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Jeudi 22 avril 2004 à 11 h 45

Thursday 22 April 2004 at 11.45 a.m.

8 Le PRESIDENT : Je donne à présent la parole à M. Luís Tavares, agent du Portugal.

M. TAVARES :

1. Monsieur le président, Madame et Messieurs de la Cour, avant de demander à Monsieur le président d'appeler à la barre notre conseil, qui formulera certaines observations en réponse à l'exposé oral présenté hier par le demandeur, je ne puis m'empêcher de commenter brièvement, au nom de mon gouvernement, certains points évoqués par la Serbie et Monténégro.

2. Non seulement je relève le comportement erroné, du point de vue procédural, que la Partie adverse continue d'adopter, et dont notre conseil aura l'occasion, dans un moment, de tirer les conséquences pertinentes en droit, mais aussi je me dois d'apporter une réponse aux arguments principaux développés dans les plaidoiries de la Serbie et Monténégro. A plusieurs reprises, les Etats défendeurs ont été accusés d'avoir commis des crimes de génocide.

3. Il s'agit là de très graves allégations et nous devons les rejeter avec force. Ces dernières décennies, en intervenant dans le cadre de plusieurs instances internationales, en particulier de l'OTAN, les défendeurs ont contribué de manière décisive au maintien de la paix en Europe. Ce sont aussi des pays — avec lesquels le Portugal est fier de coopérer pleinement — qui témoignent d'un engagement permanent à promouvoir et à protéger les droits de l'homme et l'ordre public. Et cet engagement n'est plus à démontrer. Il fait désormais partie de l'histoire de ces dernières décennies.

4. La participation active et constructive du Portugal à l'Organisation des Nations Unies, à l'OTAN, au Conseil de l'Europe, à l'OSCE et à l'Union européenne confirme ce que je viens de dire.

5. Monsieur le président, Madame et Messieurs de la Cour, la Serbie et Monténégro persiste à accuser le Portugal de génocide. De toute évidence, une telle accusation ne repose sur aucun argument de fait ni de droit, et nous la rejetons totalement.

6. Force est de souligner que, à l'occasion de la visite dans notre pays, il y a cinq mois, du président de la Serbie et Monténégro, les Parties ont signé un traité, dans lequel elles proclamaient leur désir «d'intensifier leur relation d'amitié» et s'assignaient pour «objectifs de favoriser une relation fondée sur un climat de coopération, sur la base des principes de respect mutuel, de souveraineté et d'égalité».

7. Monsieur le président, Madame et Messieurs de la Cour, je me permets de le rappeler, notre coagent a souligné dans son exposé que l'opération «force alliée» menée par l'OTAN était destinée à mettre fin à une catastrophe humanitaire.

9 8.

> «[s]i l'intervention humanitaire constitue effectivement une atteinte inadmissible à la souveraineté, comment devons-nous réagir face à des situations comme celles dont nous avons été témoins au Rwanda ou à Srebrenica, devant des violations flagrantes, massives et systématiques des droits de l'homme, qui vont à l'encontre de tous les principes sur lesquels est fondée notre condition d'êtres humains ?»

— ce sont là les termes employés en 1999 par le Secrétaire général de l'Organisation des Nations Unies, Kofi Annan, devant l'Assemblée générale des Nations Unies («La responsabilité de protéger», rapport de la Commission internationale de l'intervention et de la souveraineté des Etats, 2001, p. vii).

9. La Serbie et Monténégro a déclaré et souligné dans ses plaidoiries que son propre peuple avait jeté les bases de la démocratie. Et, une fois ces bases établies, ce pays cherche à présent une nouvelle place au sein de la communauté internationale. Cela veut dire notamment, de toute évidence, que ce pays se rapproche de certaines organisations internationales mentionnées plus haut, comme l'OTAN. Ce sont des événements dont le Portugal se félicite et auxquels nous attachons une grande valeur. Or l'OTAN a certainement joué un rôle dans cette action.

10. Depuis l'introduction de ces instances, le Portugal, heureusement, n'a pas changé. Heureusement vous, la Serbie et Monténégro, vous avez changé.

