NOTES AND COMMENTS

CONSISTENTLY INCONSISTENT: THE INTERNATIONAL COURT OF JUSTICE AND THE FORMER YUGOSLAVIA (*CROATIA V. SERBIA*)

*By Yehuda Z. Blum**

On November 18, 2008, the International Court of Justice delivered its judgment in the preliminary objections phase of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* case.[1] By a majority of 10 to 7, the Court rejected Serbia's first preliminary objection that at the time proceedings against it were instituted by Croatia on July 2, 1999, it was not a member of the United Nations (and consequently not a party to the Statute of the Court subject to its jurisdiction).[2]

This judgment is the fifth in a series of decisions in which the Court confronted the confused legal situation that arose with the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) in the years 1991–1992, and the accession to independence and admission to the United Nations of four of its six constituent republics (Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia).[3] However, rump Yugoslavia (consisting of the two remaining republics, Serbia and Montenegro) claimed to be the *continuator* of the SFRY under the new name "Federal Republic of Yugoslavia" (FRY-I) and, as such, entitled to the UN seat of the SFRY.[4] On May 30, 1992, the UN Security Council resolved that the claim of FRY-I "to continu[ing] automatically" the SFRY's UN membership "has not been generally accepted." On September 25 of that year, the Council resolved that the SFRY "has ceased to exist" and recommended to the General Assembly that FRY-I should not participate in its work and that it should apply for membership in the United Nations. The General Assembly, on the following day, endorsed the Council's recommendation while, significantly, omitting any reference to the SFRY's alleged cessation of existence.[5]

On September 29, 1992, the UN legal counsel, in response to a request by Bosnia-Herzegovina and Croatia that he clarify the legal status of FRY-I in the wake of the General Assembly's resolution, stated that, while FRY-I could not *participate* in the work of the General Assembly and its subsidiary organs, as well as in conferences and meetings convened by it, it

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[1] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.), Preliminary Objections (Int'l Ct. Justice Nov. 18, 2008) [hereinafter *Croatia* case].

[2] *Id.*, para. 146(1).

[3] Slovenia, Croatia, and Bosnia-Herzegovina were admitted to the United Nations in May 1992. Macedonia (under the name "The Former Yugoslav Republic of Macedonia") was admitted in April 1993. All these states considered themselves—and were recognized by the international community—as *successor* states to the SFRY.

[4] For a more detailed survey of these events, see Yehuda Z. Blum, *Was Yugoslavia a Member of the United Nations in the Years 1992–2000?* 101 AJIL 800, 800–01 (2007).

[5] *Id.* at 801 (quoting SC Res. 757, pmbl. (May 30, 1992), & SC Res. 777, pmbl. (Sept. 25, 1992)).

could still participate in the work of other UN organs and that the resolution neither suspended nor terminated the *membership* of FRY-I in the United Nations.[6] In fact, FRY-I remained in this rather anomalous situation, though it was generally treated as a member state, until the downfall of the regime of Slobodan Milošević in September 2000. The following month President Vojislav Kostunica, referring to the "fundamental democratic changes" that had taken place in FRY-I, applied for its admission as a *new* member of the United Nations[7] and as a *successor* state to the SFRY. It was admitted on that basis (FRY-II) on November 1, 2000.[8]

Of the five Yugoslavia-related judgments rendered by the Court since 1996,[9] the most relevant to the present analysis are the Court's 2004 judgments in the *Legality of Use of Force* cases (*NATO* cases). They originated in the proceedings instituted by FRY-I on April 29, 1999, against a group of NATO states, essentially for the bombardment of its territory in connection with the then-current Kosovo crisis. In eight separate, but virtually identical, judgments delivered on December 15, 2004, the Court unanimously ruled that the question of FRY-I's UN membership in the years 1992–2000 (during which period FRY-I instituted those proceedings) was "fundamental; for if it were not such a party, the Court would not be open to it under Article 35, paragraph 1, of the [Court's] Statute."[10] The Court then found that, with the admission of FRY-II in 2000 as a *new* member,"the rather confused and complex state of affairs that obtained within the United Nations surrounding the issue of the legal status of the Federal Republic of Yugoslavia in the Organization"[11] in the years 1992–2000 had come to an end; "it became clear that the *sui generis* position of the Applicant could not have amounted to its membership in the Organization."[12] Continuing this line of reasoning, the Court held that,

