COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE À LA LICÉITÉ DE L'EMPLOI DE LA FORCE

(YOUGOSLAVIE c. CANADA)

DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

ORDONNANCE DU 2 JUIN 1999

1999

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING LEGALITY OF USE OF FORCE

(YUGOSLAVIA *v.* CANADA)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER OF 2 JUNE 1999

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CASE CONCERNING LEGALITY OF USE OF FORCE

(YUGOSLAVIA *v.* CANADA)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *Vice-President* WEERAMANTRY, *Acting President*; *President* SCHWEBEL; *Judges* ODA, BEDJAOUI, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS; *Judges* ad hoc LALONDE, KREĆA; *Registrar* VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and to Articles 73 and 74 of the Rules of Court,

Having regard to the Application by the Federal Republic of Yugoslavia (hereinafter "Yugoslavia") filed in the Registry of the Court on 29 April 1999, instituting proceedings against Canada "for violation of the obligation not to use force",

Makes the following Order:

1. Whereas in that Application Yugoslavia defines the subject of the dispute as follows:

> "The subject-matter of the dispute are acts of Canada by which it has violated its international obligation banning the use of force against another State, the obligation not to intervene in the internal affairs of another State, the obligation not to violate the sovereignty of another State, the obligation to protect the civilian population and civilian objects in wartime, the obligation to protect the environment, the obligation relating to free navigation on international rivers, the obligation regarding fundamental human rights and freedoms, the obligation not to use prohibited weapons, the obligation not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group";

2. Whereas in the said Application Yugoslavia refers, as a basis for the jurisdiction of the Court, to Article 36, paragraph 2, of the Statute of the Court and to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 (hereinafter the "Genocide Convention");

3. Whereas in its Application Yugoslavia states that the claims submitted by it to the Court are based upon the following facts:

> "The Government of Canada, together with the Governments of other Member States of NATO, took part in the acts of use of force against the Federal Republic of Yugoslavia by taking part in bombing targets in the Federal Republic of Yugoslavia. In bombing the Federal Republic of Yugoslavia military and civilian targets were attacked. Great number of people were killed, including a great many civilians. Residential houses came under attack. Numerous dwellings were destroyed. Enormous damage was caused to schools, hospitals, radio and television stations, cultural and health institutions and to places of worship. A large number of bridges, roads and railway lines were destroyed. Attacks on oil refineries and chemical plants have had serious environmental effects on cities, towns and villages in the Federal Republic of Yugoslavia. The use of weapons containing depleted uranium is having far-reaching consequences for human life. The above-mentioned acts are deliberately creating conditions calculated at the physical destruction of an ethnic group, in whole or in part. The Government of Canada is taking part in the training, arming, financing, equipping and supplying the so-called 'Kosovo Liberation Army'";

and whereas it further states that the said claims are based on the following legal grounds:

"The above acts of the Government of Canada represent a gross violation of the obligation not to use force against another State. By financing, arming, training and equipping the so-called 'Kosovo Liberation Army', support is given to terrorist groups and the secessionist movement in the territory of the Federal Republic of Yugoslavia in breach of the obligation not to intervene in the internal affairs of another State. In addition, the provisions of the Geneva Convention of 1949 and of the Additional Protocol No. 1 of 1977 on the protection of civilians and civilian objects in time of war have been violated. The obligation to protect the environment has also been breached. The destruction of bridges on the Danube is in contravention of the provisions of Article 1 of the 1948 Convention on free navigation on the Danube. The provisions of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights of 1966 have also been breached. Furthermore, the obligation contained in the Convention on the Prevention and Punishment of the Crime of Genocide not to impose deliberately on a national group conditions of life calculated to bring about the physical destruction of the group has been breached. Furthermore, the activities in which Canada is taking part are contrary to Article 53, paragraph 1, of the Charter of the United Nations";

4. Whereas the claims of Yugoslavia are formulated as follows in the Application:

"The Government of the Federal Republic of Yugoslavia requests the International Court of Justice to adjudge and declare:

— by taking part in the bombing of the territory of the Federal Republic of Yugoslavia, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use force against another State;
— by taking part in the training, arming, financing, equipping and supplying terrorist groups, i.e. the so-called 'Kosovo Liberation Army', Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to intervene in the affairs of another State;