11. En conclusion, Monsieur le président, je vous demanderais de bien vouloir donner la parole à notre conseil, M. Miguel Galvão Teles, qui va répondre, au nom de la République portugaise, à l'exposé oral présenté hier par la Serbie et Monténégro. A l'issue de cette intervention, si vous me le permettez, Monsieur le président, je reprendrai la parole pour lire les conclusions finales du Portugal.

Le PRESIDENT : Merci, Monsieur Tavares. Je donne maintenant la parole à M. Teles.

Mr. GALVÃO-TELES: Mr. President, Members of the Court.

INTRODUCTION

1. If what is happening in the present case were not a violation of fundamental principles of procedure, I might just say that it is no easy matter to be the Respondent vis-à-vis Serbia and Montenegro and leave it at that. Not by virtue of the weight of the Applicant's argument — it has none —, but simply because it is impossible to know what to expect.

2. In its Application, and in its request for the indication of provisional measures, the Federal Republic of Yugoslavia strongly asserted that the Court had jurisdiction — even though the Court considered it did not, not even prima facie.

10 One of the three parts of the Memorial (the submissions excluded) was devoted to the vain attempt to establish the jurisdiction of the Court.

Portugal, like the other Respondents in the parallel cases, raised preliminary objections. In accordance with Article 79, paragraph 3, of the Rules of Court, depending on which text was in force when Serbia and Montenegro was notified (now paragraph 5 of Article 79), the Court gave the Applicant an opportunity to present Written Observations and Submissions on the Preliminary Objections.

It did so and, on 18 December 2002, filed its Observations and Submissions.

3. I shall return in a moment to the interpretation of these Written Observations and Submissions. All I shall say for now is that Serbia and Montenegro patently considered that the Court did not have jurisdiction to rule on the merits and that it was calling for a legal decision with negative content. Such was the interpretation of all the Respondents and the one that would be made by anyone of good faith.

Further, Serbia and Montenegro has remained completely silent on the Preliminary Objections raised by Portugal and by the other Respondents in the parallel cases.

4. Suddenly, Serbia and Montenegro tells you, Mr. President, Members of the Court, that it was actually seeking a positive or negative decision by the Court on whether it has jurisdiction — "to decide on the merits as well, if it has jurisdiction" (CR 2004/14, p. 20, para. 37).

It adds:

> "we are aware of the fact that these 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 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 the Respondents." (CR 2004/14, p. 20, para. 38.)

It was in its first round of oral argument — following the first round of the Respondents' oral arguments — and not in the Written Observations that the Applicant takes issue with the Preliminary Objections raised by Portugal.

5. The least that can be said about Serbia and Montenegro's procedural conduct is that it is utterly erratic. This is not all, as will be seen. But as a further illustration of this erratic attitude,

11 allow me, Mr. President, Members of the Court, to refer to the instability — let us put it like that — of Serbia and Montenegro with respect to the notion of dispute.

As I pointed out in the first round of oral argument (CR 2004/9, p. 15, paras. 2.5 and 2.6), the Federal Republic of Yugoslavia had put forward two conflicting theories of the dispute: one, defended in the oral arguments relating to the request for the indication of provisional measures, and which might be termed a *theory of mini-disputes*, which the Court rejected in its Order on that request and which Serbia and Montenegro abandoned in the Memorial (CR 2004/9, para. 2.7); a second one, presented in the Memorial (para. 3.2.16), which might be termed the *theory of the dispute unresolved when the Application instituting proceedings was filed* and which Portugal analysed in its written pleading (paras. 87-91), as well as in the first round of oral argument (CR 2004/9, paras. 2.8 and 2.9).

Then hey presto, in the second round of its oral argument, through the voice of Professor Brownlie, Serbia and Montenegro just as explicitly abandons this second theory (CR 2004/14, p. 43, para. 59) in favour of a third theory, which might be characterized as the *theory of the dispute created by the Application instituting proceedings*. I sincerely hope, during Serbia and Montenegro's second round of oral argument, that we will not be treated to a description, explicit or covert, of a fourth theory.

