CR 93/33

International Court
of Justice
THE HAGUE

Cour internationale
de Justice
La HAYE

YEAR 1993

Public sitting

held on Wednesday 25 August 1993, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

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

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

Requests for the Indication of Provisional Measures

No 2

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le mercredi 25 août 1993, à 10 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))

Demandes en indication de mesures conservatoires

n° 2

COMPTE RENDU

Present:

President	Sir Robert Jennings
Vice-President	Oda
Judges	Schwebel
	Bedjaoui
	Ni
	Evensen
	Tarassov
	Guillaume
	Shahabuddeen
	Aguilar Mawdsley
	Weeramantry
	Ajibola
	Herczegh
Judges *ad hoc*	Lauterpacht
	Kreca
Registrar	Valencia-Ospina

Présents:

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

Lauterparcht,
Kreca, juges *ad hoc*

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;

Mr. Francis A. Boyle, Professor of International Law,

as Agent;

Mr. Phon van den Biesen, Advocate,

Mr. Khawar Qureshi, Barrister, England,

as Advocates and Counsel;

Mr. Marc Weller, Assistant Lecturer in Law, University of Cambridge, Senior Research Fellow of St. Catharine's College, Cambridge,

as Counsel.

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro)) is represented by:

Mr. Rodoljub Etinski, Professor at the School of Law, Novi Sad (Yugoslavia),

Mr. Djordje Lopicic (LL.C.), Chargé d'affaires a.i. of the Embassy of the Federal Republic of Yugoslavia to the Netherlands,

as Agents;

Mr. Shabtai Rosenne, Advocate from Jerusalem (Israel),

Mr. Miodrag Mitic (LL.C.), Chief Legal Adviser of the Federal Ministry of Foreign Affairs,

as Counsel and Advocates.

Le Gouvernement de la Bosnie-Herzégovine est représenté par :

S. Exc. M. Muhamed Sacirbey, ambassadeur et représentant permanent de la Bosnie-Herzégovine auprès de l'Organisation des Nations Unies,

M. Francis A. Boyle, professeur de droit international,

comme agent;

M. Phon van den Biesen, avocat,

M. Khawar Qureshi, avocat,

comme avocats et conseils;

M. Marc Weller, *Assistant Lecturer in Law* à l'Université de Cambridge et *Senior Research Fellow of St. Catharine's College*, Cambridge,

comme conseil.

Le Gouvernement de la République fédérative de Yougoslavie (Serbie et Monténégro) est représenté par :

M. Rodoljub Etinski, professeur du cadre permanent à la Faculté de droit, Novi Sad (Yougoslavie),

M. Djordje Lopicic (LL.C.), chargé d'affaires a.i. de l'ambassade de la République fédérative de Yougoslavie aux Pays-Bas,

comme agents;

M. Shabtai Rosenne, avocat au barreau de Jerusalem (Israel),

M. Miodrag Mitic (LL.C.), conseiller juridique en chef du ministère fédéral des affaires étrangères,

comme conseils et avocats.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets today, pursuant to Article 74, paragraph 3, of the Rules of Court, to hear the observations of the Parties to the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro))*, on a request for the indication of provisional measures under Article 41 of the Statute of the Court presented by the Republic of Bosnia and Herzegovina on 27 July 1993, and a similar request presented by the Republic of Yugoslavia (Serbia and Montenegro) on 9 August 1993.

The proceedings in the case were instituted by the Republic of Bosnia and Herzegovina (to which I shall refer, for convenience, as Bosnia-Herzegovina) against the Republic of Yugoslavia (Serbia and Montenegro) (to be referred to as Yugoslavia), by an Application filed on 20 March 1993, invoking as basis of jurisdiction the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. On the same date Bosnia-Herzegovina filed a request for the indication of provisional measures; and in written observations presented on 1 April 1993 Yugoslavia also recommended that provisional measures be ordered. By an Order dated 8 April 1993, the Court, after hearing the Parties, ordered certain provisional measures which, however, were not identical with those asked for by either Party.

Since the making of that Order, each of the Parties has availed itself of the right conferred by Article 31, paragraph 3, of the Statute of the Court, to choose a judge *ad hoc* to sit in the case, inasmuch as the Court includes upon the Bench no judge of the nationality of the

Parties. Bosnia-Herzegovina has chosen Mr. Elihu Lauterpacht, C.B.E., Q.C., Director of the Research Centre for International Law, University of Cambridge; Yugoslavia has chosen Mr. Milenko Kreca, formerly Professor of International Law and Associate Dean, Belgrade School of Law.

Before proceeding further, I shall invite Judges Lauterpacht and Kreca to make the solemn declaration required by Articles 20 and 31 of the Statute of the Court. They will do so in the order of precedence laid down by Article 7, paragraph 3, of the Rules of Court, i.e., first Judge Lauterpacht, then Judge Kreca. I shall request all present to stand while the declarations are made. Judge Lauterpacht.

Judge LAUTERPACHT: I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.

The PRESIDENT: Judge Kreca.

Judge KRECA: I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.

The PRESIDENT: Please be seated.

I place on record the solemn declarations just made by Judge Lauterpacht and Judge Kreca, and declare them duly installed as judges *ad hoc* in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro))*.

When the second request by Bosnia-Herzegovina for the indication of provisional measures was received, it was my duty as President "to fix a date for a hearing which will afford the Parties an opportunity of being

represented at it", as prescribed by Article 74, paragraph 3, of the Rules of Court. Taking all the circumstances into account, I fixed today as the date for the hearing, and was unable to accede to representations by Bosnia-Herzegovina that the date be altered to an earlier day.

It was however also urged by Bosnia-Herzegovina that the Court could, and in this case should, indicate provisional measures without a hearing at which the other Party could be represented, notwithstanding the terms of Article 74, paragraph 3, of the Rules. This contention was based on Article 75, paragraph 1, of the Rules of Court, which provides that

> "The Court may at any time decide to examine *proprio motu* whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties."

A similar contention had been made by Bosnia-Herzegovina at the time of its original request for provisional measures on 20 March 1993. The Parties were informed by letter of 24 March 1993 that the Court had considered the matter and ruled as follows:

> "The Court notes the suggestion made in the request that the Court take certain action *proprio motu* and the reference in this connection to Article 75, paragraph 1, of the Rules of Court. It does not however consider that in the present proceedings, where a specific request has been made for the indication of provisional measures, any question arises of the exercise of its powers under that provision, which in any event do not, in the Court's view, extend to indicating measures without affording both Parties the opportunity of being heard."

I was therefore bound to regard this approach as an attempt to re-open a matter already settled by decision of the Court; on my instructions the Registrar reiterated, in a letter to the Agent of Bosnia-Herzegovina dated 11 August 1993, the Court's position as set out in the letter of 24 March 1993. In view of the circumstances however I

felt it appropriate to exercise my powers under Article 74, paragraph 4, of the Rules of Court. On 5 August 1993, I addressed an urgent message to both Parties, recalling the terms of that Article, which enables the President, pending the meeting of the Court,

> "to call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects".

The message continued:

> "I do now call upon the Parties so to act, and I stress that the provisional measures already indicated in the Order which the Court made after hearing the Parties, on 8 April 1993, still apply.
>
> Accordingly I call upon the Parties to take renewed note of the Court's Order and to take all and any measures that may be within their power to prevent any commission, continuance or encouragement of the heinous international crime of genocide." [BHY 93/47, Ann. 3.]

On 10 August 1993, the Government of Yugoslavia filed in the Registry Written Observations, dated 9 August 1993, on the second request for provisional measures presented by Bosnia-Herzegovina.

On the same day, the Government of Yugoslavia itself filed a request for the indication of provisional measures.

The Agent of Bosnia-Herzegovina has, since the filing on 27 July 1993 of the second request for the indication of provisional measures, transmitted to the Court a considerable number of communications and documents the purpose of which was to amend or supplement that request, and in some cases the Application instituting proceedings. It will be for the Court in due course to rule on the status of these instruments; for the present I shall simply enumerate them.

Communications directed to amending or supplementing the request for provisional measures, or presenting additional material, were addressed to the Court by the Agent of Bosnia-Herzegovina on 4 August, 8 August, 22 August (two communications), 23 August and 24 August 1993; communications directed to amending or supplementing both the request for provisional measures and the Application instituting proceedings were addressed to the Court by the Agent of Bosnia-Herzegovina on 6 August, 7 August, 10 August, 13 August and 22 August 1993.

Copies of all these communications were transmitted to the Agents of Yugoslavia as soon as they were received in the Registry. By a letter dated 24 August 1993, the Agent of Yugoslavia submitted Written Observations of his Government on the matters raised in a number of the communications from the Agent of Bosnia-Herzegovina.

I note the presence in the Court of the Agents and representatives of the two Parties. The Court is at present seised of requests by both Parties for the indication of provisional measures; since Bosnia-Herzegovina is the Applicant in the case, and its request for measures is prior in date to that of Yugoslavia, I propose to give the floor first to Bosnia-Herzegovina.

I therefore give the floor to Mr. Mohamed Sacirbey, Permanent Representative of Bosnia-Herzegovina to the United Nations.

Mr. Sacirbey.

Mr. SACIRBEY: Thank you, Mr. President.

Mr. President, distinguished Judges of the International Court of Justice, may it please the Court.

On 8 April 1993, this Court issued its Order in response to a request from the Republic of Bosnia and Herzegovina for preliminary measures, by concluding, in part, that Serbia and Montenegro should take all measures to ensure that genocide does not continue to be executed against the Bosnian people and, in particular, against the Muslims of Bosnia and Herzegovina.