— by taking part in attacks on civilian targets, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation to spare the civilian population, civilians and civilian objects;
— by taking part in destroying or damaging monasteries, monuments of culture, Canada has acted against the Federal Republic

of Yugoslavia in breach of its obligation not to commit any act of hostility directed against historical monuments, works of art or places of worship which constitute cultural or spiritual heritage of people;

— by taking part in the use of cluster bombs, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons, i.e. weapons calculated to cause unnecessary suffering;

— by taking part in the bombing of oil refineries and chemical plants, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to cause considerable environmental damage;

— by taking part in the use of weapons containing depleted uranium, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to use prohibited weapons and not to cause far-reaching health and environmental damage;

— by taking part in killing civilians, destroying enterprises, communications, health and cultural institutions, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect the right to life, the right to work, the right to information, the right to health care as well as other basic human rights;

— by taking part in destroying bridges on international rivers, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation to respect freedom of navigation on international rivers;

— by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part;

— Canada is responsible for the violation of the above international obligations;

— Canada is obliged to stop immediately the violation of the above obligations vis-à-vis the Federal Republic of Yugoslavia;

— Canada is obliged to provide compensation for the damage done to the Federal Republic of Yugoslavia and to its citizens and juridical persons";

and whereas, at the end of its Application, Yugoslavia reserves the right to amend and supplement it;

5. Whereas on 29 April 1999, immediately after filing its Application,

Yugoslavia also submitted a request for the indication of provisional measures pursuant to Article 73 of the Rules of Court; and whereas that request was accompanied by a volume of photographic annexes produced as "evidence";

6. Whereas, in support of its request for the indication of provisional measures, Yugoslavia contends *inter alia* that, since the onset of the bombing of its territory, and as a result thereof, about 1,000 civilians, including 19 children, have been killed and more than 4,500 have sustained serious injuries; that the lives of three million children are endangered; that hundreds of thousands of citizens have been exposed to poisonous gases; that about one million citizens are short of water supply; that about 500,000 workers have become jobless; that two million citizens have no means of livelihood and are unable to ensure minimum means of sustenance; and that the road and railway network has suffered extensive destruction; whereas, in its request for the indication of provisional measures, Yugoslavia also lists the targets alleged to have come under attack in the air strikes and describes in detail the damage alleged to have been inflicted upon them (bridges, railway lines and stations, roads and means of transport, airports, industry and trade, refineries and warehouses storing liquid raw materials and chemicals, agriculture, hospitals and health care centres, schools, public buildings and housing facilities, infrastructure, telecommunications, cultural-historical monuments and religious shrines); and whereas Yugoslavia concludes from this that:

> "The acts described above caused death, physical and mental harm to the population of the Federal Republic of Yugoslavia; huge devastation; heavy pollution of the environment, so that the Yugoslav population is deliberately imposed conditions of life calculated to bring about physical destruction of the group, in whole or in part";

7. Whereas, at the end of its request for the indication of provisional measures, Yugoslavia states that

> "If the proposed measure were not to be adopted, there will be new losses of human life, further physical and mental harm inflicted on the population of the FR of Yugoslavia, further destruction of civilian targets, heavy environmental pollution and further physical destruction of the people of Yugoslavia";

and whereas, while reserving the right to amend and supplement its request, Yugoslavia requests the Court to indicate the following measure:

> "Canada shall cease immediately its acts of use of force and shall refrain from any act of threat or use of force against the Federal Republic of Yugoslavia";

8. Whereas the request for the indication of provisional measures was accompanied by a letter from the Agent of Yugoslavia, addressed to the President and Members of the Court, which read as follows:

> "I have the honour to bring to the attention of the Court the latest bombing of the central area of the town of Surdulica on 27 April 1999 at noon resulting in losses of lives of civilians, most of whom were children and women, and to remind of killings of peoples in Kursumlija, Aleksinac and Cuprija, as well as bombing of a refugee convoy and the Radio and Television of Serbia, just to mention some of the well-known atrocities. Therefore, I would like to caution the Court that there is a highest probability of further civilian and military casualties.
>
> Considering the power conferred upon the Court by Article 75, paragraph 1, of the Rules of Court and having in mind the greatest urgency caused by the circumstances described in the Requests for provisional measure of protection I kindly ask the Court to decide on the submitted Requests *proprio motu* or to fix a date for a hearing at earliest possible time";

