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THE HAGUE

Cour internationale
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YEAR 1993

Public sitting

held on Thursday 26 August 1993, at 10 a.m., at the Peace Palace,

President Sir Robert Jennings presiding

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

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

Requests for the Indication of Provisional Measures

No 2

VERBATIM RECORD

ANNEE 1993

Audience publique

tenue le jeudi 26 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
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Guillaume
Shahabuddeen
Aguilar Mawdsley
Weeramantry
Ajibola, juges
Herczegh, juges

Lauterpacht,
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 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: This morning we hear the case of Yugoslavia and first Mr. Etinski.

Mr. ETINSKI: Mr. President, distinguished Members of the Court, may it please the Court.

My name is Rodoljub Etinski. I am professor of international law at the University of Novi Sad. It is a great honour for me to appear before this Court as Agent of the Federal Republic of Yugoslavia.

May I first take this opportunity to congratulate Judge Géza Herczegh on his election to the Court.

Keeping in mind the instructions of the President of the Court regarding the maintenance of forensic civility and the dignity of the Court, I will refrain from replying in kind to the insulting remarks made yesterday by the Agent of the Applicant State against my Government. His insult is an abuse of the procedure of the Court and I must reserve all our rights, including our right to object to the admissibility of the Application which is accompanied by such impermissible statements.

By the two written observations dated 9 and 23 August 1993, I have commented on the second request for the indication of provisional measures and of a later supplement and amendments of it, except those of 23 and 24 August. Both of them contain information not relevant to the present case.

Much to my regret, I was compelled to fax my written submissions and I am worried if they were received in a readable form. The originals of the submissions were forwarded to the Registrar on 24 August and I am sure that the Registrar will be able to produce satisfactory copies. With this in mind, it is not my intention to repeat the contents of these observations.

The statements on behalf of the Federal Republic of Yugoslavia will be made by the following persons.

Dr. Miodrag Mitic, Chief Legal Adviser of the Ministry of Foreign Affairs of the Federal Republic of Yugoslavia, will make a general presentation of the underlying facts relevant to the crisis in the former Yugoslavia. This is necessary because of the nature of the provisional measures requested by the other side. It is also important for a general understanding of the case as a whole.

My co-Agent, Dr. Djordje Lopicic, Chargé d'Affaires in the Kingdom of The Netherlands, will follow and present our reasons in respect of the Yugoslav request for provisional measures. Distinguished Professor Shabtai Rosenne will then present our general legal arguments.

Thank you, Mr. President. May it please you to permit Mr. Mitic to deliver his statement.

The PRESIDENT: Thank you very much Mr. Etinski. Dr. Mitic.

Dr. MITIC: Mr. President, distinguished Members of the Court, may it please the Court.

Allow me to briefly set out the legally relevant background information on the onset of what is known as the Yugoslav crisis, the secession of some Yugoslav republics from the then Federation - the Socialist Federal Republic of Yugoslavia - the outbreak of armed clashes and a civil, ethnic and religious war in Bosnia and Herzegovina, with reference to the discussions on both the legitimacy of the so-called Government of the Republic of Bosnia and Herzegovina and the responsibility of the Government of the Socialist Federal Republic of Yugoslavia, as well as that of the Federal Republic of Yugoslavia.

Developments on the territory of the former Yugoslav Republic of Bosnia and Herzegovina cannot be appraised without considering the basic reasons and nature of the ongoing war, which also applies to the crimes committed there and condemned most strongly by the Government of Yugoslavia time and again, regardless of who the perpetrators were.

