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International Court of Justice
THE HAGUE

Cour internationale de Justice
La HAYE

YEAR 1993

Public sitting

held on Friday 2 April 1993, at 3 p.m., at the Peace Palace,

President Sir Robert Jennings presiding

in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide

(Bosnia-Herzegovina v. Yugoslavia (Serbia and Montenegro))

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le vendredi 2 avril 1993, à 15 heures, au Palais de la Paix,

sous la présidence de sir Robert Jennings, Président

en l'affaire relative à l'Application de la convention pour la prévention et la répression du crime de génocide

(Bosnie-Herzégovine c. Yougoslavie (Serbie et Monténégro))

COMPTE RENDU

Present:

President	Sir Robert Jennings
Vice-President	Oda
Judges	Ago
	Schwebel
	Bedjaoui
	Ni
	Evensen
	Tarassov
	Guillaume
	Shahabuddeen
	Aguilar Mawdsley
	Weeramantry
	Ranjeva
	Ajibola
Registrar	Valencia-Ospina

Présents:

Sir Robert Jennings, Président
M. Oda, Vice-Président
MM. Ago
Schwebel
Bedjaoui
Ni
Evensen
Tarassov
Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ranjeva
Ajibola, juges

M. Valencia-Ospina, Greffier

The Government of the Republic of Bosnia and Herzegovina is represented by:

H. E. Mr. Muhamed Sacirbey, Ambassador and Permanent Representative of Bosnia and Herzegovina to the United Nations,

Professor Francis A. Boyle, University of Illinois School of Law at Champaign (Illinois),

as Agents;

Mr. A. H. T. van den Biesen, Advocate (Amsterdam),

as Advocate et Counsel;

Mrs. Jasminka Kalajdzic, University of Toronto School of Law,

as Legal Assistant.

The Government of the Federal Republic of Yugoslavia is represented by:

Mr. Ljubinko Zivkovic, Chargé d'Affaires a.i. of the Embassy of the Federal Republic of Yugoslavia, The Hague,

Mr. Shabtai Rosenne, Professor of International Law, University of Haifa; Member of the Israel Bar; Member of the Institute of International Law; Honorary Member of the American Society of International Law,

as Acting Agents.

Le Gouvernement de la République de Bosnie-Herzégovine est représenté par :

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M. Francis A. Boyle, professeur à la faculté de droit de l'Université de l'Illinois, Champaign (Illinois),

comme agents;

M. A. H. T. van den Biesen, avocat (Amsterdam),

comme avocat et conseil;

Mme Jasminka Kalajdzic, de la faculté de droit de l'Université de Toronto,

comme assistante juridique.

Le Gouvernement de la République fédérative de Yougoslavie est représenté par :

M. Ljubinko Zivkovic, chargé d'affaires a.i. à l'ambassade de la République fédérative de Yougoslavie, La Haye,

M. Shabtai Rosenne, professeur de droit international, Université d'Haifa; membre du barreau israélien; membre de l'Institut de droit international; membre honoraire de l'American Society of International Law,

faisant fonction d'agents.

The PRESIDENT: Please be seated. We meet today to hear the reply of the Respondent and first I call upon Mr. Zivkovic, please.

Mr. ZIVKOVIC: Mr. President and distinguished Members of the Court, may it please the Court, as the Chargé d'affaires of the Embassy of the Federal Republic of Yugoslavia in The Hague, and as a member of its diplomatic service, it is a great honour for me to address this most distinguished international legal body, the principal judicial organ of the United Nations.

The tragedy of the civil war in former Bosnia and Herzegovina has, due to the course it has taken, become an extremely emotional issue, not only in that part of Europe where it is taking place, but practically in the whole world. The reasons for this are found in the ferociousness of the international and inter-religious fighting there that has taken on immense proportions. What seems to be lost in the perception of the events taking place there is the unfortunate fact that most of the acts of violence are committed by people who once used to be neighbours, or, at least have lived next to each other for a long period of time.

What that does, in relation to this case that has been brought before the highest legal body of the United Nations, is to hide the fact that what we have on our hand is a clear-cut case of a civil war among the peoples of a former Yugoslav republic, which is composed of Muslim, Serbian and Croat population.

That also brings us to one of the key arguments in this case brought by the Government in Sarajevo against the Federal Republic of Yugoslavia, i.e., the contention that we are here dealing with a situation of an aggression of one State against the other. There are no grounds for this assertion.

Besides the obvious fact which the other side has deliberately failed to mention, i.e., that the Serbs fighting in the civil war in Bosnia are not the Serbs who come from Serbia itself, but Bosnian Serbs, who have lived there for centuries, along with other national groups. They are not the "agents and surrogates" of anyone else. It is necessary to mention these relevant facts, which substantiate the claim that the Federal Republic of Yugoslavia is not an aggressor in the civil war in Bosnia. In the Constitutional Declaration of 27 April 1992, the Parliament of the Federal Republic of Yugoslavia has clearly stated that the Federal Republic of Yugoslavia has no territorial claims towards the former Yugoslav republics that have seceded from the Socialist Federal Republic of Yugoslavia.

- the Federal Republic of Yugoslavia does not have a single soldier on the territory of the "Republic of Bosnia and Herzegovina";
- the Federal Republic of Yugoslavia does not militarily support any side in this international and inter-religious armed conflict;
- the Federal Republic of Yugoslavia does not support, in any way, the committing of serious crimes that are being done in this former Yugoslav republic and that are listed in the Application within these proceedings. On the contrary, it has stated publicly, on numerous occasions, its indignation at all the crimes against humanity committed in this civil war, whether it is so-called eithnic cleansing, or just plain murder, and without regard to who has committed them. It has also taken concrete steps to prove its commitments to this effect.

Two important facts underline this point:

- It was the Federal Republic of Yugoslavia, and also the high officials of its two constituent republics, Serbia and Montenegro, who first

proposed setting up of United Nations observers on the borders between Yugoslavia and Croatia, on one side, and "Bosnia and Herzegovina" on the other.

- Among the almost 700,000 refugees now on the territory of the Federal Republic of Yugoslavia, from civil wars in both Croatia and "Bosnia and Herzegovina", it is estimated that at least 50,000 are of Muslim national origin. They have been taken in, and are being cared for, to the greatest effect possible in the extremely difficult circumstances now existing, on an absolutely equal basis with other refugees. Most of the other refugees are of Serb origin, who are also the victims of persecution, "ethnic cleansing" and if you may call it that, plain violence, perpetrated by all sides in this civil war.

I also have to stress, that the Government of the Federal Republic of Yugoslavia has, within its possibilities and powers, and on its own initiative, acted positively in the search for a peaceful solution of the Bosnian crisis. At the same time, it has done its utmost to implement the decisions of the United Nations organs.

This all brings us back to the fact that in the case of the former Yugoslavia Republic of Bosnia and Herzegovina, we are not faced with a State-to-State aggression, but with a civil war of immense proportions and intensity. This makes all the claims against the Federal Republic of Yugoslavia set out in the Application of the other side of no validity whatsoever.

In the opinion of my Government, what this intolerable situation in the former Yugoslav republic of Bosnia demands now is:

- first, the cessation of all hostilities, for which the ceasefire of 28 March of this year, in whose establishment the Yugoslav Government had the great part, may present a good step forward,

- second, the finding of a peaceful solution which is long lasting, true and just for all parties,
- and lastly, when the highly charged emotions that are dominating the political arena settle down, and when the true and verifiable facts of what has occurred, and is now happening in Bosnia can be clearly established, the prosecution of those that are responsible for the crimes that were committed will be undertaken.

The claims presented in the Application of the Government in Sarajevo are without foundation. This fact alone is an indication of attempts being made to achieve immediate and long-term political objectives through the exploitation of human tragedy. This Application before the International Court of Justice is another vehicle for this purpose.

The immediate gain for Mr. Izetbegovic's Government in this case would be the lifting of the arms embargo, as a provisional measure proposed by the Court. If the Court were to do this, it would only further aggravate the civil war in Bosnia.

On the long-term basis, and in a situation where persons of Serbian nationality are living in other places and States away from Serbia as a constituent part of the Federal Republic of Yugoslavia (in this case, former Yugoslav Republic of Bosnia and Herzegovina) such a sensitive, and politically high-profile charge of genocide brought against the Federal Republic of Yugoslavia, would provide an opportunity for a forceful imposition of any political and other form of settlement that would in all likelihood go against the basic human rights of persons of Serb nationality in former Bosnia and Herzegovina.

And, at this moment, their basic human rights, even lives, are also being violated on the territory of the former Yugoslav Republic of Bosnia and Herzegovina. This is a fact which is, for some reason or other, being concealed from the wider public, as if the lives and human rights of Serbs in Bosnia and Herzegovina are of some lesser value than those of other national groups living on Bosnian territories.

Mr. President, I thank you and the honourable Members of the Court for your courtesy and I ask you to give the floor to Professor Rosenne, who will present the legal arguments of the Government of the Federal Republic of Yugoslavia in this phase of the case. Thank you.

The PRESIDENT: Thank you Mr. Zivkovic. Professor Rosenne.

Mr. ROSENNE: Mr. President and Members of the Court. May it please the Court.

May I first express my sense of respect and esteem at the pleasure of appearing once again before this, the princial judicial organ of the United Nations. Over 40 years have passed since I first enjoyed that experience, also in a case concerning the Convention on the Prevention and Punishment of the Crime of Genocide.

