

**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)
INTERNATIONAL COURT OF JUSTICE
General List No. 122 (February 3, 2003)
<<http://www.icj-cij.org/icjwww/idecisions.htm>>

Author's Note: In 1993, Bosnia and Herzegovina—after achieving its statehood—filed this case against the former Yugoslavia, as the latter splintered during the 1990s. Bosnia's claim arose under the Genocide Convention (textbook §11.1), asserting "Yugoslavia's" responsibility for prior actions by the Bosnian Serbs against Bosnia's non-Serbian population.

Years before this subsequent decision, the International Court of Justice (ICJ) determined that it had jurisdiction over the defendant “Federal Republic of Yugoslavia (FRY).” Based on its unique status within the United Nations as of 1992, where the seat for "Yugoslavia" would remain unfilled during the next decade, the FRY filed objections to the court's ability to determine the merits of this case against an entity that no longer existed. In 1996, the court nevertheless determined that both Bosnia and FRY were bound by the Genocide Convention.

In this 2003 round of the match between Bosnia and FRY, the defendant hoped to derail these proceedings by its claim that there was a “fact” which was unknown to the court and the parties. The “fact” was that circumstances evolved, between 1992 and the 2000 admission of Serbia and Montenegro to the UN General Assembly, whereby there could be no State against which to proceed.

As you will learn in §9.4 of this textbook, the ICJ has jurisdiction over States (only). But the defendant must be a State to be a party to the court's proceedings. In this latest opinion in the decade-long proceedings, the court analyzes the daunting question of whether there was actually an entity whom Bosnia could legally sue, given the dissolution of the former Yugoslavia. If the FRY was not a State during this period: (a) it could not be a party to the ICJ's proceedings; and (b) it could not possibly incur State responsibility for Genocide.

Court's (majority) Opinion:

Judgment

THE COURT . . . after deliberation, delivers the following Judgment:

1. On 24 April 2001, the Federal Republic of Yugoslavia (hereinafter referred to as the “FRY”) filed in the Registry of the Court an Application . . . instituting proceedings, whereby . . . it requested the Court to revise the Judgment delivered by it on 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 (I.C.J. Reports 1996 (II), p. 595).

. . .

17. . . . The Court will begin by ascertaining whether there is here a “fact” which, although in existence at the date of its Judgment of 11 July 1996, was at that time

unknown both to the FRY and to the Court [which would be a basis for modifying, and as the defendant wished, dismissing the entire proceedings because the defendant did not exist].

25. In the early 1990s the SFRY [Socialist Federal Republic of Yugoslavia] made up of Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia, began to break up. On 25 June 1991 Croatia and Slovenia both declared independence, followed by Macedonia on 17 September 1991 and Bosnia and Herzegovina on 6 March 1992. On 22 May 1992, Bosnia and Herzegovina, Croatia and Slovenia were admitted as Members to the United Nations; as was the former Yugoslav Republic of Macedonia on 8 April 1993.

27. An official Note . . . from the Permanent Mission of Yugoslavia to the United Nations [in 1992] . . . stated inter alia that:

The Assembly of the Socialist Federal Republic of Yugoslavia, at its session held on 27 April 1992, promulgated the Constitution of the Federal Republic of Yugoslavia. 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." (United Nations doc. A/46/915, Ann. I.)

28. On 19 September 1992, the Security Council adopted resolution 777 (1992) [in response to the paragraph 27 Yugoslavian Mission's Note to the UN] which read as follows:

The Security Council,

Considering that the state formerly known as the Socialist Federal Republic of Yugoslavia has ceased to exist,

Recalling in particular resolution 757 (1992) which notes that 'the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations has not been generally accepted,'

1. Considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore recommends 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;

29. On 22 September 1992 the General Assembly adopted resolution 47/1, according to which:

The General Assembly,

Having received the recommendation of the Security Council of 19 September 1992 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,

1. Considers that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations; and therefore decides 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.

