

Auswärtiges Amt
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Berlin, 26 February 2003
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His Excellency Philippe Couvreur
Registrar
International Court of Justice
The Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Re: Case concerning *Legality of Use of Force (Yugoslavia v. Germany)*

Sir,

I have the honour to refer to your letter of 30 December 2002 by which the written observations of the Federal Republic of Yugoslavia, dated 18 December 2002, on Germany's Preliminary Objections in the case concerning *Legality of the Use of Force (Yugoslavia v. Germany)* were transmitted.

Notwithstanding the brevity of these observations, it is clear that they constitute a formal acknowledgement to the effect that the Court lacks jurisdiction over the case.

The statement contained in point (a) implies that the Federal Republic of Yugoslavia, at the time when it brought proceedings against Germany on 29 April 1999, was not a party to the Statute of the Court. Hence, pursuant to Article 35 (1) of the Statute, it had no right to make use of the Court for the settlement of any international disputes it might have at that time. This means that the Court lacks jurisdiction *ratione personae* over the case. The subsequent admission of the Federal Republic of Yugoslavia has not remedied this defect. Nor has the judgment which the

Court rendered on 3 February 2003 in the case *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)* affected the legal position. This judgment is essentially founded on the argument that the non-membership of the Federal Republic of Yugoslavia was not a new fact, in the sense contemplated by Article 61 of the Statute, with regard to the judgment of 11 July 1996. In the current proceedings, it does not matter when the lack of membership became a matter of public knowledge. In any event, as is known today and has been confirmed by the Federal Republic of Yugoslavia's observations of 18 December 2002, the Applicant was not a member of the United Nations and hence not a party to the Statute in April 1999. Nor has it been authorized in any other manner to appear before the Court.

From the explanations in point (b) of the observations of 18 December 2002, it is clear that the Federal Republic of Yugoslavia does not rely any more on Article IX of the Genocide Convention as the basis of jurisdiction. Since vis-à-vis Germany, that provision was the only compromissory clause which the Applicant has invoked, no other basis of jurisdiction being conceivable, it must be concluded that the Application is inadmissible *ratione materiae* as well.

For the reasons explained in Germany's Preliminary Objections and in light of the written observations submitted by the Applicant, Germany respectfully requests the Court to adjudge and declare that it lacks jurisdiction over the claims brought by the Federal Republic of Yugoslavia against Germany and that, hence, these claims are inadmissible. Alternatively, Germany respectfully requests the Court to make a finding to the effect that the Federal Republic of Yugoslavia does not wish to go on with the proceedings, as indicated in its written observations, and that, consequently, the case is discontinued (Article 89 of the Rules). Germany has no objections to such discontinuance.

Accept, Sir, the assurances of my highest consideration