I would like to take this opportunity, Mr. President, of placing on record my sympathies to the family of the late Judge Manfed Lachs and to the Court, on the loss of a great international lawyer, a great diplomat, and a great Judge and President of this Court.

I also wish to express my sense of appreciation at the honour done to me by the Government of the Federal Republic of Yugoslavia, in entrusting me with the heavy duty of placing before this Court the legal considerations which we, on this side of the podium, consider of significance. I regard my duty to the Court, and to the Government of

Yugoslavia, as being to try and assist the Court to the best of my ability in reaching the correct decision in this proceeding, which is devoted exclusively to the Request for the indication of provisional measures of protection.

I also want, in this personal aspect of my statement, to refer to one statement in paragraph 9 of the Application instituting these proceedings. There is included there a reference to the refuge granted in Bosnia and Herzegovina to, amongst others, the Sephardic Jews who escaped the Inquisition and Pogroms and in 1565 formed their community in Sarajevo. I myself am descended from one of those Sephardi families, the Fonseca family, whose name is known to this Court in another connection, who escaped from Portugal when the Inquisition was extended to that country. We all know full well that the Ottoman Empire, which extended its sway over Bosnia and Herzegovina long before 1492, played a leading role, along with some western European countries, especially Italy and Holland, in granting refuge to those victims of persecution, and as for the Jewish Community of Sarajevo itself, what more need I say than that it has supplied great leaders to Israel today, including two of its Chiefs of Staff.

* * *

As is customary, I shall not include in this statement the full citations of what I quote but they appear in the text which I have handed into the Registry subject to check against delivery and I would ask that they be included in the transcript of these proceedings.

As I stated, my duty today is to present to this Court considerations of law which, in our opinion, should lead the Court to decline to indicate the requested provisional measures.

One preliminary remark is required.

The Application, a document which in print extends to 70 pages in length in each language, was filed in the Court on 20 March last. At that time it was faxed both to the Minister for Foreign Affairs in Belgrade and to the Permanent Representative of Yugoslavia to the United Nations in New York, but for some reason not to the Embassy here in The Hague. The transmission of that lengthy document, together with the Request for the indication of preliminary measures, required some time, in fact something like an hour, and in that transmission some pages got lost or became blurred. English is not the language of Yugoslavia, and its translation into Serbian is not a quick or an easy matter. On 24 March, before the authorities in Belgrade had a proper opportunity to study the documents, they were informed that the Court decided to fix Thursday 1 April, yesterday, for these hearings. I myself received instructions in Jerusalem only on Wednesday morning. I am mentioning this, Mr. President, simply in asking for the Court's indulgence for any imperfections or incompleteness in my presentation.

Mr. President, there is a material side also to this element of time. If I take the two recent instances of requests for the indication of provisional measures - requests which, I should recall, were not granted - and in both of which the instrument instituting the proceedings was a short document, the following picture emerges.

In the *Passage through the Great Belt (Finland* v. *Denmark)* case, the application instituting the proceedings was filed on 17 May 1991. The request for the indication of provisional measures was filed on 22 May. Written observations by the respondent party - incidentally a fairly comprehensive document - were filed on 28 June. The hearings

commenced on 1 July and the Order was issued on 29 July. I understand that those proceedings and that Order happily laid the basis for the settlement of the case out of court.

Last year, in the two cases of *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* the applications instituting the proceedings and the requests for the indication of provisional measures were all filed simultaneously on 3 March 1992. No written observations were filed by the respondents. The hearings on the requests for the indication of provisional measures commenced on 26 March, and the Orders were issued on 14 April.

I have not had time to examine other proceedings of this nature, but it does seem to us that in the circumstances of this case, the time allowed to the Government of Yugoslavia to prepare for these proceedings, to appoint its Agent, to choose its judge *ad hoc*, to decide if it even wants to appoint a judge *ad hoc*, and to organize its delegation, is really very short.

My colleague, the distinguished acting Agent for the Republic of Yugoslavia, together with myself, has already indicated to the Court the position of his Government regarding the allegations of fact contained in the Application instituting the proceedings, and it is not for me to say anything more about that at this stage of the incidental proceedings for the indication of provisional measures. I will concentrate on two inter-related points, namely, the jurisdiction of the Court to deal with this Request, and the question of the relation of these proceedings to the on-going proceedings in the Security Council.

With regard to the jurisdiction of the Court, the Application instituting the proceedings relies on one title of jurisdiction only, Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948. With your permission, Mr. President, that provision reads:

> "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."

Before dealing with the substance of that part of the case, there is a preliminary question. As we understand it, Bosnia is claiming the status of party to that Convention by virtue of a "notification of succession" which it has filed with the Secretary-General of the United Nations, in his capacity as depositary of the Genocide Convention. Bosnia-Herzegovina is an independent international entity. It was admitted to membership in the United Nations on 22 May 1992. Many issues relating to the newly-independent States of the former Yugoslavia are outstanding, and one of the most significant amongst them are those relating to what is commonly called "State succession".

I do not have to go into any aspect of that now, except to say that no rule of contemporary international law - that I know - gives Bosnia the right to proclaim unilaterally, by means of a document called a notification of succession, that it is now a party to the Genocide Convention with effect from 6 March 1992, merely because Yugoslavia is a party to the Convention and because the Convention was applicable to what is now the territory of Bosnia and Herzegovina through the former Socialist Federal Republic of Yugoslavia. I find confirmation of this in the Vienna Convention on the Succession of States in Respect of Treaties

of 23 August 1978. Article 7 of that Convention deals with the temporal application of the Convention, and its first paragraph provides:

> "1. Without prejudice to the application of any of the rules set forth in the present Convention to which the effects of a succession of States would be subject under international law independently of the Convention, the Convention applies only in respect of a succession of States which has occurred after the entry into force of the Convention except as may be otherwise agreed." (*The Work of the International Law Commission*, 4th ed., p. 323 (UN Sales No. E.88.V.1).)

Mr. President, it is a matter of common knowledge that the "declaration of succession" procedure, which incidentally is not mentioned anywhere in the 1969 Convention on the Law of Treaties (1155 *UNTS* 331), was evolved in order to deal with the problem of the effect of decolonization on the treaty obligations of the former colonial powers and the newly-independent decolonized powers. That convention is not yet in force, although the process of a declaration of succession is fully acccepted and applied in those circumstances of decolonization.

At the end of 1991 - the last date for which I have particulars - there were nine ratifications out of the 15 required to bring the 1978 Convention into force. Yugoslavia is a signatory of that Convention and ratified it without reservation on 28 April 1980. I submit that it would defeat the object and purpose of the Convention to apply in 1993 the concept of declaration of succession to circumstances which were not in contemplation when the International Law Commission prepared its draft articles on the topic, and the diplomatic conference adopted the Convention of 1978. In our submission the notification of succession of Bosnia and Herzegovina which was circulated by the Secretary-General in his capacity as depositary of the Convention, is not the same as a declaration of succession in a case of decolonization.

What I am saying is borne out by the curious terms of the depositary notice circulated by the Secretary-General of the United Nations on 18 March last. According to that notice, the Government of Bosnia and

Herzegovina deposited this "notificiation of succession" on 29 December 1992, with retroactive effect to 6 March 1992, the date on which "Bosnia and Herzegovina assumed responsibility for its international relations". Bosnia and Herzegovina is perfectly entitled to accede to the Convention in the normal way, in accordance with Article XIII of the Convention, such accession taking its effect after the lapse of 90 days from the deposit of the instrument with the Secretary-General of the United Nations.

Accordingly, Mr. President, all that part of the statement of facts contained in the Application instituting the proceedings which preceded the entry into force of the Convention for Bosnia and Herzegovina in accordance with Article XIII is outside the jurisdiction of the Court. The Federal Republic of Yugoslavia does not consent to any extention of the jurisdiction of the Court beyond what is strictly stipulated in the Convention itself.

While maintaining those contentions, Mr. President, I would now like to turn in the alternative to the Convention itself.

I think the Court will agree with me that Article IX of the Convention of the Prevention and Punishment of the Crime of Genocide is an unusual form of compromissory clause and that exceptional care is required before the Court bases jurisdiction on it in the mainline proceedings, and *a fortiori* before it bases its threshold jurisdiction to indicate provisional measures of protection in this incidental phase.

That part of the provision of Article IX which refers to "disputes relating to the interpretation and application" of the Convention is, of course, in customary terms, and on that I will content myself at this stage with noting that the application instituting the proceedings, and its streams of additional submissions, does not contain any indication

that such a dispute has yet arisen. I say this with all deliberation having regard to what I have been able to learn regarding the proceedings in the General Assembly and in the Security Council.

The problem starts with the following words of Article IX. I would not at this stage dispute that all the words of Article IX from "fulfilment of the present Convention" to "acts enumerated in Article XIII" relate to the merits of the case, and we are not concerned with that now, beyond reserving all our rights as to how we shall deal with the jurisdiction of the Court and the merits when the time comes.

The point I wish to make now is a different one. If we look closely at the Request for the indication of provisional measures, what do we find?

That Yugoslavia "together with its agents and surrogates" - I do not really know what is meant here by "surrogates" - must immediately cease what the other side is calling "acts of genocide and genocidal acts", an expression which I would have thought was merely repetitious. What is meant by that can be ascertained from the Application instituting the proceedings. But as the Court has stressed, the Request for the indication of provisional measures "must by its very nature relate to the substance of the case since, as Article 41 [of the Statute] expressly states, their object is to preserve the respective rights of either party" (*United States Diplomatic and Consular Staff in Tehran, Provisional Measures, I.C.J. Reports 1979*, p. 16, para. 28).