Today, we are here to inform you that the genocide continues and that we, the Government of the Republic of Bosnia and Herzegovina, are now being forced to negotiate with the perpetrators of this crime, while the threat of ongoing genocide is held as a loaded gun to our head.

In view of the fact that the aforementioned acts of genocide continue in contravention of the Court's Order for Provisional Measures of 8 April 1993, we call upon the Court to address three general and essential issues:

First, can the absolute right to self-defence, affirmed by Article 51 of the United Nations Charter of the People and Government of the Republic of Bosnia and Herzegovina be abridged by the Security Council, as long as the Council has not taken all the necessary measures required to stop the genocide?

Second, can the Security Council act to limit the affirmative obligation of the signatories of the Convention on the Prevention and Punishment of the Crime of Genocide to stop the crime? and

Third, can any agreement signed by the Republic of Bosnia and Herzegovina, under the compulsion and threat of continuing genocide, be deemed as valid and binding on the Republic of Bosnia and Herzegovina?

These three issues are invariably interrelated.

Despite an ongoing genocide, certain influential members of the European Community and certain powerful permanent members of the Security Council, have unduly used their influence to maintain an unjust and genocide-abetting arms embargo on the Republic of Bosnia and Herzegovina and to effectively prevent third countries from taking the necessary measures to confront the Serbians and stop their campaign of genocide. Thus far, the common denominator of all international community interventions has been the lack of will to confront and stop the Serbian perpetrators.

Promoting negotiations between the victim and perpetrator is, in and of itself, an inadequate and unprincipled response to the crime of genocide. What is especially flawed in this process, both morally and logically, is that the negotiations are promoted as a precondition to ending the execution of the crime.

In this matter I noted yesterday the threat of Dr. Karadic that if in fact the Republic of Bosnia and Herzegovina does not acquiesce to the demands to sign the current proposal from the Co-Chairmen, that in fact the assaults and sieges on the people of Bosnia and their cities will intensify.

Although numerous calls by the Security Council and General Assembly for a cease-fire, the free flow of humanitarian assistance, and an end to ethnic cleansing, murder, torture and rape of civilians have been ignored by the Serbian forces, the international community avoids the responsibility to confront the Serbians by placing the unprincipled

burden upon the victim to find a way through talks to satisfy the ambitions of those that have resorted to the ultimate in evil, rape, torture, murder and genocide.

Certain members of the international community have offered the services of mediators to assist in the negotiations. Lacking the means and/or will to compel the Serbians to comply with the resolutions and Orders of the Security Council, the General Assembly, the London Conference on the Former Yugoslavia and this Court, the mediators effectively legitimize the ambitions, pretences and, ultimately, the consequences of the crime. The rule of law is overridden by the rule of force. The more brutal, determined and criminal the force, it seems, the less will there is to confront it.

Some might argue that the Bosnians always have the option not to participate in the negotiations, if they are so flawed. However, even here, we face unprincipled pressure. That is, if we do not participate in this process, we are then labelled as unco-operative by those who have the very responsibility to stop the crime. Consequently, the criminal takes advantage and is emboldened to pursue its objectives even more boldly and brutally, believing that the international community will not respond, and believing that the victim will be blamed for resisting the legitimization and consequences of the crime.

None the less, because of a clear lack of will to confront the perpetrator, the Bosnians must pursue negotiations as a subtitute for justice as the only available option for a longer term peace. However, if the negotiations are to bring about any durable peace, they must be pursued in an environment hospitable for an equitable solution. A cease-fire must be firmly established, humanitarian assistance must not be blocked, and the aggression and sieges must stop by whatever means are

necessary. To pursue negotiations in any other environment is to make an agreement, resulting therefrom, null and void on the basis that any signature was coerced under the threat of continuing genocide.

More to the point, should we even expect that an agreement delivered under such inequitable circumstances would be durable? From the perspective of the victim, it is a source of continuing bitterness and fuels the desire to see justice delivered. From the view of the perpetrator, it is a formula for success and an all too obvious invitation for further crimes.

This Court, in its Order for Preliminary Measures of 8 April 1993, unequivocally called for an end to the genocide against the Bosnian people and for all measures to stop this genocide. Today, the siege of our cities and the torture, rape, murder, and expulsion of our citizens continue unabated. The Court is now faced with the imperative for more direct and resolute measures to see its Order of 8 April 1993, implemented. In addition, the Court is faced with the prospect that the failure to implement its Order of 8 April 1993, has, in fact, been utilized as a means to coerce the victim to accept, rather than resist, the consequences of the crimes that this Court has already condemned.

Despite some reasons to fear that this Court may become subject to political pressure, we, the Bosnians, must deliver our confidence in the independence of the Court and its commitment to legal principles and the rule of law. After all, a failure by this Court to confront the Serbian aggression, crime of genocide, and the consequences thereof would not only be a tragedy for Bosnia, but also a denigration of the international legal system.

As the crime of genocide continues unabated, Serbia and Montenegro are using the apparatus of the International Court of Justice and the United Nations to deny and therefore abet their crime, by repeatedly denying the existence of the plaintiff. In the current context, such legal manoeuvring must be seen as abetting the crime. Signalling the attempt to dismember a sovereign State through genocide, official Yugoslav statements repeatedly refer to the "the so-called Republic of Bosnia and Herzegovina" or "the Former Republic of Bosnia and Herzegovina" - including in arguments before this Court. This is demonstrated in the document submitted to the Court, entitled

"Observations of the Federal Republic of Yugoslavia to the second request made on 27 July 1993 and the amended second request made on 4 August 1993 by the *so-called* Republic of Bosnia and Herzegovina for the indication of provisional measures" (emphasis added). Again, "*Former* Republic of Bosnia and Herzegovina" (emphasis added) appears in offical press releases of the United Nations Mission of the Federal Republic of Yugoslavia, for example, the Press Releases dated 6 August 1993 and 12 August 1993. Clearly, Yugoslavia is using the forum of the United Nations and this Court to eulogize a recognized Member State, even as Yugoslavia, that is Serbia and Montenegro, commits genocide aggression against that State.

Thus, in the references to the "so-called" and "Former" Republic of Bosnia and Herzegovina, the Belgrade régime seeks to mock the authority of the International Court of Justice and the United Nations, utilize these institutions to further the dismemberment of the Republic of Bosnia and Herzegovina, a member of the United Nations, and signals the Belgrade régime's final steps in perpetrating its aggression and the crime of genocide.

Thank you for your attention, and I now will call upon my fellow Co-Agent, Professor Boyle to present the rest of our case.

Professor BOYLE: Mr. President, distinguished Members of the International Court of Justice, may it please the Court:

The Members of the Court are familiar with the procedural posture of this case, so I will not take your time to review it here. On 8 April 1993, this Court issued an Order indicating three measures of provisional protection on behalf of the Republic of Bosnia and Herzegovina, but the Respondent - Yugoslavia (Serbia and Montenegro) -

paid absolutely no attention whatsoever to this Court's Order, and immediately proceeded to violate each and every one of its provisions on a daily basis.

Section B of our current request of 27 July 1993, as amended and supplemented, contains a brief chronology of the Respondent's violation of the Court's Order. It is a chronology of death, destruction, murder, rape, terror, torture, the wanton devastation of cities, and the intentional infliction of physical and mental suffering upon hundreds of thousands of completely innocent human beings. There are over 30 pages of single-spaced, densely typed entries drawn from reputable news media sources around the world including accounts by organs and officials of the United Nations Organization, distinterested foreign governments, war correspondents, and other eye-witness accounts. As you can see for yourselves, the Respondent has committed and continues today to commit acts of genocide against the people and State of Bosnia and Herzegovina in violation of the 1948 Genocide Convention and this Court's Order of 8 April 1993.

There are no limits to the cruelty, rapacity, territorial ambitions and bloodlust of this Respondent. And as confirmation of this fact, public officials of the Respondent - including and especially the President of Serbia, Slobodan Milosevic - are today openly and publicly proposing and negotiating in Geneva, Belgrade, Zagreb and elsewhere, the partition, dismemberment, annexation and incorporation of the sovereign territory of the Republic of Bosnia and Herzegovina, as we speak here today. The success of their endeavours will constitute the logical culmination of their genocidal plans to create a "Greater Serbia" as explained in our Application that instituted these proceedings. If not

prevented by this Court, the Respondent plans to annex and incorporate approximately 75 per cent of the sovereign territory of the Republic of Bosnia and Herzegovina.

This brutal, savage and criminal act will then be followed by further measures of so-called "ethnic cleansing" against all who live in our lands and continue to recognize Bosnian citizenship - whether Muslim, Croat, Serb, Jew or other. We have already established in our previous submissions to the Court that "ethnic cleansing" is a form of genocide in violation of the Genocide Convention. The Respondent's proposed negotiated partition of Bosnia and Herzegovina will be the prelude to the ultimate extermination of our people and the final extinction of our State. Clearly, the destruction of a sovereign nation State by means of genocide by another State must fall within the prohibitions of the Genocide Convention to which both States are Contracting Parties.

Since the Court's Order of 8 April 1993, another major development having a decisive bearing upon our request for provisional measures of 27 July is that the Respondent has officially admitted its responsibility for arming, equipping, and supply the Serb army and militia forces, paramilitary and irregular armed units operating in Bosnia and Herzegovina. Section C of our current request contains the full text of at least three statements to that effect issued by the Respondent on or about 11 May 1993. Here I want to draw your attention to what we believe to be the most salient portions of two of these documents for the purpose of this request.

The first communiqué was issued by the Republic of Serbia, which is the predominant part of Yugoslavia (Serbia and Montenegro), the Respondent in this case. It starts by proclaiming:

> "Firmly believing that a just battle for freedom and the equality of the Serbian people is being conducted in the Serb Republic [of Srpska] the Republic of Serbia has been unreservedly and generously helping the Serb Republic, in spite of the enormous problems it had to face due to the sanctions introduced against it by the UN Security Council."