I. INTERPRETATION OF SERBIA AND MONTENEGRO'S WRITTEN OBSERVATIONS AND SUBMISSIONS, PROCEDURAL ESTOPPEL, LACK OF LEGAL INTEREST AND POINT OF THE PROCEEDINGS

1.1. Mr. President, Members of the Court, as I said a moment ago, there is, in Serbia and Montenegro's procedural conduct, far more than sheer erraticism. Let me start with the interpretation of the Written Observations and Submissions of the Federal Republic of Yugoslavia.

1.2. As the Court has asserted on several occasions, it is for it to interpret the Parties' submissions.

It said this clearly in the case concerning *Fisheries Jurisdiction, Preliminary Objections*:

12 "Thus it is the Court's duty to isolate the real issue in the case and to identify the object of the claim. It has never been contested that the Court is entitled to interpret the submissions of the Parties, and in fact is bound to do so; this is one of the attributes of its judicial functions." (*Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 466, para. 30; see also *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand v. France) *Case, Order of 22 September 1995, I.C.J. Reports 1995*, p. 304, para. 55) (*I.C.J. Reports 1998*, para. 30.)

1.3. Serbia and Montenegro's written submission is worded as follows: "The Federal Republic of Yugoslavia requests the Court to decide on its jurisdiction considering the pleadings formulated in these Written Observations."

In other words, in the light of the pleadings or arguments set forth. And what are these arguments?

I note that the Agent of Serbia and Montenegro was careful not to reproduce them.

Although, Mr. President, Members of the Court, you are very familiar with them, let us reproduce them, starting with the last sentence of the first paragraph of the part entitled "Written Observations":

> "The Federal Republic of Yugoslavia submits that it is now *clear* [clear, I emphasize] that
>
> *(a)* With regard to Articles 35 and 36 of the Statute of the Court, with regard to the Genocide Convention (and with regard to bilateral conventions in the cases against Belgium and The Netherlands),
>
> as the Federal Republic of Yugoslavia became a *new* Member of the United Nations on 1 November 2000, it follows that it was not a member before that date. Accordingly [I emphasize], it became an established fact that before 1 November 2000, the Federal Republic of Yugoslavia was not and could not have been a party to the Statute of the Court by way of UN membership.

(b) With regard to the Genocide Convention,

> the Federal Republic of Yugoslavia did not continue the personality and treaty membership of the former Yugoslavia, and thus specifically, it [I emphasize] was not bound by the Genocide Convention until it acceded to that Convention (with a reservation to Article IX) in March 2001."

What can the conclusion of these arguments be but that the Court lacks jurisdiction to rule on the merits of the case?

13 1.4. As the Court has said, "whether there exists an international dispute is a matter for objective determination" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion, I.C.J. Reports 1950*, p. 74).

Viewed objectively, following the Observations and Written Submissions by Serbia and Montenegro there is no longer any dispute regarding the jurisdiction of the Court, whatever the arguments on which the parties' agreement is based.

1.5. Let us also note that Serbia and Montenegro's silence with regard to the Respondents' Preliminary Objections was nothing more than the effect of its position. If it agreed with the Respondents that the Court has no jurisdiction, what was the point of discussing arguments?

In addition, one of the general principles of law to which Article 38, paragraph 1 *(c)*, of the Statute refers is that as a rule the absence of a challenge means acceptance.

1.6. In the first round of oral pleadings Portugal stressed that even if, *ex abundanti cautela*, it will return to

> "some aspects of the Preliminary Objections it has raised, it relies on Serbia and Montenegro's agreement as to the Court's lack of jurisdiction and on its admission of the Preliminary Objections not explicitly dealt with in its Observations and Submissions. By virtue of waiver and estoppel, Serbia and Montenegro is now precluded from changing its position." (CR 2004/9, p. 13, para. 1.6.)

