CR 2004/15

International Court
of Justice

THE HAGUE

Cour internationale
de Justice

LA HAYE

YEAR 2004

Public sitting

held on Thursday 22 April 2004, at 10 a.m., at the Peace Palace,

President Shi presiding,

in the case concerning the **Legality of Use of Force**
(Serbia and Montenegro *v.* Belgium)

VERBATIM RECORD

ANNÉE 2004

Audience publique

tenue le jeudi 22 avril 2004, à 10 heures, au Palais de la Paix,

sous la présidence de M. Shi, président,

en l'affaire relative à la **Licéité de l'emploi de la force**
(Serbie et Monténégro c. Belgique)

COMPTE RENDU

Present:	President	Shi
	Vice-President	Ranjeva
	Judges	Guillaume
		Koroma
		Vereshchetin
		Higgins
		Parra-Aranguren
		Kooijmans
		Rezek
		Al-Khasawneh
		Buergenthal
		Elaraby
		Owada
		Tomka
	Judges *ad hoc*	Kreća
	Registrar	Couvreur

Présents : M. Shi, président
M. Ranjeva, vice-président
MM. Guillaume
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby
Owada
Tomka, juges
M. Kreća, juge *ad hoc*

M. Couvreur, greffier

The Government of Serbia and Montenegro is represented by:

Mr. Tibor Varady, S.J.D. (Harvard), Chief Legal Adviser at the Ministry of Foreign Affairs of Serbia and Montenegro, Professor of Law at the Central European University, Budapest and Emory University, Atlanta;

as Agent, Counsel and Advocate;

Mr. Vladimir Djerić, LL.M. (Michigan), Adviser to the Minister for Foreign Affairs of Serbia and Montenegro,

as Co-agent, Counsel and Advocate;

Mr. Ian Brownlie, C.B.E., Q.C., F.B.A., Chichele Professor of Public International Law (Emeritus), University of Oxford, Member of the International Law Commission, member of the English Bar, member of the Institut de droit international,

as Counsel and Advocate;

Mr. Slavoljub Carić, Counsellor, Embassy of Serbia and Montenegro, The Hague,

Mr. Saša Obradović, First Secretary, Embassy of Serbia and Montenegro, The Hague,

Mr. Vladimir Cvetković, Third Secretary, International Law Department, Ministry of Foreign Affairs of Serbia and Montenegro,

Ms Marijana Santrač,

Ms Dina Dobrković,

as Assistants;

Mr. Vladimir Srećković, Ministry of Foreign Affairs,

as Technical Assistant.

The Government of the Kingdom of Belgium is represented by:

Mr. Jan Devadder, Director-General, Legal Matters, Ministry of Foreign Affairs, Brussels,

as Agent;

Mr. Daniel Bethlehem, Q.C., Director, Lauterpacht Research Centre for International Law, Cambridge,

as Counsel;

Ms Clare Da Silva, Research Assistant, Lauterpacht Research Centre for International Law, Cambridge,

Ms Valérie Delcroix, Assistant Adviser, Directorate of Public International Law, General Directorate of Legal Affairs, Federal Public Department of Foreign Affairs, Foreign Trade and Co-operation for Development, Brussels,

as Assistants.

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comme agent, conseil et avocat;

M. Vladimir Djerić, LL.M. (Michigan), conseiller du ministre des affaires étrangères de la Serbie et Monténégro,

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M. Slavoljub Carić, conseiller à l'ambassade de Serbie et Monténégro à La Haye,

M. Saša Obradović, premier secrétaire à l'ambassade de Serbie et Monténégro à La Haye,

M. Vladimir Cvetković, troisième secrétaire, département de droit international, ministère des affaires étrangères de Serbie et Monténégro,

Mme Marijana Santrač, LL.B. M.A. (Université d'Europe centrale),

Mme Dina Dobrković, LL.B.,

comme assistants;

M. Vladimir Srećković, ministère des affaires étrangères de Serbie et Monténégro,

comme assistant technique.

