DISSENTING OPINION OF JUDGE VERESHCHETIN

The assumption of Yugoslavia's membership in the United Nations was a necessary prerequisite for the Court's finding on its jurisdiction (paras 1-8) — The discovery of the wrongfulness of an assumption can constitute a ground for revision (paras 9-12) — The facts of Yugoslavia's non-membership in the United Nations and non-participation in the Genocide Convention were unknown to Yugoslavia and the Court at the relevant time (paras 13-21) — Yugoslavia has not acted negligently (paras 22-27) — Conclusions (para 28)

1 THE ASSUMPTION OF YUGOSLAVIA'S MEMBERSHIP IN THE UNITED NATIONS AS A NECESSARY PREREQUISITE FOR THE COURT'S FINDING ON ITS JURISDICTION

1 The Court has expressly stated in its 1996 Judgment that "its only jurisdiction to entertain the case is on the basis of Article IX of the Genocide Convention" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v *Yugoslavia), Preliminary Objections, Judgment, I C J Reports 1996 (II)*, p 621, para 41) The Court has also found that it "is unable to uphold any of the additional bases of jurisdiction invoked by the Applicant " (*ibid*)

What is strongly disputed by the Parties in the current proceedings relating to the admissibility of the revision of the above Judgment — is whether or not the assumption of Yugoslavia's membership of the United Nations at the time of the 1996 Judgment was necessary, and therefore "of such a nature as to be a decisive factor" (within the meaning of Article 61, paragraph 1, of the Statute), for the Court to have reached the conclusion on its jurisdiction Yugoslavia contends that the issue of Yugoslavia's status in the United Nations was of fundamental importance for the reasoning of the Court relating to the admissibility of the revision, since

> "the Judgment of 11 July 1996 was *solely*, and could *solely* [be] based on the assumption that the FRY was a Member of the United Nations, a party to the Court's Statute and also bound by Article IX of the Genocide Convention as being identical with the former Yugoslavia — an assumption that has, however, *ex post facto*, proved to be erroneous and which thus has given rise to [the] Application for Revision" (CR 2002/42, p 42, para 4 42 (Zimmermann))

Conversely, Bosnia and Herzegovina maintains that

> "Yugoslavia's status in relation to the United Nations is totally irrelevant when it comes to considering the Application for revision and cannot be 'of such a nature as to be a decisive factor' in the reasoning of the Court, which in 1996 did not venture onto that ground" (CR 2002/41, pp. 42-43, para 34 (Pellet))

Thus, the Parties are in complete disagreement as to whether or not the Court could have arrived at the same finding on the basis of the same *ratio decedendi* had it known, as an established fact, that Yugoslavia was not a Member of the United Nations at the time the Judgment on jurisdiction was given Evidently, the answer to this question is bound to clarify the role of the "discovery" of a new fact alleged by Yugoslavia. Therefore, I am of the view that this question, directly related to the first condition for the admissibility of revision set out in Article 61 of the Statute, should have been the starting point of the Court's reasoning in the present Judgment

2 The Genocide Convention, on which the Court has chosen to solely base its jurisdiction, both *ratione personae* and *ratione materiae*, specifically provides that it is open only to Members of the United Nations and to non-member States that have received an invitation from the General Assembly of the United Nations (Article XI of the Convention) Evidently, this essential precondition for participation in the Convention had to be met by both Parties to the case to provide the Court with jurisdiction on the basis of the Convention However, in view of the circumstances of the case and of the arguments advanced by the Parties, the Court, at the previous stages of its proceedings, while dealing specifically with the issue of Bosnia and Herzegovina's membership in the United Nations, did not undertake a similar examination of and slid over the subject of Yugoslavia's standing in the United Nations.