> from the vantage point from which the Court now looks at the legal situation, and in light of the legal consequences of the new development since 1 November 2000, the Court is led to the conclusion that Serbia and Montenegro was not a Member of the United Nations, and in that capacity a State party to the Statute of the International Court of Justice, at the time of filing its Application to institute the present proceedings before the Court on 29 April 1999.[13]

In the case under consideration here, Croatia filed its application to institute proceedings against FRY-I on July 2, 1999, that is, prior to November 1, 2000. There was therefore a justified expectation that, if only for reasons of judicial consistency, the Court would follow its own prior reasoning and look at Serbia's preliminary objection to the Court's jurisdiction from

[6] UN Doc. A/47/485, annex (Sept. 30, 1992).

[7] UN Doc. A/55/528–S/2000/1043, annex (Oct. 30, 2000). The new member state initially kept its name "Federal Republic of Yugoslavia" (hereinafter "FRY-II") but changed it in February 2003 to "Serbia and Montenegro," and yet again upon the latter's secession and admission to the United Nations in June 2006, to "Serbia." Blum, *supra* note 4, at 800 n.2.

[8] *Id.* at 802–03, 812–13.

[9] The preceding four judgments are discussed in Blum, *supra* note 4.

[10] Legality of Use of Force (Serb. & Mont. v. Belg.), Preliminary Objections, 2004 ICJ REP. 279, 299, para. 46 (Dec. 15) [hereinafter *NATO* cases].

[11] *Id.* at 308, para. 73.

[12] *Id.* at 310, para. 78.

[13] *Id.* at 311, para. 79.

the same vantage point as when it had dismissed Serbia-Montenegro's application.[14] The Court acknowledged that its previous *NATO* decisions had

> referred to the question of the status of a particular State, the FRY[-I], in relation to the United Nations and to the Statute of the Court; and it is that same question in relation to that same State that requires to be examined in the present proceedings . . . . *It would require compelling reasons for the Court to depart from the conclusions reached in [the] previous decisions.*[15]

Yet, for reasons that are difficult to explain on the legal level, the majority found otherwise and dismissed Serbia's preliminary objection.

To be sure, the Court's jurisprudence in all four Yugoslavia-related judgments rendered since the admission of FRY-II to the United Nations in November 2000 has been marked by a puzzling inconsistency. In the *Application for Revision* case,[16] the Court rejected the argument of FRY-II that its admission to the United Nations as a new member and as a successor state to the SFRY meant that as of 1992 it had *not* continued the SFRY's legal personality, and that the proceedings in the *Genocide Convention* case initiated by Bosnia-Herzegovina against FRY-I in 1993[17] should therefore be discontinued. The Court concluded that the admission of FRY-II to the United Nations as a new state was not a "new fact" within the meaning of Article 61 of the Court's Statute, as required for revision.[18] By contrast, in the *NATO* cases, as already indicated, the Court unanimously held that the admission of FRY-II as a *new* state showed, from "the vantage point" of 2004, that FRY-I had *not* been a member of the United Nations in 1999. This latter ruling obviously posed a serious dilemma for the Court when it came to determining the merits in the *Genocide Convention (Bosnia and Herzegovina)* case.[19] In its judgment of February 26, 2007, the Court distinguished the *NATO* cases; it did so by the highly questionable invocation of the *res judicata* doctrine,[20] although the matter of FRY-I's UN membership had not been raised by the parties in the preliminary objections phase, and consequently had not been addressed by the Court in 1996.[21]

To distinguish the *NATO* cases in *Croatia v. Serbia,* the Court maintained that had Croatia filed its application on November 2, 2000 (that is, the day after the admission of FRY-II to the United Nations), instead of July 2, 1999, no objection could have been raised to the jurisdiction *ratione personae* of the Court.[22] It then addressed

[14] As the Court pointed out, the parties were agreed that its previous Yugoslavia-related judgments were not *res judicata* within the meaning of Article 59 of the Court's Statute, although it conceded that "while those decisions are in no way binding on the Court, it will not depart from its settled jurisprudence unless it finds very particular reasons to do so." *Croatia* case, *supra* note 1, para. 53.

[15] *Id.*, para. 54 (emphasis added).

[16] Application for Revision of the Judgment of 11 July 1996 in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Yugoslavia), Preliminary Objections (Yugo. v. Bosn. & Herz.), 2003 ICJ REP. 7 (Feb. 3) [hereinafter *Revision* case].