Le Gouvernement du Royaume de Belgique est représenté par :

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comme agent;

M. Daniel Bethlehem Q.C., directeur du *Lauterpacht Research Centre for International Law*, Cambridge,

comme conseil;

Mme Clare Da Silva, assistante de recherche au *Lauterpacht Research Centre for International Law*, Cambridge,

Mme Valérie Delcroix, conseiller adjoint à la direction droit international public, direction générale des affaires juridiques du ministère des affaires étrangères,

comme assistantes.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this morning to hear the second round of oral argument of Belgium, the Netherlands, Canada and Portugal.

I shall now give the floor to Mr. Devadder, Agent of the Kingdom of Belgium.

M. DEVADDER : Merci, Monsieur le président. Madame et Messieurs les juges, je vais demander de donner directement la parole à Me Bethlehem pour l'introduction. Je présenterai les conclusions après, avec votre permission, Monsieur le président. Je vous remercie.

The PRESIDENT: Thank you. I now give the floor to Mr. Bethlehem.

Mr. BETHLEHEM:

1. Mr. President, Members of the Court, I can be quite brief in my reply to Serbia and Montenegro's submissions yesterday. Although there were some novel elements to their arguments, to which I will come in a moment, we have heard nothing so far to cause us either to abandon any of our submissions or which suggests a pressing need to elaborate on them in any detail. In particular, Mr. President, I do not propose to engage with Serbia and Montenegro on two of its elements of its arguments directed to Belgium's objections to admissibility — concerning the application of the *Monetary Gold* principle to this case and the allegations of bad faith. These are set out in Chapters 9 and 10 of Belgium's written pleadings and need no further elaboration. Similarly, there is no need for me to say anything about the allegations in the FRY's Memorial concerning post-10 June 1999 events. In the light of the submissions of Serbia and Montenegro yesterday, it seems that they are not now pursuing this element. This aspect is addressed in Belgium's written pleadings at Chapter 2. Save for one observation, I will also say nothing on Belgium's objections to admissibility to the effect that the FRY has not particularized any allegations against Belgium specifically. This argument is addressed in Chapter 8 of Belgium's written pleadings as well as in Chapter 6 in respect of the Genocide Convention. The only observation that I would make at this point is that in the absence of specific allegations detailing conduct by Belgium said to be contrary to the Genocide Convention, this is a particular shortcoming of the FRY's case. An essential element to proving both the *actus reus* and the *mens*

rea of genocide would be to allege conduct and intent which is specific to the respondent. This the Applicant has not done. I say no more on the point here. Mr. President, once again, for the avoidance of doubt, I also note that Belgium maintains all of its written submissions, notwithstanding that I may not address them further here.

2. Mr. President, Members of the Court, before I turn to make a number of short points on the substance of the Applicant's oral submissions, I must begin formally by registering some irritation on Belgium's part at what we heard yesterday. The Applicant's response on the substance of Belgium's Preliminary Objections should have been set out in Serbia and Montenegro's written statement envisaged by Article 79 (5) of the Rules of Court. Everything that we heard yesterday could — and ought to have been — said in a written document. This would have allowed the Parties to properly join argument in this phase of the proceedings. We do not consider that the approach adopted by Serbia and Montenegro is consistent with sound practice and the established procedures of the Court. On a number of quite critical points, we heard an entirely new theory of the case yesterday. On one element — concerning the point at which "the dispute" is said to have crystallized — counsel for Serbia and Montenegro specifically expressly disavowed the Memorial[1]. We are now informed that "[f]or purposes of the Declaration and the Statute of the Court the date of the dispute was that of the deposit of the Application namely, 29 April 1999"[2]. Mr. President, Members of the Court, this is the third or fourth variation on a theme to which we have been treated, it is difficult to be precise. The Application instituting proceedings was cast in general terms, referring to participation "in the acts of use of force against the Federal Republic of Yugoslavia by taking part in bombing targets in the Federal Republic of Yugoslavia"[3]. The accompanying request for provisional measures, however, referred to "the onset of the bombing of the Federal Republic of Yugoslavia", that is, the 24 March 1999. Similarly, the FRY's Memorial proceeded by way of a day-by-day chronology, starting from 24 March 1999. This is some five weeks before the dispute is now said to have crystallized.

