**Volume VI**

**ARTICLE 93**

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**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.

**I. NOTE**

1. In general, the structure of the present study follows that of the corresponding study on this Article in Supplement No. 9 of the *Repertory*. The major headings of the study have been retained. However, subheadings have been modified or added, as appropriate.

**II. GENERAL SURVEY**

2. 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,¹ in the order in which they are listed: Tuvalu, the Federal Republic of Yugoslavia (subsequently, Serbia and Montenegro and thereafter Republic of Serbia),² Switzerland, Timor-Leste and Montenegro. In accordance with Article 93(1) of the Charter, those Members became ipso facto parties to the Statute of the International Court of Justice (hereinafter, the Court).

3. 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), Switzerland, became a Member State of the United Nations during the period under review.³

4. In the cases concerning the Legality of the Use of Force, instituted by the Federal Republic of Yugoslavia against several Member States, the Court determined that, at the time of instituting the proceedings, the Federal Republic of Yugoslavia was not a Member of the United Nations, and, consequently, was not, on that basis, a party to the Statute of the Court.⁴

III. ANALYTICAL SUMMARY OF PRACTICE

Cases concerning the Legality of the Use of Force

5. On 29 April 1999, the Government of the Federal Republic of Yugoslavia instituted proceedings before the Court against the following ten States, claiming that they had violated the prohibition of the use of force against the Applicant: Belgium, Canada, France, Germany, Italy, Netherlands, Portugal, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

6. By Orders of 2 June 1999, the Court removed from the List, due to lack of jurisdiction, the cases brought against Spain and the United States of America.⁵

¹ See GA resolutions A/RES/55/1 (Tuvalu), A/RES/55/12 (Federal Republic of Yugoslavia), A/RES/57/1 (Switzerland), A/RES/57/3 (Timor-Leste) and A/RES/60/264 (Montenegro).
² On 4 February 2003, following the adoption and promulgation of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia, the official name of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. In a letter dated 3 June 2006, the President of the Republic of Serbia informed the Secretary-General that the membership of Serbia and Montenegro was being continued by the Republic of Serbia, following Montenegro’s declaration of independence.
³ See supra, note 1.
⁴ See paragraph 8 below.
7. As for the other eight cases, the Court did not dismiss them in *limine litis*; it continued the proceedings in order to determine if it had jurisdiction over them.⁶

8. According to article 35(1) of its Statute, the Court was called upon to determine whether the Applicant – the Federal Republic of Yugoslavia – was a party to the Statute at the time of the institution of proceedings, on 29 April 1999. In its judgments of 15 December 2004, the Court concluded that the Federal Republic of Yugoslavia was not, at the relevant time, a Member of the United Nations⁷ and, consequently, was not, on that basis, a party to the Statute of the Court. Therefore, the Court was not open to Serbia and Montenegro under Article 35(1) of the Statute.⁸

9. The Court then examined whether Serbia and Montenegro had access to it under Article 35(2) of the Statute. While recognizing that the wording of Article 35(2) might, under certain conditions, open the Court to States not parties to the Statute, the Court nevertheless considered that Article 35(2) referred only to treaties already in force at the date of the entry into force of the Statute, and not to treaties which had entered into force since that time. Thus, the Court held that, even if Serbia and Montenegro were to be considered a party, at the time of its Application on 29 April 1999, to the Genocide Convention, Article IX thereof could not have provided that State

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⁷ It was only on 1 November 2000 that the Federal Republic of Yugoslavia was admitted to membership in the United Nations; see General Assembly resolution 55/12. See also: Security Council resolution 777 of 19 September 1992, where the Council 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 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 and that it shall not participate in the work of the General Assembly; as well as General Assembly resolution 47/1, of 22 September 1992, in which the Assembly too 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 shall not participate in the work of the General Assembly.

with a basis to access to the Court under Article 35(2) of the Statute, as the Genocide Convention entered into force after the Statute.\(^9\)

10. In two of these cases, the Federal Republic of Yugoslavia had submitted an additional basis for jurisdiction, \textit{i.e.}, respectively, Article 4 of the 1930 Convention of Conciliation, Judicial Settlement and Arbitration between the Kingdom of Yugoslavia and Belgium, and Article 4 of the 1931 Treaty of Judicial Settlement, Arbitration and Conciliation between the Kingdom of Yugoslavia and the Netherlands, which both provided for the jurisdiction of the Permanent Court of International Justice.\(^10\)

11. In this connection, the Court considered that, since Serbia and Montenegro was not a party to the Statute at the time of its Application on 29 April 1999, neither Article 4 of the 1930 Convention nor Article 4 of the 1931 Treaty – assuming that they were still in force at the date of filing of the Application – could have constituted a basis for the Court’s jurisdiction under Article 37 of the Statute.\(^11\)