The Constitution of the Socialist Federal Republic of Yugoslavia, with Bosnia and Herzegovina as one of its federal units, contained a provision on self-determination of peoples but did not envisage the required procedure for its application. The forcible and illegal secession of the Republic of Slovenia, followed by that of the Republic of Croatia and their declarations of independence, were proclaimed invalid by the Constitutional Court of Yugoslavia and the leadership of the then Yugoslavia sought to develop common rules to be applied with a view to implementing a people's right to self-determination. The then valid 1974 Socialist Federal Republic of Yugoslavia Constitution prescribed that any decision on changes of Yugoslavia's borders, as well as those of its federal units, i.e., republics, was to be reached by consensus of all the member republics. Only the State borders of Yugoslavia were recognized internationally and by the highest legislative State authority. Inter-republican borders were merely administrative in nature and were neither drawn nor validated by any agency of either the federation or the republics. The recognition of the breakaway Yugoslav republics by certain countries and even by the international community within their administrative bounderies did not only constitute a violation of the Constitution of Yugoslavia and its internationally recognized borders but also of the principle of inviolability of boundaries by force.

What, in this specific case, happened to the former Yugoslav republic of Bosnia and Herzegovina? This republic was created only after the Second World War as a federal unit within Yugoslavia and as a community of three constituent nations - the Serbs, Muslims and Croats. Before the proclamation of the Kingdom of Serbs, Croats and Slovenes in 1918, the territory of the Republic of Bosnia and Herzegovina formed part of the Austro-Hungarian Empire, populated by Yugoslav peoples and was, in 1918, incorporated in the State of the Serbs, Croats and Slovenes, which was attached, together with Vojvodina to the Kingdom of Serbia and the Kingdom of Montenegro, thus forming a common State called the Kingdom of Serbs, Croats and Slovenes.

As a result the Serb people in the Republic of Bosnia and Herzegovina and in the Republic of Croatia were granted the status of a constituent nation having continuously lived on those territories for centuries. With the secession of one of its parts from Yugoslavia the Serbs have not only lost their common State but were denied the right to self-determination, that is to decide on their future in the former Republic of Croatia and the Republic of Bosnia and Herzegovina. On 15 October 1991 by flouting the Socialist Federal Republic of Yugoslavia's Constitution, the Assembly of the former Republic of Bosnia and Herzegovina adopted a resolution on the position of the Socialist Republic of Bosnia and Herzegovina regarding the Yugoslav crisis and a memorandum on the sovereignty of Bosnia, with the representatives of the Croatian and the Muslim peoples voting in favour and the representatives of the Serb people strongly opposing these acts. The Socialist Federal Republic of Yugoslavia's Presidency conveyed on 20 December 1991 to the Arbitration Committee of The Hague Conference on former Yugoslavia its stands and opinion on the right of the Serb people in Croatia and in Bosnia and Herzegovina to self-determination. On 9 January 1992 when it became clear that the Muslim and Croat sides by violating the principle of consensus were about to separate from Yugoslavia and turn Bosnia and Herzegovina into a Muslim-Croat State the Serb deputies to the parliament passed a declaration proclaiming the Republic of the Serb people in Bosnia and Herzegovina, the Constitution of which was adopted and promulgated on 27 March 1992, nine days after the statement on the principles of constitutional arrangements for Bosnia and Herzegovina was signed by the ruling Muslim and Croatian political parties in Bosnia and Herzegovina. On 7 April 1992, the European Community recognized, in spite of all these facts and warnings the so-called Republic of Bosnia

and Herzegovina whereas on the very same day the Assembly of the Serb people proclaimed the independent State known as the Serb Republic of Bosnia and Herzegovina (subsequently renamed Republic of Srpska by its Assembly's decision). Meanwhile, the authorities of the so-called Republic of Bosnia and Herzegovina resorted to terror against the Serb population (the first assault by Muslim extremists took place at a Serb wedding party in Sarajevo), as well as against Yugoslav army troops stationed in Bosnia and Herzegovina. The leadership of Socialist Federal Republic of Yugoslavia sought to prevent armed clashes and to that end Mr. Alija Izetbegovic, Mr. Radovan Karadzic, and Mr. Franjo Bovas on behalf of the Muslim, Serb and Croat national communities in Bosnia and Herzegovina signed on 23 April 1992 a cease-fire declaration in Sarajevo.