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[1]Submissions of Ian Brownlie, Q.C., CR 2004/14, 21 April 2004, p. 43, para. 59.

[2]Submissions of Ian Brownlie, Q.C., CR 2004/14, 21 April 2004, p. 40, para. 50.

[3]Application, at "Facts upon which the claim is based".

3. The FRY's provisional measures request was dated 28 April 1999 — that is, the day *before* the date which the Applicant now says is the date of crystallization of the dispute. In the FRY's oral submissions at the provisional measures phase, theories of instantaneous wrongful acts and of continuing events were advanced. Now, at this very last possible moment, following a four-paragraph written response on 18 December 2002 to Belgium's written pleadings, we have an entirely new theory of the case again. Now, we are told, the dispute crystallized with the deposit of the Application instituting proceedings.

4. Mr. President, Members of the Court, quite apart from what this new theory does to the substance of the Applicant's claim — to which I will come shortly — this really is not an acceptable way in which to proceed. It is reminiscent of the FRY's invocation of the 1930 Convention as a basis of jurisdiction in the midst of the provisional measures phase of this case. I recall again the Court's observation in response to that issue — "such action at this late stage [the Court noted], when not accepted by the other party, seriously jeopardizes the principle of procedural fairness and the sound administration of justice"[4]. We do not think that it should be open to Serbia and Montenegro to rely on new arguments and theories at this stage of proceedings in circumstances in which all we have had from them in the last four years is a four-paragraph written response which basically endorsed Belgium's central jurisdictional objection.

5. The same is true for the entirely new elaboration of Serbia and Montenegro's case on the Genocide Convention. We were treated, yesterday, to a survey of the jurisprudence of the Yugoslav and Rwanda Criminal Tribunals on the meaning of genocide. We heard about the decisions in *Akayesu* and *Rutaganda* and the novel idea that the *mens rea* and *actus reus* of genocide can be deduced from threats of coercion aimed at bringing about a change in government policy. Whatever happened to the requirement to show evidence of "acts committed with intent to destroy" and, for purposes of jurisdiction, the necessity of showing that the alleged breaches, as pleaded, fall within the scope of the Genocide Convention *ratione materiae*.

6. Again, I will come back to this analysis when I turn to say a word or two about the Applicant's arguments on the Genocide Convention. For the moment, I simply note that these

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[4]Case concerning *Legality of Use of Force (Yugoslavia* v. *Belgium), Provisional Measurers, Order of 2 June 1999*, para. 44.

issues should have been developed in the Applicant's Written Observations in response to Belgium's Preliminary Objections. Indeed, they should have been fully developed in the Applicant's Memorial. They were not. For reasons that I will come to shortly, we do not think that the Applicant's analysis yesterday carries it over the jurisdictional bar. The point here, however, is simply that these arguments ought to have been set out in the FRY's pleadings. The Applicant was under an obligation to specify the precise nature of its claim, together with a succinct statement of the facts and grounds on which the claim is based, in its Application instituting proceedings. It did not do so. There was an insufficiency of detail in its Memorial. There was nothing in its written observations on Belgium's Preliminary Objections. Yet now we are presented with elements of case law on the meaning of genocide as foundation for the proposition that the requirement, under Article II of the Genocide Convention, to show "acts committed with intent to destroy", is somehow satisfied by a barely developed allegation that certain acts were undertaken with the objective of coercing the Yugoslav Government or of intimidating the people of Yugoslavia[5]. Mr. President, Members of the Court, this is a hearing on jurisdiction but, without stepping into the merits, I must say for the record that Belgium rejects both the contention and the lateness of the hour at which this novel argument is made. We do not think that this is consistent with procedural fairness and with the sound administration of justice.