30. On 25 September 1992, the Permanent Representatives of Bosnia and Herzegovina and Croatia addressed a letter to the Secretary-General, in which, with reference to Security Council resolution 777 (1992) and General Assembly resolution 47/1, they stated their understanding as follows:

at this moment, there is no doubt that the Socialist Federal Republic of Yugoslavia is not a member of the United Nations any more. At the same time, the Federal Republic of Yugoslavia is clearly not yet a member. They concluded that “the flag flying in front of the United Nations and the name-plaque bearing the name ‘Yugoslavia’ do not represent anything or anybody any more” and “kindly request[ed] that [the Secretary-General] provide a legal explanatory statement concerning the questions raised” (United Nations doc. A/47/474).

31. In response, on 29 September 1992, the Under-Secretary-General and Legal Counsel of the United Nations addressed a letter to the Permanent Representatives of Bosnia-Herzegovina and Croatia, in which he stated that the “considered view of the United Nations Secretariat regarding the practical consequences of the adoption by the General Assembly of resolution 47/1” was as follows:

While the General Assembly has stated unequivocally that the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot automatically continue the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations and that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations, the only practical consequence that the resolution draws is that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the

General Assembly. It is clear, therefore, that representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) can no longer participate in the work of the General Assembly, its subsidiary organs, nor conferences and meetings convened by it.

On the other hand, the resolution neither terminates nor suspends Yugoslavia's membership in the Organization. Consequently, the seat and nameplate remain as before, but in Assembly bodies representatives of the Federal Republic of Yugoslavia (Serbia and Montenegro) cannot sit behind the sign 'Yugoslavia'. Yugoslav missions at United Nations Headquarters and offices may continue to function and may receive and circulate documents. At Headquarters, the Secretariat will continue to fly the flag of the old Yugoslavia as it is the last flag of Yugoslavia used by the Secretariat. The resolution does not take away the right of Yugoslavia to participate in the work of organs other than Assembly bodies. [The UN's Economic and Social Council would soon exclude the defendant from participating in its activities.] The admission to the United Nations of a new Yugoslavia under Article 4 of the Charter will terminate the situation created by resolution 47/1. (United Nations doc. A/47/485.)

...

33. The Court recalls that between the adoption of General Assembly resolution 47/1 of 22 September 1992 and the admission of the FRY [upon its successful application for membership] to the United Nations on 1 November 2000, the legal position of the FRY remained complex, as shown by the following examples.

...

35. During this period, referring to the terms of Security Council resolution 777 (1992) and General Assembly resolution 47/1, Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia consistently objected to the FRY's claim that it continued the State and the international legal and political personality of the former SFRY. In particular, they disagreed that the FRY was a Member of the United Nations and a party to the multilateral treaties to which the former Yugoslavia was a party.

36. It was in this context that, following the suggestion made by the Representative of Bosnia and Herzegovina at the 18th and 19th Meetings of States Parties to the International Covenant on Civil and Political Rights [textbook §11.2], and a vote thereon, the FRY was excluded from participating in the said meetings. . .

37. In response to these protests, the FRY, claiming that it continued the international legal personality of the former Yugoslavia, at all times maintained the view that its membership in the United Nations and its status as a State party to international treaties were not affected by the [ousting] adoption of Security Council resolution 777 (1992) and General Assembly resolution 47/1.

...

43. On 3 June 1999, the Permanent Representatives of Bosnia and Herzegovina, Croatia, Slovenia and the former Yugoslav Republic of Macedonia addressed a letter to the President of the Security Council, stating:

We wish that this letter be understood as our permanent objection to the groundless assertion of the Federal Republic of Yugoslavia (Serbia and

Montenegro), which has also been repudiated by the international community, that it represents the continuity of our common predecessor, and thereby continues to enjoy its status in international organizations and treaties.

50. On 31 October 2000, the Security Council . . . “recommend[ed] to the General Assembly that the Federal Republic of Yugoslavia be admitted to membership in the United Nations.” On 1 November 2000, the General Assembly . . .

Having considered the application for membership of the Federal Republic of Yugoslavia,

Decides to admit the Federal Republic of Yugoslavia to membership in the United Nations.

