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To the Registrar of the  
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Nr. of pages: 4

Amsterdam, 12 May 2006

Re **:Bosnia and Herzegovina v. Serbia and Montenegro**

Dear Sir,

In response to Question 1. of the Vice-President of the Court, addressed to both Parties at the end of the session of 9 May 2006, I am instructed by Bosnia's Agent to submit the following observations to the Court.

The relevant passages of the documents attached to Question 1. read as follows:

“In the light of the fact that Serbia and Montenegro had existed as independent States before the creation of Yugoslavia, and in view of the fact that Yugoslavia continued the international legal personality of these States, the Republic of Macedonia respects the state continuity of the Federal Republic of Yugoslavia. [...] The Parties agree to resolve their mutual claims on grounds of succession to the former Yugoslavia by agreement.”<sup>1</sup>

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<sup>1</sup> FRY / Macedonia

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“Proceeding from the historical fact that Serbia and Montenegro existed as independent States before the creation of Yugoslavia, and bearing in mind the fact that Yugoslavia has continued the international legal personality of these States, the Republic of Croatia notes the existence of the State continuity of the Federal Republic of Yugoslavia.”<sup>2</sup>

“Bosnia and Herzegovina accepts the State continuity of the Federal Republic of Yugoslavia.”<sup>3</sup>

All of these documents do reflect the developing relations between the various independent States that emerged from the former Yugoslavia. The Macedonian documents date from after the Preliminary Objections-Oral Pleadings, but from before the Court’s Judgment of 11 July 1996, while the Croatian and Bosnian documents were agreed upon between the respective Parties after that Judgment. We do want to draw the Court’s attention to the fact that the FRY / Bosnia Document was made known within the UN by the Chargé d’affaires of Yugoslavia, i.e. the FRY, which formed at the time –and remained since- the regular UN practice.

The documents also show that Yugoslavia retained its views on State continuity as expressed in the Declaration of the joint session of the Assembly of the SFRY, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro of 27 April 1992, as also expressed in the Note sent to the Secretary-General of the United Nations by Yugoslavia’s representative at the United Nations on 27 April 1992, which note states among other things:

“Under the Constitution, on the basis of the continuing personality of Yugoslavia and the legitimate decisions by Serbia and Montenegro to continue to live together in Yugoslavia, the Socialist Federal Republic of Yugoslavia is transformed into the Federal Republic of Yugoslavia, consisting of the Republic of Serbia and the Republic of Montenegro. Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia. The Federal Republic of Yugoslavia, as a founding member of the United Nations, acknowledges its full commitment to the world Organization, the United Nations Charter and to the Conference on Security and Cooperation in Europe (CSCE), as its founding

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<sup>2</sup> FRY / Croatia

<sup>3</sup> FRY / Bosnia and Herzegovina

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participating state and to all CSCE documents, in particular the Helsinki Final Act and the Charter of Paris.”<sup>4</sup>

The documents attached to the Vice-President’s question also show that Yugoslavia’s position regarding continuity was in effect not barred by the other three, respective, Parties, while all Parties agreed that the format for upcoming negotiations on the “legacy” of the SFRY would be:

“The Parties agree to resolve their mutual claims on grounds of succession to the former Yugoslavia by agreement.” (Macedonia);

“The Contracting Parties are agreed to resolve the issue of the succession of the Socialist Federal Republic of Yugoslavia on the basis of the rules of international law on succession of States and through agreement.” (Croatia);

and

“Both sides agree to resolve issues of succession on the basis of the rules of international law on succession of States and by agreement.” (Bosnia and Herzegovina)

The Court knows that, as Counsel for Bosnia and Herzegovina observed, the FRY had presented the continuity position during the course of our proceedings to the Court on which the Court, then, based itself reaching its 11 July 1996 Judgment<sup>5</sup>. Likewise the FRY, at the time, - outside the Court- continuously presented this position to its counterparts who also acted on this basis.

Although Respondent has, during the recent Oral Pleadings, taken the stance that the continuity position was wrong, at the same time it was stressed by various Counsel for the Respondent that the continuity position was “not implausible” and “plausible”<sup>6</sup>. Certainly, this position was not only plausible, but from a legal perspective perfectly possible, regardless of the circumstances that the other States emerging from the former Yugoslavia –politically– would have desired otherwise. The situation reflected in the documents attached to Question 1. reflects precisely the situation Counsel for Bosnia referred to when he stated:

« En d’autres termes, il eût été possible que le vent tournât et que la communauté internationale – qui n’avait pris aucune mesure d’expulsion ou de suspension de la You-

<sup>4</sup> UN Doc. A/46/915, Annex I, page 2.

<sup>5</sup> CR 2006/36, pages 12-13, paras. 29-32 (Pellet)

<sup>6</sup> CR 2006/13, page. 30, para. 3.46 (Varady) and CR 2006/44, page 43, para. 2.50 (Zimmermann).

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goslavie des Nations Unies – se résignât à sa réintégration dans l'intégralité de ses droits au sein de l'Organisation, car il était possible aussi que les autres Etats successeurs de l'ex-Yougoslavie (la RFSY) lui reconnaissent le statut de continuateur [...] »<sup>7</sup>

The main thing is that, as appears from the documents attached to Question 1, the FRY, Macedonia, Croatia and Bosnia and Herzegovina conducted their respective, bilateral, relations also on the given state continuity of the FRY, as did the Court while reaching its 1996 Judgment, on the basis of the position firmly maintained by the FRY itself. This situation cannot be undone and is not undone, retroactively, by the FRY's admission to the United Nations on 1 November 2000, which admission was based upon a request of the FRY submitted to the Secretary General on 27 October 2000.

Please, accept, Sir, the assurances of my highest esteem,

Sincerely,



Phon van den Biesen,  
Deputy Agent of Bosnia and Herzegovina  
before the International Court of Justice

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<sup>7</sup> CR 2006/37, page 35, para. 7 (Pellet)