7. Mr. President, I turn from this to make a few brief observations which go to the substance of what was said yesterday. I start with a number of statements in the eloquent submissions of Mr. Varady, the Agent of Serbia and Montenegro. He began by taking issue with Belgium's proposition that there was agreement between the Parties on a question of jurisdiction that was determinative of the case. The essence of this proposition, it will be recalled, is that, with this agreement between the Parties, there was no longer a dispute on which the Court was required to fasten. At paragraphs 37 and 38 of his submissions, Mr. Varady went on to say as follows:

> "The applicant State wants the Court to continue the case and to decide upon its jurisdiction — and to decide on the merits as well, if it has jurisdiction.
>
> Let me add, Mr. President, that we are aware of the fact that there are issues pertaining to jurisdiction disputed between the Parties, other than those referred to in our 18 December 2002 submission. The Respondents have raised objections

[5]CR 2004/14, 21 April 2004, p. 31, para. 13, and p. 34, para. 23.

> regarding jurisdiction *ratione materiae* and *ratione temporis* as well, and we shall take a clear position with respect to these issues confronting the allegations of Respondents."

8. The impression created by this statement is that there is indeed a dispute between the Parties to this case, contrary to my submissions on Monday. The language of this statement is, however, both interesting and revealing. There is no plea here — or anywhere else in the Applicant's oral submissions — to the Court to find that it has jurisdiction. There is no plea to uphold Serbia and Montenegro's claim to jurisdiction. The Agent for Serbia and Montenegro did not ask the Court to reject Belgium's central objection to jurisdiction based on Serbia and Montenegro's non-membership of the United Nations at the crucial time. On this, the Parties continue to agree. And, as I said in my opening submissions on Monday, this agreed appreciation is determinative of the case before the Court on this threshold point of jurisdiction.

9. Mr. President, Members of the Court, let me not dance around the point too lightly and make Belgium's position quite clear. In the light of Serbia and Montenegro's submissions yesterday, there are quite evidently issues on which we do not agree and which, in other circumstances, would constitute a dispute on which this Court could fasten. It is, however, important that these points are taken in their proper sequence. The initial question — the primary question — is whether the Court was open to the FRY on any basis when it filed its Application instituting proceedings. On this question, Belgium says that the Court was not open to the FRY under the terms of Article 35 of the Statute as it was not a Member of the United Nations at the relevant time and was not therefore a party to the Statute. Nor has the FRY advanced any other basis of jurisdiction. Serbia and Montenegro agrees with Belgium on this point. That is what it said in its Written Observations of 18 December 2002. That was the central thesis of Mr. Varady's submissions yesterday. This is the threshold question before the Court. The Parties agree on the answer. It is determinative of the case. Whatever may be the subsidiary disagreements or disputes that may or may not subsist between the Parties were we to move beyond this threshold question are not relevant. There is no dispute between the Parties on this threshold point.

10. Mr. President, Members of the Court, there is of course a dispute which looms large over this case and which drives the Applicant's pleadings. It is the "elephant in the room", as the saying goes. It is not, however, a dispute with Belgium. It is a dispute with Bosnia-Herzegovina. This

case, our case, has effectively become the fifth round in the jurisdictional contest of the *Genocide Convention* case that stretches back to 1993. While Belgium has some sympathy with Mr. Varady's attempts to unscramble the egg that is the legacy of litigation arising from the events of the 1990s, the present case cannot be used to procure a favourable opinion by the back door in an entirely separate piece of litigation. On the threshold question of jurisdiction in the present case, the Parties agree. That should be an end of the matter.

11. I move to a second observation. On Monday, I advanced the proposition that the jurisdiction of the Court falls to be determined at the point at which the act instituting the proceedings was filed. Again, this is a contention that, if accepted, would be determinative of the entire dispute. The principle is axiomatic in the Court's jurisprudence. We heard nothing on this from either Mr. Varady or Mr. Brownlie yesterday. The point was not disputed. On the contrary, it was adopted by the Co-Agent of Serbia and Montenegro, Mr. Djerić, in the course of his submissions for his own purposes[6]. My submission here is simple. No claim was or is now made in this case that the Court was open to the FRY at the time of the filing of its Application on any basis other than that of United Nations membership. It is now acknowledged that the FRY was not a Member of the United Nations at the relevant time. Serbia and Montenegro has not attempted to bring itself within any exception to the basic principle. Again, this should be an end of the matter. The Court was not open to the FRY as an applicant under Article 35 of the Statute on 29 April 1999 when it purported to file its Application instituting proceedings. It could not therefore proceed to found jurisdiction under Article 36, paragraph 1, of the Statute, under declarations purportedly made under Article 36, paragraph 2, of the Statute, or under treaties contemplated by Article 37 of the Statute.