That is where the problem lies. What our opponents are asking, in the disguise of an indication of provisional measures, is really for an interim judgment on the merits of the case. There can be no question about that, and in our view this brings the case directly and squarely within the scope of the doctrine enunciated by the Permanent Court in the well-know *Chorzow Factory* case (*Order of 21 November 1927, Permanent Court of International Justice, Series A, No. 12*, p. 10). In the *Hostages* case, the Court distinguished the issues which it then faced from those which faced its predecessor in 1927. In our view,

Mr. President, that distinction cannot be made in the present case. The details of the provisional measures requested have to be seen against the formal statement of the claim as stated in the Application instituting the proceedings. The question then has to be asked whether, in terms of Article 41 of the Statute, the rights claimed in so far as they come within the jurisdiction of the Court are in need of the protection which Article 41 envisages. In our submission, in this case that essential condition is not met.

I now want to say something about the resolutions of the Security Council. Here allow me to recall that in the first resolution, resolution 713 of 25 September 1991, the Security Council insisted that it was acting under Chapter VII of the Charter. The last resolution to date, resolution 802 of 25 January, in which it recalled all its previous resolutions from resolution 713 onwards, concluded with the sentence, frequently employed by the Security Council, that the Security Council "decides to remain actively seized of the matter". I said resolution 802 of 25 January as a last resolution, but I believe I saw in the media that another resolution was adopted yesterday or the day before, and with the Court's indulgence that resolution has not reached me yet, so I do not know what is in it. I would say this, Mr. President. The Security Council remains actively seized of the whole question raised in the Application instituting these proceedings and in the Request for the indication of provisional measures. And I would, with all respect, request the Court to keep that aspect of the case in mind.

Now, in paragraph (*m*) of the submissions of the Application instituting the proceedings, we read:

> "(*m*) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law".

The Agent of Bosnia and Herzegovina devoted a great part of his statement yesterday to that aspect of his case.

Security Council resolution 713 (1991) is the first of a long series of resolutions adopted by the Security Council since 25 September 1991. Paragraph 6 of that resolution reads:

> "The Security Council
>
> 6. *Decides*, under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise following consultation between the Secretary-General and the Government of Yugoslavia."

"All States", Mr. President.

This is the key provision to which the submissions of the Application instituting the proceedings in this case refer. It is to this provision that different paragraphs of the Request for the indication of provisional measures adverts. I am thinking particularly of paragraphs 4, 5 and 6 of the provisional measures requested. Bosnia and Herzegovina has always resented the even-handedness of Security Council resolution 713 (1991), and is now attempting, through the machinery of a Request for the indication of provisional measures of protection, to circumvent it.

Mr. President, Members of the Court.

Anyone who is familiar with the workings of the Security Council knows that the language of its resolutions is always very carefully chosen. In that connection, may I recall what the Court had to say about this in 1971: "the language of a resolution of the Security Council should be carefully analysed" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *I.C.J. Reports 1971*, p. 53, para. 53).

Actually, paragraph 6 of resolution 713 (1991) does not really need much by way of analysis. It means, Mr. President, exactly what it says. What is more, it does not stand alone. I would like to recall that the Security Council has specifically reaffirmed that provision several times since it was first adopted in 1991. I refer to Security Council resolution 724 of 15 December 1991, 740 of 7 February 1992, 743 of 21 February 1992 (see in particular para. 11), resolution 762 of 30 June 1992 (see especially para. 8). The Security Council deliberately adopted and confirmed that paragraph of resolution 713 (1991), all the time acting under Chapter VII of the Charter. That Chapter, I need not remind the Court, deals with action with respect to threats to the peace, breaches of the peace and acts of aggression, and it is here that the Security Council has exclusive powers to take mandatory action. In more general language the Security Council reaffirmed resolution 713 (1991) in resolution 780 (1992) of 6 October last and in resolution 787 (1992) of 16 November last, both and others, after Bosnia-Herzegovina became a Member of the United Nations.

What our opponents are asking the Court to do today, in the guise of a Request for the indication of provisional measures of protection, is to interpret or even to amend that provision of resolution 713 (1991) and turn it into a tendentious and one-side provision, which is not calculated to achieve the aims which the Security Council and we all wish to see, the restoration of peace in the area concerned.

The Court has always been extremely careful and cautious when faced with questions relating to actions of the Security Council, and perhaps in contrast to what is sometimes expressed in academic literature, has not allowed itself to be pushed into any form of confrontation with the Security Council. This was particularly in evidence in the proceedings last year in the *Lockerbie* case, and I do not intend, nor was I able in

the limited time which I had to prepare this statement, to traverse the ground covered in the oral proceedings in that case. Here I would like to recall one paragraph from the Order of 14 April last (I am quoting form the Order rendered by the Court in the case brought against the United Kingdom, but the same paragraph appears in the second case brought against United States of America).

Paragraph 39 of the United Kingdom Order reads:

> "Whereas both Libya and the United Kingdom, as members of the United Nations, are obliged to accept and carry out the decisions of the Security Council in accordance with Article 25 of the Charter; whereas the Court, which is at the stage of proceedings on provisional measures, considers that prima facie this obligation extends to the decision contained in resolution 748 (1992); and whereas, in accordance with Article 103 of the Charter, the obligations of the Parties in that respect prevail over their obligations under any other international agreement..."

In our view, the doctrine underlying that recital in the Order, is to prevail with even greater force in the present case, where the Security Council has been acting under Chapter VII of the Charter from the very beginning of its dealing with this problem.

In this respect, the present case is easily distinguishable from two cases which academic writing frequently is inclined to hold up as indicating potential conflict between the Court and the Security Council. I am referring to the *Military and Paramilitary Activities in and against Nicaragua* case and to the *Lockerbie* cases. At the time the Court was seised of each one of those three cases, the Security Council had been acting under other provisions of the Charter, not under Chapter VII (it moved into Chapter VII while the Court was deliberating in the *Lockerbie* cases). This is not the position here, where, as I have mentioned, the Security Council has been acting under Chapter VII of the Charter, with all the implications which that has for all organs of the United Nations and for all States, whether or not members of the United Nations.

This issue has an importance which transcends the relations of the Parties in the present case. As seen, paragraph 6 of resolution 713 is addressed to all States, and since it was adopted under Chapter VII of the Charter it is mandatory for all States. The Court would wish to be extremely cautious before changing in any way the meaning, the sense, the

thrust of that mandatory provision, even if it were to do so only indirectly and by means of an interpretation and through the virtually summary and peremptory incidental proceedings on a request for an indication of interim measure of protection.

I am perfectly aware of the fact that on many occasions, the Security Council has adopted decisions deploring various activities attributed to the Government of Yugoslavia or otherwise criticizing it. But if we look at the resolutions as a whole, as I am sure the Court would wish to do - I will file them if the Court so requires - I think it would be fair to say that the Security Council has avoided over-generalized apportionments of blame for the current situation. The list of resolutions in question includes the following, excluding the one adopted a day or so ago, namely 713, 721, 724 of 1991, 727, 740, 743, 749, 752, 757, 758, 761, 762, 764, 769, 770, 771, 776, 780, 781, 787, 795, 798 of 1992 - an enormous number of resolutions - and 802 of 1993. In all these resolutions it has always called upon all parties to take whatever action a particular resolution had in mind in face of a particular event or incident. And indeed when the Security Council decided that actions of the Government of Yugoslavia were opten to criticism and even condemnation, we must not overlook the fact that these were political determinations by a political body, not legal determinations based on careful perusal of full pleadings carefully marshalled and studied in a deliberately thorough adversarial process. I don not share the view, and I do not think that the Court has ever said anything which could support such a view, that decisions of this character by the Security Council are "quasi-judicial" whatever that mysterious expression could mean. They are political decisions based on an interplay of political factors not always apparent. Members of the

Court who in another capacity have experienced proceedings in the Security Council are well aware of this, and I do not need to belabour the point any more.

What Bosnia and Herzegovina is asking the Court to do in its Application instituting the proceedings is to pick and choose pronouncements of the Security Council and transmute them by some process of alchemy into decisions of the Court with all the consequences which attend decisions of the Court. And what Bosnia and Herzegovina is then trying to do in these interim measures proceedings is to obtain an interim pronouncement by the Court to the same effect. It is attempting to abuse the threshold jurisdiction of the Court to indicate provisional measures of protection in order to obtain an anterim judgment on the merits, notwithstanding that in our submission in this case the admittedly low threshold jurisdiction under the unusual compromissory clause of the Genocide Convention has not been reached.

Mr. President, I know Latin is not an official language of the United Nations but may I be allowed to quote a well-known maxim, I think from the Digest: *narra mihi facta, narrabo tibi jus.* This is a court of law, not another type of Security Council. Some facts are obviously necessary before any viable statement of law can be made, and this, of course, is expressly recognized in the Rules of Court. However, I think that study of the records of this Court and of its predecessor will show that, rarely, if at all, has the Court been swamped by such long streams of facts and allegations of facts, with so little law, as we heard yesterday.

These are incidental proceedings on the request for an indication of provisional measures of protection under Article 41 of the Statute, and the procedure set forth in Articles 73 to 78 of the Rules of Court. We intend to keep as much as possible within the limits set by that procedure. From that point of departure, I will now turn, Mr. President, to the matter which you raised yesterday when you referred to Article 61, paragraph 1, of the Rules, I believe the first time that that provision has been formally invoked at all events, and at the same time you mentioned, Mr. President, a new document filed by the adverse Party which it believed could form what it has termed "an additional basis for jurisdiction in this case".