And, that was one month after your Court Order.

Notice, the Republic of Serbia shamelessly but forthrightly proclaimed that the campaign of genocide by Serbs in Bosnia is "a just battle for freedom and the equality of the Serbian People". In other words, the Republic of Sebia has fully endorsed, ratified and approved what the Bosnian Serbs have done: genocide and acts of genocide in violation of the Genocide Convention and this Court's Order of 8 April 1993, less than a month before. The Republic of Serbia, in the communiqué, then admitted that it "has been unreservedly and generously helping" the Bosnian Serbs in violation of the express will of the United Nations Security Council. What effrontery. In essence, Serbia has admitted that it is factually and legally responsible for what the Bosnian Serbs have done to the people and State of Bosnia and Herzegovina and could not care less what the Security Council says about this matter.

Towards the end of the document, the Republic of Serbia states: "Since the conditions for space have been met ..." Notice the use of the word "space". Here the Republic of Serbia indicates an awareness that Bosnian Serbs have been driving non-Serbs out of their homes in order to create "space" by means of so-called "ethnic cleansing", which is a form of genocide. Serbia's use of the word "space" in this communication should remind the Court of the invocation of the word "*Lebensraum*" by Hitler and the Nazis over a generation ago. This communiqué by the Republic of Serbia concludes by freely admitting that it has been providing "funds, fuel, raw materials, etc." to the Serbs in Bosnia at the cost of its "economic depletion".

These admissions by the Republic of Serbia were fully endorsed, approved, and ratified by Yugoslavia (Serbia and Montenegro) in the second communiqué issued in conjunction with and as part of the same document as the first communiqué and I have attached this document to my request and it was provided to me by the Respondent's Mission in

New York. So, the Respondent in this case itself has legally admitted that it has supplied "funds, fuel, raw materials, etc." to the Serbs in Bosnia from the outset of this conflict on or about 6 March 1992 up to and including at least 11 May 1993. This is more than enough to establish the Respondent's responsibility under international law for violating the 1948 Genocide Convention and all three operative provisions of this Court's Order of 8 April 1993.

The first communiqué's use of the abbreviation "etc." raises the far more serious and ominous implication that the Respondent has been providing military weapons, equipment, suplies and troops to Serbian forces in Bosnia, who in turn have used these instruments of warfare to inflict acts of genocide upon the people and State of Bosnia and Herzegovina. This conclusion is made quite clear by all the facts introduced into evidence so far in this case. It can also be confirmed by a statement given by Slobodan Milosevic, President of the Republic of Serbia and *de facto* ruler of the Respondent, which was issued in conjunction with the promulgation of these communiqués on 11 May 1993 and I have provided to the Court the full text of the translation of Mr. Milosevic's statement, prepared by the BBC. This statement by Mr. Milosevic - acting in his official capacity as President of the Republic of Serbia - speaks for itself and binds the Respondent.

Mr. Milosevic started by admitting that the Republic of Serbia provided assistance to "Serbs outside of Serbia" for "the past two years" - that is, going back to on or about May 1991 or so, just before the entire conflict in the former Yugoslavia was unleashed by Mr. Milosevic himself when he instituted barbaric aggression and genocidal warfare against the peoples of Slovenia and Croatia and then later against Bosnia and Herzegovina.

Mr. Milosevic then shamelessly stated: "Most of the assistance was sent to people and fighters in Bosnia and Herzegovina." Let me repeat his word "fighters". In other words, Mr. Milosevic admitted and conceded that the Republic of Serbia provided "assistance" for the past two years to "fighters" in the Republic of Bosnia and Herzegovina. He also indicated that this assistance was provided "to Serbs who were at war" in defiance of the will of the international community, as expressed by international sanctions adopted by the United Nations Security Council. Once again, Mr. Milosevic could not care less about Security Council resolutions and that is why this Court must pay most significant attention to the 10 provisional measures of interim protection that we have requested. We believe that the Security Council will pay some attention to what this Court has to say.

Mr. Milosevic then stated quite clearly that, as a result of the help provided by the Republic of Serbia to Bosnian Serbs for the past two years, "Most of the territory in the former Bosnia-Herzegovina belongs now to Serb provinces." In other words, Mr. Milosevic has endorsed, approved and ratified the campaign of "ethnic cleansing" and genocide launched by the Bosnian Serbs at the behest of the Respondent, which has resulted in their seizure of almost 75 per cent of the sovereign territory of Bosnia and Herzegovina. If there were any doubt about this, Mr. Milosevic concludes his statement by saying that, because of the "great, great deal of assistance to the Serbs in Bosnia" given by the Republic of Serbia, the Bosnian Serbs "have achieved most of what they wanted".

These three documents set forth in our request indicate quite clearly that the Respondent has knowingly armed, equipped and supplied Serbian fighters in Bosnia for the express purpose of seizing Bosnian lands and then driving out non-Serbs by means of "ethnic cleansing", a

form of genocide. Moreover, all foreign observers agree and Section B of our current request as supplemented indicates that, despite the so-called cut-off of 11 May 1993, the Respondent has continued to provide weapons, equipment and supplies to Serbian military, militia, paramilitary forces and irregular armed units operating in Bosnia and Herzegovina continuously until today, as we speak, in violation of the Genocide Convention and this Court's Order of 8 April 1993. That is precisely why the Respondent rejected its prior offer to permit the stationing of United Nations monitors along its border with Bosnia and Herzegovina in order to verify their so-called cut-off.

The Court will recall that the then acting Agent for the Respondent, Mr. Zivkovic, touted this offer before the Court during the course of oral proceedings on 2 April 1993 as an indication of the Respondent's supposed peaceful intentions towards the people and State of Bosnia and Herzegovina.

Yet as we now know everything the Acting Agents for the Respondent told the Court on 2 April 1993 was a complete contradiction to the truth! The three statements quoted verbatim in Section C of our current request testify to the true facts of this case. They indicate quite clearly why the Court must grant our request for the additional measures of protection set forth on 27 July 1993.

In order to substantiate and corroborate these admissions we have also filed with the Court on 24 August 1993 and expert article by Dr. Vego published in Jane's Intelligence Review as recently as October of 1992, the contents of which I duly incorporate here by reference. This article establishes beyond a reasonable doubt that the Respondent actually exercises operational command-and-control over the JNA/YPA military forces and other Serbian military, paramilitary and irregular armed units currently deployed in Bosnia and Herzegovina that have committed acts of genocide in violation of the 1948 Genocide Convention and this Court's Order of 8 April 1993. We respectfully ask the Court to consider this expert article when it retires to deliberate on our current request.

Section D of our request sets forth the consequences sought to be avoided by these additional measures. Their overriding objective is to prevent the further loss of human life and further acts of genocide against the people of Bosnia and Herzegovina. Already, a minimum of about 150,000 people have been killed, 30,000 women have been raped, and about two-and-a-half million Bosnians have been rendered refugees from their own homes.

But the tragedy of Bosnia and Herzegovina has only just begun - unless this Court moves promptly, effectively, and fully by means of granting the additional measures of protection set forth in our request.

If the Respondent actually carries out its plan to partition, annex and incorporate three-quarters or so of the sovereign territory of the Republic of Bosnia and Herzegovina, the generally accepted figure is that up to one million or more Bosnian citizens will then be subjected to so-called "ethnic cleansing", which is a form of genocide. And I do write that figure from an official State Department study whose contents was supported earlier this summer in the *New York Times*. Right now as we speak, hundreds of thousands of completely innocent human beings in Bosnia and Herzegovina are currently being subjected to death, starvation, malnutrition, severe bodily injury, torture, physical and mental harm, as well as the mass rape of women, and the systematic abuse of children. The provisional measures to be indicated are thus compelled by the most fundamental humanitarian concerns.

The Respondent's gross, systematic, and persistent violation of basic international legal and humanitarian rights pertaining to the people of Bosnia and Herzegovina could *never* be adequately compensated for the payment of monetary reparations should the Court ultimately decide in favour of Bosnia and Herzegovina's claims as set forth in our Aplication. Pending the Court's decision on the merits, it is imperative that the Respondent's criminal and genocidal behaviour be terminated forthwith by these additional provisional measures. Otherwise, the Respondent and its agents and surrogates will inflict immediate and irreparable harm upon the people and State of Bosnia and Herzegovina. Only by granting the provisional measures set forth in our current request can the rights of the people and State of Bosnia and Herzegovina be fully protected and preserved.

Indeed, if the Court does not grant the additional provisional measures set forth in our request, Bosnia and Herzegovina will not be able to argue its case on the merits to the Court. I hereby certify this fact to be true in my capacities as Agent for the Republic of Bosnia and Herzegovina, as a Member of the Bar of the Supreme Court of the United States of America and the Bar of the Supreme Judicial Court of the Commonwealth of Massachusetts. This Court must not allow the Respondent to win this case by means of exterminating the people and destroying the State of Bosnia and Herzegovina.

But if you do not act that is exactly what they intend to do, to remove us from the list permanently.

In the recent past, this Court has emphasized that a 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):
>
> > "The Court shall have the power to indicate, if it considers that circumstances so require, *any* provisional measures which ought to be taken to preserve the respective *rights* of either *party*." (Emphasis added.)

And I emphasize the word "any" found in Article 41.