12. Mr. President, Members of the Court, I move to a third very brief general observation. Following the Applicant's submissions yesterday we are still left with the question of what we should make of its Written Observations of 18 December 2002. The text of this brief statement will by now be very familiar to the Court. I must simply emphasize that it addresses each one of the bases of jurisdiction advanced by the FRY against Belgium in this case, including the bilateral

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[6]CR 2004/14, 21 April 2004, p. 61, para. 60.

Convention of 1930, and says that "the Federal Republic of Yugoslavia was not and could not have been a party to the Statute of the Court by way of United Nations membership". No other basis of jurisdiction was advanced in those observations. It is not now contended that the Court was then open to the FRY on some other basis. Mr. President, Members of the Court, these observations do indeed constitute an abandonment by Serbia and Montenegro of the central plank of its assertion of jurisdiction in its Memorial. In Part Three of its Memorial, at page 329, the FRY addresses the jurisdiction of the Court. The opening title to this part reads as follows: "The Federal Republic of Yugoslavia is a Member State of the United Nations". At paragraph 3.1.18 of its Memorial, it was stated: "The FR of Yugoslavia is a State Party to the Statute of the International Court of Justice." This was the central thesis of the Applicant's claim of jurisdiction in its Memorial. It no longer maintains that claim. We do not see how the Applicant can sustain the case in the present circumstances. Its Written Observations may not formally be notice of discontinuance but it certainly raises the question — as was put by the Agent for Canada on Monday — of why are we here. Well, we know why we are here. There is a subsisting dispute with Bosnia. But, as I have already observed, the present case cannot be used to procure a favourable opinion for use in an entirely separate piece of litigation.

13. Mr. President, Members of the Court, I move now briefly to make one or two short observations on the Applicant's arguments on each of specific heads of jurisdiction advanced against Belgium and maintained by Serbia and Montenegro in the event that you decide that the Court was somehow open to the FRY on 29 April 1999. I start with Mr. Djerić's observations on the 1930 Convention. As an opening point, I note simply that Mr. Djerić mischaracterized Belgium's position on the Vienna Convention on Succession of States in Respect of Treaties. The relevant passages are to be found at paragraph 428 and following of Belgium's written pleadings. The Vienna Succession Convention does not apply *qua* treaty in respect of relations between Belgium and Serbia and Montenegro. Nor do we contend that the Convention generally can be said to reflect principles of customary international law. In our analysis, in our written observations, we proceeded by reference to a number of accepted principles of law relevant to the particular circumstances of the case. They are set out in our written pleadings and I addressed them rather simply by way of proposition on Monday.

14. On the specific issues of the case, the sole focus of Mr. Djerić's submissions was the letter of the Belgian Foreign Minister of 29 April 1996, to which Serbia and Montenegro responded on 25 March 2002. Elsewhere in its submissions, the Applicant is at pains to pray in aid the wider context of particular documents in the interpretative exercise. Here, however, on this particular point, as regards a letter to which Serbia and Montenegro did not even respond for six years, and which formed part of an ongoing bilateral exchange, somehow context is no longer relevant. Mr. Djerić maintains that the letter was a binding commitment by the Belgian Foreign Minister that all treaties between Belgium and some former incarnation of the former Yugoslav State were to remain in force until either confirmed or renegotiated by both parties. In his oral observations, he emphasized that this letter referred to all treaties — I will come back to the point in just a moment. But this is neither what the letter says nor what is imported by its context. The context is a bilateral process of negotiation on succession, which proceeded by way of an exchange of lists of treaties between the Parties. The 1930 Convention did not feature on any list. Those negotiations were proceeding slowly. To avoid a legal vacuum, the Belgian Foreign Minister proposed that *the* — that is, the *specific* — bilateral agreements binding, on the one hand, the Kingdom of Belgium and, on the other hand, the Socialist Federal Republic of Yugoslavia, would continue to have effect until either confirmed or renegotiated. The only conception that the two sides had about what treaties were or were not binding between them was the lists that they had been exchanging in the course of the preceding negotiations.