3 This is evidenced by the following statements in the Orders on provisional measures and in the Judgment on preliminary objections rendered in the period 1993-1996 Dealing with the question of prima facie jurisdiction in 1993, the Court said that "whereas this consideration embraces jurisdiction both *ratione personae* and *ratione materiae* inasmuch as almost all States are today parties to the Statute of the Court, it is in general only the latter which requires to be considered" *(Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Provisional Measures, Order of 8 April 1993, I C J Reports 1993*, p 12, para 14) This statement demonstrates that, from the very first step, the Court proceeded from the prima facie assumption that both States parties to the case, Bosnia and Herzegovina and Yugoslavia, were Members of the United Nations and, accordingly, parties to the Statute of the Court

However, with apparent unease as to the prima facie jurisdiction *ratione personae* with regard to Yugoslavia, the Court, while observing

that the solution adopted by the United Nations Secretariat concerning the status of Yugoslavia in the United Nations "is not free from legal difficulties", reserved for the future a definitive finding on Yugoslavia's membership in the United Nations It specifically stated that "the question whether or not Yugoslavia is a Member of the United Nations and as such a party to the Statute of the Court is one which the Court does not need to determine definitively at the present stage of the proceedings" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v *Yugoslavia), Provisional Measures, Order of 8 April 1993, I C J Reports 1993*, p 14, para 18)

Then, referring to Article 35, paragraph 2, of the Statute, the Court concludes that "*if* Bosnia-Herzegovina and Yugoslavia are both parties to the Genocide Convention, disputes to which Article IX applies are in any event prima facie within the jurisdiction *ratione personae* of the Court" (*ibid*, p 14, para 19, emphasis added) The use of the word "if" in this phrase is significant It could not but reflect the idea that it had yet to be seen whether both States were indeed parties to the Genocide Convention and therefore the Convention could be considered as "a treaty in force" for each of them, as required by Article 35, paragraph 2, of the Statute In turn, it necessitated the resolution of the issue of Yugoslavia's membership of the United Nations This necessity was not taken away by the statement that the proceedings before the Court under Article 35, paragraph 2, "may validly be instituted independently of the conditions laid down by the Security Council in its resolution 9 of 1946" (*ibid*)

4 The question of Yugoslavia's membership in the United Nations, which the Court decided not "to determine definitively" in its Orders on provisional measures, had to be decided "definitively" in the Judgment of 1996 on preliminary objections when the question of the Court's jurisdiction was to be determined, in principle, conclusively Nonetheless, the Court again opted not to clarify expressly the knotty legal question of Yugoslavia's membership in the United Nations and instead satisfied itself with citing the declaration of a general nature made by Yugoslavia on 27 April 1992 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 " (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v *Yugoslavia), Preliminary Objections, Judgment, I C J Reports 1996 (II)*, p 610, para 17)

The Court, after taking note that "it has not been contested that Yugoslavia was party to the Genocide Convention", decided "[t]hus, Yugoslavia was bound by the provisions of the Convention on the date of the filing of the Application in the present case, namely, on 20 March 1993" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v *Yugoslavia), Preliminary Objections, Judgment, I C J Reports 1996 (II)*, p 610, para 17)

5 Although the Court did not proffer any legal reasoning, it is evident that the above conclusion, read against the background of the former hesitations of the Court as to Yugoslavia's status in the United Nations, carries the necessary implication that the Court at that time assumed as a fact continued membership of Yugoslavia in the United Nations Otherwise, it is inconceivable how the Court, even in the absence of challenge, could recognize the continuing participation of Yugoslavia in the Convention while the essential precondition of such participation had ceased to exist

6 It may be argued that since the Court explicitly did not take any position on Yugoslavia's membership in the United Nations, it could have proceeded on the theory that once a Member of the United Nations (in our case, the former Yugoslavia) has become a party to the Genocide Convention, the essential precondition of United Nations membership is met once and for all, irrespective of the future standing of the State in the United Nations Whatever may be the merits of this theory, evidently it applies only to the situation where the State remains identical and retains the legal personality of its predecessor The applicability of this theory to the situation of Yugoslavia is belied by the non-recognition of its claim to continue the personality of the former Yugoslavia and, furthermore, by the treatment by the Court in the same case of the situation of Bosnia and Herzegovina's participation in the Convention

7 Indeed, it will be recalled that in 1996, dealing with the question of Bosnia and Herzegovina's participation in the Genocide Convention, which at that time was contested by Yugoslavia, the Court considered that the fact of the admission of Bosnia and Herzegovina to the United Nations played a decisive role in its becoming a party to the Convention While declining Yugoslavia's contention relating to the alleged existence of some other conditions for the participation in the Convention, the Court said in the 1996 Judgment