On 27 April 1992 the Constitution of the Federal Republic of Yugoslavia was adopted and promulgated along with an Assembly declaration explicitly stating that the Federal Republic of Yugoslavia has no territorial claims on any of its neighbouring States. Already the following day on 28 April, the Yugoslav Presidency took a decision to charge the staff of the Supreme Command of the armed forces with preparing a plan for a transformation of the JNA into the army of the Federal Republic of Yugoslavia and with making every effort to withdraw the remaining JNA units whose evacuation into the Federal Republic of Yugoslavia had been prevented by Muslim-Croat authorities following various assaults on the barracks. The Socialist Federal Republic of Yugoslavia's Presidency took a decision on 4 May 1992 to order all citizens of the Federal Republic of Yugoslavia who were members of the JNA in Bosnia and Herzegovina to return to the territory of Yugoslavia within no more than 15 days. The following day the representatives of the Bosnia and Herzegovina Presidency, JNA and European Community signed

a cease-fire agreement in Bosnia and Herzegovina which was to halt attacks on JNA barracks and enable its troops to pull out. On the same day the Yugoslav Presidency by a special statement called on the leaders of the three national communities of Bosnia and Herzegovina to reach an agreement on taking over the army formations made up of Bosnia and Herzegovina citizens. On 6 April 1992 the representatives of the Serb and Croat communities in Bosnia and Herzegovina agreed in Graz to a comprehensive and lasting cease-fire. On 5 June 1992 the last Yugoslav soldier left the territory of Bosnia and Herzegovina and only 11 days later the Yugoslav Presidency addressed a memorandum on the engagement of Croatian army troops in Bosnia and Herzegovina to the United Nations Secretary-General, Mr. Boutros Boutros-Ghali.

The above-mentioned facts clearly testify to the following:

1. The Serb people in the former Yugoslav Republic of Bosnia and Herzegovina were deprived by the Muslim-Croat coalition of the right to self-determination and compelled, against their will expressed at the referendum, to live in the newly proclaimed Muslim-Croat State whereby, not only the Yugoslav constitution and the constitution of Bosnia and Herzegovina were flagrantly violated but also the fundamental principles of the international law governing self-determination, inviolability of borders and non-interference in the internal affairs of other countries (following the recognition of the Republic of Bosnia and Herzegovina by the European Community despite the above-mentioned facts and the explicit provision adopted by the Conference on Yugoslavia to recognize new States only upon the completion of the negotiating process).

2. By promulgating the Federal Republic of Yugoslavia's Constitution on 27 April 1992 which stipulates that the territory of the former Yugoslav republics with the exception of those of Serbia and Montenegro

no longer form part of that of the Federal Republic of Yugoslavia, the Government of Yugoslavia proceeded immediately to ensure the withdrawal of the JNA and its transformation into the army of the Federal Republic of Yugoslavia.

3. The Government of Yugoslavia pointed right from the onset of the Yugoslav crisis that a political settlement for the territory of the former Yugoslav Republic of Bosnia and Herzegovina can be reached only by consensus of the three national communities, that is the three nations living on that territory, namely, the Muslims, Serbs and Croats. The Yugoslav State and Government have no territorial aspirations against the former Yugoslav Republic of Bosnia and Herzegovina but have not recognized what is known as the Republic of Bosnia and Herzegovina (many international protagonists in that Yugoslav crisis have clearly stated that recognition of Bosnia and Herzegovina was wrong and premature, as reported to the Court by our Government).