[17] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo.), Preliminary Objections, 1996 ICJ REP. 595 (July 11) [hereinafter 1996 *Bosnia* judgment].

[18] *Revision* case, *supra* note 16, 2003 ICJ REP. at 31, paras. 70–71. Three judges voted against the *dispositif* of the judgment, which was supported by ten judges. *See* Blum, *supra* note 4, at 803–05.

[19] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.) (Int'l Ct. Justice Feb. 26, 2007) [hereinafter 2007 *Bosnia* case].

[20] *See* Blum, *supra* note 4, at 808–11.

[21] *See* note 17 *supra.*

[22] *Croatia* case, *supra* note 1, para. 77.

> an issue of particular importance in the present case: whether fulfilment of the conditions laid down in Article 35 of the Statute must be assessed solely as of the date of filing the Application, or whether it can be assessed, at least under the specific circumstances of the present case, at a subsequent date, more precisely at a date after 1 November 2000.[23]

While conceding that "the jurisdiction of the Court must normally be assessed on the date of the filing of the act instituting proceedings,"[24] the Court invoked considerations of "realism and flexibility in certain situations" where the conditions governing its jurisdiction were fully satisfied only at a later date, albeit still before the Court ruled on its jurisdiction.[25] The majority then quoted what is mostly regarded as an obiter dictum of the 1924 judgment of the Permanent Court of International Justice in the *Mavrommatis Palestine Concessions* case: "The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law."[26] The Court saw

> no convincing reason why an applicant's deficiency might be overcome in the course of proceedings, while that of a respondent may not. What matters is that, at the latest by the date when the Court decides on its jurisdiction, the applicant must be entitled . . . to bring fresh proceedings in which the initially unmet condition would be fulfilled. In such a situation, it is not in the interests of the sound administration of justice to compel the applicant to begin the proceedings anew . . . and it is preferable . . . to conclude that the condition has, from that point on, been fulfilled.[27]

The Court was fully conscious, of course, that it was departing from its decisions in the *NATO* cases:

> It is true that the Court apparently did not take account in its 2004 Judgments of the fact that Serbia and Montenegro had by that date become a party to the Statute: indeed, the Court found that it lacked jurisdiction on the sole ground that the Applicant did not have access to the Court in 1999, when the Applications were filed, without taking its reasoning any further.[28]

The majority tried to explain this departure by arguing that, while Serbia-Montenegro had not intended to discontinue the pending proceedings in the *NATO* cases, it "clear[ly] . . . did not have the intention of pursuing its claims by way of new applications."[29] The Court went on to say that when Croatia filed its application in July 1999, it was entitled to assume that FRY-I

[23] *Id.*, para. 78.

[24] *Id.*, para. 79 (quoting the 1996 *Bosnia* judgment, *supra* note 17, to this effect; comparing Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. UK), Preliminary Objections, 1998 ICJ REP. 9, 26, para. 44 (Feb. 27); and explaining, in para. 80, the reasons for its being "easy to see why this rule exists").

[25] *Id.*, para. 81.

[26] *Id.*, para. 82 (quoting Mavrommatis Palestine Concessions (Greece v. UK), 1924 PCIJ (ser. A) No. 2, at 34 (Aug. 30)).

[27] *Id.*, para. 85. In this passage the Court affirms that the same criteria should be applied to applicants and respondents in the matter here under consideration. However, in his separate opinion Judge Ronny Abraham argues that full compliance with the jurisdictional requirements was incumbent only on the applicant and that, therefore, in this regard there was no absolute requirement for equality between the applicant and the respondent. Separate Opinion of Judge Abraham, paras. 8–44, *id.*

[28] *Croatia* case, *supra* note 1, para. 88.

[29] *Id.*, para. 89. As pointed out in Blum, *supra* note 4, at 813, Serbia and Montenegro "left it to the Court to determine its own jurisdiction, in a further attempt to force the Court's hand in advance of its judgment in the [2007 *Bosnia*] *Genocide Convention* case."

was subject to the Court's jurisdiction and that, even though it had filed its 10-page application instituting proceedings against FRY-I prior to November 1, 2000, its 414-page memorial was submitted after that date.[30] According to the Court:

> While this cannot be considered a decisive element, it cannot be entirely ignored: if Croatia had submitted the substance of its Memorial, on 1 March 2001, in the form of a new application, as it could have done, no question with respect to Article 35 of the Statute would have arisen.[31]

It therefore rejected Serbia's preliminary objection.