9. Whereas on 29 April 1999, the day on which the Application and the request for the indication of provisional measures were filed in the Registry, the Registrar sent to the Canadian Government signed copies of the Application and of the request, in accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court; and whereas he also sent to that Government copies of the documents accompanying the Application and the request for the indication of provisional measures;

10. Whereas on 29 April 1999 the Registrar informed the Parties that the Court had decided, pursuant to Article 74, paragraph 3, of the Rules of Court, to hold hearings on 10 and 11 May 1999, where they would be able to present their observations on the request for the indication of provisional measures;

11. Whereas, pending the notification under Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, by transmittal of the printed bilingual text of the Application to the Members of the United Nations and other States entitled to appear before the Court, the Registrar on 29 April 1999 informed those States of the filing of the Application and of its subject-matter, and of the filing of the request for the indication of provisional measures;

12. Whereas, since the Court includes upon the bench no judge of Yugoslav nationality, the Yugoslav Government has availed itself of the provisions of Article 31 of the Statute of the Court to choose Mr. Milenko Kreća to sit as judge *ad hoc* in the case; and whereas no objection to that choice was raised within the time-limit fixed for the purpose pursuant to Article 35, paragraph 3, of the Rules of Court; whereas, since the Court includes upon the bench no judge of Canadian nationality, the Canadian Government has availed itself of the provisions of

Article 31 of the Statute of the Court to choose Mr. Marc Lalonde to sit as judge *ad hoc* in the case; whereas, within the time-limit fixed for the purpose pursuant to Article 35, paragraph 3, of the Rules of Court, Yugoslavia, referring to Article 31, paragraph 5, of the Statute, objected to that choice; and whereas the Court, after due deliberation, found that the nomination of a judge *ad hoc* by Canada was justified in the present phase of the case;

13. Whereas, at the public hearings held between 10 and 12 May 1999, oral observations on the request for the indication of provisional measures were presented by the following:

On behalf of Yugoslavia:

Mr. Rodoljub Etinski, *Agent*,
Mr. Ian Brownlie,
Mr. Paul J. I. M. de Waart,
Mr. Eric Suy,
Mr. Miodrag Mitić,
Mr. Olivier Corten;

On behalf of Canada:

Mr. Philippe Kirsch, *Agent*;

14. Whereas, in this phase of the proceedings, the Parties presented the following submissions:

On behalf of Yugoslavia:

> "[T]he Court [is asked] to indicate the following provisional measure:
>
> Canada . . . shall cease immediately the acts of use of force and shall refrain from any act of threat or use of force against the Federal Republic of Yugoslavia";

On behalf of Canada:

> "Canada respectfully requests the Court to reject the request for provisional measures made by the Federal Republic of Yugoslavia on 29 April 1999";

* * *

15. Whereas the Court is deeply concerned with the human tragedy, the loss of life, and the enormous suffering in Kosovo which form the background of the present dispute, and with the continuing loss of life and human suffering in all parts of Yugoslavia;

16. Whereas the Court is profoundly concerned with the use of force in Yugoslavia; whereas under the present circumstances such use raises very serious issues of international law;

17. Whereas the Court is mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of peace and security under the Charter and the Statute of the Court;

18. Whereas the Court deems it necessary to emphasize that all parties appearing before it must act in conformity with their obligations under the United Nations Charter and other rules of international law, including humanitarian law;

* * *

19. Whereas the Court, under its Statute, does not automatically have jurisdiction over legal disputes between States parties to that Statute or between other States to whom access to the Court has been granted; whereas the Court has repeatedly stated "that one of the fundamental principles of its Statute is that it cannot decide a dispute between States without the consent of those States to its jurisdiction" (*East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 101, para. 26); and whereas the Court can therefore exercise jurisdiction only between States parties to a dispute who not only have access to the Court but also have accepted the jurisdiction of the Court, either in general form or for the individual dispute concerned;

20. Whereas on a request for provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to indicate such measures unless the provisions invoked by the applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be established;