Our request for additional measures of protection is motivated by the desire to have the Court protect the "rights" of the people and State of Bosnia and Herzegovina as set forth in Section D of our request. This request is even more importantly motivated by the desire to have the Court protect the very existence of the people and State of Bosnia and Herzegovina from extermination by means of genocide, partition, dismemberment, annexation and incorporation by the Respondent. Since the Court has the legal power to protect the "rights" of Bosnia and

Herzegovina under Article 41, then *a fortiori* the Court must have the legal power to protect the Republic of Bosnia and Herzegovina itself.

The sovereign "rights" of the people and State of Bosnia and Herzegovina to their independent existence as a nation State and as a member State of the United Nations Organization must certainly be among the "rights" that the Court can protect under Article 41 of the Statute, which is "an integral part" of the UN Charter according to Article 91. In essence, I am today asking the Court to act under Statute Article 41 to protect the very existence of a State Member of the United Nations which is a "party" to a case that is currently pending before the Court from the physical mutilation and then total annihilation by the other "party" to the same case in violation of the 1948 Genocide Convention, which is the very subject-matter of the lawsuit itself. The word "any" found in Statute Article 41 indicates quite clearly that the Court has the power to protect Bosnia and Herzegovina by all means possible from genocide, extermination, partition, dismemberment, annexation, incorporation, and then ultimate destruction by the Respodent.

The Court's jurisdiction in this case is already prima facie established under the Genocide Convention for all the reasons set forth in our Application and our 20 March 1993 request for provisional measures, and the oral submissions that I already made before the Court on 1 and 2 April 1993.

Indeed, the Court has already indicated provisional measures on behalf of Bosnia and Herzegovina in its 8 April 1993 Order. In light of the three statements made by the Respondent, on or about 11 May 1993, in light of the public plans by the Respondent to partition, dismember, annex and incorporate substantial portions of the sovereign territory of the Republic of Bosnia and Herzegovina, and in light of the violation of this Court's Order of 8 April by the Respondent, we believe that the Court must now indicate additional provisional measures to preserve our rights under the Genocide Convention as well as our right to exist as a sovereign nation State and a Member of the United Nations.

Because the Respondent has repeatedly contested the jurisdiction of the Court on the basis of the Genocide Convention, I have felt it necessary to file with the Court a 44-page Memorandum of Law on jurisdiction under the Convention, that was dated 22 August 1993. I will not review that Memorandum in detail here, but will simply incorporate its contents by reference at this time. But the Memorandum establishes beyond a reasonable doubt precisely why this Court has jurisdiction over our Application and our current request for provisional measures under the 1948 Genocide Convention. It also establishes beyond a reasonable doubt why the Court should construe its jurisdiction under the Genocide Convention in the most liberal and far-reaching manner possible for the purpose of these proceedings and in order to accomplish the sacred objectives of the Genocide Convention itself. I submit that the Court has all the authority it needs under the Genocide Convention and Statute Article 41 to grant all of the provisional measures we have now requested in full and as soon as possible.

Nevertheless, and out of an excess of caution, concerning this most important question of the jurisdiction of the Court, I have also filed a brief Memorandum of Law outlining our thoughts on why the Court's

jurisdiction in this case is also grounded in the Customary and Conventional International Laws of War and International Humanitarian Law, including but not limited to the Four Geneva Conventions of 1949, the First Additional Protocol of 1977, the Hague Regulations on Land Warfare of 1907 and the Nuremberg Charter, Judgement, and Principles. And I should note that the Former Yugoslavia did indeed sign the Nuremberg Charter. The precise reasons for the assertion of these additional jurisdictional bases will be developed at greater length in our Memorial which is due before the Court on 15 October 1993.

But if the Court does not grant our additional measures of protection in full and as soon as possible we will not be able to submit our Memorial to the Court on 15 October 1993. Without these additional measures of protection, we could be physically destroyed and legally liquidated, both as a people and a State, by the Respondent before then. So the Court must grant our requested additional measures of protection in order to permit us to even begin to argue our case on the merits to the Court. Certainly, one of the "rights" of Bosnia and Herzegovina that the Court has the power to protect under Statute Article 41 is our right to institute and conduct these legal proceedings in accordance with the provisions of the United Nations Charter, the Statute and Rules of the Court and the Genocide Convention itself.

Once again, out of an abundance of caution, concerning this most important question of the Court's jurisdiction to grant additional provisional measures and the final relief we have requested, we have also relied upon the letter of 8 June 1992 from Slobodan Milosevic and Momir Bulatovic, the respective Presidents of Serbia and Montenegro (the Respondent) to Mr. Robert Badinter, President of the Arbitration Commission on the Conference of Yugoslavia. On 13 August 1993, I filed

with the Court a formal Memorandum of Law on why "Yugoslavia (Serbia and Montenegro) has accepted the Court's Jurisdiction under Article 36, paragraph 1, over all Legal Disputes Between the six Former Yugoslav republics arising from the Dissolution of Yugoslavia" on the basis of this 8 June letter. Once again, I will not review the contents of the Memorandum here; but will simply incorporate it by reference. But for reasons fully explained in the Memorandum, we submit that the letter falls within the ruling of this Court found in the *Nuclear Tests* case of 1974 instead of the *Aegean Sea Continental Shelf* case of 1978.

We submit that by means of the letter the Respondent accepted the jurisdiction of the Court to hear all three questions posed to the Badinter Commission by Lord Carrington, and including "all questions involved in the overall settlement of the Yugoslav crisis" and "all legal disputes which cannot be settled by agreement". This declaration is clear, unconditional and immediate, and was expressed in unambiguous language and intent. As the letter makes clear, the Respondent accepted the jurisdiction of the Court over these matters in order to avoid and evade the jurisdiction of the Badinter Commission. But now we have accepted the Respondent's offer to have these matters adjudicated by the Court, the Respondent seeks to avoid and evade the jurisdiction of this Court as well. The Respondent cannot have it both ways. It is either Badinter, which they have rejected, or this Court, which they have also rejected.

In terms of context, the letter of 8 June was a formal public statement issued in response to the Chair of an international arbitration tribunal concerning the proper forum for the resolution of a defined set of issues between a defined set of parties. It cannot now be dismissed as a general policy statement with no binding effect. The Republic of

Bosnia and Herzegovina as well as the participants in the conference and the entire international community have reasonably relied upon this letter by the Respondent as an acceptance of the Court's jurisdiction with respect to all legal disputes between the Former Yugoslav republics arising from the Yugoslav crisis, which would include the subject-matter of this lawsuit and our current request for provisional measures.

Since first introducing this letter into evidence before the Court on 1 and 2 April, we have obtained a precise translation of the operative paragraphs from a Serbo-Croatian language into English by a linguistic expert, Professor Anne Henderson at the College of William and Mary in Williamsburg, Virginia. Professor Henderson's translation demonstrates that the language used in the letter was intended to convey an immediate and unconditional acceptance of the Court's jurisdiction. And here I quote from the operative paragraphs of Professor Henderson's translation:

> "The Federal Republic of Yugoslavia takes the position that those legal disputes which cannot be resolved through agreement of the Federal Republic of Yugoslavia and the former Yugoslav republics must be submitted to the juisdiction of the International Court of Justice as the principal court organization of the UN.
>
> Therefore, keeping in mind the fact that the questions your letter raised were of a legal nature, the Federal Republic of Yugoslavia proposes that if agreement on these questions cannot be reached among the participants of the conference, they be resolved before the International Court of Justice in accordance with the Statute of that Court."

The language is unqualified in stating that all legal disputes specified therein "must be submitted" to the Court and later that the three specific questions "be resolved" by the Court. The language in *Aegean Sea* was neither as definite nor as forceful. Moreover, the *Aegean Sea* communiqué was not signed or initialled by either of the Prime Ministers, which is the case here for the two Presidents that constitute the Respondent (see *I.C.J. Reports 1978*, p. 39). Once again, we submit this letter and declaration fit within the *Nuclear Test* cases not the *Aegean Sea* case. Finally, in support of this proposition, I also mention it this time and cite as authority directly on point the Arbitration between France and Canada of 17 July 1986 involving the application of a 1972 Fisheries Treaty between the two States. This Arbitration can be interpreted to stand for the proposition that when a party to a dispute makes a formal declaration during arbitration, this declaration is binding (see *Revue générale de droit international public*, p. 756). In this case, the French agent declared during an earlier arbitration proceeding that France would enforce the 1972 Treaty quotas on its nationals who were fishing in the disputed area. The Arbitration Committee ruled that this statement was binding on France (*ibid.*).

Similarly, the 8 June 1992 letter and declaration was a formal, signed joint statement to the Badinter Commission by the Presidents of Serbia and Montenegro on behalf of the Respondent in this case made during the proceedings of the International Conference on the Former Yugoslavia. The Chairman of the Conference asked the Arbitration Commission, and indirectly all six republics, how the numerous legal issues should be settled. Serbia and Montenegro responded, on behalf of the Respondent, that if the republics themselves could not settle their disputes, then only the International Court of Justice - not the Badinter Commission - must adjudicate the matters at issue. Such a declaration, made during these arbitration proceedings, is binding upon Serbia and Montenegro, and thus upon the Respondent, for the reason set forth in these 1986 arbitration proceedings between France and Canada.

One final point about the 8 June letter needs to be explained. The Badinter Arbitration Commission reported in its Interlocutory Decision (Opinions Nos. 8, 9 and 10) of 4 July 1992 that

> "The Republics of Montenegro and Serbia informed the Chairman of the [ICFY] Conference and the Chairman of the Commission of Arbitration in letters dated 19 June [1992] that they maintained their positions [set forth in the joint letter of 8 June 1992], Serbia considering in addition that the Commission did not have the power to pronounce upon its own competence." (See *International Legal Materials*, Vol. 31, pp. 1518-1519, No. 6: November 1992.)