The admission of the FRY to membership of the United Nations on 1 November 2000 put an end to Yugoslavia's sui generis position within the United Nations.

52. . . . On 15 March 2001, the Secretary-General, acting in his capacity as depositary, issued a Depositary Notification (C.N.164.2001.TREATIES-1), indicating that the accession of the FRY to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide “was effected on 12 March 2001” and that the Convention would “enter into force for the FRY on 10 June 2001.”

61. The Court rendered its Judgment on the preliminary objections raised by the FRY on 11 July 1996. In the reasoning of the Judgment, the Court came to the conclusion that both Parties were bound by the Convention when the Application was filed.

62. With regard to the FRY, the Court stated the following:

The proceedings instituted before the Court are between two States whose territories are located within the former Socialist Federal Republic of Yugoslavia. That Republic signed the Genocide Convention on 11 December 1948 and deposited its instrument of ratification, without reservation, on 29 August 1950. At the time of the proclamation of the Federal Republic of Yugoslavia, on 27 April 1992, a formal declaration was adopted on its behalf to the effect that:

The Federal Republic of Yugoslavia, continuing the State, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally.

This intention thus expressed by Yugoslavia to remain bound by the international treaties to which the former Yugoslavia was party was confirmed in an official Note of 27 April 1992 from the Permanent Mission of Yugoslavia to the United Nations, addressed to the Secretary-General. . . .

With regard to Bosnia and Herzegovina, the Court . . . noted that Bosnia and Herzegovina became a Member of the United Nations on 22 May 1992 and from that date, by virtue of Article XI of the Genocide Convention, “Bosnia and Herzegovina could thus become a party to the Convention.”

65. The Court will now examine whether the FRY relies on facts which fall within the terms of Article 61 of the Statute [with a view toward “revising” the 1996 judgment to dismiss this case].

66. As recalled above, the FRY claims that the facts which existed at the time of the 1996 Judgment and upon the discovery of which its request for revision of that Judgment is based “are that the FRY was not a party to the Statute, and that it did not remain bound by the Genocide Convention continuing the personality of the former Yugoslavia.” It argues that these “facts” were “revealed” by its admission to the United Nations on 1 November 2000 and by the Legal Counsel's letter of 8 December 2000.

67. The Court would begin by observing that, under the terms of Article 61, paragraph 1, of the Statute, an application for revision of a judgment may be made only when it is “based upon the discovery” of some fact which, “when the judgment was given,” was unknown. These are the characteristics which the “new” fact referred to in paragraph 2 of that Article must possess. Thus both paragraphs refer to a fact existing at the time when the judgment was given and discovered subsequently. A fact which occurs several years after a judgment has been given is not a “new” fact within the meaning of Article 61; this remains the case irrespective of the legal consequences that such a fact may have.

68. In the present case, the admission of the FRY to the United Nations occurred on 1 November 2000, well after the 1996 Judgment. The Court concludes accordingly, that that admission cannot be regarded as a new fact within the meaning of Article 61 capable of founding a request for revision of that Judgment [to essentially absolve FRY from State responsibility for Genocide].

70. Furthermore the Court notes that the admission of the FRY to membership of the United Nations took place more than four years after the Judgment which it is seeking to have revised. At the time when that Judgment was given, the situation obtaining was that created by General Assembly resolution 47/1. In this regard the Court observes that the difficulties which arose regarding the FRY's status between the adoption of that [1992] resolution and its admission to the United Nations on 1 November 2000 resulted from the fact that, although the FRY's claim to continue the international legal personality of the Former Yugoslavia was not “generally accepted” (see paragraph 28 above), the precise consequences of this situation were determined on a case-by-case basis (for example, non-participation in the work of the General Assembly and ECOSOC and in the meetings of States parties to the International Covenant on Civil and Political Rights, etc.).

Resolution 47/1 did not *inter alia* affect the FRY's right to appear before the Court or to be a party to a dispute before the Court under the conditions laid down by the Statute. Nor did it affect the position of the FRY in relation to the Genocide Convention. To “terminate the situation created by resolution 47/1,” the FRY had to submit a request for admission to the United Nations as had been done by the other Republics composing the SFRY. All these elements were known to the Court and to the FRY at the time when the Judgment was given. Nevertheless, what remained unknown in July 1996 was if and when the FRY would apply for membership in the United Nations and if and when that application would be accepted, thus terminating the situation created by General Assembly resolution 47/1.