Serbia and Montenegro asserts that there are no grounds for estoppel. But of course it exists. In accordance with the jurisprudence of the Court, for estoppel to apply the conduct of one party on which the other relies must lead to benefit for the former or to detriment for the latter (*North Sea Continental Shelf, I.C.J. Reports 1969*, p. 26, para. 31; *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, pp. 414-415, para. 51; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening),*

I.C.J. Reports 1990, p. 118, para. 63). Serbia and Montenegro obtained an advantage and Portugal suffered damage, due solely to the fact that Portugal did not have proper notice of the observations on its Preliminary Objections now entered by Serbia and Montenegro.

14 The principle of good faith is well established in international law (case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, I.C.J. Reports 1998*, para. 38), which also holds good in the area of procedure. Procedural fairness is an objective requirement.

1.7. The Agent of Serbia and Montenegro now tells us that "we are asking the Court to undertake a definitive investigation, and to establish conclusively the position of the FRY in relation to the Statute and the Genocide Convention between 1992 and 2000" (CR 2004/14, p. 20-21, para. 40). And further: "A judgment on jurisdiction based on the elucidation of the position of the FRY between 1992 and 2000 could create an anchor point of orientation. Thus Serbia and Montenegro has a clear legal interest in the rendering of a judgment on jurisdiction." (CR 2004/14, p. 27, para. 64.)

A legal interest in what precisely? In being elucidated? This might be very interesting, but the appropriate course would be to seek an advisory opinion. However, Serbia and Montenegro has no power to do so, and contentious proceedings are an unsuitable forum for elucidation.

1.8. Mr. President, Members of the Court, Serbia and Montenegro no longer has any relevant legal interest and is no longer concerned with the purpose of the proceedings: let it seek a negative jurisdictional decision or quite simply ask for the legal position of the Federal Republic of Yugoslavia between 1992 and 2000 to be elucidated.

II. THE RESERVATION *RATIONE TEMPORIS* ON THE DECLARATION OF ACCEPTANCE OF JURISDICTION

2.1. Serbia and Montenegro states that its intention in filing the declaration of acceptance of the Court's jurisdiction was to initiate the present proceedings and that the declaration should be interpreted in accordance with that intention.

2.2. However, the Court has never stated that declarations of acceptance of its compulsory jurisdiction have to be interpreted having regard solely to the intention of their originators.

In the case concerning the *Temple of Preah Vihear (Preliminary Objections)* the Court stated, as Professor Brownlie himself has pointed out, that it "must apply its normal canons of
15 interpretation, the first of which, according to the established jurisprudence of the Court, is that words are to be interpreted according to their natural and ordinary meaning in the context in which they occur" (*I.C.J. Reports 1961*, p. 32).

Similarly, in the case concerning the *Anglo-Iranian Oil Co.*, the Court stated that it must "seek the interpretation which is in harmony with a natural and reasonable way of reading the text, having due regard to the intention of the Government of Iran at the time when it accepted the compulsory jurisdiction of the Court" (*I.C.J. Reports 1952*, p. 104). In the case concerning *Fisheries Jurisdiction*, the Court reiterated that it interprets "the relevant words of a declaration including a reservation contained therein in a natural and reasonable way, having due regard to the intention of the State concerned at the time when it accepted the compulsory jurisdiction of the Court" (*I.C.J. Reports 1998*, para. 49).

2.3. In these three cases the Court took the view that the "natural and reasonable way" of reading the text led to the result arrived at, so that seeking the intention of the State which made the declaration merely served to confirm that result.

In the present case, the actual text of the declaration by Serbia and Montenegro presents no ambiguity. Its only possible meaning is that the Court has jurisdiction only to entertain disputes arising after the date of signature of the said declaration.

2.4. Serbia and Montenegro is fully aware of this. With its third theory of the dispute it is trying a conjuring trick which would ultimately lead to deletion from its declaration of acceptance of jurisdiction of part of a sentence, namely, "in all disputes arising or which may arise after the signature of the present declaration".

The conjuring trick lies in the assertion that a dispute is produced only by the filing of the Application.