* *

21. Whereas in its Application Yugoslavia claims, in the first place, to found the jurisdiction of the Court upon Article 36, paragraph 2, of the Statute; whereas each of the two Parties has made a declaration recognizing the compulsory jurisdiction of the Court pursuant to that provision; whereas Yugoslavia's declaration was deposited with the Secretary-General of the United Nations on 26 April 1999, and that of Canada on 10 May 1994;

22. Whereas Yugoslavia's declaration is formulated as follows:

> "I hereby declare that the Government of the Federal Republic of Yugoslavia recognizes, in accordance with Article 36, paragraph 2, of the Statute of the International Court of Justice, as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, that is on condition of recipro-

city, the jurisdiction of the said Court in all disputes arising or which may arise after the signature of the present Declaration, with regard to the situations or facts subsequent to this signature, except in cases where the parties have agreed or shall agree to have recourse to another procedure or to another method of pacific settlement. The present Declaration does not apply to disputes relating to questions which, under international law, fall exclusively within the jurisdiction of the Federal Republic of Yugoslavia, as well as to territorial disputes.

The aforesaid obligation is accepted until such time as notice may be given to terminate the acceptance";

and whereas the declaration of Canada reads as follows:

"On behalf of the Government of Canada,

(1) I give notice that I hereby terminate the acceptance by Canada of the compulsory jurisdiction of the International Court of Justice hitherto effective by virtue of the declaration made on 10 September 1985 in conformity with paragraph 2 of Article 36 of the Statute of the Court.

(2) I declare that the Government of Canada accepts as compulsory *ipso facto* and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court, until such time as notice may be given to terminate the acceptance, over all disputes arising after the present declaration with regard to situations or facts subsequent to this declaration, other than:

(a) disputes in regard to which the parties have agreed or shall agree to have recourse to some other method of peaceful settlement;

(b) disputes with the Government of any other country which is a member of the Commonwealth, all of which disputes shall be settled in such manner as the parties have agreed or shall agree;

(c) disputes with regard to questions which by international law fall exclusively within the jurisdiction of Canada; and

(d) disputes arising out of or concerning conservation and management measures taken by Canada with respect to vessels fishing in the NAFO Regulatory Area, as defined in the Convention on Future Multilateral Co-operation in the Northwest Atlantic Fisheries, 1978, and the enforcement of such measures.

(3) The Government of Canada also reserves the right at any time, by means of a notification addressed to the Secretary-General of the United Nations, and with effect as from the moment of such

notification, either to add to, amend or withdraw any of the foregoing reservations, or any that may hereafter be added.

It is requested that this notification be communicated to the Governments of all the States that have accepted the Optional Clause and to the Registrar of the International Court of Justice";

23. Whereas Canada contends that the jurisdiction of the Court cannot be founded on Article 36, paragraph 2, of the Statute of the Court in this case; whereas it argues that the Yugoslav declaration accepting the jurisdiction of the Court "is inapplicable by its own terms to disputes in existence before 25 April [1999]"; whereas it points out in this connection that "[t]here is nothing in the description of the subject-matter of the dispute in the Application against Canada of 29 April that relates specifically to events subsequent to 25 April, or to any change in the character of the dispute subsequent to that date"; and whereas Canada accordingly concludes that "[t]he dispute referred to in the Applicant's own pleading, therefore, is not one arising or that may arise after 25 April 1999";

24. Whereas, according to Yugoslavia, "[t]he issue before the Court is that of interpreting a unilateral declaration of acceptance of its jurisdiction, and thus of ascertaining the meaning of the declaration on the basis of the intention of its author"; whereas Yugoslavia contends that the text of its declaration "allows all disputes effectively arising after 25 April 1999 to be taken into account"; whereas, referring to bombing attacks carried out by NATO member States on 28 April, 1 May, 7 May and 8 May 1999, Yugoslavia states that, "[i]n each of these cases, which are only examples, [it] denounced the flagrant violations of international law of which it considered itself to have been the victim", and the "NATO member States denied having violated any obligation under international law"; whereas Yugoslavia asserts that "each of these events therefore gave rise to 'a disagreement on a point of law or fact', a disagreement . . . the terms of which depend in each case on the specific features of the attack" in question; whereas Yugoslavia accordingly concludes that, since these events constitute "instantaneous wrongful acts", there exist "a number of separate disputes which have arisen" between the Parties "since 25 April relating to events subsequent to that date"; and whereas Yugoslavia argues from this that "[t]here is no reason to exclude prima facie the Court's jurisdiction over disputes having effectively arisen after 25 April, as provided in the text of the declaration"; and whereas Yugoslavia adds that to exclude such disputes from the jurisdiction of the Court "would run entirely counter to the manifest and clear intention of Yugoslavia" to entrust the Court with the resolution of those disputes;