4. The Federal Republic of Yugoslavia has recognized neither the Republic of Srpska nor the so-called Herzeg-Bosnia, which was proclaimed the day before yesterday as an independent Republic, although they, just as the Government of the Republic of Bosnia and Herzegovina, act in fact as governments of these specific parts of the former Yugoslav Republic of Bosnia and Herzegovina. The Federal Republic of Yugoslavia has not recognized the so-called Republic of Bosnia and Herzegovina in an endeavour to remain consistent in its application of the conclusions of the Conference on Yugoslavia which left the recognition issue to be settled at a later stage of the negotiating process. The Conference on Yugoslavia has, however, recognized as negotiating partners the representatives of all three governments.

5. Yugoslavia cannot be held responsible at all for the course the events have taken on the territory of the former Yugoslav Republic of Bosnia and Herzegovina nor for any crimes including the crimes of genocide.

6. The Government of the Federal Republic of Yugoslavia is rightfully concerned for the fate and the status of the Serbs living in the former Yugoslav Republic of Bosnia and Herzegovina and has, therefore, joined in the international effort toward a peaceful settlement, the end of the civil, ethnic and religious conflict in the area of Bosnia and Herzegovina, and the reaching of consensus among the three national communities on their future set-up which would recognize the interests of all three communities on an equal footing.

7. The Federal Republic of Yugoslavia, notwithstanding its grave situation caused by the sanctions has been sending relief aid to the population living on the territory controlled by the Republic of Srpska authorities. It has, also, for months been granting passage through its

territory and use of its warehouses for international relief aid deliveries so as to help citizens living in areas controlled by the so-called Government of Bosnia and Herzegovina. Through the Yugoslav Red Cross the Yugoslav Government has on several occasions offered humanitarian assistance to inhabitants of those regions as well, but already after the first few deliveries and with the exception of assistance provided by non-governmental organizations and individual Sarajevo citizens, this has been rejected by the Muslim authorities.

The laws in force in the Federal Republic of Yugoslavia prohibit paramilitary organizations and thus the Federal Republic of Yugoslavia has no paramilitary of any kind either within or out of its territory.

We see no reason to be accused of crime of genocide against any one people. Least of all for the heinous crime "against the people and the State of Bosnia and Herzegovina", as alleged in the Applicant's charges. Were the Government of Yugoslavia against the Muslims of Bosnia and Herzegovina, it would surely not have permitted over 37,000 Muslim refugees from Bosnia and Herzegovina to remain in its territory. Nor would have tens of thousands of Muslim refugees in transit through the Yugoslav territory found refuge and safely reached their destinations in various European countries.

The boundaries between the Federal Republic of Yugoslavia and the territory of the former Yugoslav Republic of Bosnia and Herzegovina are controlled by air-borne electronics on a daily basis and there is therefore no need for me to reassure you in Yugoslavia's strict observance of its international commitments.

I likewise do not wish to comment on the accusations made by the Applicant regarding the so-called "partition" or "annexation" of Bosnia and Herzegovina nor on the latest proposals by the Co-Chairmen of the

Conference on former Yugoslavia, also endorsed by Yugoslavia as well, for a final and peaceful settlement to the crisis of Bosnia and Herzegovina and for preventing any further loss of human lives as this does not pertain directly to our dispute over the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide. It is strange and regrettable that the Applicant had taken part in the mentioned negotiations and agreed to the above proposals, proceeded on the very first day on the assumption of those talks to convey an urgent request to the International Court of Justice for taking interim measures rather than speed up the process of final peaceful settlement for all three national communities in Bosnia and Herzegovina. The insulting words used by the Applicant in addressing the representatives of my country before the International Court of Justice, and especially his offensive attitude to the Co-Chairmen of the Conference on Former Yugoslavia, in itself an outrageous act, cannot help settle the Yugoslav crisis nor alleviate the tragedy of all the nations living in Bosnia and Herzegovina.