> "Article XI of the Genocide Convention opens it to 'any Member of the United Nations', *from the time of its admission to the Organization*, Bosnia and Herzegovina could thus become a party to the Convention " (*Ibid*, p 611, para 19, emphasis added)

For this reason, the Court found it unnecessary and declined to consider other arguments in favour of the participation in the Convention of Bosnia and Herzegovina advanced by the latter, including the argument relating to the succession to treaties generally and the argument of "auto-

matic succession", allegedly applicable in the case of certain types of international treaties or conventions (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v *Yugoslavia), Preliminary Objections, Judgment, I C J Reports 1996 (II)*, p 612, para 23)

8 If we now apply the same standard to Yugoslavia, we can only conclude that the assumption that Yugoslavia was a Member of the United Nations was a *sine qua non* condition for the Court's determination on the jurisdiction *ratione personae*, and therefore it was a "decisive factor" within the meaning of Article 61 of the Statute

2 Can the Discovery of the Wrongfulness of an Assumption Constitute a Ground for Revision?

9 Having demonstrated that the Judgment of the Court on its jurisdiction *ratione personae* over Yugoslavia was premised on the assumed membership of Yugoslavia in the United Nations, it is yet to be seen whether United Nations membership status may fall within the legal notion of "fact" and, if so, whether an assumption of such a fact later proved to be incorrect can serve as a ground for revision of a judgment, provided all other requirements of Article 61 of the Statute are met

10 The question whether or not a State is a Member of the United Nations would appear to be a question of fact according to a whole series of definitions of the term "fact" given in authoritative law dictionaries and texts Thus, applying the definition of "fact" given by *Black's Law Dictionary*, it would fall under "something that actually exists" or under "circumstance, as distinguished from its legal effect, consequence, or interpretation" (*Black's Law Dictionary*, 7th ed , p 610) According to Wigmore on Evidence, "fact is any act or *condition of things, assumed* for (the moment) as happening or existing" (cited in *Black's Law Dictionary*, 7th ed , p 610, emphasis added) De Smith *et al* define "a finding of fact as an assertion that a phenomenon exists, has existed or will exist, independently of any assertion as to its legal effect" (de Smith, Woolf & Jowell, *Judicial Review of Administrative Action*, 5th ed , p 277, para 5-079) If we turn to the ordinary meaning of the word "fact", the *Concise Oxford Dictionary* defines it as "1 Thing certainly known to have occurred or be true " (*The Concise Oxford Dictionary of Current English*, 6th ed , p 370) From the quoted definitions, it follows it would be a natural interpretation of the meaning of the term "fact" that it includes a State's status in an organization Likewise, facts would be statehood, being a party to a treaty, etc It may be pertinent to note that the Russian text of Article 61 of the Statute uses the word "circumstances" in place of the word "fact" used in the English text

11 As was shown above, the Court did not concern itself specifically with the establishment of the fact of Yugoslavia's membership in the United Nations and explicitly did not take any position on the claim of Yugoslavia in this respect However, implicitly it could not avoid the assumption of Yugoslavia being a Member of the United Nations This assumption, which was of crucial importance for the establishment of the Court's jurisdiction in the case, later proved to be incorrect Therefore, the question arises whether an incorrect assumption of the factual situation, in international proceedings, can lead to the revision of a judgment

12 A pertinent example of international jurisprudence where an incorrect or erroneous assumption of the personal status of the claimant led to the revision of the decision is *Schreck's* case (Moore, 2 *International Arbitrations*, p 1357) often referred to by writers The umpire, Sir Edward Thornton, reversed his earlier decision when he discovered he had based it on an incorrect assumption about the nationality of the claimant under Mexican law The claimant Schreck needed to be an American citizen in order to obtain relief The umpire had wrongly assumed that, because the claimant was born in Mexico he must have had Mexican nationality, and therefore refused relief He later discovered the fact that under Mexican law this was not the case and indeed the claimant did not have Mexican nationality at all That fact existed at the time of the decision but was not known to the umpire until afterwards Consequently, upon its discovery, he revised his decision and found for the claimant

Certainly, in national jurisprudence one may find many other examples of the revision of decisions based on the discovery of wrong assumptions, including the assumptions of the legal status of natural persons and legal entities (citizenship, marital status, domicile, etc)

3 Were the Facts of Yugoslavia's Non-Membership in the United Nations and Non-Participation in the Genocide Convention Unknown to Yugoslavia and the Court at the Relevant Time?

