Notification informing Member States of Yugoslavia's declaration on 30 April 1999. See C.N.311.1999.TREATIES.1. Several Member States subsequently addressed a letter to the Secretary-General to express their disagreement with the Secretary-General's acceptance of Yugoslavia's declaration. See, e.g., A/53/992.

⁸ G A Resolution 47/1 states, in pertinent part, that the General Assembly, on the recommendation of the Security Council: "[c]onsiders 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."

Court of Justice in accordance with Article 93(1).⁹

4. In its provisional measures Orders of 2 June 1999,¹⁰ the Court reached the conclusion that, regardless of Yugoslavia's status as a Member of the United Nations, it could not base its jurisdiction on the Article 36(2) declarations made by the Parties, because the dispute between the parties predated the period for which Yugoslavia had accepted the Court's compulsory

jurisdiction.¹¹ Accordingly, the Court determined that it would not need to consider the question of Yugoslavia's membership status in the United Nations¹² and its status as a party to the Statute of the International Court of Justice for the purpose of deciding whether or not the Court could indicate provisional measures.¹³ Nonetheless, the significance of Yugoslavia's membership status in the United Nations was discussed in several of the separate opinions and dissenting opinions appended to the Order of the Court in each case.¹⁴

⁹ It was therefore argued that Yugoslavia's declaration accepting the compulsory jurisdiction of the Court was invalid. It was also argued that as a non-party to the Statute, Yugoslavia could not properly initiate an action before the I.C.J. See ICJ Oral Pleadings of May 10, 1999; Doc. 99/14, 99/15, 99/19, 99/20, 99/21, 99/22 at <http://www.icj-cij.org/icjwww/idocket/iybe/iybeframe.htm>.

¹⁰ See *Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 124 ; *Legality of Use of Force (Yugoslavia v. Canada)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 259; *Legality of Use of Force (Yugoslavia v. Germany)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 422; *Legality of Use of Force (Yugoslavia v. Netherlands)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 542; *Legality of Use of Force (Yugoslavia v. Portugal)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 656; *Legality of Use of Force (Yugoslavia v. Spain)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 761; *Legality of Use of Force (Yugoslavia v. United Kingdom)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, p. 826.

¹¹ Yugoslavia's declaration restricted the compulsory jurisdiction of the Court to "disputes arising or which may arise after the signature of the present Declaration, with regard to the situations or facts subsequent to this signature." Moreover, Article 36(2) of the Statute of the Court allows States to accept the compulsory jurisdiction of the Court only "in relation to any other State accepting the same obligation." Thus, the Court had held that any limitation *ratione temporis* attached by one of the Parties to its declaration of acceptance of the Court's jurisdiction "holds good as between the Parties." See, e.g., I.C.J. Reports 1999, P. 269-70, para. 29.

¹² For a more extensive discussion of the practice relating to membership in the United Nations see *Repertory of Practice*, Volume I, in particular Articles 4, 5 and 6.

¹³ See ICJ Reports 1999, p. 136, para. 33; p. 270, para. 32; p. 553, para. 33; p. 668, para. 32; p. 771, para. 28; p. 836, para. 28.

¹⁴ See Separate Opinions of Judge Oda, I.C.J. Reports 1999, pp. 145-46, 279-80, 384-85, 443-44, 504-05, 563-64, 677-78, 782-83, 850-51, 934-35; Separate Opinion of Judge Higgins,

I.C.J. Reports 1999, pp. 167, 301, 585, 699, 804, 872; Separate Opinion of Judge Kooijmans, *I.C.J. Reports 1999*, pp. 173-80, 307-14, 591-98, 707-12, 809-16, 878-885; Dissenting Opinion of Judge Weeramantry, *I.C.J. Reports 1999*, p. 185; Dissenting Opinion of Judge Kreća, *I.C.J. Reports 1999*, pp. 227-37, 338-349, 622-33, 736-47, 897-908.