I would first of all express the strongest reservation at this attempt to change the basis of jurisdiction which I suppose they would justify by the reservation contained in the Application instituting the proceedings, paragraph 135, to revise, amend or supplement the Application instituting the proceedings. This is not the time or the place for full argument on the extent to which this type of reservation is compatible with Article 40 of the Statute of the Court and Article 38

of the Rules of Court. I would simply like to mention the doctrinal study of this problem by the Italian jurist, Luigi Migliorino, in the 1989 volume of the *Rivista di diritto internazionale*. Last year in the *Nauru* case the Court addressed this problem and stressed the need to maintain juridical security in relation to matters raised in an application instituting proceedings, and I submit that the same considerations apply here. Yesterday afternoon, while I was preparing my notes for these remarks, I received a letter from the distinguished Registrar, after the close of the proceedings yesterday, forwarding some more of what is called "Supplementary Submission in support of the Application". That was submitted yesterday by the Agent of the other side. This really calls for an energetic protest on our part. How can a litigant, how can any litigant, possibly prepare its presentation before the Court, if there is to be a constant and apparently unrestrained deluge of documents and new submissions and supplements from its opponent? This is only causing confusion on all sides and I am sure that the Court is as confused as we are. I would really respectfully urge the Court to address this problem and draw appropriate conclusions.

As these are incidental proceedings on provisional measures, requested by the other side on the basis of "The facts set forth in the Statement of Facts in the Application", I will content myself with these brief remarks on this aspect at this stage, reserving our right to deal with the problem more fully at the appropriate time.

Mr. President, and I now have to say this, this Court is not an international criminal court and concepts such as those we heard yesterday, derived from domestic criminal law, have no relevance in these kind of proceedings before this Court. The Court's jurisdiction is defined by Article 36 of the Statute, and Article 36 does not endow it

with the powers and functions of the military tribunals which tried the major Nazi war criminals after the Second World War. Nothing in the Convention on the Prevention and Punishment of the Crime of Genocide affects this, and in this case, Mr. President, the jurisdiction of the Court is based *exclusively* on Article 36, paragraph 12, of the Statute.

The additional basis for the jurisdiction of the Court now invoked by the other side is apparently to be found in paragraphs 2 and 3 of the letter sent by the President of Serbia and Montenegro to Monsieur Robert Badinter, President of the Arbitration Commission of the Conference on Yugoslavia in Paris, on 8 June 1992. Paragraphs 2 and 3 of that letter read, in the translation supplied by the other side:

> "2. It is the principled position of FR Yugoslavia that all questions involved in the overall settlement of the Yugoslav crisis should be resolved in an agreement between FR Yugoslavia and all the former Yugoslav republics.
>
> 3. FR Yugoslavia holds the view that all legal disputes which cannot be settled by agreement between FR Yugoslavia and the former Yugoslav republics should be taken to the International Court of Justice, as the principal judicial organ of the United Nations."

Mr. President, that letter is an illustration of the confidence which the Government of the Federal Republic of Yugoslavia reposes in this Court. It reflects the policy of this Government that legal disputes with Yugoslavia which cannot be resolved by other means should be resolved in accordance with the Statute of the Court. But there is nothing in this letter which can be taken as a general acceptance of the jurisdiction of the Court for all disputes of a legal nature between the Federal Republic of Yugoslavia and former Yugoslav republics. It is not an offer which can be taken up unilaterally by any other State, and Professor Boyle's remarks yesterday about accepting this offer do not confer any jurisdiction on the Court. If the Application is intended to

come within the scope of Article 38, paragraph 5, of the Rules of Court, then I have to make it clear that the consent of the Federal Republic of Yugoslavia has not been given, and no action in the proceedings should be taken. I would respectfully ask the Court to clarify this point.

As I see it, Mr. President, the position is, in fact, identical with that which faced the Court a few years ago in the *Aegean Sea Continental Shelf* case. There too, the applicant, Greece, sought to found the jurisdiction of the Court on a joint communiqué in which Greece and Turkey announced their political decision that problems between those two countries should be resolved peacefully through the Court on the basis of Article 36, paragraph 1, of the Statute. The expression used in that communiqué was *"devraient être résolus"*.

The letter of 8 June, as translated into French by our opponents, also uses the same expression, *"devraient être resolus"*. In neither English nor in French is that the language of legal obligation or a firm acceptance of the jurisdiction of the Court under the terms of the Statute. It is an indication of willingness to agree with other States on the terms of referring a defined dispute to the Court in accordance with the terms of the Statute, and I submit that as it did in 1978, the Court should "conclude that it was not intended to, and did not, constitute an immediate commitment" by the Government of the Federal Republic of Yugoslavia to "accept unconditionally the unilateral submission of the present dispute to the Court". I am citing from page 44, paragraph 107, of the Court's Judgment in the *Aegean Sea Continental Shelf* case.

There is one more jurisdictional argument with which I have to deal.

I am referring to the contentions advanced by Professor Boyle at page 39 of yesterday's hearing, to the effect that Article VIII of the

Convention on the Prevention and Punishment of the Crime of Genocide somehow or other "expressly confers international legal competence upon the International Court of Justice to take effective action to prevent and suppress all acts of genocide and other acts enumerated in Article III" of the Convention. I noted, if I am not mistaken, that Professor Boyle did not read into the record the text of Article VIII, and I shall therefore do that. It reads as follows:

> "Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III."

Mr. President, I have not had time to undertake an investigation into the legislative history of that provision. However, relying on Article 31 of the Vienna Convention on the Law of Treaties, I would venture to suggest that interpretation in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of the object and purpose of the Treaty does not lead to any ambiguity or obscurity or lead to a result which is manifestly absurd or unreasonable, so as to justify recourse to the legislative history. The Article means what it plainly says: a contracting State may have recourse to a competent organ of the United Nations to take such action under the Charter as that organ thinks appropriate. The Statute of the Court is an integral part of, and an annex to, the Charter. Applied to the Court, in its capacity of a principal organ and the principal judicial organ of the United Nations, Article VIII simply states that the contracting States may have recourse to the Court to exercise its competence under the Charter and Statute to take such action as it considers appropriate. In relation to provisional measures of protection, the competence of the Court is established by

Article 36, paragraph 1, of the Statute, read together with Article IX of the Convention as the point of departure, followed by Article 41 of the Statute and the discretion which Article 41 confers on the Court, a discretion which, I might add, as all other discretionary powers conferred on the Court, must be exercised judicially. No amendment can be made to the Charter and Statute of the Court by another treaty.

* * *

Mr. President, I now come to the last section of my remarks, the question of provisional measures, which is what this phase of the proceedings is about.

My task has been made easier by the communication sent to the Registrar yesterday by Gospodin Jovanovic, the Minister for Foreign Affairs of the Federal Republic of Yugoslavia.

In that communication the Minister outlined the elements which should be included in any indication of provisional measures, should the Court conclude that it is appropriate for it to make such an order.

One: to instruct the Muslim-controlled authorities of Bosnia and Herzegovina to comply strictly with the latest agreement on a cease-fire in Bosnia and Herzegovina, that is the agreement which came into force on 28 March last, after these proceedings had been instituted and after the Request for the indication of provisional measures had been filed.

Two: to instruct those same authorities to respect and apply the Geneva Conventions for the Protection of Victims of War of 1949, as well as the appropriate Additional Protocols of 1977. Genocide and genocidal acts are being carried out against Serbs living in the Republic of Bosnia and Herzegovina, as well as very serious war crimes. I am informed that the Serbian population of Bosnia and Herzegovina constitutes about 34% of the total population of that Republic.

Three: to instruct those same authorities to close immediately and disband all prisons and detention camps in their territory, camps and locations in which Serbs are being detained because of their ethnic origins and are being subject to acts of violence and torture presenting a real danger to their life and health.

Four: to instruct those same authorities to allow the Serb residents without delay to leave safely and in security Tuzla, Zenca, Sarajevo and other places in Bosnia and Herzegovina where they have been subjected to harassment and physical and mental abuse, bearing in mind that they may suffer the same fate as Serbs in eastern Bosnia, the site of the massacre of several thousand of Serb civilians.

Five: to direct those same authorities and their surrogates to cease and desist immediately from further destruction and desecration of Orthodox churches and places of worship and of other sites belonging to the Serb cultural heritage, and to stop further mistreatment of Orthodox priests being held in prison.

Six: to direct those same authorities to put an end to all acts of discrimination based on nationality or religion and their activities of "ethnic cleansing", including discrimination in the delivery of humanitarian aid to the Serb population in Bosnia and Herzegovina.

In that communication, the Minister for Foreign Affairs also commented on the provisional measures which are being requested by Bosnia and Herzegovina. I am referring now to the provisional measures requested as set out on page 6 of the Court's reproduction of that Request.

There is no ground for accepting the request for the provisional measures as contained in paragraph 1 of that document. The Federal Government of Yugoslavia and its subordinate bodies, including the

military, have not committed and are not committing any of the acts to which Article III of the Convention on the Prevention and Punishment of the Crime of Genocide refers. Since the beginning of the inter-ethnic and inter-religious conflicts in Bosnia and Herzegovina, the Federal Government of Yugoslavia has consistently sought a peaceful resolution of the crisis. The Muslim side, and its President himself, bear a heavy responsibility for initiating and spreading that conflict throughout Bosnia and Herzegovina. The allegations made against the Federal Republic in the stream of documents that have been sent to the Court by the other side are unsupported by any hard evidence. Press reports, often tendentious, are not adequate as a basis for such serious charges against a sovereign State.