2.5. Mr. President, Members of the Court: if the word "dispute" in the Yugoslav declaration meant something that would be produced only by the Application instituting proceedings, the part of the sentence "all disputes arising or which may arise after the signature of the present declaration" would be utterly pointless or meaningless. The Federal Republic of Yugoslavia could

16 not institute proceedings before the filing of the declaration and any application by a third State based on Article 36, paragraph 2, of the Statute could rely on this ground of jurisdiction only if it were filed after the filing of the optional declaration. There was no application based on Article 36, paragraph 2.

2.6. As the Court stated in the case concerning *East Timor* (*I.C.J. Reports 1995*, p. 100, para. 22), to establish "the existence of a dispute . . . it must be shown that the claim of one party is positively opposed by the other" (*South West Africa, Preliminary Objections, I.C.J. Reports 1962*, p. 328).

For a dispute to exist, one party must make a claim and that claim must be expressly or impliedly rejected by the other party.

Mr. President, Members of the Court: if a dispute could be established only through judicial channels, the Application instituting proceedings would never be enough. Opposition by the respondent would be needed. We would have to wait for the Counter-Memorial!

How then could the Statute require the Application instituting proceedings to indicate the subject of the dispute if, by definition, that dispute could not yet exist (Art. 40, para. 2)?

2.7. The dispute must predate the proceedings. Such is the jurisprudence of the Court and of its predecessor, established, as Portugal pointed out in the first round (CR 2004/9, p. 17, para. 2.9), ever since the case concerning the *Electricity Company of Sofia and Bulgaria, Preliminary Objections* (*P.C.I.J., Series A/B, No. 77*, p. 83).

In itself the dispute is not a pleading. It is during the proceedings that it is legally defined.

2.8. Serbia and Montenegro asserts that its intention in the present case, which it wished to refer to the Court, was to give the Court jurisdiction.

However, by the very nature of the optional clause embodied in Article 36, paragraph 2, of the Statute, a State cannot file a declaration only to become an applicant. As the Court stressed in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections*, a State

> "in adhering to the jurisdiction of the Court in accordance with Article 36, paragraph 2, accepts jurisdiction in its relations with States previously having adhered to that clause. At the same time, it makes a standing offer to the other States party
17 to the Statute which have not yet deposited a declaration of acceptance." (*I.C.J. Reports 1998*, p. 300, para. 45.)

It was this which led Serbia and Montenegro to exclude disputes arising before the date of signature of the declaration.

If the Federal Republic of Yugoslavia was trying to square the circle, it did not succeed.

III. ARTICLE IX OF THE GENOCIDE CONVENTION

3.1. Mr. President, Members of the Court, just a brief word now on the non-applicability of Article IX of the Genocide Convention. First of all, Serbia and Montenegro seems to have abandoned the eleventh submission in its Memorial concerning acts subsequent to 10 June 1999. It has not said a word on the non-admissibility of that submission alleged by Portugal, among other Respondents, and has expressly revoked its second theory of the dispute, which relied on those events subsequent to 10 June.

3.2. On the theme of the imaginary genocide, Professor Brownlie repeatedly stressed that the purpose of the air strikes was to force acceptance of the demands of the Contact Group and to intimidate Yugoslavia and its nationals into accepting the demands made during the Rambouillet talks. He said as much in paragraphs 20, 21 and 23 of his statement (CR 2004/14, pp. 33-34). I would just like to quote two passages:

> "these tactics, and these weapons, were not used in a ground war, they were used in a bombing campaign with the stated purpose of intimidating the people of Yugoslavia and its government, as a group, as a national unit" (para. 20, p. 33).

> "The position is that the group of NATO States using the threat of force, and, ultimately, an aerial bombardment of targets throughout Serbia and Montenegro, had the objective of intimidating Yugoslavia and its nationals into accepting the demands made during the Rambouillet talks." (Para. 23, p. 34.)

3.3. Mr. President, Members of the Court, at this stage, I will not discuss the facts. I will simply address the allegations of Serbia and Montenegro.

The intention to intimidate is not the same as the intention to destroy. On the contrary, to intimidate someone into doing something, that someone must first exist.