15. Serbia and Montenegro alleges that the letter of the Belgian Foreign Minister amounts to a binding undertaking. It must therefore be interpreted in good faith, by reference to the ordinary meaning of its terms, in their context and in the light of the letter's object and purpose. The circumstances in which the letter was presented are equally relevant. As is also the conduct of the Applicant in this case. The 1930 Convention did not feature on any list of treaties it — the FRY — prepared for purposes of succession negotiations. The FRY did not reply to the letter of the Belgian Foreign Minister until six years later, and then only in general terms and some three years after the present proceedings had commenced. The FRY did not include the 1930 Convention on a list of treaties which it proposed should form part of the renewed negotiations on succession which it circulated to Belgium two years after these proceedings commenced. The first we hear of

proposed succession to the 1930 Convention is a letter of 26 December 2003. This is hardly the stuff of a compelling case in favour of the Applicant's position.

16. On the question of desuetude, Mr. Djerić simply says that Belgium has failed to produce any proof of the implied consent of the Parties to abandon the treaty. Six pages of argument in our written pleadings, including 12 annexes, plus further submissions on the point on Monday, are then dismissed with two sentences, which focus exclusively on subsidiary grounds advanced against Belgium. Belgium relies not only on the scheme of the 1930 Convention and on related considerations but, most importantly, on the common appreciation of all those who might be said to have had an interest in the 1930 Convention. We are here concerned with the question of whether a bilateral convention of 1930 between Belgium and the former Kingdom of Yugoslavia survived to apply to the successor States of the former Socialist Federal Republic of Yugoslavia. The practice and appreciation of the successor States, other than the FRY, cannot simply be dismissed as *res inter alios acta*. It is evidence of an objective appreciation; and, indeed, of an objective appreciation that was reinforced by the conduct of the FRY itself.

17. Mr. President, Members of the Court, as regards the Applicant's arguments yesterday on the Genocide Convention, Mr. Brownlie invoked passages from the *Nuclear Weapons* Advisory Opinion in aid of his argument that intent to destroy a particular national, ethnic, racial or religious group could be inferred from the use of certain weaponry. In fact, as the passages quoted by Mr. Brownlie attest, the Court was careful not to make general prescriptions, emphasizing that questions of intent to commit genocide would have to be assessed "after having taken due account of the circumstances specific to each case".

18. The reality here is that the Applicant has not advanced evidence in support of its claim even at a prima facie level. As I noted on Monday, the matter is addressed in less that two pages in the FRY's Memorial. Mr. Brownlie devoted considerably more attention to it yesterday. In the light of his submissions, we can ask the following question. Do the allegations of genocide advanced by the Applicant in oral argument yesterday, simply as pleaded yesterday, adduce enough evidence to allow an assessment that they come within the scope of the Genocide Convention *ratione materiae*? That is the *Oil Platforms* formulation. Alternatively, are the allegations of a sufficiently plausible character or has the case been made that there is a reasonable connection with

the Genocide Convention? Belgium does not see how the answer to these questions can be anything other than in the negative. Taking the Applicant's case at its highest and most developed — that is, Mr. Brownlie's submissions yesterday — and taking the jurisdictional test at its most flexible — that is, the plausibility of the allegations — the Applicant still does not adduce evidence sufficient to tie the allegations to the Genocide Convention. The proposition that the allegations here should be joined to the merits because the objections are not of an exclusively preliminary character is simply an attempt to paper over the glaring holes in the Applicant's case. The Court's jurisprudence sets the jurisdictional bar for such cases. It is designed to exclude spurious allegations with tenuous links to the treaty relied upon to found jurisdiction. This is one such case. Given the particular significance of the Genocide Convention, it is especially important in this case that the Court is not taken down the path of joinder to the merits. I addressed the point in my submissions on Monday.