The measures proposed in paragraphs 2 to 6, go beyond any of the provisions of the Convention and therefore do not reach even the low threshold jurisdiction of the Court in the matter of the indication of provisional measures. Furthermore, the assertions which form the basis for those measures are inconsistent with the facts. An additional reason for rejecting the requests enumerated in paragraphs 4, 5 and 6 of that Request, is that their acceptance would only lead to the perpetuation of the genocide and genocidal acts being perpetrated against the Serb population of the territory of Bosnia and Herzegovina.

I prefaced this part of my statement with a suggestion that the Court might conclude that it would not be appropriate for it to make any indication of provisional measures in this case. I now have to indicate why this is so.

Referring to Article 41 of the Statute of the Court, I submit that the case-law of the Court establishes two fundamental criteria which must be met before the Court will exercise its discretionary power to indicate provisional measures of protection.

The first condition is that the instrument invoked as the title of jurisdiction must prima facie provide a basis for jurisdiction over the facts indicated in the instrument by which the proceedings have been instituted, in this case the Application instituting the proceedings, without any reference to the deluge of additions to which we have all been subjected.

The second is that the provisional measures requested must be necessary to preserve rights likely to be adjudicated.

In our submission, neither of these conditions is met by the Request of Bosnia-Herzegovina.

With regard to the first aspect, I have already attempted to show, I hope to the satisfaction of the Court, that to the extent that Article IX of the Convention supplies a basis for the jurisdiction of the Court, that jurisdiction is limited to events which occurred after the participation of Bosnia and Herzegovina in the Genocide Convention became effective. There is no other basis for the jurisdiction of the Court, and in particular, Article VIII of the Convention does not enlarge in any way the jurisdiction or the competence of the Court or the discretion of the Court under Article 41 of the Statute. In all circumstances, Article 103 of the Charter is predominant as far as regards any obligation of States under the Convention and under the actions of the Security Council acting in accordance with Chapter VII of the Charter.

With regard to the second requirement, that the measures requested are necessary to preserve rights which might be adjudged to either party in due course, I submit that when one goes behind the welter of charges and countercharges in this case, the Court must find that when the Security Council is acting under Chapter VII of the Charter, the often-repeated view of the Court that Article 41 of the Statute confers

on the Court an "exceptional power" should prevail (see for instance, the *Aegean Sea Continental Shelf, Interim Protection* case (*I.C.J. Reports 1976*, p. 11) and the *Great Belt* case, *I.C.J. Reports 1991*, p. 29) in the separate opinion of Judge Shahabuddeen). I submit that the Court has heard enough, despite the reticence which we on this side of the podium have manifested in order not to exacerbate relations in these proceedings, to show that there exists a real possibility that the other side will not obtain from the Court the Judgment requested in its Application instituting the proceedings. In those circumstances, were the Court to indicate provisional measures now, it would run the risk that later it would find itself in the uncomfortable position which arose in 1952 in the *Anglo-Iranian Oil Company* case, and which was foreseen by two eminent Members of the Court then, Judges Winiarski and Badawi (see *I.C.J. Reports 1951*, p. 97).

In our submission, careful examination of the Application instituting the proceedings and the Request for the indication of interim measures will not disclose that there has been a demonstrated urgency to the request. The typographical trick and bombastic phraseology of the highlighted passage on page 138, paragraph 136, of the printed version of the Application instituting the proceedings are not a substitute for a demonstration of urgency. The question is aired before the Court every time a request is made for the indication of provisional measures, as though the Court is not familiar with its own precedents, and in order to save the time of the Court, I will refrain today from repeating arguments which the Court has heard *ad nauseam*, as recently as one year ago in other cases.

Mr. President and Members of the Court, I do not think that it is necessary to conclude this statement with any formal submissions which, as I read the Rules of the Court, are not always required in this type of incidental proceedings. The pleadings show that the Request raises a series of complex issues. If the Court reaches the conclusion that it ought to exercise its discretion and give some indication of what it would regard as appropriate provisional measures which ought to be adopted at this stage of the case, then we have indicated what type of measures we think ought to be indicated. On the other hand, we have also suggested that in the circumstances of this case, it would be more appropriate for the Court to decline to indicate any provisional measures at all. At all events, our view is that the one-sided and unbalanced requests made by Bosnia and Herzegovina would under no circumstances be appropriate and we respectfully ask the Court so to decide.

That concludes what I want to say at this stage of the proceedings which, I may recall once more, are incidental proceedings on a Request for the indication of provisional measures of protection under Article 41 of the Statute. All other rights of the Government of the Federal Republic of Yugoslavia under the Statute and Rules of the Court, including but not limited to its right to present counter-claims, are reserved.

That concludes the pleading which I wish to make on behalf of the Government of the Federal Republic of Yugoslavia at this stage.

However, Mr. President, while I have the floor I must ask the indulgence of the Court to make one brief personal remark.

In his statement yesterday, Ambassador Sacirbey several times referred to the Nazi Holocaust. To any person who has direct knowledge of what the Holocaust was and what it was intended to achieve, such

statements are nothing short of blasphemous. Nothing that has occurred since in Europe matches that unspeakable event in European history.

It remains, Mr. President, for me to thank the Court and the Registrar for the courtesies once again extended to me. Thank you, Mr. President.

The PRESIDENT: Thank you very much, Professor Rosenne. The Court has heard the Applicant State and the Respondent State in this Application for interim measures of protection. It is not entirely clear at the moment what further oral proceedings may or may not be desired by the Parties, so the convenient procedure at the moment, I think, is that the Court should retire for 10 or 15 minutes whilst the Parties are consulted on that point. Thank you.

The Court adjourned from 16.30 to 16.55.

The PRESIDENT: Now we hear the further statement on behalf of Bosnia-Herzegovina, I think from Professor Boyle.

Professor BOYLE: Mr. President, distinguished Members of the Court, May it please the Court, yesterday I received the communication from Vladislav Jovanovic, Federal Minister for Foreign Affairs of the rump Yugoslavia. It did not bother me that it came in yesterday. I had a look at it, and I have some comments to make on this communiqué that Mr. Rosenne referred to.

First, the democratic basis and legitimacy of the Government of Bosnia and Herzegovina that I represent, and of our President, His Excellency Alijy Izetbegovic, have already been described in paragraphs 10 to 16 of the 20 March Application. I am not going to go through all that here. The rump Yugoslavia together with its agents and surrogates in Bosnia has attempted to create an artifical "statelet" in our sovereign territory under the name of the so-called "Serbian Republic of Bosnia and Herzegovina", in clear-cut violation of United Nations Charter Article II, paragraph 4. That is the real problem of legitimacy here, not that of my Government. His Excellency, President Izetbegovic, is still recognized by the United Nations as the legitimate Head of State of the Republic of Bosnia and Herzegovina. President Izetbegovic accredited Ambassador Sacirbey, who appeared before you yesterday, as the Ambassador and Permanent Representative of Bosnia and Herzegovina to the United Nations, and the United Nations accepted the credentials of Ambassador Sacirbey to be the Ambassador and Permanent Representative of Bosnia and Herzegovina. That should indicate to you the legitimacy of my Government to represent the State of Bosnia and Herzegovina.

Likewise, President Izetbegovic personally accredited the same Ambassador Sacirbey, who appeared before you yesterday, and me as the

General Agents with Extraordinary and Plenipotentiary Powers to the Court on behalf of Bosnia and Herzegovina, and the Court has obviously accepted our credentials. Otherwise I would not be standing before you today. So it is clear that our Government, our President, our Ambassadors are all recognized by the United Nations itself.

As for the Vance-Owen negotiations, they must of course be kept separate and apart from the question of United Nations recognition. Only the question of United Nations recognition of our Government is relevant to these proceedings. Furthermore, despite what was said by the Respondent, the Vance-Owen agreement has not yet come into effect. When President Izetbegovic signed, he signed subject to conditions that made it very clear that it would not come into any legal effect whatsoever until all the parties had likewise signed, and all the parties have not yet signed. And the President also attached a 15-day deadline on the signing of this document. So as of today, this document is effectively a legal nullity.

The truth is that it is the legitimacy of the so-called Federal Republic of Yugoslavia (Serbia and Montenegro) that has been denied by the Security Council, by the General Assembly and a good deal of the international community. Indeed, the General Assembly has treated the rump Yugoslavia in the same way that it treated the apartheid régime in Pretoria, namely, suspension from participation in the activities of the General Assembly. That should provide the Court with some idea of the degree of contempt in which the world holds the rump Yugoslavia.

Now, our Application has fully documented the responsibility of the rump Yugoslavia for acts of genocide, acts of aggression and armed attacks against the people and State of Bosnia and Herzegovina. In this regard, I would emphasize especially *Section F. Specific Factual*

Allegation of Acts of Genocide, paragraphs 32 to 83, and *Section I. Specific Factual Allegations Relating to the Conduct of the Former Yugoslavia and/or Yugoslavia (Serbia and Montenegro)*, paragraph 87A, pp. 82-108.

Now also yesterday, I filed a Supplementary Submission in support of our Application and Request that updated this *Section I*. This Supplementary Submission simply contained the news articles that I quoted to you yesterday from the *New York Times* and the BBC. It is very short, very succinct, it was not intended at all to tax your patience but simply to put this in writing so that you could read it in the harsh light of day. And the reporter for the *New York Times*, this war correspondent, Roger Cohen, said quite clearly on 22 March 1993:

> "While it is common to see men on buses transforming themselves from civilians into heavily armed soldiers as they cross into Bosnia, it is rare to witness an operation so prominently co-ordinated between Yugoslav and Bosnian Serb forces as the offensive now under way in the Srebrenica area."