25. Whereas Yugoslavia has accepted the Court's jurisdiction *ratione temporis* in respect only, on the one hand, of disputes arising or which may arise after the signature of its declaration and, on the other hand, of those concerning situations or facts subsequent to that signature (cf.

Right of Passage over Indian Territory, Merits, Judgment, I.C.J. Reports 1960, p. 34); whereas, in order to assess whether the Court has jurisdiction in the case, it is sufficient to decide whether in terms of the text of the declaration, the dispute brought before the Court "arose" before or after 25 April 1999, the date on which the declaration was signed;

26. Whereas Yugoslavia's Application is entitled "Application of the Federal Republic of Yugoslavia against Canada for Violation of the Obligation Not to Use Force"; whereas in the Application the "subject of the dispute" (emphasis added) is described in general terms (see paragraph 1 above); but whereas it can be seen both from the statement of "facts upon which the claim is based" and from the manner in which the "claims" themselves are formulated (see paragraphs 3 and 4 above) that the Application is directed, in essence, against the "bombing of the territory of the Federal Republic of Yugoslavia", to which the Court is asked to put an end;

27. Whereas it is an established fact that the bombings in question began on 24 March 1999 and have been conducted continuously over a period extending beyond 25 April 1999; and whereas the Court has no doubt, in the light, *inter alia*, of the discussions at the Security Council meetings of 24 and 26 March 1999 (S/PV.3988 and 3989), that a "legal dispute" (*East Timor (Portugal* v. *Australia), I.C.J. Reports 1995*, p. 100, para. 22) "arose" between Yugoslavia and the Respondent, as it did also with the other NATO member States, well before 25 April 1999 concerning the legality of those bombings as such, taken as a whole;

28. Whereas the fact that the bombings have continued after 25 April 1999 and that the dispute concerning them has persisted since that date is not such as to alter the date on which the dispute arose; whereas each individual air attack could not have given rise to a separate subsequent dispute; and whereas, at this stage of the proceedings, Yugoslavia has not established that new disputes, distinct from the initial one, have arisen between the Parties since 25 April 1999 in respect of subsequent situations or facts attributable to Canada;

29. Whereas, as the Court recalled in its Judgment of 4 December 1998 in the case concerning *Fisheries Jurisdiction (Spain* v. *Canada)*,

> "It is for each State, in formulating its declaration, to decide upon the limits it places upon its acceptance of the jurisdiction of the Court: '[t]his jurisdiction only exists within the limits within which it has been accepted' (*Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 23)" (*I.C.J. Reports 1998*, p. 453, para. 44);

and whereas, as the Permanent Court held in its Judgment of 14 June 1938 in the *Phosphates in Morocco* case (Preliminary Objections), "it is recognized that, as a consequence of a condition of reciprocity stipulated in paragraph 2 of Article 36 of the Statute of the Court", any limitation *ratione temporis* attached by one of the Parties to its declaration of acceptance of the Court's jurisdiction "holds good as between the Parties"

(*Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74,* p. 10); whereas, moreover, as the present Court noted in its Judgment of 11 June 1998 in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*, "[a]s early as 1952, it held in the case concerning *Anglo-Iranian Oil Co.* that, when declarations are made on condition of reciprocity, 'jurisdiction is conferred on the Court only to the extent to which the two Declarations coincide in conferring it' (*I.C.J. Reports 1952*, p. 103)" (*I.C.J. Reports 1998*, p. 298, para. 43); and whereas it follows from the foregoing that the declarations made by the Parties under Article 36, paragraph 2, of the Statute do not constitute a basis on which the jurisdiction of the Court could prima facie be founded in this case;