The Yugoslav Government maintains the position that the Applicant has no valid authorization to speak on behalf of Bosnia and Herzegovina. President Izetbegovic's term of office has long expired, as noted in the letter addressed by the Prime Minister of the so-called Government of the Republic of Bosnia and Herzegovina, Mr. Mile Akmacic, to the United Nations Secretary-General and to the high-ranking United States officials, the copies of which have already been presented to this Court. The Presidency of the so-called Republic of Bosnia and Herzegovina has meanwhile been abandoned by all its Croat members, it does no longer enjoy the undivided support of all its Muslim members as evidenced by some of their public statements. Therefore, I ask in whose name are "the people and the State of Bosnia and Herzegovina" being

defended? Those who accepted and then rejected the Cutiliero plan, those who have accepted also the latest plan for resolving the Bosnia and Herzegovina crisis and have simultaneously pressed charges against the Federal Republic of Yugoslavia on the grounds that it envisages the split up of Bosnia and Herzegovina and its annexation would now like to present their own plan, more than obviously rejected by both the Croats and the Serbs in Bosnia and Herzegovina, and not even acceptable to all the Muslims, as an overall and a just solution for all.

While the issues I have raised do not fall within the purview of this Court I consider them salient for understanding our case and this is why I have addressed them in my presentations. Thank you, Mr. President.

The PRESIDENT: Thank you very much, Dr. Mitic.

Mr. MITIC: Mr. President, may I ask you kindly to invite Mr. Lopicic to present his statement.

The PRESIDENT: Yes, thank you. Dr. Lopicic.

Mr. LOPICIC: Thank you, Mr. President, distinguished Judges.

Allow me to adduce just some of the cruellest crimes against the Serbian people in the former Yugoslav Republic of Bosnia and Herzegovina committed by the Muslim forces.

In the two last World Wars alone, the number of civilian victims among the Serbs in Bosnia and Herzegovina was unmatched by any European people in the same period, in proportion to their size.

I

During the years of the Second World War the *Srebrenica district* was ethnically cleansed of the Serbs and belonged wholly to the followers of Islam.

The results of the genocide against the Serbian people in the Srebrenica district became evident after World War II and the renewal of Yugoslavia. Once dominant in numbers, the numbers of Serbian people found themselves in a minority after World War II, hardly reaching one-third of the total number of inhabitants.

It is important to note that in Yugoslavia, after the wars and the irrefutable crimes against the Serbian people not denied by anyone in peace either, no records of the victims or of the criminals were established. Most of the perpetrators of these genocidal acts went free. In the Srebrenica district, only about 15 so-called collaborators of the occupying forces were registered, of which only some were given symbolic sentences and served some time in prison. We would not be mentioning this if new butchers and killers were not being recruited afresh from the same families (the family Kamenica, from Jaglici, the family Salikovic from Biljaca, or the family Zukic, also from Biljaca).

The aim of the terror the Serbs are now exposed to is the same as during the previous wars. It is to expel now and for all the Serbs from

these regions. That is why every attack on Serbian villages leaves in its wake only desolation, burned buildings, looted and destroyed property, destroyed monuments, cemeteries and churches.

All the attacks so far were, as a rule, thoroughly prepared, systematically mounted and carried out by large numbers of well-armed men. The targets were initially smaller Serbian hamlets in nationally mixed villages, then isolated Serbian villages surrounded by Muslim ones, and finally the remaining Serbian settlements.

It seems that even the days when attacks take place are not left to chance. It is hard to believe that Orthodox festivals and family patron saint days (St. George's Day, St. Vitus' Day, St. Peter's Day, Christmas ...), when villagers are celebrating or days when they are busiest working on their farms are chosen for no reason whatsoever.

These tactics have been confirmed by all subsequent events.

The first victims of attacks on Serb territories and Serbian people were the hamlets of Gniona in the commune of Srebrenica and Bljeceva in the commune of Bratunac on 6 May 1992, on St. George's Day, followed by attacks on other Serbian villages and on 7 January 1993 (Christmas), the last large Serbian villages in the vicinity of Skelane and Bratunac were run over and destroyed. Even before the autumn of 1992, the commune of Srebrenica had been almost completely ethnically cleansed of Serbs.