72. It follows from the foregoing that it has not been established that the request of the FRY is based upon the discovery of “some fact” which was “when the judgment was given, unknown to the Court and also to the party claiming revision.” The Court therefore concludes that one of the conditions for the admissibility of an application for revision prescribed by paragraph 1 of Article 61 of the Statute has not been satisfied.

74. The FRY's Application for revision must accordingly be rejected.

75. For these reasons,

THE COURT, By ten votes to three,

Finds that the Application submitted by the Federal Republic of Yugoslavia for revision, under Article 61 of the Statute of the Court, of the Judgment given by the Court on 11 July 1996, is inadmissible.

Separate Opinion of Judge Koroma

9. . . . I have difficulty with some conclusions reached in the Judgment. One such difficulty is that the Court, without defining what in its opinion will be considered a "new" fact within the meaning of Article 61, stated that if the fact occurred several years after a judgment, this is not a new fact within the meaning of Article 61, irrespective of its legal consequences. Although this as a position of law is correct as far as it goes, but the issue the Court has to determine involves the question as to whether or not Yugoslavia was a Member of the United Nations before 1 November 2000. The Court itself had earlier acknowledged in its Judgment in 1996, that the FRY's status regarding United Nations membership was not free from “legal difficulties.” Accordingly, to dismiss the FRY's admission to membership of the United Nations in November 2000 and its legal consequences as simply a fact occurring several years after the [1996] Judgment is a distortion and too superficial. . . . It is to be recalled that the Court relied for the basis of its Judgment in 1996 on the FRY's declaration of 22 April 1992 that it remained bound by those treaties to which the former Socialist Federal Republic of Yugoslavia had been a party, and the Court assumed for this purpose that the FRY was a Member of the United Nations. Unless such assumption was made, the FRY's declaration alone should not and could not legally have been sufficient to serve as a basis for recognition of the FRY as a party to the Genocide Convention—the sole basis on which the Court founded its jurisdiction. Accordingly, the FRY's admission to membership of the United Nations on 1 November 2000 suggests that it was not a Member of the United Nations in 1996 and thus was not a party to the Genocide Convention; therefore, the basis of the Court's jurisdiction no longer exists. Unfortunately, the Court chose not to address these critical issues, which were raised in the [defendant's] Application [for revision of the 1996 judgment]. . . . The Court went on to say that: “To ‘terminate the situation created by resolution 47/1’, the FRY had to submit a request for admission to the United Nations as had been done by the other Republics composing the SFRY.” (Paragraph 70.)

11. In my view, when an application for revision is submitted under Article 61 and where fresh facts have emerged and are of such importance as to warrant revising the

earlier decision or conclusion, the Court should be willing to carry out such a procedure. Such an application is not to be regarded as impugning the Court's earlier legal decision as such, as that decision was based on the facts as then known. I am of the view that the admission of the FRY to membership of the United Nations in November 2000 does have legal implications for the Judgment reached by the Court on this matter in July 1996.

...

Dissenting Opinion of Judge Vereschetin

...

20. On 8 December 1999 nine States submitted in the United Nations a draft resolution of the General Assembly, proposing that the Assembly should declare that it “[c]onsiders that, as a consequence of its dissolution, the former Socialist Federal Republic of Yugoslavia ceased to exist as a legal personality and that none of its five equal successor States can be privileged to continue its membership in the United Nations.” Ultimately, the consideration of this draft resolution was postponed indefinitely by the General Assembly. This reaction of the Assembly could have been seen by Yugoslavia as another “mixed” political signal.

21. Accordingly, the facts of Yugoslavia's non-membership of the United Nations could not have been known to the Court and Yugoslavia at the time of the Judgment.

...

Dissenting Opinion of Judge Dimitrijevic

III. Facts in the Present Case

...