So in other words, on 19 June 1992 the President of Serbia and the President of Montenegro independently reaffirmed their joint position of 8 June that outstanding matters between the Former Yugoslav republics that could not be resolved by means of agreement, must be submitted to the International Court of Justice. Now despite our best efforts, we have not yet been able to obtain these two 19 June letters. But, we respectfully submit that the Court should take the Badinter Commission at

its word and conclude that the Respondent has, not once, but twice, publicly and officially indicated its intention and willingness to submit these disputes to the Court. And therefore, again, the Court's jurisdiction falls within the *Nuclear Test* cases, the earlier Arbitration, not within *Aegean Sea*.

Now to conclude the section on jurisdiction, and then perhaps the Court might wish to take a coffee break, I have one final point to make and that is, once again out of an abundance of caution and in deference to the wishes of the Court on the question of jurisdiction, I have filed with the Court on 6 August 1993 a formal Memorandum of Law submitting that in addition to the jurisdictional basis already set forth, the Court's jurisdiction to hear this case in our current request for provisional measures is grounded in the Treaty between the Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes (Protection of Minorities), signed at Saint-Germain-en-Laye on 10 September 1919, which called for the protection of minorities and which provided for the compulsory settlement of disputes by the Permanent Court of International Justice. Once again, I will not bother to take your time here to review this detailed Memorandum and amendment to our Application and the current request at this time, but was simply incorporated by reference in my oral submission.

For all these reasons, then, we respectfully submit that the Court now has all the jurisdiction it needs to grant our requested additional measures of protection on the grounds of the Genocide Convention; the customary and conventional international laws of war and international humanitarian law; the Respondent's letter and Declaration of 8 June 1992; and finally on the basis of the Serb-Croat-Slovene Treaty of 1919.

Thank you very much and I suggest that we all break for coffee.

The PRESIDENT: Thank you very much Professor Boyle. So we will take our break now and then resume.

The Court adjourned from 11.20 to 11.40 a.m.

The PRESIDENT: Please be seated. Professor Boyle.

Mr. BOYLE: I am not going to read through all of the ten additional measures of provisional protection we have requested - you have them there before you - but I will provide you with a brief commentary upon the rationale for each of them.

The first one, a cease-and-desist order against the Respondent to provide any type of assistance to Serbs in Bosnia and Herzegovina, is fully warranted by the three statements made by the Respondent on or about 11 May 1993, concerning the so-called cut-off of assistance to Serbian fighters in Bosnia. All informed observers agree that this assistance is continuing to be provided by the Respondent and the Republic of Serbia to Serbian fighters in Bosnia and Herzegovina in violation of this Court's Order of 8 April 1993 and the 1948 Genocide Convention. Indeed, if you read the three statements themselves, they all indicate that various sorts of assistance will continue to be provided to Serbian fighters in Bosnia, despite the so-called cut-off and despite this Court's Order of 8 April 1993. We are asking the Court to order an immediate and unconditional cut-off of any type of assistance by the Respondent, including the Republic of Serbia, to Bosnian Serbs for any purpose or any reason.

The second measure of provisional protection is fully warranted for the reasons set forth in Section D of our request. We have asked the Court to issue a cease-and-desist order to public officials in the Respondent and especially Mr. Milosevic, concerning all schemes, proposals, plans and negotiations to partition, dismember, annex or incorporate the sovereign territory of Bosnia and Herzegovina. As we pointed out in our Application, it has been the long-standing plan of the Respondent to create a "Greater Serbia" by means of genocide and acts of

genocide. In the event that the partition, dismemberment, annexation and incorporation of Bosnia and Herzegovina by the Respondent is actually carried out, then there will inevitably occur further acts of so-called "ethnic cleansing" and genocide against the staggering figure of almost one million more human beings - completely innocent men, women and children - in Bosnia and Herzegovina and you can see their suffering on your TV sets this evening when you come home from work.

Concerning this second requested measure of protection, I have filed documents with the Court proving that the recently concluded "negotiations" in Geneva were premised upon the assumption that the Republic of Bosnia and Herzegovina would be carved up into three independent states and deprived of its membership in the United Nations Organization and deprived of sovereign control over our own capital, Sarajevo. As proof of this, I refer the Court to my brief communication of 6 August 1993 and my 20-page communication of 7 August 1993 concerning the so-called Owen-Stoltenberg Plan and these negotiations. Again, I will not bother to review these documents here but will simply incorporate them by reference at this time. These documents establish beyond a reasonable doubt that the second and third provisional measures of protection are fully warranted by the circumstances.

The so-called Owen-Stoltenberg Plan is a diktat that is the legal equivalent to what Hitler presented to Czechoslovakia at Munich in 1938. It is based on the assumption that the Republic of Bosnia and Herzegovina, a member State of the United Nations Organization, will be carved up into three independent states and deprived of our United Nations membership. We have repeatedly and most emphatically rejected this proposal to sign our own death certificate as a sovereign nation State and member of the United Nations Organization. But I want to indicate that Bosnia and Herzegovina will always negotiate in good

faith, in accordance with general principles of international law, including the United Nations Charter and the principles of the London Conference, whenever we have the opportunity to so negotiate. The second and third provisional measures will give us the opportunity to negotiate in good faith, without a gun of genocide pointed at our heads.

The third measure of protection seeks to make it crystal clear to the Respondent, as well as the entire world, that the annexation or incorporation of even one centimetre of the sovereign territory of Bosnia and Herzegovina shall be illegal, null, void *ab initio*, deprived of any legal effects whatsoever, that cannot be recognized by the international community for any reason or at any time for the rest of eternity. We believe that an emphatic and sound declaration of our "rights" to that effect by the Court at this time will prevent the partition, dismemberment and annexation of Bosnia and Herzegovina by the Respondent, as well as further acts of genocide and "ethnic cleansing" that could approach the mind-boggling figure of over one million human beings. We submit that the Court has the authority to protect our rights by making such a declaration under Statute Article 41.

The fourth proposed measure of protection simply calls for the Court to determine the rights and conversely the obligations of the people and State of Bosnia and Herzegovina under Article 1 of the Genocide Convention: "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake *to prevent* and to punish." (Emphasis added.) This provisional measure of protection draws attention to the fact that the Government of Bosnia and Herzegovina has an obligation under the terms of the Genocide Convention "to prevent" the acts of genocide that are currently being inflicted upon our people by the

Respondent and yet, because of the arms embargo imposed upon us by the Security Council illegally, we are unable to protect our own people from genocide.

In the fifth provisional measure, we are asking the Court to clarify - not determine but clarify - the legal responsibility of all other Contracting Parties to the Genocide Convention "to prevent" the commission of acts of genocide against the people and State of Bosnia and Herzegovina, as they are obligated to do so by Article 1 of the Convention.

This provisional measure of protection is required by the fact that many prominent States of the world community have publicly taken the position that despite the fact they are parties to the Genocide Convention they have no legal obligation whatsoever "to prevent" the acts of genocide that the Respondent is undeniably perpetrating against the people and State of Bosnia and Herzegovina. We are asking the Court to make it crystal clear to all Contracting Parties to the Genocide Convention that they do in fact and in law have a legal obligation "to prevent" genocide against the people and State of Bosnia and Herzegovina. Such a declaration of rights by the Court at this time will go a long way toward preserving our "rights" under the Genocide Convention within the meaning of Statute Article 41. We have a "right" to the assistance of the other Contracting Parties to the Genocide Convention under the terms of the Convention itself, particularly Article 1.

The sixth measure: we are asking the Court to declare that the Government of Bosnia and Herzegovina must have the means to defend its people and State from acts of genocide and partition and dismemberment by means of genocide. This conclusion flows inevitably from the Genocide Convention itself as well as from Article 51 of the United Nations Charter, both of which we are a party to. Again, the Court's issuance of a declaration of rights along these lines would clarify the legal situation for the entire international community, and especially for the Contracting Parties to the Genocide Convention, several of which are also Members of the United Nations Security Council. And here, I believe it is the case that all but three States who are Members of the Security Council are also parties to the Genocide Convention. Such a declaration of our "rights" by the Court at

this time will go a long way toward preserving our "rights" under the Convention within the meaning of Statute Article 41.

The seventh measure of protection deals with the rights and obligations pertaining to the other Contracting Parties to the Genocide Convention. We are asking the Court to declare that all Contracting Parties to the Genocide Convention have the obligation under Article 1 to prevent acts of genocide, and partition and dismemberment by means of genocide, against the people and State of Bosnia and Herzegovina. Again, many prominent States in the world deny that they have a legal obligation to do anything with respect to Bosnia and Herzegovina despite Article 1 of the Convention. Their position simply is injustifiable. So, we are asking the Court to clarify, not determine but to clarify, the rights and duties of all Contracting Parties to the Genocide Convention with respect to Bosnia and Herzegovina under these unique circumstances. Once again, we submit, such a declaration of our "rights" by the Court at this time will go a long way toward preserving our "rights" under the Convention within the meaning of Statute Article 41. Once again, we have a"right" to the assistance of the Contracting Parties under the terms of the Genocide Convention that we are asking the Court to protect under Article 41.

Now, notice that so far not one of these seven measures of protection I have called for conflicts with United Nations Security Council resolution 713 of 25 September 1991 that imposed an arms embargo upon the former Yugoslavia.

During the course of the oral proceedings on 1 April 1993, I provided a detailed analysis of the negotiating history of this resolution to prove, first, that resolution 713 (1991) was adopted at the express request of and with the permission of the former Yugoslavia;

secondly, that most Members of the Security Council made it quite clear that the legal validity of resolution 713 depended upon the consent of the former Yugoslavia to the arms embargo; and thirdly, that without such express request and consent by the former Yugoslavia the Security Council would not have adopted resolution 713. Again, I will not go through all that analysis here again, but simply refer you to the verbatim record of my oral submissions on 1 April 1993, and incorporate them here by reference.