19. Mr. President, Members of the Court, I turn finally to make a brief observation about the Applicant's argument on jurisdiction *ratione temporis* under the purported optional clause declarations of the Parties. As I remarked in opening, we heard a new theory of the case yesterday, proposing the crystallization of the dispute with the filing of the Application instituting proceedings on 29 April 1999. There are just two small problems with this theory. First, it does not fit the facts of the Applicant's allegations. Everything that the Applicant has said to this point takes the dispute back to the start of the NATO action. The dispute on this element, such as it is or was, in fact probably predates this, as Belgium showed in its written pleadings, at paragraphs 274 to 277. Nor does it square with the fact that the provisional measures request in this case was in fact dated 28 April 1999, before the present dispute is now said to have crystallized.

20. Second, whatever the analysis concerning the double exclusion form of the FRY declaration, whether cumulative or otherwise — and we contend that it is cumulative — the present Application falls foul of it. Mr. Brownlie relied on the proposition, drawn from the Court's jurisprudence, that the declaration must be construed by reference to the intention of the declarant at the time of the making of the declaration. That is all very well. But what was the Applicant's intention in this case? It is not very convincing now to be told that the Applicant considered that the dispute which it wanted to submit to the Court crystallized only on the filing of the Application.

This is the latest in a long line of theories. The declarant's intention, as construed at the time of the filing of its declaration, seemed to be rather different then. The point was addressed in Belgium's written submissions, in some detail, at paragraphs 252 to 261.

21. As the Court recalled in its Judgment in the case concerning the *Aerial Incident of 10 August 1999* between Pakistan and India, a declaration "must be interpreted as it stands, having regard to the words actually used"[7]. Well, the words actually used in the FRY's declaration of 25 April 1999 are clear. The Court is given jurisdiction "in all disputes arising or which may arise after the signature of the present declaration, with regard to the situations or facts subsequent to this signature". In Belgium's submission, assuming *arguendo* that the declaration is valid, which of course Belgium contests, however one construes it, the present case is caught by the temporal limitation set out therein.

22. Mr. President, Members of the Court, that brings my submissions to an end. Mr. President, may I invite you to call upon the Agent for Belgium who will make Belgium's formal submissions.

The PRESIDENT: Thank you, Mr. Bethlehem. I now give the floor to Mr. Devadder, Agent of Belgium.

M. DEVADDER :

1. Monsieur le président, Madame et Messieurs les juges, il m'appartient uniquement de présenter les conclusions finales de la Belgique ainsi que d'en arriver à la clôture des conclusions orales de mon gouvernement à ce stade de la procédure.

Les conclusions formelles de la Belgique dans cette affaire sont les suivantes :

Dans l'affaire relative à la *Licéité de l'emploi de la force (Serbie et Monténégro c. Belgique)*, pour les motifs exposés dans les objections préliminaires de la Belgique datées du 5 juillet 2000, ainsi que pour les motifs développés au cours des conclusions orales des 19 et 22 avril 2004, la Belgique demande à la Cour de :

a) rayer l'affaire introduite par la Serbie et Monténégro contre la Belgique du rôle;

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[7] *Aerial Incident of 10 August 1999 (Pakistan* v. *India)*, Judgment of 21 June 2000, para. 42.

b) alternativement, de juger que la Cour n'a pas compétence dans l'affaire introduite par la Serbie et Monténégro contre la Belgique et/ou que l'affaire introduite par la Serbie et Monténégro contre la Belgique est irrecevable.

Une copie signée des conclusions sera remise au greffier de la Cour.

2. Cela clôture les conclusions orales de la Belgique à ce stade de la procédure. Je remercie la Cour pour l'attention qu'elle a bien voulu prêter à nos présentations. Merci, Monsieur le président.

The PRESIDENT: Thank you, Mr. Devadder. The Court takes note of the final submissions which you have now read on behalf of the Kingdom of Belgium. This brings to an end the second round of oral argument by the Kingdom of Belgium.

The Court rose at 10.40 a.m.

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