17. That very expeditious way of dealing with the important matter of jurisdiction, together with the choice of arguments and terms, could only have meant the following.

(a) The Court assumed that the SFRY had ceased to exist. Otherwise there would be no “former” Yugoslavia.

...

IV. The Legal Status of The Socialist Federal Republic of Yugoslavia, Of The Federal Republic of Yugoslavia And of "Yugoslavia" in 1996

...

25. The first mention of the legal disappearance of Yugoslavia was to be found in Opinion No. 1 of the Arbitration Commission established as an advisory body by the Peace Conference on Yugoslavia, convened by the (then) European Community. This Commission, known after its first president as the "Badinter Commission", opined on 29 November 1991 “that the Socialist Federal Republic of Yugoslavia [was] in the process of dissolution” (Conference for Peace in Yugoslavia, Arbitration Commission, Opinion No. 1, International Legal Materials, 1992, p. 1497).

26. In its Opinion No. 8 of 4 July 1992 the Commission found that the process of dissolution was completed and that the SFRY no longer existed. The Commission, in its Opinion No. 9 of the same date, advised that “the SFRY's membership of international organizations must be terminated according to their statutes and that none of the successor states may thereupon claim for itself alone the membership rights previously enjoyed by the former SFRY.” The Commission concluded in its Opinion No. 10, that the FRY was “a new state which cannot be considered the sole successor to the SFRY.”

(Opinions 8, 9 and 10 are reproduced in *International Legal Materials*, 1992, pp. 1521 et seq.)

...
28. As interpreted by the United States, a permanent Member of the Security Council, at the time of the adoption of resolution 777 (19 September 1992), this resolution “recommends that the General Assembly take action to confirm that the membership of the Socialist Republic of Yugoslavia has expired and that because Serbia and Montenegro is not the continuation of the Socialist Republic of Yugoslavia it must apply for membership if it wishes to participate in the United Nations.”

...
33. In this respect it is important to observe the conduct of Bosnia and Herzegovina. It has been one of those States which have most vigorously contested the membership of the FRY in the United Nations and other international organizations as well as the existence of continuity between the SFRY and the FRY. . . .

34. In view of the foregoing, the finding of the Court “that it has not been contested that Yugoslavia was a party to the Genocide Convention” must be seen in a different light. Actually, the other party in the proceedings, Bosnia and Herzegovina, has never failed to contest the identity between the SFRY and the FRY, except only in relation to the Genocide Convention and only regarding a specific case [this one] before the International Court of Justice.

...
37. . . . What then is the difference between “old Yugoslavia” and “new Yugoslavia,” referred to in the opinion? What was believed would happen to the old State once the new State was admitted to the United Nations? In view of the instruction to fly the flag of the SFRY (the old Yugoslavia) and the fact that this flag lost its symbolic meaning (for it had been abolished by the same gathering [SFRY Assembly] which had proclaimed the Constitution of the FRY and adopted the Declaration of 27 April 1992), it can be concluded that, for unknown reasons, some actors kept alive the fiction that, as late as on the eve of 1 November 2000, when the FRY was admitted to membership, a phantom State existed, which was neither the SFRY nor the FRY. . . .

38. Paradoxically, this fanciful theory seems to correspond best to the situation obtaining after the adoption of resolution 47/1, which was aptly described by one writer as “limited survival after death . . . of the former Yugoslavia at the United Nations.”

...

Notes & Questions

1. Paragraphs 28 and 29 of the ICJ's opinion contain the Security Council and General Assembly rejections of the paragraph 27 Note from the Permanent Mission of Yugoslavia. These two UN bodies simultaneously determined that the “FRY” was not the successor entity to the “SFRY.” Paragraph 30 echoed Bosnia and Croatia's express understanding that the: (a) SFRY was not a UN member any more; (b) FRY was “clearly not yet a member;” and (c) the “Yugoslavia” flag in front of the UN—and the name-plaque bearing that name in the General Assembly chamber—did “not represent anything or anybody any more.” As noted in paragraph 31, Slovenia and Macedonia likewise objected to the claim that “FRY” represented the former Yugoslavia at the UN. So how

could the ICJ thus decide this case against the defendant for the interim period between Bosnia's 1993 filing and the defendant's 2003 application to alter the 1996 judgment against the defendant?