*

30. Whereas Canada also contends that the jurisdiction of the Court cannot be founded prima facie on Article 36, paragraph 2, of the Statute, since the Yugoslav declaration accepting the jurisdiction of the Court "is a transparent nullity"; whereas Canada, referring to United Nations Security Council resolution 777 (1992) dated 19 September 1992 and to United Nations General Assembly resolution 47/1 dated 22 September 1992, argues that "the Federal Republic of Yugoslavia is not a Member of the United Nations as a successor State", and that, not having duly acceded to the Organization, it is not in consequence a party to the Statute of the Court;

31. Whereas Yugoslavia, referring to the position of the Secretariat, as expressed in a letter dated 29 September 1992 from the Legal Counsel of the Organization (doc. A/47/485), and to the latter's subsequent practice, contends for its part that General Assembly resolution 47/1 "[neither] terminate[d] nor suspend[ed] Yugoslavia's membership in the Organization", and that the said resolution did not take away from Yugoslavia "[its] right to participate in the work of organs other than Assembly bodies";

32. Whereas, in view of its finding in paragraph 29 above, the Court need not consider this question for the purpose of deciding whether or not it can indicate provisional measures in the present case;

* *

33. Whereas in its Application Yugoslavia claims, in the second place, to found the jurisdiction of the Court on Article IX of the Genocide Convention, which provides:

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the

> International Court of Justice at the request of any of the parties to the dispute";

and whereas in its Application Yugoslavia states that the subject of the dispute concerns *inter alia* "acts of Canada by which it has violated its international obligation . . . not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group"; whereas, in describing the facts on which the Application is based, Yugoslavia states: "The above-mentioned acts are deliberately creating conditions calculated at the physical destruction of an ethnic group, in whole or in part"; whereas, in its statement of the legal grounds on which the Application is based, Yugoslavia contends that "the obligation . . . not to impose deliberately on a national group conditions of life calculated to bring about the physical destruction of the group has been breached"; and whereas one of the claims on the merits set out in the Application is formulated as follows:

> "by taking part in activities listed above, and in particular by causing enormous environmental damage and by using depleted uranium, Canada has acted against the Federal Republic of Yugoslavia in breach of its obligation not to deliberately inflict on a national group conditions of life calculated to bring about its physical destruction, in whole or in part";

34. Whereas Yugoslavia contends moreover that the sustained and intensive bombing of the whole of its territory, including the most heavily populated areas, constitutes "a serious violation of Article II of the Genocide Convention"; whereas it argues that "the pollution of soil, air and water, destroying the economy of the country, contaminating the environment with depleted uranium, inflicts conditions of life on the Yugoslav nation calculated to bring about its physical destruction"; whereas it asserts that it is the Yugoslav nation as a whole and as such that is targeted; and whereas it stresses that the use of certain weapons whose long-term hazards to health and the environment are already known, and the destruction of the largest part of the country's power supply system, with catastrophic consequences of which the Respondent must be aware, "impl[y] the intent to destroy, in whole or in part", the Yugoslav national group as such;

35. Whereas for its part Canada contends that "the facts alleged in the Application bear no genuine relation to the Genocide Convention which is invoked as a basis for jurisdiction"; whereas Canada, referring to the fact that Yugoslavia had invoked Article II *(c)* of the Convention, observes *inter alia* that "the essence of genocide is *intention* and *destruction* — the destruction of entire populations"; that the Applicant "did not even attempt to address the question of intent"; and that

> "this cheapens the concept of genocide and deprives it of its integrity as an autonomous principle to equate it with the use of force or even

aggression, or with collateral damage suffered by civilians, or with issues related to the proportionality of the use of force";

and whereas Canada accordingly concludes that "[t]he Genocide Convention cannot, therefore, provide prima facie jurisdiction for the measures sought";

36. Whereas it is not disputed that both Yugoslavia and Canada are parties to the Genocide Convention without reservation; and whereas Article IX of the Convention accordingly appears to constitute a basis on which the jurisdiction of the Court might be founded to the extent that the subject-matter of the dispute relates to "the interpretation, application or fulfilment" of the Convention, including disputes "relating to the responsibility of a state for genocide or for any of the other acts enumerated in article III" of the said Convention;