That was on 22 March, and I have given it to you there in writing.

Likewise again, the BBC reported that Serbian attacks on the Bosnian towns of Kovacevici and Selimovici were backed up by long-range artillery from Yugoslavian (Serbia and Montenegro) territory. That is the BBC, on 23 March.

Now, in the United States, of course, the *New York Times* is considered a newspaper of public record. Courts can take judicial notice of facts in newspapers of public record under the relevant rules of evidence applicable in United States courts and under appropriate circumstances. And given the extraordinary nature of these circumstances, for we have an armed conflict, armed aggression, genocide going on, of course we have to rely upon reports by war correspondents on the scene to establish our prima facie facts in this case. What else

can we do at this time? Certainly on the merits - when we get there, if we get there - we will have more facts from other sources. But as it stands now, this is the best we can do, and I submit that it is more than sufficient.

Now, the letter from Mr. Jovanovic also tries to say that the Court should indicate provisional measures against us. Well, there is no credible evidence anywhere in the public record that the Government of Bosnia and Herzegovina has committed acts of genocide against anyone. Moreover, there has been no credible evidence submitted to this Court that Bosnia and Herzegovina has committed genocide or aggression against anyone. There were some intimations here made by counsel for the other side, and that is it. Where is the documentation? Where are the reports? They are not there. You look at my Application and my Supplementary Submissions, and you will see 50 or 60 pages of hard evidence of what Yugoslavia has done to my people and my State. And yet if you look at the record submitted on the other side, you see nothing; no facts, simply assertions, no basis in fact. So I submit that there is not even a prima facie case of evidence to support any type of provisional measures against Bosnia and Herzegovina.

I do not believe that there is a basis either in fact or in law for the Court to indicate provisional measures against the Republic of Bosnia and Herzegovina. This Respondent has not created any prima facie case of evidence or law against us on any of these allegations. All we have heard is some spurious allegations made here at this forum, and that is it. That is not evidence.

During the course of my oral submission on 1 April, I amended the Application to assert an additional jurisdictional basis for the Court premised on the 8 June 1992 letter from Mr. Milosevic to Mr. Badinter, which I filed with the Court on 31 March 1993. Again, I apologize for the late filing. That letter was not available to me at the time I filed the Application on 20 March. Why was that letter not available to me before 20 March? Because of the barbaric aggression that the rump

Yugoslavia has inflicted upon my people and my Government. It is almost impossible for me to communicate with Sarajevo, with my President. That is why I have been given the powers that I have to be here. These things take a little time; I did the best that I could do in the circumstances, but for reasons I will explain in a little while, I certainly believe that this letter does provide jurisdiction for the Court to consider all the claims in our Application.

As for the *Aegean Sea Continental Shelf* case, I think there are significant differences between the communiqué involved there and the letter here. I submit we will be able to develop those differences if and when we get to the merits. But remember, the objective of the rump Yugoslavia is to destroy us, to make sure that we never get to those merits, to eliminate us as a sovereign nation State, as a Member of the United Nations, and to exterminate our people. This is exactly why we are asking for provisional measures to prevent this from happening, to allow us to get to the merits.

All the other matters raised in the letter by Mr. Jovanovic fall within the domestic affairs of Bosnia and Herzegovina and are therefore protected by Article II, paragraph 7, of the United Nations Charter.

Let me turn again briefly to the commnts made by the Chargé from the rump Yugoslavia, stating that this is a civil war in Bosnia-Herzegovina. Again, as I developed in the Application and our oral submission yesterday, this is an outright case of international aggression perpetrated by the rump Yugoslavia against Bosnia and Herzegovina. Nothing could be clearer and I have established that in the Application, in the Supplementary Submissions and the oral proceedings. Professor Rosenne does not like the fact that you have been inundated with facts. But that is what these proceedings are all about, to provide you with as many facts as I can for you to make up your mind. I believe

there is more than a prima facie case that the rump Yugoslavia is committing aggression against Bosnia and Herzegovina both directly and indirectly by means of agents and surrogates in Bosnia and elsewhere. Again, in the Supplementary Submission I filed yesterday, it was simply intended to put in writing exactly what I read to you from the podium at that time.

As for the comments made by Professor Rosenne, he first mentioned the *Lockerbie* case. What happened in those proceedings? Libya filed a case on 3 March last year and the Court granted a hearing, I believe starting on 24 March. While the Court was meeting at Libya's request for an indication of provisional measures, the two Respondent Governments decided to usurp the power and authority of this Court by going to the Security Council and trying to ram through a resolution against Libya without giving the proper respect to the Court to make a decision on its request for interim measures. As you know, as you were meeting here in The Hague, the two Respondent States then began the hearings in the Security Council and got that resolution adopted shortly after you had adjourned.

If you remember, in the opinions coming out of the *Lockerbie* case on provisional measures, 11 Judges made it very clear that in the absence of this attempt by the two respondent States to move the way they did, you would have given the provisional measures to Libya that Libya requested. There were very strong opinions expressed by many of you in your opinions in the *Lockerbie* case as to how you felt about what was done at the Security Council while this matter had been submitted to you; the two Respondent States did not bother to wait for your decision to come down.

I think that that sentiment makes it very clear that in the current circumstances you should feel no hesitation to act immediately on our

request for provisional measures. You have an independent responsibility under the terms of the Charter to move forward and to grant our request and not to worry about an attempt to be made at the Security Council to pre-empt your ability to exercise your powers under the Charter.

As for Professor Rosenne's argument on the Vienna Convention on the Succession of States in Respect of Treaties, I would refer you to the proceedings of the Badinter Commission that are reported in the November 1992 issue of International Legal Materials - I referred to them yesterday. In there you will see, in the Badinter Opinions, that all of the parties to the International Peace Conference on the Former Yugoslavia have agreed that they would be bound by the terms of the Vienna Convention on Succession of States in Respect of Treaties (*International Legal Materials*, p. ?). Moreover, of course, the rules of the Vienna Convention also codify customary international law on the question of State succession with respect to treaties. I see no problem at all with this Court applying the rules of the Vienna Convention on State succession, especially when the rump Yugoslavia has agreed that they are fully prepared to be bound by these rules with respect to these questions of State succession between the rump Yugoslavia and the other now independent republics.

Professor Rosenne said that he had problems with provisional measures 1, 2 and 3. He did not know exactly where they had come from. Well, they came almost verbatim from the provisional measures given by this Court in the *Nicaragua* case. They were patterned on that, almost line by line. That is apparent to anyone who looks at the first three paragraphs of the provisional measures. And I guess I would submit that if you were prepared to give the first three provisional measures to Nicaragua, then, *a fortiori*, you should be prepared to give provisional measures 1, 2 and 3 to Bosnia and Herzegovina. A situation far more serious, as I pointed out yesterday, not just involving outright aggression, direct and indirect, by one State against another State but also acts of genocide within the meaning of the Genocide Convention.

Now, Professor Rosenne also talked about resolution 713. I think I decisively established yesterday that when resolution 713 was adopted, no one contemplated Bosnia and Herzegovina because our State did not exist at that time. It did not come into existence until 6 March 1992. The arms embargo was applied on the former Yugoslavia, not upon us. Moreover, it was applied with their consent and at their request. Now, if the former Yugoslavia wants to impose an arms embargo upon itself, that is its business, that is fine. But the Security Council did not even consider us at the time because we did not exist.

As for the subsequent routine reaffirmances and whatever, well these are natural things that security councils do in resolutions that they adopt, they always reaffirm their previous resolutions. But there was never an indication that anyone had considered the question that when Bosnia and Herzegovina became independent on 6 March, or when it became a Member of the United Nations on 22 May, that at that point it had the

inherent right of self-defence, recognized in the United Nations Charter, Article 51, and again "Nothing in the present Charter", and that means Security Council resolutions too,

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

And it is obvious that, at least so far, the Security Council has not yet taken effective measures necessary to maintain international peace and security with respect to Bosnia and Herzegovina. We are still being attacked, even as reported by the *New York Times* and the BBC war correspondents right on the scene, we are being attacked today. Our people are being killed and exterminated.

And this brings us to why we are here for provisional measures. If we cannot defend ourselves, we will be destroyed by the rump Yugoslavia before we ever get to the merits of our claim. That is the entire purpose for what they are doing, to destroy us completely as a State and as a people. And we are coming to you on points 4, 5 and 6 of provisional measures to basically declare that we have a right to defend ourselves in the hope that we will at some point get to the merits of this case. But if you deny us 4, 5 and 6 I doubt very seriously that you will see us here a year from now to argue the case on the merits. Certainly that is the objective of the rump Yugoslavia.

And again, I point out, the Security Council's powers are limited by Article 51. The word "nothing" means Security Council resolutions as well. And likewise the powers of the Security Council under Chapter 7 are also limited by Article 24, paragraph 2. Our rights as a sovereign nation-State to defend ourselves individually and collectively must be respected and we cannot be denied these rights by ambiguous

Security Council resolutions that were intended to apply to the former Yugoslavia at its request and with its acquiescence. We have always maintained that these resolutions do not apply to us, and they cannot legally apply to us, they would violate Article 51 and Article 24, paragraph 2.