The Serbs started fleeing Srebrenica itself as early as April and already by mid-May the town was ethnically clean. Only some ten older persons are there today (if they are still alive). A particularly massive exodus started after 8 May and the killing of Goran Zekic, Serb deputy to the then Assembly of Bosnia-Herzegovina. His car was waylaid by the Muslims and riddled by fire in the immediate vicinity of Srebrenica. After that, the remaining Serbs in the city had to flee for their lives.

Hardly anyone managed to take away even the bare minimum of personal belongings. The Serb population of Srebrenica and its surroundings is now in exile and this commune has been cleansed of the Serbian nation.

The collective perpetrators of these crimes are Muslim military or paramilitary units.

All the attempts of the Serbs, who formed their own, usually small in number and poorly-armed village guards, to defend these villages were unsuccessful.

The destruction of villages

It is almost impossible in such a brief survey to mention all the attacks, burning down and looting of Serb villages. Almost one hundred settlements with Serb populations are in question. We nevertheless believe that a description of the desolation of just some of those villages and hamlets can be compelling evidence of their epopee. What happened to them is in some ways typical of the fate of the other settlements. If differences do exist, they mainly concern the names of the attackers, the perpetrators of the crimes, but not the final outcome of their attacks. And this final outcome is always killed people, plundered property, burned and destroyed villages.

II

THE BRADINA CRIME

Bradina, the largest Serbian village, with 750 inhabitants, does not exist any longer; it was renamed Donji Repovci on 13 July. A three-thousand-strong Serbian Muslim force attacked the village from all sides, on 25 May. A small number of poorly-armed Serbs could not hold the defence line long and on 26 May, HOS (the Croatian armed forces), entered Bradina from the direction of Repovci and began to burn everything and kill everyone. A great number of Serbs were captured and

taken to Konjic: men above the age of 18 were taken to Celebici camp and women, children and the elderly to the Konjic Sports Hall, the Bradina Elementary School and the prison of the Ministry of the Interior in Konjic. During the night of 27 May, Muslim fundamentalists raped five young women in the Sports Hall. After a few days, the women and children held in the Sports Hall were released and some of them remained in Konjic with their relatives, some were moved to Donje Selo and Cerice, while a smaller number returned to Bradina.

During their first attack on Bradina, HOS members and the "green berets" killed a large number of Serbs; 23 of them were buried in a common grave in front of Bradina Orthodox Church. An unseen massacre of defenceless Serbian people was carried out.

What they did not do during that first attack HOS members and the "green berets" finished off on 13 July, when they set torch to all Serbian houses in Bradina and detained a small number of Serb villagers that had remained in the village in the Elementary School building. During the night, they raped a large number of young women. On the next day, Serbs were expelled to Donje Selo and Cerice.

Today, in Bradina, which used to be a village with over 200 Serb houses, there is nothing and no one left: all the houses have been burnt down, even the hen coops. The Orthodox Church was burnt down last.

Many Serbs did not want to surrender to the ustashi and the "green berets" and fled to the woods and to the Serb territories in Kalinovik and Ilidza. Of six groups, three made it, three were captured: one in the village of Ljuta (25 persons), another in the village of Sabici (12 persons) and the third on Mt. Igman (9 persons). All were detained in the notorious Celebici camp in tunnel No. 9 where they were brutally tortured and killed.

It has been established so far that 52 Serbs were executed and killed at Bradina; the fate of 16 Serbs is not known: they have not reached Serb territory nor are they on the list of the International Red Cross as prisoners in any of the Moslem-run camps.

III

The Crime in Vase Miskin street in Sarajevo

Fourteen to sixteen people were killed and 114 injured in an explosion of charges as they queued for bread. (The numbers of those killed differ in the statement released by the authorities and media reports.)