13 I now propose to turn to the questions whether Yugoslavia has shown that its non-membership of the United Nations was unknown to Yugoslavia when the Judgment was delivered and, if so, was it due to its negligence I would think that throughout the whole proceedings both Yugoslavia and the Court were equally aware of the uncertainty and ambiguity prevailing outside the Court as to the status of Yugoslavia in the United Nations All the information pertaining to this issue was readily available to the Court and was not artificially withheld by Yugoslavia What they could not know, due to the political vicissitudes of the time, was the final outcome of this uncertainty and ambiguity In the unclear situation of Yugoslavia's standing in the United Nations, both the Court and Yugoslavia, obviously for different reasons, opted to pro-

ceed on the assumption that Yugoslavia had not ceased to be a Member of the United Nations after the dissolution of the former Yugoslavia

14 The legal history of the problem shows that the objective ground for such an assumption did exist Indeed, the situation of Yugoslavia's membership in the United Nations at all stages of the incidental proceedings in 1993-1996, and later until 1 November 2000 when Yugoslavia was formally admitted to the United Nations as a new Member, was, to say the least, ambiguous or, to repeat the words of the Court, "not free from legal difficulties" The organs of the United Nations, solely competent to decide this matter, on the one hand stated that Yugoslavia's claim to continue automatically the membership of the former Yugoslavia "has not generally been accepted" and decided that the new Yugoslavia "should apply for membership in the United Nations and that it shall not participate in the work of the General Assembly" (Security Council resolution 777 (1992) of 19 September 1992 and General Assembly resolution 47/1 of 22 September 1992) On the other hand, the "considered view" of the United Nations Secretariat regarding the practical consequences of these decisions was, among other things, that Yugoslavia's *membership* in the Organization was "neither terminated nor suspended", that Yugoslav missions at United Nations Headquarters and offices may continue to function, receive and circulate documents, etc (United Nations doc A/47/485 (1992)) Yugoslavia continued to pay membership dues, which were duly accepted

15 Evidently, the assumption of the Court on Yugoslavia's standing in the United Nations was at least partly based on the "considered view" of the United Nations Secretariat as well as on the official listings of the United Nations in which "Yugoslavia" (without explanations whether the designation referred to the Federal Republic of Yugoslavia) was included until 2000 as an original Member of the United Nations since 24 October 1945 and as a party to the Genocide Convention since 29 August 1950 For its part, Yugoslavia could find in the above "considered view" and in official listings of the Depository a kind of partial recognition of its contention of continuity of membership in the United Nations and of the continuing participation in the treaties to which the former Yugoslavia was a party It had no compelling reasons to immediately apply for membership in the United Nations while being told that its current membership was "neither terminated nor suspended"

16 As to the other Party in these proceedings, Bosnia and Herze-

govina, its position with regard to these matters was ambivalent and inconsistent In the proceedings before the Court it did not contest the status of Yugoslavia as a Member of the United Nations and as a party to the Genocide Convention In its Application filed with the Court on 20 March 1993, it stated, *inter alia*, that "[a]s Members of the United Nations Organization, the Republic of Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) are parties to the Statute " At the same time, outside the Court, Bosnia and Herzegovina constantly refuted Yugoslavia's claim to the continuation of the membership of the former Yugoslavia Thus, the representative of Bosnia and Herzegovina stated in the United Nations General Assembly

> "Serbia and Montenegro are not legally entitled to succeed to the position of the former Socialist Federal Republic of Yugoslavia This is applicable to this body [United Nations General Assembly] as well as to other related and similar international organizations " (United Nations doc A/47/PV 7 (1992))