Now again, to go back to the 8 June letter, and again I apologize for the haste, as it were, in submitting it. I submitted it as soon as I could upon my return here to The Hague. We believe that this letter certainly is distinguishable from the *Aegean Sea* case. Here you had a *formal letter* submitted by the rump Yugoslavia to Mr. Badinter as part of international proceedings, knowing full well that this letter would be turned over to our Government, which it was, for our consideration which we have done. We have considered the letter and I am here to say, as I said yesterday, that we accept the offer of the rump Yugoslavia to submit all our legal disputes to this Court unequivocally. And we have submitted them to this Court, all the disputes set forth in our Application and Request for provisional measures and I believe that this establishes an additional jurisdictional basis for this Court to consider.

Of course, these issues will need to be briefed in more detail on the merits when we get there but again I submit if you do not give us these provisional measures we will not be around to come back here and argue this case on the merits.

Now perhaps Professor Rosenne misunderstood my argument on the basis of Article VIII of the Genocide Convention. I was not suggesting that it provided an additional jurisdictional basis for the Court, rather what I was suggesting is that Article VIII provides a basis for the Court to grant our request for provisional measures in full and as soon as possible. And I would encourage you to go back and read the terms of Article VIII of the Genocide Convention.

I realize we are making an exceptional request but these are extraordinary circumstances: genocide and acts of aggression, and Article VIII was intended to deal with such extraordinary circumstances as these.

Now again, Mr. Rosenne quoted the 28 March so-called agreement. Again I want to clarify the record: Mr. Jovanovic said the same thing, there is no 28 March ceasefire agreement. There is a document signed in New York by President Izetbegovic with conditions attached. And one of the conditions is that the document would have no legal significance unless all of the parties signed that document and, so far, one of the parties has refused to do so. Moreover, President Izetbegovic also attached a 15-day time period in which the other party is permitted to sign or not sign the agreement. But the agreement has not yet come into effect. There is no such agreement.

Professor Rosenne also mentioned the opinion by Judge Shahabuddeen in the above case and again I think that is fine, I would just be happy to read it again because I think it is very eloquent and right on point

> If the *summaria cognitio*, which is characteristic of a procedure of this kind, enabled us to take into account the *possibility* of the right claimed by the German Government and the *possibility* of the danger to which that right was exposed, I should find it difficult to imagine any request for the indication of interim measures more just, more opportune or more appropriate than the one which we are considering", (emphasis as in the original)

again quoting from Judge Anzilotti.

And as I said yesterday, it is difficult to imagine a request for interim measures that is more just, more opportune or more appropriate than the Request for provisional measures by Bosnia and Herzegovina.

Professor Rosenne concluded his comments by making a reference to the Nazi Holocaust. I think it is important to keep this in mind. The Genocide Convention came out of the holocaust that the Nazi's inflicted upon the Jewish people, the Polish people, the Russian people, the gypsies, and others in Europe. This led to the Nuremberg definition of Crime against Humanity, that is why Crime against Humanity was put into the Nuremberg Charter to deal with the mass extermination of races of people by the Nazis here in Europe. And it was the basis of that then that led the General Assembly to codify the Nuremberg Crime against Humanity, the experience of the holocaust in the Genocide Convention. Which is why I was suggesting yesterday that you should interpret the Genocide Convention in reference to the Nazi Holocaust, in reference to the Nuremberg Crime against Humanity; and it is certainly true that we are not yet at a point where the rump Yugoslavia has killed outright the number of people that the Nazis killed during the Second World War. But that is why we are here before this Court, to prevent a holocaust of such

enormous dimensions and proportions for an entire other race of people - the people of Bosnia and Herzegovina. There are 4.5 million people in Bosnia and Herzegovina and the rump Yugoslavia wants to exterminate them all. They have not yet succeeded in doing that, but they will unless you give us our provisional measures. They will succeed, they will destroy us, and we will never get to this case on the merits unless this Court gives us the six items of provisional measures that we have requested in full and as soon as possible.

Thank you very much once again for your courtesy and consideration and again may God be with you as you deliberate on our Request.

The PRESIDENT: Thank you Professor Boyle. Now that concludes I think the presentation for Bosnia-Herzegovina. Yugoslavia (Serbia and Montenegro) has of course a right to reply and wishes to exercise it I believe, and is prepared to do so this afternoon. It might be convenient perhaps if the Court were to retire for 10-15 minutes and then return to hear the reply.

Thank you very much.

The Court adjourned from 17.25 to 17.35

The PRESIDENT: Professor Rosenne, please.

Professor ROSENNE: May it please the Court. Thank you, Mr. President. I will say that the delegation of the Federal Republic of Yugoslavia very much appreciates your courtesy and that of the distinguished Members of the Court in agreeing to continue this sitting beyond the accustomed hour. I will try and be very brief, and a little bit probably incoherent, but I think that you will excuse me, and I also hope that our opponents will excuse me, given the speed with which we are conducting these proceedings.

I have to say in all frankness, Mr. President, that the interesting statement made by Professor Boyle does not cause me to retract in any way anything that I said earlier on this afternoon. I do not think he really refuted any of the main contentions and conclusions which I had the honour to present on behalf of the Government of Yugoslavia in accordance with instructions which I received. I really only want to mention a few points while maintaining the integrity of the observations which I and my co-Agent both presented this afternoon. We do not wish to prolong these proceedings unnecessarily.

On one central point, I wish to reiterate the view of the Federal Government of Yugoslavia that the situation which has developed in Bosnia and Herzegovina is a situation of civil war with all which that entails. In that connection, it is our impression that the Applicants are persisting in their inability to see a distinction between the actions of the Federal Government and the standpoint of the Federal Government of Yugoslavia itself, and the actions and the standpoints of the Serbs in Bosnia-Herzegovina. As I said earlier on, according to the information which I have they constitute some 34 per cent, one third, of the population of that area.

This distinction is absolutely fundamental, and we took note of the fact that Professor Boyle earlier this afternoon referred all the time to some unnamed third party. We assume that what he had in mind was the Serbs of Bosnia. This distinction, Mr. President, is also the explanation for the observations which were made by the Minister for Foreign Affairs in the communication yesterday, to which Professor Boyle referred and which I also in effect incorporated in the observations which I made, both in relation to the provisional measures being requested by the other side and in relation to the kind of provisional measures which we think could be appropriate in the eventuality that the Court should feel that it ought to indicate provisional measures despite, or notwithstanding, the view which we continue to hold: that in this particular case, so long as the Security Council is actually acting under Chapter VII of the Charter, then it would be premature and inappropriate for the Court to indicate provisional measures, and certainly provisional measures of the type which have been requested.

Mr. President, Members of the Court, I could not really follow all that Professor Boyle said about facts. We have got a document, which, as I have said, we only received here in full yesterday morning, and which consists of 70 pages of a closely printed statement called "Application Instituting Proceedings". Mr. President, with all respect - I am sorry to raise this point, it is a technicality, and I do not want to base our case on technicalities, but I have to because it has been forced on me - Article 38 of the Rules of Court, paragraph 2, dealing with an Application states that an application "shall also specify the precise nature of the claim," - I am not going to say anything about that, Mr. President - "together with a succinct statement of the facts and grounds on which the claim is based".

Mr. President, I really do not think that a document which is 70 pages long, closely typed, in print, is by any stretch of the imagination "a succinct statement of the facts and grounds on which the claim is based". I would therefore ask the Court, in view of the statements which we have heard about the facts, also to keep that aspect in mind. As I said, I do not want to get involved too much in these technicalities, but I have to because I have been forced into it. The place for 70 pages of facts - if they are facts, I am not admitting that they are, that is another matter - is in the Memorial, and Article 49 of the Rules of Court makes this perfectly plain: "A Memorial shall contain a statement of the relevant facts". And it is in the Counter-Memorial, Mr. President, that the Respondent, an unwilling Respondent - or, rather, a Respondent who has been brought before the Court in circumstances unknown to it, unforeseen by it; it is not an unwilling Respondent as that expression is frequently used, because as I have indicated we do think that the jurisdiction of the Court is limited, but we are prepared to continue to litigate the case within the limits of the jurisdiction as we understand it. It is in those circumstances that the Counter-Memorial of the Respondent, given time to collect the material and so on, shall contain an admission or denial of the facts.

We are now being accused virtually of not producing any facts in - what is it, 48 hours, 72 hours, something like that - in answer to 70 closely-typed pages. And, by the way, more is coming; we have received another big envelope this afternoon, which, quite frankly, Mr. President, I have not yet had time even to open. I do not know what is in it. Are we going to get any more envelopes, before the Court renders its decision in this case? I am just wondering, because we are

going to be coming backwards and forwards here, I suppose, with new envelopes every day.

So, I would ask the Court, very respectfully, to keep this aspect also in mind. We intend to file a Counter-Memorial when the time comes for us to do so, and within the circumscription of the jurisdiction of the Court, however it is determined when the time comes.

I want to say something about the evidence. Mr. President, I do not know anything about the rules of evidence in United States courts; I am quite prepared to leave that to Professor Boyle. I do not know whether the *New York Post* is admitted as evidence, or *Playboy*, or the *New York Times*. I would like to know much more about it before a flat assertion is made that because something appears in the *New York Times*, it is evidence. If the *New York Times* - and with all respect to the *New York Times* - or any other Times, or *Le Monde*, or the *Frankfurter Allgemeine Zeitung*, whichever one you like - is a newspaper of record, it is a newspaper of record for the documents which it prints, not for journalists' reports, however eminent those journalists may be.