37. Whereas, in order to determine, even prima facie, whether a dispute within the meaning of Article IX of the Genocide Convention exists, the Court cannot limit itself to noting that one of the Parties maintains that the Convention applies, while the other denies it; and whereas in the present case the Court must ascertain whether the breaches of the Convention alleged by Yugoslavia are capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court would have jurisdiction *ratione materiae* to entertain pursuant to Article IX (cf. *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para. 16);

38. Whereas the definition of genocide set out in Article II of the Genocide Convention reads as follows:

> "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> *(a)* Killing members of the group;
> *(b)* Causing serious bodily or mental harm to members of the group;
> *(c)* Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> *(d)* Imposing measures intended to prevent births within the group;
> *(e)* Forcibly transferring children of the group to another group";

39. Whereas it appears to the Court, from this definition, "that the essential characteristic of genocide is the intended destruction of 'a national, ethnical, racial or religious group'" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 345, para. 42); whereas the threat or use of force against a State cannot in itself constitute an act of genocide within the meaning of Article II of the Genocide Convention; and whereas, in the opinion of the Court,

does not appear at the present stage of the proceedings that the bombings which form the subject of the Yugoslav Application "indeed entail the element of intent, towards a group as such, required by the provision quoted above" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 240, para. 26);

40. Whereas the Court is therefore not in a position to find, at this stage of the proceedings, that the acts imputed by Yugoslavia to the Respondent are capable of coming within the provisions of the Genocide Convention; and whereas Article IX of the Convention, invoked by Yugoslavia, cannot accordingly constitute a basis on which the jurisdiction of the Court could prima facie be founded in this case;

* *

41. Whereas, it follows from what has been said above that the Court lacks prima facie jurisdiction to entertain Yugoslavia's Application; and whereas it cannot therefore indicate any provisional measure whatsoever in order to protect the rights invoked therein;

42. Whereas, however, the findings reached by the Court in the present proceedings in no way prejudge the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves; and whereas they leave unaffected the right of the Governments of Yugoslavia and Canada to submit arguments in respect of those questions;

* * *

43. Whereas there is a fundamental distinction between the question of the acceptance by a State of the Court's jurisdiction and the compatibility of particular acts with international law; the former requires consent; the latter question can only be reached when the Court deals with the merits after having established its jurisdiction and having heard full legal arguments by both parties;

44. Whereas, whether or not States accept the jurisdiction of the Court, they remain in any event responsible for acts attributable to them that violate international law, including humanitarian law; whereas any disputes relating to the legality of such acts are required to be resolved by peaceful means, the choice of which, pursuant to Article 33 of the Charter, is left to the parties;

45. Whereas in this context the parties should take care not to aggravate or extend the dispute;

46. Whereas, when such a dispute gives rise to a threat to the peace, breach of the peace or act of aggression, the Security Council has special responsibilities under Chapter VII of the Charter;

* * *

47. For these reasons,

THE COURT,

(1) By twelve votes to four,

Rejects the request for the indication of provisional measures submitted by the Federal Republic of Yugoslavia on 29 April 1999;

IN FAVOUR: *President* Schwebel; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Fleischhauer, Koroma, Higgins, Parra-Aranguren, Kooijmans; *Judge* ad hoc Lalonde

AGAINST: *Vice-President* Weeramantry, *Acting President*; *Judges* Shi, Vereshchetin; *Judge* ad hoc Kreća;

(2) By fifteen votes to one,

Reserves the subsequent procedure for further decision.

IN FAVOUR: *Vice-President* Weeramantry, *Acting President*; *President* Schwebel; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin Higgins, Parra-Aranguren, Kooijmans; *Judges* ad hoc Lalonde, Kreća;

AGAINST: *Judge* Oda.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this second day of June, one thousand nine hundred and ninety-nine, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Yugoslavia and the Government of Canada, respectively.

(Signed) Christopher G. WEERAMANTRY,
Vice-President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judge KOROMA appends a declaration to the Order of the Court.

Judges ODA, HIGGINS, PARRA-ARANGUREN and KOOIJMANS append separate opinions to the Order of the Court.

Vice-President WEERAMANTRY, Acting President, Judges SHI and VERESHCHETIN, and Judge *ad hoc* KREĆA append dissenting opinions to the Order of the Court.

(Initialled) C.G.W.
(Initialled) E.V.O.