3.4. There is no link between the allegations made by Serbia and Montenegro and Article IX of the Genocide Convention.

IV. THE *MONETARY GOLD* RULE

18 4.1. Portugal has invoked the *Monetary Gold* rule in relation to NATO, stressing that there were indeed other bases prior to that for the Court not to rule on the merits of the case. Let me just make a few points about the statement of Mr. Vladimir Djerić.

4.2. The fundamental argument of Serbia and Montenegro is that

> "both the application of this principle (the *Monetary Gold* principle) and the reasoning behind it have been linked exclusively to States. In its jurisprudence, the Court has consistently referred to States. There is not even a hint that the principle could be applied to other subjects of international law." (CR 2004/14, p.50, para. 13.)

Let me ask a question. In the current state of international law, can an international organization be subject to the jurisdiction of the Court without consenting to it? If hitherto we have only been speaking of the consent of States, is this not because the question has hitherto only arisen in relation to States?

4.3. Serbia and Montenegro invokes Article 5 of the North Atlantic Treaty, asserting that, in military actions, it is the parties which act, individually and in concert with the other parties (CR 2004/14, p. 52, para. 22). Such military activities thus would not be acts attributable to the organization.

This argument — as I might call it — which echoes General de Gaulle's standpoint in 1966, does not take into account NATO's long development. A reading of the 1949 Treaty, independently of subsequent developments shows it was inconceivable that the Council would delegate the initiative for military operations to a Secretary General who, moreover, did not even exist at the beginning. The Council itself was simply an organ for dealing with questions relating to the application of the Treaty. NATO started out as simply an alliance, which later became an international organization.

As Professor Pellet said, in a passage quoted by Portugal in the first round of oral argument, "the institutionalisation [of NATO] was empirical and gradual".

It was indeed NATO, as such, which initiated the "Allied Force" operation, under the orders of the Secretary General and the command of the "SACEUR". Moreover, Serbia and Montenegro has acknowledged this. In paragraph 1.19 of the Memorial, entitled "Facts related to issue of the imputability", it is the military control by political "leaders" (which ones? — I wonder) that it

19 invokes. And in paragraph 2.8, what it alleges is that the NATO organs — and I stress, the NATO

organs — take their decisions by consensus and that each military plan in which a member State participates must be approved by that State. It concludes: "Whereas NATO acts are under the political and military guidance and control of the Respondents; its acts (i.e., the acts of NATO) are imputable to the Respondents." (Para. 2.8.1.1.5.)

In the Memorial, what Serbia and Montenegro pleads is the responsibility of member States through the acts of an international organization.

It seems to have changed its position here too. But it was indeed NATO which entered into an agreement with the Federal Republic of Yugoslavia concerning the Kosovo verification mission.

4.4. The fact that it is the States themselves that freely make their armed forces available to NATO is of no consequence. The same happens with the United Nations and nobody questions the fact that the responsibility for peacekeeping operations lies with that Organization.

4.5. With respect to the authority to approve the choice of targets, I will not address any points of fact at this stage. I would simply observe that it is an authority exercised by States, when they do so, within the NATO organs.

4.6. Serbia and Montenegro quoted a passage from the report by the then Professor Rosalyn Higgins to the *Institut de droit international* with which Portugal totally agrees. However, while there is no norm stipulating that member States "bear no legal liability to third parties for the non-fulfilment by international organizations of their obligations to third parties", that means, at least, that they are not in principle liable by virtue of the acts of international organizations.

The resolution of the *Institut de droit international* adopted in Lisbon in 1995 provides for exceptions, in particular in cases where the organization has acted as an "agent" of the State, whether in law or in fact (Art. 5 *(c)*; see also *Annuaire*, Vol. 66, I, 1995, p. 413). Here one can draw an analogy with Article 17 of the draft articles on the international responsibility of States adopted by the International Law Commission in 2001.

20 This notwithstanding, a relationship of "agency" on the part of an international organization cannot be established with all its member States. Leadership and control by all member States are inherent in the very nature of an international organization.