Recall, however, the Security Council imposed the arms embargo upon the former Yugoslavia only; and at its express request and with its consent. But the Republic of Bosnia and Herzegovina had not yet come into existence as an independent State until 6 March 1992. So, the arms embargo upon the former Yugoslavia did not and could not by its own words apply to the Republic of Bosnia and Herzegovina. We have never consented to or acquiesced in the extension of this arms embargo from the former Yugoslavia to ourselves. We have always claimed that any extension of this arms embargo from the former Yugoslavia to ourselves would violate our inherent right of individual and collective self-defence as recognized by customary international law and United Nations Charter Article 51.

Now later, the Security Council reaffirmed the arms embargo against the former Yugoslavia in paragraph 5 of resolution 724 of 15 December 1991. But for similar reasons, the arms embargo continued to apply only to the former Yugoslavia. By its own terms, resolution 724 (1991) did not and could not apply to the Republic of Bosnia and Herzegovina.

This brings us to the critical resolution of 8 January 1992, when the Security Council adopted resolution 727, in which it decided to

reaffirm the arms embargo upon the former Yugoslavia applied in paragraph 6 of resolution 713 and in paragraph 5 of resolution 724, and then to apply it in accordance with paragraph 33 of the United Nations Secretary-General's Report S/23363, using the following language that is in resolution 724:

> "6. *Reaffirms* the embargo applied in paragraph 6 of resolution 713 (1991) and in paragraph 5 of resolution 724 (1991), and *decides* that the embargo applies in accordance with paragraph 33 of the Secretary-General's Report (S/23363)."

This paragraph 33 of S/23363 reads as follows:

> "33. To all interlocutors, during his recent fifth mission to Yugoslavia, Mr. Vance pointed out that the arms embargo imposed by the Council in resolution 713 (1991) and reinforced by resolution 724 (1991), continues in force and will retain its application unless the Security Council determines otherwise. Indeed, Mr. Vance added that the arms embargo would continue to apply to all areas that have been part of Yugoslavia, any decisions on the question of the recognition of the independence of certain republics notwithstanding."

As best as can be figured out from the record, paragraph 6 of resolution 727 incorporated the reference to paragraph 33 of S/23363 for the purpose of providing former UN Special Envoy Cyrus Vance with some negotiating leverage at that particular time for dealing with the conflicts surrounding the dissolution of the former Yugoslavia. Nevertheless, whatever negotiating utility that the threat contained in paragraph 33 might have had in early January of 1992 has long since disappeared and become irrelevant, immaterial, counter-productive and superseded by supervening events during the past 18 months that are well-known to this Court.

In particular, on 22 May 1992, the UN General Assembly adopted resolution 46/237 that admitted the Republic of Bosnia and Herzegovina to Membership. At that point in time, the Republic of Bosnia and Herzegovina was subject to all of the responsibilities, rights, privileges, duties and obligations of the United Nations Charter, including and especially Article 51 thereof:

"*Article 51*

> "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 ..."

Certainly, no later than 22 May 1992, the Republic of Bosnia and Herzegovina had, and still has, the inherent right to defend itself, both individually and collectively, under Article 51 of the United Nations Charter.

Indeed, there is nothing in resolution 727 that would conflict with this conclusion. And here I wish to draw to the attention of the Court the last sentence of paragraph 33 of S/23363:

> "Indeed, Mr. Vance added that the arms embargo would continue to apply to all areas that had been part of Yugoslavia, *any decisions* on the question of the recognition of the independence of certain republics notwithstanding." (Emphasis added.)

We must analyse the last sentence of paragraph 33 quite carefully because it contains the crux of the problem. The Secretary-General's report expressly used the words "any decisions". Within the context of the Report, these two words can only mean "any decisions" by certain foreign states to recognize the independence of the various republics within the former yugoslavia. By its own terms, paragraph 33 never intended to deal with the eventuality that such former Yugoslav republics might be admitted as member States to the United Nations Organization itself.

Paragraph 14 of our Application of 20 March 1993 pointed out that in December 1991, Bosnia and Herzegovina applied to the European Community for recognition as an independent State. It is this recognition by the member States of the European Community that Mr. Vance was referring to during the course of his fifth mission to the former Yugoslavia that took place from 28 December 1991 to 4 January 1992, which was the subject-matter of the Secretary-General's Report S/23363, and that in turn was the occasion and reason for the adoption of resolution 727 on 8 January 1992. That is why the last sentence of paragraph 33 of S/23363 refers to the words "any decisions". These words must be interpreted to mean "any decisions" by various member States of the European Community to recognize the independence of certain republics of the former Yugoslavia.

This interpretation of paragraph 33 can be confirmed by reference to the rest of the Secretary-General's Report, where numerous references are made to efforts by the European Community and its member States to obtain

a peaceful resolution of the conflicts in the former Yugoslavia. The conclusion can be made especially clear by reference to paragraphs 31 and 32 of S/23363. I will not read those paragraphs here but would encourage all of you to read S/23363 for yourselves. If you do, you will see that it is within the context of anticipated recognition by the European Community that paragraph 33 must be understood and interpreted. It had nothing at all to do with admission to the United Nations Organization.

So, it is clear from this Report that Mr. Vance said nothing at all about the arms embargo that was imposed upon the former Yugoslavia being imposed and extended to its former republics if and when they were formally admitted to the United Nations Organization itself. There is nothing in there, read it for yourself, you will see. So the two sentences found in paragraph 33 that were later incorporated in resolution 727 only dealt with the eventuality of recognition of the Republic of Bosnia and Herzegovina by the member States of the European Community. Paragraph 33 did not and indeed legally could not deal with the admission of Bosnia and Herzegovina to membership in the United Nations Organization by General Assembly as of 22 May 1993. Likewise, resolution 727 did not and could not prejudice the rights of Bosnia and Herzegovina under Article 51 of the Charter when it was formally admitted to Membership in the Organization.

For similar reasons then, all subsequent Security Council resolutions that routinely reaffirmed the arms embargo imposed upon the former Yugoslavia by paragraph 6 of resolution 713 (1991), paragraph 5 of resolution 724 (1991) and paragraph 6 of resolution 727 (1992) cannot properly be construed to apply to the Republic of Bosnia and Herzegovina upon its admission to the United Nations as of 22 May 1992. Rather, all

such Security Council resolutions must be construed in a manner consistent with Article 51 and thereunder the Republic of Bosnia and Herzegovina has and still has the inherent right of individual and collective self-defence. And we need the Court to affirm this right because we are under genocidal attack and aggression this very day.

So, none of these numerous Security Council resolutions can be properly interpreted to apply to the Republic of Bosnia and Herzegovina as a member State of the United Nations. To do otherwise would "impair the inherent right of individual or collective self defense" of the Republic of Bosnia and Herzegovina, and thus violate UN Charter Article 51 and render these Security Council resolutions *ultra vires*: "*Nothing* in the present Charter shall impair the inherent right of individual or collective self-defence..." (Emphasis added.)

This conclusion is also supported by UN Charter Article 24, paragraph 2, that provides:

> "2. In discharging these duties [of maintaining international peace and security] the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII."

So, even when it acts under Chapter VII of the Charter, the Security Council must "act in accordance with the Purposes and Principles of the United Nations" set forth in Chapter I and this consists of Articles 1 and 2 of the Charter. In particular, Article 2, paragraph 1, provides: "The Organization is based on the principle of the sovereign equality of all its Members".

The arms embargo imposed upon the former Yugoslavia by the Security Council legally did not apply and could not apply to the Republic of Bosnia and Herzegovina upon its admission to the United Nations.

Otherwise, the Security Council would not be acting "in accordance with the Purposes and Principles of the United Nations" and thus would be in breach also of Charter Article 24, paragraph 2. Such an improper interpretation of resolutions 713, 724, 727 and their successors would have illegally deprived Bosnia and Herzegovina of our "sovereign equality" with all other UN Member States when it comes to exercising our sovereign right, our inherent right, our natural right - to quote the French version of the Charter - to self-defence against the armed attack and armed aggression by means of genocide that has been continuously perpetrated upon us by the Respondent in violation of the Genocide Convention and the United Nations Charter. Once again, such an improper interpretation of these resolutions would render them all and their successors to be *ultra vires* the Security Council under both Article 24, paragraph 2, and Article 51 of the Charter. And here again I will quote from the introductory language of Article 51: "*Nothing* in the present Charter shall impair the inherent right of individual or collective self-defence..." (Emphasis added.) That includes Security Council resolutions as well.

Finally, Charter Article 25 states clearly: "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Article 51 is certainly one of the most fundamental provisions of the Charter. So, the Member States of the United Nations have an obligation to carry out the terms of resolutions 713, 724, 727 and their successors "in accordance with the present Charter," which would mean "in accordance with Article 51". So, the Member States of the United Nations and parties to the Genocide Convention - and a hundred of them are - are obliged "to accept and carry out" resolutions 713, 724, 727 and their successors in a

manner that would respect Bosnia and Herzegovina's right of individual and collective self-defence against the armed attack and armed aggression by means of genocide that is currently being perpetrated by the Respondent in violation of both the Charter and the Genocide Convention.

The Security Council has never expressly deprived the Republic of Bosnia and Herzegovina of its right of individual and collective self-defense. Indeed, for reasons already explained, the Security Counci would not have had the legal authority to adopt such a resolution in the first place, and that is precisely why they never did so. There is no resolution expressly applying by name to Bosnia and Herzegovina. It isn't there. So, the obligation of all Contracting Parties to the Genocide Convention "to prevent" genocide against the people and State of Bosnia and Herzegovina under Article I remains intact.