17 The inconsistency of Bosnia and Herzegovina's position also manifested itself in that it recognized the status of Yugoslavia as a party to the Genocide Convention, but at the same time initiated the exclusion of Yugoslavia from participation in the meetings of States parties to other important human rights treaties, like the International Covenant on Civil and Political Rights and the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (see, for instance, the proposal of the representative of Bosnia and Herzegovina at the meeting of the States parties to the International Covenant on Civil and Political Rights held on 16 March 1994 — Annex 17 of Yugoslavia's Application)

The arguments underpinning this position which finally resulted in the exclusion of Yugoslavia from the above meetings boiled down to the contention that since Yugoslavia had not notified the Secretary-General, specifically, of its succession to the above human rights treaties as one of the successor States of the former SFRY, it could not be considered as one of the parties to the said treaties It is not easy to see why a special notification of succession was considered necessary in respect of the above two major human rights treaties, but not in relation to the Genocide Convention Why was the Yugoslav intention to observe "all the international commitments of the SFRY" taken as a sufficient ground for its continued participation in the Genocide Convention but at the same time not sufficient for its participation in other human rights treaties?

18 It should be added that the "Summary of Practice of the Secretary-

General as Depository of Multilateral Treaties" published by the Treaty Section of the United Nations Office of Legal Affairs, in relation to the practice of listing Yugoslavia as a party to multilateral treaties, had been inconsistent and changed according to the political pressures of the time It did not shed much light on the status of Yugoslavia (A thorough account of the divergent views among the member States and the Legal Office of the United Nations Secretariat is given in the book by K Buhler, *State Succession and Membership in International Organizations Legal Theories versus Political Pragmatism*, pp 192-271)

19 The question of Yugoslavia's membership in the United Nations arose again more recently (in 1999) in connection with Yugoslav requests for the indication of provisional measures in the cases concerning *Legality of Use of Force* In six of those cases, the defendant States (Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom) contended that Yugoslavia could not be regarded as a Member of the United Nations or as a party to the Statute of the Court because it had not "duly acceded to the Organization" (see, for example, paragraph 31 of the Order of 2 June 1999 in the case concerning *Legality of Use of Force (Yugoslavia* v *Belgium), Provisional Measures, Order of 2 June 1999, I C J Reports 1999 (I)*, p 135, para 31)

However, like in the case of the 1996 Judgment, the Court avoided the direct answer to the thorny question of Yugoslavia's membership in the United Nations and satisfied itself with the observation that it "need not consider this question for the purpose of deciding whether or not it can indicate provisional measures " (*ibid*, p 136, para 33) This time it was done in circumstances where Yugoslavia's standing in the United Nations was directly challenged by six respondent States In disagreeing with the Court's reasoning in this respect, Judge Kooijmans stressed in his separate opinion that he came "to the conclusion that there are strong reasons for doubt as to whether the Federal Republic of Yugoslavia is a full-fledged, fully qualified Member of the United Nations " (*Legality of Use of Force (Yugoslavia* v *Belgium), Provisional Measures, Order of 2 June 1999, I C J Reports 1999 (I)*, p 179, para 25)

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" (United Nations doc A/54/L 62 (1999))

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

4 HAS YUGOSLAVIA ACTED NEGLIGENTLY?

22 From the foregoing, it can be seen that the circumstances surrounding Yugoslavia's standing in the United Nations were such that not only Yugoslavia but, as was shown above, the Court itself appeared to proceed from the assumption that Yugoslavia retained its membership in the United Nations

23 A number of elements characteristic of the dissolution of the former Yugoslavia suggest that the new Yugoslavia could plausibly expect that, *in the long run*, its contention to continue the statehood of the former Yugoslavia would be generally accepted It was the only remaining part of the former Yugoslavia that did not issue a declaration of independence, but on the contrary, proclaimed continuity and kept the name "Yugoslavia" The plausibility of the development in this direction was not denied even by Bosnia and Herzegovina, which stated in its Written Observations on the Application for revision by Yugoslavia the following

