

Uncorrected

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CR 99/26 (translation)

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Wednesday 12 May at 3.05 p.m.

Mercredi 12 mai à 15 h 5

Le VICE-PRESIDENT, faisant fonction de président : Veuillez vous asseoir. La Cour se réunit maintenant pour le deuxième tour d'audiences dans les affaires concernant la *Licéité de l'emploi de la force* instituées par la Yougoslavie contre dix états défendeurs.

En fonction des nouveaux moyens de compétence invoqués aujourd'hui dans les affaires contre la Belgique et les Pays-Bas, la Cour tient à informer les Parties qu'elle va donner sa considération à toutes observations de la part de la Belgique ou des Pays-Bas quant à l'admissibilité des moyens additionnels invoqués.

C'est avec grand plaisir maintenant que je donne la parole à l'agent distingué de la Belgique, Mme Raymonde Foucart-Kleynen.

Mrs. FOUCART-KLEYNEN: Mr. President, Members of the Court. In order to respond to the grounds relied on by the Federal Republic of Yugoslavia, Maître Ergec, counsel for the Kingdom of Belgium, will first consider the argument that the Court allegedly has jurisdiction under the Convention on Conciliation, Judicial Settlement and Arbitration of 25 March 1930 between the Kingdom of Belgium and the Kingdom of Yugoslavia.

Mr. President, Belgium could have asked for additional time to reply to an argument raised *in extremis* in a way that is completely unfair and in bad faith on the part of the Federal Republic of Yugoslavia.

Out of respect for the Court, and not wishing to delay unduly proceedings which, according to the applicant State, are urgent in character, we shall not do so.

Maître Ergec will also summarize the arguments already presented in our defence relating to the legality of armed intervention for urgent humanitarian reasons.

Finally, as regards the claimed status of the Federal Republic of Yugoslavia as a Member of the United Nations, Belgium would refer you to the decisions of organs of the United Nations and of organs of specialized international institutions¹, which I have cited in my written submission; these are sufficiently clear and unequivocal, in particular resolution 48/88 of the General Assembly of 20 December 1993. More specifically, recital 19 of that resolution expressly reaffirms resolution 47/1 of 22 December 1992 and requires member States and the Secretariat, in the spirit of that resolution, to bring to an end the *de facto* participation of Serbia and Montenegro in the work of the United Nations.

With your permission, Mr. President, I will now call on counsel for the Kingdom of Belgium, Maitre Ergec, to speak. Thank you for your kind attention.

Le VICE-PRESIDENT, faisant fonction de président : Je vous remercie. Je vous en prie.

Mr. ERGEC: Mr. President, Members of the Court, the Kingdom of Belgium wishes first to protest against this latest procedural manoeuvre by the Federal Republic of Yugoslavia, which today, shortly before the close of the hearing, submitted to the Court a new ground of jurisdiction.

What is more, and above all, I would refer you here to Article 38, paragraph 2, of the Rules of Court, which provides: "The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based." It follows clearly that it is unacceptable, as has happened here, to add a new ground

in extremis supplementing an essential point in the arguments on the prima facie jurisdiction of the Court. Moreover, we may ask why the Federal Republic of Yugoslavia, which must be familiar with the treaties to which it claims to have succeeded, thought it unnecessary - contrary to the principle of the sound administration of justice and the provisions of Article 38 which I have just cited - to include this ground when filing its Application.

Yet Yugoslavia had ample time to do this.

This illustrates clearly the contempt shown by the Federal Republic of Yugoslavia not only for the respondent States but also for the Court.

The Kingdom of Belgium therefore asks the Court, *primarily*, to strike this ground from the proceedings. *In the alternative*, I would remind the Court that the Convention of 1930 confers jurisdiction - obviously - not on this Court but on the Permanent Court of International Justice.

Mr. President, the Permanent Court no longer exists today. It is quite true that Article 37 of the Statute allows the International Court of Justice to substitute itself, to a certain extent, for the Permanent Court of International Justice, but this same Article 37 makes it clear that this is possible only where the States in dispute are *also parties to the Statute of the Court*, i.e., the International Court of Justice (see Charles Rousseau, *Droit international public*, Vol. 5, p. 445).

Now Mr. President, Members of the Court, as has been amply demonstrated, the Federal Republic of Yugoslavia is not a party to the Statute of the Court. It therefore follows that the bilateral Convention of 1930 does not constitute a sufficient ground of jurisdiction, even prima facie.

In the further alternative, in relation to the Convention of 1930 relied on by the Federal Republic of Yugoslavia, the Kingdom of Belgium would remind you that, under the terms of that Convention, the role of the Permanent Court of International Justice is a subsidiary one.

Article 4 provides:

"All disputes with regard to which the Parties are in conflict as to their respective rights shall be submitted for decision to the Permanent Court of International Justice, *unless the parties agree in the manner hereinafter provided, to resort to an arbitral tribunal.*" (Emphasis added.)

Moreover, Articles 5, 6 and 7 of the Convention describe in a precise way a preliminary procedure of arbitration and conciliation.

Yet the Federal Republic of Yugoslavia has instituted none of the procedures laid down by the Articles cited above.

Having not done so, it has failed to use the preliminary procedures whose exhaustion is a necessary condition for seisin of the Permanent Court of International Justice.

You can therefore derive no ground of jurisdiction, even prima facie, from this Convention.

We have here yet another procedural device, intended to overcome our irrefutable and unrefuted preliminary objections to the manifestly invalid character of the recognition by the Federal Republic of Yugoslavia of the jurisdiction of the Court on the basis of Article 36, paragraph 2, of the Statute.

Mr. President, I come now to the reply by my distinguished colleague, Professor Brownlie, to our argument relating to the legality and the necessity of armed intervention by NATO.

I note first that he has said not one word about the doctrine of necessity, as developed by the Kingdom of Belgium.

In relation to the notion of intervention on humanitarian grounds, Mr. Brownlie said that we had failed to cite

any doctrinal support for our stance.

Here, at this point in the proceedings, are two:

- Mario Bettati, "Intervention, ingérence ou assistance" (*Revue trimestrielle des droits de l'homme*, 1994, p. 300ff.);
- Silvio Marcus-Helmons, "Le droit d'intervenir, un corollaire des droits de l'homme?" (*idem*, 1992, p. 470).

Thank you for the Court's attention, Mr. President.

Le VICE-PRESIDENT, faisant fonction de président : Je vous remercie. Ceci termine les conclusions de la Belgique par voie de réplique et la Cour va maintenant procéder à entendre les conclusions dans l'affaire *Yugoslavie c. Canada*. Le juge distingué *ad hoc* représentant la Belgique sera accompagné de la tribune et le juge distingué du Canada sera installé. La séance va reprendre dans quelques instants lorsque les aménagements nécessaires à la barre seront terminés.

L'audience est levée à 15.15.

1 Third supplementary report concerning the second report of the secretariat of the Governing Body of the International Labour Office, March 1993, 255th Session "Review of the decisions of the Governing Body of the International Labor Office"; Second supplementary report of the secretariat of the Governing Body of the International Labor Office, March 1994, 259th Session "Review of the Decisions of the Governing Body of the International Labor Office"; verbatim transcripts of the plenary sittings of the World Health Organization on 3 May 1993; resolution of the Council of Administration of the Universal Postal Union of 20 October 1998.