And under the Genocide Convention, the Republic of Bosnia and Herzegovina has a "right" to the performance of these obligations by the other Contracting Parties to prevent genocide against us and this right can be protected by this Court under Article 41 of the Statute.

This brings us then to requested Provisional Measure No. 8 and because of its importance I will read it:

> "8. That in order to fulfill its obligations under the Genocide Convention under the current circumstance, the Government of Bosnia and Herzegovina must have the ability to obtain military weapons, equipment, and supplies from other Contracting Parties."

The Court has already stated in paragraph 48 of its Order of 8 April:

> "whereas from the information avaialble to the Court it is satisfied that there is a grave risk of action being taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution ...".

In our current request as supplemented and amended, we have indicated that such genocidal action is still being perpetrated upon us today by the Respondent from 8 April until now, as we speak, you can see it on

television this morning. Under these terrible circumstances of ongoing genocide, we are calling upon the Court to clarify and explain the right of Bosnia and Herzegovina under the Genocide Convention to obtain military weapons, equipment, and supplies from the other Contracting Parties necessary to defend our people and our State from acts of genocide, and partition and dismemberment by means of genocide, that have been and are continously being perpetrated upon us by the Respondent and its agents and surrogates in violation of the Genocide Convention and this Court's Order of 8 April.

A declaration by the Court to this effect at this time will go a long way towards preserving our "rights" under the Genocide convention within the meaning of Statute Article 41. Conversely, without such a declaration of our "rights" under the Genocide Convention by the Court at this time, Bosnia and Herzegovina will not be in a position to argue its claims on the merits to the Court because we will soon be partitioned, dismembered, annexed, incorporated, and destroyed by the Respondent. This is not an exaggeration but a statement of fact.

In the event the Court were to make such a declaration of our "rights" under the Genocide Convention at this time, it would be up to those other Contracting Parties to the Genocide Convention to decide what to do next. And that would include the 12 Members of the Security Council who are also parties to the Genocide Convention - they would decide what to do next. We are not asking the Court to order them to do anything, simply to declare our rights.

This then brings us to the ninth proposed measure of protection:

> "9. That in order to fulfill their obligations under the Genocide Convention under the current circumstances, all Contracting Parties thereto must have the ability to provide military weapons, equipment, suplies and armed forces (soldiers, sailors, airpeople) to the Government of Bosnia and Herzegovina at its request."

Article I of the Genocide Convention clearly states:

> "The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law *which they undertake to prevent* and to punish." (Emphasis added.)

So, all Contracting Parties to the Genocide Convention are obligated to prevent the Respondent's acts of genocide and partition and dismemberment by means of genocide, against the people and State of Bosnia and Herzegovina. Conversely, we have a "right" to the assistance of the other Contracting Parties to the Genocide Convention, that can be protected by this Court under Article 41 of the Statute by making such a declaration.

Article 41 empowers this Court to indicate "any provisional measures" the Court deems necessary to preserve the "rights" of Bosnia and Herzegovina. Under the unique circumstances of this case, and at this critical time in our nation's history, we submit that a declaration of our "rights" by the Court along the lines of these nine proposed provisional measures might very well save the people and State of Bosnia and Herzegovina from extermination, annihilation and liquidation by the Respondent.

Concerning the tenth proposed measure of proisional protection, I have been advised by my Government that the United Nations peacekeeping forces in Tuzla have been obstructing the delivery of humanitarian relief supplies to the people of Bosnia and Herzegovina. Some believe that this is a measure of compulsion designed to coerce the Government of Bosnia and Herzegovina into going along with the so-called partition plan that has been concocted by the President of Serbia and the President of Croatia with the support and approval of EEC Special Envoy David Owen and the current UN Special Envoy Thorvald Stoltenberg. Be that as it may, we

are asking the Court to order United Nations peacekeeping forces in Tuzla to do all in their power to secure the free flow of humanitarian relief supplies to the innocent people of Bosnia and Herzegovina and in this regard I have been advised by my Foreign Minister that there are nearly one million people in the general vicinity of Tuzla who are near the point of starvation.

Finally, at the end of our request for provisional measures you will note that we have asked the Court to exercise its powers under Article 75 of the Rules of Court to indicate provisional measures *proprio motu*. We have suggested several additional provisional measures that the Court might see fit to call upon the Respondent to obey both now and in the future, and a mechanism and a means to do this.

In general, we are asking the Court to grant such other and further relief at this time as the Court may deem to be just, proper, necessary and sufficient to save the people and State of Bosnia and Herzegovina from acts of genocide and partition, dismemberment, annexation, incorporation, destruction and loss of our United Nations membership by means of genocide, and that is clearly what is contemplated at this time. Again I refer you to my communications of 6 and 7 August 1993 that are already on file with the Court. With all due respect to the honourable Members of this Court, it is the obligation of this Court under the United Nations Charter, under the Statute of the Court, under the Rules of Court and under the Genocide Convention, particularly Article 8, to divise whatever type of relief is necessary to save the people and State of Bosnia and Herzegovina from extermination and annihilation by the Respondent. Towards that end, we have also requested the Court to keep the situation in Bosnia and Herzegovina under active review for the indefinite future for the purpose of indicating provisional measures *proprio motu* without waiting for us to file yet another written request. Because of the Respondent's barbaric aggression and genocide, it is extremely difficult for me as a general agent to communicate with the authorities, my Government, in Sarajevo, to get instructions to come here. Time is of the essence for the people and State of Bosnia and Herzegovina.

At this point, I must comment briefly upon the Respondent's recent request for one provisional measure of protection against the Republic of Bosnia and Herzegovina that was made on 9 August 1993 and I will try to keep it brief. In all honesty, this procedural stunt reminded me of the time when over a generation ago the Nazi Government blamed the German Jews for the wanton destruction of synagogues and Jewish property on the

infamous Kristallnacht of 9 November 1938 and then ordered the Jews to pay for the damage that had been inflicted upon them by the Nazis. The Respondent's transparent attempt to make it appear that they are not the perpetrators of genocide can easily be disproven by the Court referring to any of the documentation cited in our Application or any of the evidentiary submissions made so far in this case.

Even the Agent for the Respondent has conceded flat-out in his request of 9 August 1993:

> "Although comprehensive evidence on the crime of genocide now being committed against the Serb people and the ensuant responsibility of the so-called Republic of Bosnia and Herzegovina is hard to provide in the circumstances, ...".

There is one good reason for the lack of this evidence: it simply does not exist!

The Respondent and its agents and surrogates right now illegally occupy over 75 per cent of the sovereign territory of the Republic of Bosnia and Herzegovina. And they still cannot produce any independent or credible evidence that the Republic of Bosnia and Herzegovina is responsible for acts of genocide against our own Serbian citizens. This is because this evidence does not exist. And despite their best efforts, the Respondent has been unable to produce such evidence as conceded by their current Agent, as recently as 9 August 1993, i.e., less than two weeks ago.

In comparison, in our Application and subsequent submissions to the Court, we have referred to and relied upon voluminous documentation by the various organs of the United Nations - the Security Council, the General Assembly, the Human Rights Commission and its Special Rapporteur - by the European Community, by neutral governments and by distinguished non-governmental organizations in the human rights field, such as Amnesty International and Human Rights Watch, in order to support

our claims and our request for provisional measures. If you read through this mass of outside, independent, objective documentation, you will see that there is no evidence that the Government of Bosnia and Herzegovina has committed any acts of genocide against our own Serbian citizens. I challenge the Respondent to produce such evidence from any outside, objective, independent source. So far, the Respondent has failed to do so, despite the fact that the Respondent and its agents and surrogates illegally occupy 75 per cent of our sovereign territory. Where is the evidence? - I said that the last time I was here before the Court. It simply is not there.

All the Agent for the Respondent has given to the Court in support of his request are documents that have been generated by the Respondent itself. No documents by any outside organization. The Respondent's allegations have not been verified by any outside, independent, objective source. Indeed, several of these documents, if you read them carefully, concede that the entire rest of the world community disagrees with the allegations found in these documents. So if the Court were to accept the allegations found in the Respondent's documents, the Court would have to believe that everyone in the entire world is lying about the human rights situation in Bosnia and Herzegovina - including the Security Council, the General Assembly, the Human Rights Commission, its Special Rapporteur, the European Community, the United States Government, Amnesty International and Human Rights Watch, to name just a few.

The Respondent assures the Court that this time it and it alone is telling the truth. Yet the Court now knows that the acting Agents for the Respondent contradicted the truth on behalf of their Government during the course of the proceedings held on 2 April 1993 and I submit that on 9 April the Agent for the Respondent similarly contradicted the

truth when he said that there was evidence that the Government of Bosnia and Herzegovina has committed genocide against our own citizens. Rather, the exact opposite is true: The Respondent and its agents and surrogates have perpetrated acts of genocide against those Serbian citizens of the Republic of Bosnia and Herzegovina who support our Government and strive to maintain and assert their Bosnian citizenship and nationality. They have been killed too, along with the Muslims, the Croats, the Jews and others.

Now, again by comparison, during the course of all the proceedings up until today, Bosnia and Herzegovina has relied almost exclusively and referred to and submitted factual allegations based upon outside, objective, independent and neutral sources. I would not insult the intelligence of this Court at this time by giving you our own internal documentation, which we have. We at this time would like and submit the Court to rely upon sources other than our own when it comes to the indication of provisional measures, whether as of 8 April 1993 or as of today. Under the expedited procedures, the emergency nature of these hearings, we are asking the Court to look at outside, objective, independent, neutral sources as opposed to sources produced by the Party to this lawsuit and we believe that is the best way to proceed. If and when we get to the merits stage of these proceedings, then of course we fully intend to produce the voluminous evidence that has been produced by our Government to support our factual allegations. At that time, this evidence can be critically examined by the Court and by the Respondent. We believe that our own internal evidence will withstand the most demanding scrutiny and will certainly fulfil our burden of proof on the factual allegations set forth in our Application as amended and supplemented and certainly our current request today.