> "The fact of the matter is that Yugoslavia kept to a position, which may even have been defendable if the other new States emerging from the former Yugoslavia would — sooner or later — have been willing to accept it In other words the Yugoslavia position could have turned out to be the internationally accepted one " (Written Observations of Bosnia and Herzegovina of 3 December 2001, Part II, p 21, para 2 23)

However, with its expectations to be recognized as the continuator of the former Yugoslavia steadily vanishing and after the change of its political régime, Yugoslavia took the decision to apply for membership in the United Nations as a new State

24 In the chain of events that led to the "discovery" of the new fact that at the relevant time Yugoslavia was not a Member of the United Nations, the initial impulse was certainly given by Yugoslavia's application for United Nations membership, and evidently the timing of this initial impulse depended on Yugoslavia From this it does not follow, however, that in the political situation prevailing in the early 1990s, one could be certain that Yugoslavia would have been admitted to the United Nations had it applied at that time, or that one could have known even after Yugoslavia's application of 27 October 2000, that the competent

United Nations organs would admit it as a *new* Member and list its membership as of the date of admission In this sense, contrary to what is implied in the Judgment (see the second subparagraph of paragraph 70 of the Judgment) the discovery of the new fact did not depend on the position of Yugoslavia and was not the result of its negligence

25 Yugoslavia cannot be blamed for its long-lasting attempts to assert its status as the continuator of the former Yugoslavia, for a State cannot be faulted for trying to pursue its national interests (however it perceives them) unless in doing so it violates the rules and principles of international law I am in agreement with the view that

> "no standard of diligence could impose the duty on a party to seek clarification by taking out of the two possible options exactly the one which is *against* its views and convictions The FRY was not negligent if it did not seek a resolution of the dilemma in the direction opposite to its persuasions " (CR 2002/42, p 24, para 2 27 (Varady))

26 From the legal point of view it cannot be denied that the fact of Yugoslavia's non-membership in the United Nations at the time of the 1996 Judgment could not have been established before the decision of the General Assembly on 1 November 2000, by which decision Yugoslavia was admitted as a *new* Member of the United Nations This decision was taken pursuant to the recommendation of the Committee on the Admission of *New* Members and the recommendation of the Security Council Like all other States which had formed the past Socialist Federal Republic of Yugoslavia, the new Yugoslavia is now listed in the official documents of the United Nations as a Member from the time of its admission, and not from the time when the former Yugoslavia became a Member of the United Nations

27 On the other hand, the assumption of Yugoslavia's membership in the United Nations at the time of the Court's Judgment on its jurisdiction cannot be sustained after 1 November 2000 Residual elements of the membership of the former Yugoslavia, not denied to the new Yugoslavia after 1992, cannot frustrate this conclusion Otherwise, we have to presume that the rules of elementary logic and common sense are not applicable to this case, and a State that already was a Member of an organization and whose membership had neither ceased nor was suspended at a certain time, can again be admitted to the same organization as a new Member, but with a different initial date of its membership However, this is exactly what flows from the Judgment's holding 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'" (para 72 of the Judgment)

5 CONCLUSION

28 The foregoing brings me to the conclusion that the Court, in 1996, based its jurisdiction on the assumption that Yugoslavia was at that time a Member of the United Nations Subsequent events, described above, have clearly demonstrated that the assumption made by the Court was wrong The fact is, Yugoslavia was not a Member of the United Nations in 1996 This fact constitutes "the new fact" for the purposes of Article 61 of the Statute

The request for revision of the Court's Judgment on its jurisdiction satisfies all the conditions contemplated by Article 61 of the Statute it is based on the "discovery" of a fact "of such a nature as to be a decisive factor", the fact had been "unknown" to the Court and to the Party claiming revision when the Judgment was given, ignorance of the fact was not "due to negligence", the Application for revision was made within the time prescribed For these reasons, in my opinion, the Application of Yugoslavia is admissible and the Judgment of the Court of 11 July 1966 should have been laid open for revision

Such a procedural decision would not have prejudged the ultimate result of the revision *A fortiori*, it could not have been seen as a condoning of the behaviour of either side in the bloody conflict on the territory of the former Yugoslavia

(Signed) Vladlen S VERESHCHETIN