

DECLARATION OF JUDGE REZEK

[*Translation*]

1 In the opinion of the majority of the Court, the Application for revision submitted by the Federal Republic of Yugoslavia is inadmissible. Accordingly, the *Genocide* case, in which Bosnia and Herzegovina is the Applicant and the Federal Republic of Yugoslavia the Respondent, must take its normal course. In no way can I support this conclusion.

2 My opposition to the Court's decision is founded on two general considerations. First, under current international law the jurisdiction of the Court cannot be imposed on a State against its will. Second, the ambiguities found in the United Nations system, notably those characterizing the recent conduct of the United Nations in respect of the status of the former Yugoslavia and the States having emerged from its break-up, should not be permitted to operate in the present case against the party applying for revision. In my view, even the readily understandable uncertainties and contradictions characterizing the conduct of Governments in the region over the last decade should not work in legal proceedings to the disadvantage of those States. And definitely not to the disadvantage of only one of them.

3 Security Council resolution 777 (1992) however appears to me to be clear enough. It implies that the entity over which the Court affirmed its jurisdiction in the Judgment of 11 July 1996, an entity comprising part of the former Socialist Republic of Yugoslavia, could not at that time claim to have been a Member of the United Nations, a party to the Statute of the Court or a party to the 1948 Genocide Convention. Owing to the apparent will of other States and to the attitude adopted by a majority of them, and as a consequence by the United Nations, the main State arising out of the former Yugoslavia found itself precluded from claiming any entitlement whatsoever on the basis of its participation in these treaty frameworks, even though, in a sign of its conviction, it averred its participation in them. It would be unfair, and contrary to fundamental legal principles, to deny a State a particular status within a given system as far as some effects were concerned but to recognize that status on a selective basis in respect of others.

4 In any case, the new Yugoslavia has been a Member of the United Nations and a party to the Statute of the Court since 1 November 2000. Its accession to the 1948 Genocide Convention, following upon action taken by the United Nations Legal Counsel, occurred in March 2001 and was accompanied by a reservation to Article IX concerning the Court's jurisdiction to settle disputes. As a general rule, any State expressing its consent to a treaty enjoys the prerogative of making a reservation, the

benefit of this right would not have been denied to the other States resulting from the disintegration of the former Yugoslavia and it cannot be otherwise for the State seeking revision

5 The Court could have considered as a new fact the clarification provided by the United Nations in November 2000 of a question which had lain in a grey area since 1992, of a situation which could thus have appeared uncertain in 1996 the former Socialist Republic of Yugoslavia had ceased to exist, Mr Milosević's administration did not continue the State which had broken up The Court's assertion in the Judgment of 11 July 1996 of jurisdiction over the Respondent, resulting from a misreading of the factual situation, should now be subject to revision

6 Otherwise, I would have proposed denying *in limine* the Application for revision but for a reason diametrically opposed to those relied upon by the majority the Federal Republic of Yugoslavia, one of the newest Members of the United Nations, is not the entity considered by the Court to be the Respondent in the Judgment of 11 July 1996 Accordingly, the new Yugoslavia does not have standing to seek revision It is not a party to the dispute submitted to the Court by Bosnia and Herzegovina It will be for the Court to decide at the appropriate time whether that dispute is extant in the absence of the Respondent

(Signed) FRANCISCO REZEK