In the meantime, however, and for the purpose of indicating provisional measures at this time, we submit that the Court must not rely upon evidence produced by the Respondent and especially when this so-called "evidence" has not been corroborated by any outside, independent, objective and neutral source, whether by a government, by an international organization or official, or by any human rights organization. So we respectfully request the Court to reject the Respondent's request for this one provisional measure against the Republic of Bosnia and Herzegovina, as the Court did in its Order of 8 April 1993. There is no evidence to support the Respondent's request and therefore there is no need for the Court to give this request.

Finally, I must make a brief comment upon what is entitled "Memorandum" produced by the so-called "Yugoslav State Commission for War Crimes and Genocide" of April 1993, which you have, that was submitted to the General Assembly and the Security Council on 2 June 1993. The truth of the matter is that it has been the Respondent and its agents and surrogates that have perpetrated massive acts of genocide upon the poor people living in Eastern Bosnia and Herzegovina and especially in the vicinity of Srebrenica.

The Respondent's acts of genocide are precisely why these Bosnian citizens have now fled to the so-called "safe havens" in Eastern Bosnia and Herzegovina, including and especially Srebrenica. This self-interested memorandum by an agency of the Respondent tries to turn the truth upon its head. It is the people residing in Eastern Bosnia and Herzegovina who have constituted the most and the worst victims *per capita* of acts of genocide perpetrated by the Respondent and its agents and surrogates. It is the Serb militia forces acting at the behest of the Respondent that have perpetrated "ethnic cleansing", which is a form of genocide, upon almost the entirety of Eastern Bosnia and Herzegovina except the so-called "safe havens" including Srebrenica, which as you know, is not very safe either. We ask the Court to take judicial notice of any of the numerous maps that have come into the public record concerning "ethnic cleansing" by the Respondent in Eastern Bosnia and Herzegovina. And, if you look at those maps, including the so-called "safe havens" you will see that it is the people of Bosnia and Herzegovina who have been the victims of genocide, not the pepetrators.

Indeed, it is curious that page 79 of this memorandum indicates that the "Yugoslavia State Commission for War Crimes and Genocide" relied upon evidence produced by "the command and units of the Army of the Republic of Srpska" in the production of this memorandum and its evidence. I repeat: "the command and units of the Army of the Republic of Srpska". It is that very same command and units of the Army of the Republic of Srpska that has perpetrated the most atrocious acts of genocide against the people and State of Bosnia and Herzegovina in violation of the 1948 Genocide Convention and this Court's Order of 8 April 1993. As a matter of sound public policy and of general international law, this Court must not accept as so-called evidence any allegations produced by

the Respondent working with and in co-operation with and on the basis of evidence manufactured by its agents and surrogates in Bosnia and Herzegovina, the Army of the Republic of Srpska, which themselves have committed massive acts of genocide, murder, systematic rape, torture, robbery, and wanton devastation of homes and property. How dare they rely upon the militia and armed units of the Republic of Srpska to produce this report and then insult the intelligence of this Court, let alone the Security Council, by filing it with you? These are the people who are the killers and the murderers; these are the people who have prepared this report - the Respondent. Then, I think their request should be denied. Indeed this page 79 of the memorandum simply provides additional proof of the fact that the Respondent is acting in co-operation with "the command and units of the Army of the Republic of Srpska". They have admitted it, they filed it with the Security Council, they have now filed it with you. It goes back to our point on command and control, that the Respondent is working with them. Such an official admission by the Respondent provides yet another reason why the Court should grant our ten measures of provisional protection of 27 July 1993 and reject as a matter of sound policy the Respondent's requested measure of 9 August 1993.

The Respondent has still not created even a prima facie case on either the facts or the law to support its request. By comparison, the Republic of Bosnia and Herzegovina has created much more than a prima facie case on both the facts and the law that the Respondent and its agents and surrogates such as "the command and units of the Army of the Republic of Srpska" (p. 79), are perpetrating acts of genocide against the people and State of Bosnia and Herzegovina. The true facts of this case are there for the entire world to see. We ask the Court to

take judicial notice of what the entire world knows to be true for the purpose of deciding on these requests for provisional measures.

At the conclusion of my brief presentation today, I wish to draw the attention of the Court to one short passage taken from the lengthy negotiating history of the Genocide Convention that seems to be particularly prophetic and on point concerning our current request for additional provisional measures. Here I wish to quote from comments made by Mr. Zourek from Czechoslovakia, the victim of Munich, at the 103rd meeting of the Sixth Committee held on 28 November 1948:

> "Mr. Zourek (Czechoslovakia) said that the Committee was discussing guarantees for the application of the Convention. Those guarantees should be appropriate to the object of the Convention, which was to ensure the prevention and punishment of the crime of genocide.
>
> Genocide was brought about by racial, national or religious hatred. That crime might be committed unexpectedly and on a large scale. Legal guarantees, however, seemed too slow to ensure the effective prevention of the perpetration of such a crime.
>
> *The representative of Czechoslovakia observed that there was every reason to think that the human group concerned would be massacred before the completion of proceedings instituted with the International Court of Justice.* The Czechoslovak delegation asked that supervision of the implementation of the Convention should be entrusted to the Security Council, which had appropriate means at its disposal for stopping, should occasion arise, the perpetration of the crime of genocide ..." (See *Official Records of the General Assembly, Third Session, Part I, Sixth Committee,* Legal Questions, 21 September-10 December 1948, at page 439.) (Emphasis added.)

As we all know, this proposal fortunately failed. The Security Council was not given exclusive jurisdiction to deal with genocide; the Court was given jurisdiction that was concurred with and we submit at times superior to the jurisdiction of the Security Council to deal with the crime of genocide under the Convention.

With all due respect to Mr. Zourek, we submit that the International Court of Justice does indeed have the power under Statute Article 41 to guarantee that the people of Bosnia and Herzegovina will not "be massacred before the completion of proceedings instituted with the International Court of Justice". That is why we have Article 41. To reiterate, Article 41 states quite clearly: "The Court shall have the power to indicate, if it considers that circumstances so require, *any* provisional measures which ought to be taken to preserve the respective rights of either party." (Emphasis added.)

Despite the predictions made by Mr. Zourek almost 45 years ago, it is obvious that, because of serious political disagreements among the Permanent Members of the Security Council, the Security Council has been unable to quote from Mr. Zourek to "intervene with the necessary speed" in the case of Bosnia and Herzegovina's genocide being perpetrated against us. In accordance with its own terms, the Court directed that one original copy of its 8 April 1993 Order be transmitted "to the Secretary-General of the United Nations for transmission to the Security Council", which was done.

And yet the extermination of the people and State of Bosnia and Herzegovina has continued apace and uninterrupted since 8 April 1993 as verified by our request as supplemented and amended. Indeed, now the situation is significantly much worse and more dangerous since the Respondent is publicly planning, preparing, conspiring, proposing and negotiating to partition, dismember, annex, incorporate and destroy Bosnia and Herzegovina by means of genocide in violation of the Convention and this Court's Order of 8 April. This will in turn result in one million completely innocent men, women and children being subjected to so-called "ethnic cleansing" and acts of genocide in Bosnia and Herzegovina.

We ask the Court to take judicial notice of the serious political disagreements among the Permanent Members of the Security Council that have so far prevented them from taking decisive action "to prevent" the ongoing genocide against the people and State of Bosnia and Herzegovina by the Respondent, the Permanent Members of the Security Council are required by Article I of the Genocide Convention to stop the genocide. All of the Permanent Members are parties to the Genocide Convention and are bound by Article I to prevent the genocide against Bosnia and Herzegovina and yet so far they have failed to discharge this obligation and we are now asking the Court to do something about it, to clarify our rights under the Convention as you have the power to do under Statute Article 41.

These political disagreements among the Permanent Members of the Security Council are a matter of public record. You can read them in the debates of the Security Council, you can read them in the pages of the newspapers - I will not get into them here. But in default of such action by the Security Council it now becomes incumbent upon the Court "to intervene with the necessary speed", to prevent the people of Bosnia

and Herzegovina from being "massacred before the completion of proceedings instituted with the International Court of Justice". We submit that Statute Article 41 provides the Court with all the legal authority it needs under the United Nations Charter to grant our proposed additional measures of protection and any other relief the Court deems to be necessary and sufficient under the tragic and desperate circumstances of the people in Bosnia and Herzegovina today.

As you retire to deliberate upon our recent request, please remember that the very lives, well-being, health, safety, physical, mental and bodily integrity, homes, property and personal possessions of hundreds of thousands of completely innocent men, women, and children in Bosnia and Herzegovina are right now at stake, hanging in the balance, awaiting the next Order of this Court. Make no mistake about it: this will be the last opportunity this Court shall have to save both the people and State of Bosnia and Herzegovina from extermination and annihilation by the Respondent. God will record your response to our current request for the rest of eternity!

Thank you for your attention. And may God be with you at this critical time in our Nation's history!

The PRESIDENT: Thank you very much Professor Boyle. So that I think concludes the presentation for Bosnia and Herzegovina in this stage of the proceedings. So we shall meet tomorrow at 10 o'clock in the morning to hear Yugoslavia's presentation and then again in the afternoon tomorrow to hear the two replies.

Thank you very much.

The Court rose at 12.50 p.m.