The Court's judgment evoked the strong disapproval of seven of the judges on the bench. In an unusually critical "Joint Declaration" (in fact, a joint dissenting opinion), the four remaining judges of the Court who had taken part in the Yugoslavia-related proceedings since 1996 (Judges Raymond Ranjeva, Shi Jiuyong, Abdul Koroma, and Gonzalo Parra-Aranguren)[32] point out that "at no time between 1992 and 2000 did the Court ever *definitively* declare that Serbia—the Respondent in the present case—had the necessary access to bring a dispute before the Court. In fact, the Court deliberately avoided the issue . . . ."[33] The joint declaration continues:

> [T]his Judgment . . . not only lacks legal validity and consistency but is even *contra legem* and untenable. This Court is not entitled to exercise jurisdiction based on a *contra legem* interpretation of a convention, such as the United Nations Charter or the Statute of the Court. Any such Judgment cannot but be extra-legal. It is regrettable that this Court, as a court of law, should have taken such a position.[34]

The four judges recall that, whereas before 2000 the Court had never ruled that Yugoslavia had access to it, in the *NATO* cases it determined definitively (by invoking the "vantage point" reasoning[35]) that FRY-I (Serbia-Montenegro by 2004) had not had access to it in 1999.[36] They dismiss the obiter dictum in the *Mavrommatis* judgment as irrelevant to the present case for having dealt merely with a temporary, short-lived procedural defect, as distinct from the very access to the Court of one of the parties involved.[37] The joint declaration states:

> A party can correct a procedural error, but cannot simply change a fundamental characteristic of the opposing party's legal status. . . . In fact, the logic of the *Mavrommatis* approach was meant to be applied prospectively, in particular to excuse *procedural* imperfections that the applicant could rectify *ex ante* by re-filing a corrected application. Such is not the situation in the present case, which involves, rather, a *fundamental* question which is only known to resolve itself *ex post.*[38]

[30] *Croatia* case, *supra* note 1, para. 90.

[31] *Id.*

[32] Judges Ranjeva, Shi, and Koroma had sat on all five Yugoslavia-related cases since 1996. Judge Parra-Aranguren did not participate in the 2007 *Bosnia* judgment.

[33] Joint Declaration of Judges Ranjeva, Shi, Koroma and Parra-Aranguren, para. 1, *Croatia* case, *supra* note 1 [hereinafter Joint Declaration].

[34] *Id.*

[35] *See* text at note 14 *supra.*

[36] Joint Declaration, *supra* note 33, para. 5.

[37] *Id.*, paras. 6, 8; *see also* Dissenting Opinion of Judge Owada, paras. 8–14, 27, *Croatia* case, *supra* note 1.

[38] Joint Declaration, *supra* note 33, para. 7.

Since the *Mavrommatis* approach was intended to cure only temporary, short-lived procedural errors, the four judges reason that to apply it to a long-lasting defect like the one in the instant case "would create a jurisprudential slippery slope in respect of the Court's jurisdiction, to the detriment of judicial certainty and finality. . . . *According to the Court's settled jurisprudence, its jurisdiction in a case must exist at the time of filing the Application.*"[39] The declaration adds that the majority judgment also ignored one of the fundamental principles of international justice, that of *equality* between the applicant and the respondent.[40] As the four judges see it, this omission

> is to ignore the fact that as a non-Member State of the United Nations and a non-party to the Statute of the Court, Serbia and Montenegro was not entitled to institute proceedings before the Court against Croatia without the latter's consent. Indeed, when the Respondent in the present case attempted to do so against other States in the [*NATO*] cases, this Court ruled that the present Respondent as Applicant in those cases had no access to the Court and that the Court therefore could not exercise its jurisdiction.[41]

The four judges then note that, in a letter dated May 27, 1999, and addressed to the UN secretary-general, Croatia itself took the position that FRY-I, as a nonmember of the United Nations (and consequently also as a nonparty ipso facto to the Court's Statute), lacked the capacity to participate in proceedings before the Court at the relevant time,[42] implying that the principle of estoppel (or preclusion) might also have worked against Croatia.[43]