I have always understood the *New York Times* as a newspaper of record for the documents which it contains and they may be admitted as evidence and probably could be, even in this Court. But, as for a wild assertion that because the *New York Times* is an instrument, is a newspaper of record in the courts of the United States, State courts or federal courts, it is relevant and can therefore be admitted here, I think this proposition only has to be stated, Mr. President, for its unacceptability to become evident.

Now, Mr. President, I want to say something about the Security Council and the interpretation of the Charter. I would like to remind Professor Boyle, with respect, of the underlying considerations in the San Francisco Declaration (I do not have the reference in front of me) on the interpretation of the Charter. If I understand it correctly, and I am speaking from memory, Mr. President - and you will forgive me for that - the Declaration basically lays down that each organ of the United Nations itself interprets the provisions of the Charter which refer to it. If any organ wants other interpretations of the Charter, if it wants an interpretation from this Court, for instance, the proper way for it to do it is by way of a request for an advisory opinion, and I would remind Professor Boyle, if I may and with respect, that the General Assembly, for instance, has done this in relation to specific Articles of the Charter. Article 4 has been interpreted by this Court at the request of the General Assembly. Article 17 has been interpreted by this Court, always in concrete circumstances, not in the abstract of course.

Now the Security Council, as far as I know, nor any Member of the Security Council, as far as I know, has not queried the interpretation of resolution 713 on the arms embargo, whether as originally adopted before

Bosnia and Herzegovina became Members of the United Nations or as repeated and deliberately reaffirmed later. Now, Mr. President, I think you are aware of the fact that I personally have had a considerable amount of experience in the Security Council and I know that Professor Boyle is also quite familiar with a great deal of the working of the Security Council. If the Security Council specifies, by number, resolutions, which it is recalling in the preambular part of its substantive resolution, it does so deliberately, it is not a matter of routine. The Security Council has other formulas for what Professor Boyle regards as a mere routine, for instance, recalling previous resolutions on the subject, that might be - I am not even sure about that - because as I said, the language of the Security Council resolutions is in fact very carefully negotiated. They are not thrown out; it is not like the resolutions in the General Assembly and one small point to indicate the difference, the Secretariat has a general power under the rules of procedure of the General Assembly, to edit them and if you look at the printed version of resolutions of the General Assembly, in the official records of the General Assembly, they are quite different from the text as adopted by the General Assembly itself and published in the famous press release which United Nations-goers like myself call the round-up because they are edited by the Secretariat. On the other hand, Mr. President, if you look at the printed version of resolutions of the Security Council, which come out year by year, they are identical with the text as adopted by the Security Council in all the official languages and the working languages of the Security Council which are the same now. So let us not have any more talk about routine expressions just thrown in thoughtlessly because that is the routine. There is no such thing in resolutions of the Security Council.

To another point, Mr. President, nothing that Professor Boyle has said causes me to change one iota of what I suggested would be the rule of law applicable to the letter of 8 June 1992 as far as concerns the jurisdiction of the Court. The jurisdiction of the Court, in conformity with that letter, is not conferred by the acceptance by Bosnia and Herzegovina of the offer, the offer is to submit a case to the Court with agreed terms of reference, agreement on what the question is that the Court should decide and as I maintain, as I said earlier, I think that the situation I so submit in regard to that letter is identical in substance with the situation which the Court faced in the *Aegean Sea* case.

On the question of aggression and the somewhat wild charges which have been bandied about this courtroom, I would just like to say one thing. I say it with respect and with perhaps a reservation due to the time constraints but, as far as I have been able to see on the file that I have here on the table, I did not find that word, the word aggression, in any of the resolutions of the Security Council.

As I say, I am making this statement with reservations, I hope I am not misleading the Court, I certainly do not intend to. But in the perusal which I have made in the interval of the resolutions, and I have them all with me here, I did not find that word. If I am wrong, then I in advance would accept of course a correction from the Court or from the other side, and express my apologies.

The efforts of the Security Council, Mr. President, are directed towards one aim, and one aim alone, and that is to restore peace in the area. If it has not yet achieved that aim, it is not for want of trying. It remains actively seised of the matter and is acting under Chapter VII. This has not been refuted by Professor Boyle and I venture

to submit that this is a central factor which should weigh with the Court when it comes to deliberate and render its decision on this request for interim measures of protection.

The last point I want to mention is, Mr. President, the question of the legality of the Federal Government, the representative quality of the Federal Government of Yugoslavia. Mr. President, all the Security Council did in that very curious resolution was to say that the Federal Republic of Yugoslavia cannot continue *automatically* the membership of the former Socialist Federal Republic of Yugoslavia. I do not quite know really what that means. The resolution of the General Assembly, as I read it, does not entirely fit into that pattern, maybe I have misread it. But the curious thing is that Yugoslavia is actually continuing its membership of the United Nations and I have before me here - I have to file it I suppose as a new document, I assume I may be allowed to read it - signed by Dr. Boutros Boutros-Ghali, the Secretary-General of the United Nations, dated 26 February 1993 addressed to H.E. Mr. [inaudible], Federal Minister for Foreign Affairs of the Federal Republic of Yugoslavia, Belgrade, inviting the Federal Republic of Yugoslavia to participate in the United Nations Conference on Human Rights, which is going to take place in Vienna next June, as a result of a decision of the General Assembly. I do not think the Secretary-General would make a mistake. He has addressed this letter to the Federal Minister for Foreign Affairs of the Federal Republic of Yugoslavia and signed it himself, Boutros Boutros-Ghali. I will file this document during the weekend if you want me to, Mr. President, if you think I should, and I think that is simply adequate to show that the legality and continued membership of the Federal Republic in the United Nations is a matter not open to any further discussion.

I must say that these are disjointed and perhaps incoherent remarks, Mr. President; we are all extremely tired. I again wish to thank you very much for the courtesy you have extended to us and even if we have been a little bit hard with each other, I would extend my expression of appreciation to the other side for the way in which they also have conducted these proceedings.

Perhaps it is an indication that having non-nationals plead in cases of high tension may assist in the administration of international justice by reducing to a very large extent, I hope, the personal involvement of Counsel appearing before this Court in the substance of the case. Thank you, Mr. President.

The PRESIDENT: Thank you, Professor Rosenne. Judge Guillaume.

M. GUILLAUME : Merci, Monsieur le Président. J'aurais souhaité poser une question à chacune des Parties. L'agent de la République de Bosnie-Herzégovine a mentionné cet après-midi dans sa plaidoirie l'avis n° 9 de la commission d'arbitrage de la conférence pour la paix en Yougoslavie, en ce qui concerne le problème de la succession. Le paragraphe 2 de cet avis que j'ai sous les yeux dit ceci :

> "Le phénomène de la succession d'Etats est régi par des principes de droit international dont s'inspirent les conventions de Vienne du 23 août 1978 et du 8 avril 1983 que toutes les républiques ont accepté de retenir comme base de leurs discussions relatives à la succession d'Etats dans le cadre de la conférence pour la paix en Yougoslavie."

Et ma question pour chacune des Parties est la suivante : Pourriez-vous produire sous vingt-quatre heures le ou les documents, s'il en existe, par lesquels la Bosnie-Herzégovine et la Yougoslavie (Serbie et Monténégro) ont accepté éventuellement les obligations mentionnées au paragraphe 2 de l'avis n° 9 ?

Je vous remercie, Monsieur le Président.

The PRESIDENT: Thank you, Judge Guillaume. The answer to that question could be made in writing as soon as possible please - with advantage, tomorrow. Yes, Mr. Boyle, do answer now if you wish.

Mr. BOYLE: Your Honour, there is absolutely no way I could produce that document in 24 hours. I cannot even communicate with Sarajevo. We are being bombed and attacked by the rump Yugoslavia. The rump Yugoslavia and its agents and surrogates bombard the Presidency. I cannot even communicate with my President, let alone the Foreign Minister. I cannot get documents out of Sarajevo. That is why I could not produce that letter of 8 June until I did on Monday. If I had had it before Monday I would have given it to you. I am been sent here with extraordinary and plenipotentiary powers as the personal representative of President Izetbegovic with the only instructions "Good luck!". Now that indicates to you the severity of the situation in Sarajevo. I would certainly try to get that document but I doubt very seriously that I could get it within a period of weeks, so I would encourage you for the purpose of these interim procedures to move forward on the good faith assertion by the Badinter Arbitration Commission that this agreement has been made and they have the document. I do not have it and there is no way I can get it very soon. That is due to the conduct of the Respondent.

The PRESIDENT: Thank you, Professor Boyle. Professor Rosenne.

Mr. ROSENNE: Thank you, Mr. President. I am not going to make a political statement. I appreciate very much the reasons behind Judge Guillaume's question and I appreciate very much why he would like the answer within 24 hours. With all respect to Judge Guillaume and to Members of the Court, it is the weekend and I would like, as the

President has said, with respect and if you agree, Sir, that we would supply what documents are relevant as soon as possible, which I suppose would be around the middle of next week.

The PRESIDENT: Yes, thank you very much.

It remains only to thank the Agents of the two Parties for the assistance they have given to the Court and by their observations on the Request for the indication of provisional measures in this case. In accordance with the usual practice, I request them to remain at the disposal of the Court for any further assistance it may require. With that reservation, I declare the present oral proceedings closed.

The Court will give its decision on the Request for the indication of provisional measures as soon as possible in the form of an Order, which will be read at a public sitting of the Court. The date of that sitting will be notified to the Agents of the Parties in due course. Thank you very much.

The Court adjourned at 6.30 p.m.