2. Why was the “phantom State,” as it was labeled by the dissenting Justice Dimitrijevic, neither the SFRY nor the FRY? Note that the defendant entity in these proceedings—between 1993 and 2000—was not the former Yugoslavian provinces “Serbia and Montenegro.” That union was formed and admitted to the UN in 2000. It thereafter reclaimed the former Yugoslavia seat in the General Assembly.

3. Did the points made by the dissenting justices convincingly suggest that this case was wrongly decided?

4. Was the defendant in this decade-long proceedings, a “State” under the four Montevideo Convention elements appearing in §2.3 of this book on Recognition of States?

5. On February 4, 2003, the European Union brokered an arrangement whereby “Yugoslavia” was finally legally abolished. Serbia and Montenegro, former provinces—and now the remnant—of Yugoslavia each have sovereignty. They are linked for defense and foreign affairs purposes, with the common capitol in Belgrade. The departing prime minister of Yugoslavia praised this development as being beneficial for the two remaining republics, and one that “puts an end to the disintegration in the region.” See D. Simpson, *Yugoslavia is Again Reinvented in Name and Structure*, NYT on the Web (Feb. 5, 2003).

6. Almost two years after the above *Bosnia v. FRY* case was decided, the ICJ dismissed a distinct case, wherein the Applicant “_____” sued NATO nations. That military campaign was conducted without the imprimatur of a UN Security Council resolution authorizing the use of force. When initially filed during the bombing in 1999, the plaintiff entity sought provisional measures that—if granted—would have ordered the defendants to cease the bombing campaign. In an earlier phase of these proceedings, the Court denied the Applicant's preliminary request for an injunction against the NATO bombing. The ICJ did not decide, however, whether the Applicant was a member of the UN—and the companion ICJ Statute permitting the Court to resolve contentious cases only between “States.” This allowed the case to remain on the Court's docket, because denying the requested injunction was not a judgment on the merits of the underlying claim against the NATO nations. For a succinct but authoritative analysis of the ICJ's decision(s in the separately filed cases against each defendant NATO nation), see P. Bekker & C. Borgen, *ASIL Insight: World Court Rejects Yugoslav Requests to Enjoin Ten NATO Members from Bombing Yugoslavia* (June, 1999): <http://www.asil.org/insights/insigh36.htm>.

The ICJ's December 2004 dismissal of this case, unanimously held that the defendant nations correctly argued that Serbia and Montenegro was not a UN member when this case was originally filed in 1999. Serbia and Montenegro was characterized as not having “standing” [see §1.5 on avoidance of issues arising under International Law]. Put another way, Serbia and Montenegro did not have the legal personality to present this claim on behalf of the people in the former Yugoslavia. Thus, the ICJ never could have had jurisdiction to proceed with this case. The critical date for establishing Serbia and Montenegro's right to proceed with this case is the date that these proceedings were filed.

The April 1999 filing date fell between the 1992 demise of the former Yugoslavia (“SRFY”) and the 2000 application and admission of the “FRY” to the United Nations—thus providing first legal access to the ICJ long after the 1999 filing date of this Legal Use of Force case. Case Concerning Legality of the Use of Force (Serbia and Montenegro v. Belgium—one of eight simultaneous judgments), Judgment of December 15, 2004, available at <<http://www.icj-cij.org/icjwww/idocket/iybe/iybeframe.htm>>. In addition to the ICJ online summary, see P. Bekker, J. Levine & F. Weinacht, *The World Court Dismisses Serbia and Montenegro’s Complaints against Eight NATO Members*, ASIL Insight (Dec. 2004), available at: <<http://www.asil.org/insights/2004/12/insight041223.htm>>.

First, is the ICJ’s decision the later Legality of Use of Force case consistent with the Court’s decision in *Bosnia v. FRY*? Second, having read about both cases, what entity—if any—could have filed the Legality of Use of Force case in the ICJ in 1999?