The four judges reject the "weak attempts" of the majority to distinguish the *NATO* cases of 2004, by arguing that in those cases Serbia-Montenegro had no intention of pursuing its claims. In their view, "This assumption by the Court is also an unconvincing basis on which to rest such an important distinction."[44] They conclude that

> [i]f the Respondent lacked access to the Court when it filed its Applications against some [NATO] States in 1999, as the Court held in 2004, it cannot be deemed to have had access to the Court as Respondent when Croatia filed its Application against it, also in 1999. . . .
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> . . . [Since] Serbia lacked access to the Court at the relevant time (and thus the Court lacked jurisdiction *ratione personae*) . . . , we conclude that the Court is wholly lacking jurisdiction to hear the case.[45]

In his dissenting opinion, Judge Hisashi Owada discusses at length the "*Mavrommatis* principle" relied upon by the majority (and referred to in subsequent decisions of the Court)[46] and

[39] *Id.*, para. 8.

[40] *Id.*, para. 12. However, as already mentioned, *see supra* note 27, Judge Ronny Abraham, in his separate opinion, seems to favor such a distinction, suggesting that only the applicant must entirely fulfill the procedural requirements needed to establish the Court's jurisdiction.

[41] Joint Declaration, *supra* note 33, para. 12.

[42] *Id.*, para. 13.

[43] In his dissenting opinion Judge Ranjeva also draws attention to Croatia's letter to the UN secretary-general of February 16, 1994, in which Croatia rejected the claim of FRY-I to be the continuator state of the SFRY. Dissenting Opinion of Judge Ranjeva, para. 7, *Croatia* case, *supra* note 1 (quoting UN Doc. S/1994/198 (Feb. 19, 1994)).

[44] Joint Declaration, *supra* note 33, para. 15.

[45] *Id.*, paras. 16, 18.

[46] Dissenting Opinion of Judge Owada, *supra* note 37, paras. 8–27.

rejects its applicability to the present case.[47] He also rejects any suggestion of distinguishing between FRY-I/Serbia as an applicant and as a respondent, for "making such a distinction in interpretation of Article 35, paragraph 1, would create an unequal treatment between the applicant and the respondent in matters relating to the access to the Court and the capacity to appear before the Court."[48] He further dismisses the relevance of the judgment's reasoning that in the *NATO* cases Serbia did not intend to pursue its claims by way of new applications. He finds this rationale "singularly unpersuasive since the issue of the capacity of a party to seise the Court . . . is a matter which the Court has to ascertain, if necessary *proprio motu*, independently of the will or the motive of one or the other of the parties."[49]

Serbian judge *ad hoc* Milenko Kreča, in his dissenting opinion, takes issue with the majority judgment in the following words:

> [T]he only consistency of the decisions of the Court regarding *jus standi* of the FRY/Serbia is found in the inconsistency of the decisions *per se* and in its *ratio decidendi*. And, if the purpose of consistency is, *inter alia*, to "provide predictability" "in different phases of the same case or with regard to closely related cases", it is not clear what that predictability would consist of in those cases in which the FRY/Serbia was a party, except, perhaps, that the FRY/Serbia has *jus standi* as a respondent and that it is deprived of it as an applicant.[50]

In his separate opinion Vice-President Awn Shawkat Al-Khasawneh, while joining the majority on the *dispositif* of the judgment, dissociates himself from the Court's reasoning because, as he had already indicated in the 2007 *Bosnia* judgment,[51] the fact that FRY-II became a "new Member" in November 2000 did not mean that FRY-I had been a "non-Member" before that time. In his view, between 1992 and 2000 FRY-I was a *continuator* state of the SFRY (and as such an *old* member of the United Nations) and became a *successor* state to the SFRY with the admission of FRY-II as a *new* member of the organization in 2000.[52] In the present opinion he states:

> In the 2007 Genocide [*Bosnia*] Judgment . . . the contradictions with the 2004 [*NATO*] Judgment[s] were not substantively resolved but merely obscured by the formalism of *res judicata*. In the present judgment, in which the Applicant is different, the ghost of the 2004 Judgment[s], freed from the shackles of *res judicata*, is back to haunt us, and rather than putting it this time to rest beyond revivication, the Court chose in fact to revive it . . . . This is regrettable as the moral and logical implications of the collective disappearing act of the FRY for eight full years, while some of the most horrible crimes occurred, and in which its leaders were implicated, cannot represent a high point in the history of this Court.[53]