Moreover, even when there is a relationship of agency, or leadership and control by one or more of the members, the organization does not cease to be responsible, except when there are circumstances precluding wrongfulness such as *force majeure* or necessity. This is aptly stressed in paragraph 9 of the International Law Commission's commentary to draft Article 17 on State responsibility.

4.7. In any event, and from the perspective of the *Monetary Gold* principle, there should always be a preliminary ruling on the responsibility of the international organization, in the present case NATO, or at least on the question whether the acts are attributable thereto as a preliminary indication of the possible responsibility of member States without NATO having consented to jurisdiction.

V. CONCLUDING POINTS

5.1. My conclusion will be very brief. Portugal has not sought to rehearse all the aspects considered in its written pleadings and during the first round of oral argument. As far as the oral argument of Serbia and Montenegro is concerned, it has focussed on the points it considers most important or which are related to arguments it has set out. The Portuguese Republic states that it wishes to benefit from the further arguments of the other Respondents in the cases parallel to this one.

5.2. The Court will probably have realized that the procedural conduct of Serbia and Montenegro has been determined by other cases to which Portugal is not a party. Procedural choices that are made cannot but have consequences.

5.3. To summarize the Portuguese position in general:

First, as a result of the absence of any dispute as to jurisdiction, the absence of legal interest on the part of the Applicant and the non-pursuance of the purpose of the proceedings, the Court is not called upon to give a decision on the claims of Serbia and Montenegro;

in the alternative,

22 *Secondly:*

(a) (i) Serbia and Montenegro has no *locus standi* before the Court, nor is the Court open to it, and Serbia and Montenegro cannot, by its renunciation, invoke Article 36, paragraph 2, of the Statute;

in the alternative,

(ii) the Court has no jurisdiction on the basis of Article 36, paragraph 2, of the Statute, because of the temporal reservation in the Yugoslav declaration;

(b) (i) Serbia and Montenegro cannot, by its renunciation, invoke Article IX of the Genocide Convention;

in the alternative,

(ii) the Court has no jurisdiction, *ratione materiae* and *ratione personae*, on the basis of Article IX of the Genocide Convention;

(c) the Court has no jurisdiction or the submissions are inadmissible, because NATO did not give its consent to jurisdiction;

(d) the submission concerning events subsequent to 10 June 1999, if not abandoned by Serbia and Montenegro, is not admissible.

Thank you, Mr. President, Members of the Court, for your attention; I apologize for having taken up so much time. Mr. President, I would now ask you to give the floor to the Agent of the Portuguese Republic for his presentation of Portugal's final submissions. Thank you.

Le PRESIDENT : Merci, Monsieur Teles. Je donne maintenant la parole à M. Tavares, agent du Portugal.

M. TAVARES : Merci, Monsieur le président. Monsieur le président, Madame et Messieurs de la Cour, pour les motifs indiqués dans les exposés oraux présentés au nom du Portugal au cours de ces audiences et dans les exceptions préliminaires du 5 juillet 2000, voici les conclusions finales de la République portugaise :

Plaise à la Cour dire et juger que : *premièrement*, il ne lui est pas demandé de se prononcer sur les prétentions de la Serbie et Monténégro; à titre subsidiaire, *deuxièmement*, la Cour n'est compétente: *a) ni* en vertu du paragraphe 2 de l'article 36, du Statut; *b)* ni en vertu de l'article IX de la convention sur le génocide; et les demandes sont irrecevables.

22 Monsieur le président, Madame et Messieurs de la Cour, au nom de mon gouvernement je tiens à vous remercier de votre patience et j'adresse mes compliments à la délégation de la Serbie et Monténégro et aux délégations des autres Etats défendeurs. Merci beaucoup, Monsieur le président.

Le PRESIDENT : Merci, Monsieur Tavares. La Cour prend acte des conclusions finales que vous venez de lire au nom du Portugal. Cet exposé met fin au second tour de plaidoiries du Portugal et à la séance de ce matin.

La Cour reprendra ses audiences cet après-midi à 15 heures, pour entendre le second tour de plaidoiries du Royaume-Uni, de l'Allemagne, de la France et de l'Italie. Merci.

La séance est levée.

La séance est levée à 12 h 35.