Thus, eight of the seventeen judges rejected the reasoning of the Court, even though only seven actually voted against the *dispositif*. Vice-President Al-Khasawneh had articulated his

[47] *Id.*, para. 27; *see also* Dissenting Opinion of Judge Skotnikov, para. 1, *Croatia* case, *supra* note 1.
[48] Dissenting Opinion of Judge Owada, *supra* note 37, para. 29.
[49] *Id.*, para 32.
[50] Dissenting Opinion of Judge *ad hoc* Kreča, para. 15, *Croatia* case, *supra* note 1 (quoting Joint Declaration of Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al-Khasawneh, Buergenthal and Elaraby, *NATO* cases, *supra* note 10, 2004 ICJ REP. at 330, para. 3) (citations omitted).
[51] Dissenting Opinion of Judge Al-Khasawneh, 2007 *Bosnia* case, *supra* note 19, paras. 11–16.
[52] Separate Opinion of Vice-President Al-Khasawneh at 1, *Croatia* case, *supra* note 1.
[53] *Id.*

thesis of "continuator v. successor State" for the first time in his dissenting opinion in the 2007 *Bosnia* case (albeit voting with the majority on the *dispositif* there). In the earlier *NATO* judgments of 2004, he had joined the other members of the Court by embracing the "vantage point" theory, thus making the Court's decisions unanimous.[54]

As will be recalled, the majority in the instant case stated that "it would require compelling reasons for the Court to depart in its conclusions from decisions reached . . . in previous decisions."[55] As the minority judges (and even one of the majority) pointed out, the reasons adduced by the Court to justify its departure from the ruling reached in the *NATO* cases look "weak," "unpersuasive," and "unconvincing." To be sure, the Court acknowledges that the same criteria should be applied to the applicant and the respondent;[56] yet the outcome nevertheless suggests the possibility of unequal treatment, inviting the inference that the Court would have upheld the "vantage point" theory enunciated by it in the *NATO* cases if Serbia had been the applicant in this case. Equality of the parties has been termed by Shabtai Rosenne the "major principle governing the procedure of the Court . . . . Among other things it implies, for the Court, that . . . each [party] possesses equal rights for the submission of its case to the tribunal called upon to examine the matter . . . ."[57]

Nor can the *cri de coeur* of Judge *ad hoc* Kreča[58] be lightly dismissed. For in all the cases adjudicated by the Court, and involving FRY-II/Serbia-Montenegro/Serbia, the Court, on various and changing grounds, ruled against it: in the *Revision* case it was the absence of "new facts"; in the *NATO* cases, the "vantage point" theory; in the 2007 *Bosnia* judgment, the controversial application of *res judicata*; and in the instant case, the equally controversial application of the "*Mavrommatis* principle." Moreover, it is puzzling that in the instant case the Court departed, without any apparent "compelling reason," from its decision in the *NATO* cases.

In juxtaposing the techniques of the political organs of the United Nations and those employed by the Court, Rosenne states that "the Court's decision is reached exclusively on the basis of law."[59] Yet one may wonder whether Rosenne's statement is fully borne out by the Court's Yugoslavia-related decisions. Admittedly, the Court, as an organ of an essentially *political* organization, cannot remain oblivious to the overall political atmosphere prevailing in that organization. Still, the Court's jurisprudence in the Yugoslavia-related cases has not enhanced its reputation as a tribunal motivated solely by legal considerations, to the exclusion of extra-legal motives, however praiseworthy in themselves.

[54] He did join six other judges, though, who in a joint declaration strongly dissociated themselves from the reasoning of the judgment, which they found inconsistent with the Court's position in the *Revision* case. Joint Declaration of Vice-President Ranjeva, Judges Guillaume, Higgins, Kooijmans, Al-Khasawneh, Buergenthal and Elaraby, *supra* note 50, 2004 ICJ REP. at 330.
[55] *See* text at note 15 *supra*.
[56] *See* note 27 *supra*.
[57] 3 SHABTAI ROSENNE, THE LAW AND PRACTICE OF THE INTERNATIONAL COURT, 1920–2005, at 1048–49 (4th ed. 2006).
[58] *See* text at note 50 *supra*.
[59] 2 ROSENNE, *supra* note 57, at 804.