INDICATION CONCERNING PERPETRATOR(S): Security forces, military or paramilitary organizations controlled by Moslem authorities. As one of the executors figures the name of Rusmir Hakic and the action was co-ordinated by Ejub Ganic.

This serious crime received world-wide publicity through leading TV networks, news agencies and the press. According to the official story of the Moslem authorities broadcast world-wide and accepted as authentic, the innocent civilians were hit by four long-range artillery

or mortar shells fired from the Serb positions around Sarajevo. This massacre of civilians effectively and extensively publicized on television understandably outraged the world public. In addition, it coincided with the expected Security Council meeting which was held on 30 May 1992 and which imposed mandatory sanctions on the Federal Republic of Yugoslavia. The Government of the Federal Republic of Yugoslavia and the authorities of the Serbian Republic demanded that UNPROFOR carry out a thorough investigation and submit a first-hand expert report. However, this request was not met.

The analysis made by experts of the Yugoslav army raised the following issues and singled out assumptions such as:

1. The massive wounds and killing of civilians queuing for bread in Vase Miskina street, as presented to the public, could not have been cause by 4 missiles fired from long-range artillery systems, regardless of their calibre, design characteristics and purpose.

2. The pictures broadcast by Bosnia and Herzegovina television do not contain substantial evidence on the effects of the missiles, i.e. craters, traces of dispersion effects on the street and the walls of nearby buildings, the remains of the back parts of the missiles, etc.

3. The massive wounds and death of civilians as reported to the public could have been produced by specially designed explosive charges (with targeted effects) laid in certain numbers along the street and set off by remote control simultaneously.

4. The Bosnian and Herzegovina TV report showed seriously wounded people who did not behave as people injured a short while ago (the commentator said that a TV crew had come to the scene in no time). It is realistic to assume that some of the victims were brought to the site from local hospitals in order to produce a maximum effects on television viewers.

The same questions and strong evidence that this was an organized act of crime committed with the participation or knowledge of the Moslem authorities were cited in the British daily *The Independent* of 22 August 1992 which were subsequently carried by a large number of reputable European daily newspapers.

It is also necessary to consult a report on this serious criminal incident which must have been drawn up by UNPROFOR in order to provide possible answers to the questions raised by Yugoslav army experts.

In the diplomatic contacts of Yugoslav representatives, strong suspicions were also supported that the organizer and perpetrator of this crime was the Moslem side.

IV

The situation of Serbs in Tuzla (according to Mazowiecki's report)

Serious allegations regarding the present treatment of Serbs in the Tuzla area were made, in particular during the negotiations with Serb forces regarding access for humanitarian aid to Srebrenica. Negotiators for the Serb forces alleged that their situation was desperate and that almost all the 18,000 Serbs said to be in the Tuzla area wished to leave.

Meetings and interviews were conducted with Serb groups from Tuzla town as well as outlying areas by field staff of the Special Rapporteur in early April 1993. Based on these and on the experience of international actors with extensive contacts with the Serb minority there, it is clear that a number of Serbs wish to leave Tuzla town.

It has not been possible to confirm allegations of large-scale discriminatory dismissals from work of Serbs.

The first major cause for concern to Serbs living in Tuzla and its surroundings is their forced mobilization to fight in government forces.

In Tuzla, those who refuse to be drafted into government forces are imprisoned for 3 to 10 years after a speedy trial.

It is repeatedly alleged that those among the latter group, in particular those in Banovici, who refuse the draft are mobilized by force and sent to the front line to dig trenches.

It should be noted in this context that where the freedom of the movement of the Serbs in outlying villages is restricted, the authorities allege that this is for their own protection, implying that there is some threat from their Muslim neighbours.

The second problem of particular concern to Serbs is psychological pressure in the form of abuse from neighbours and colleagues, and the allegedly constant use of the term *chetnik*. It is disturbing to note that a newspaper called *Zmaj od Bosne* (The Dragon of Bosnia), which has published articles clearly inciting hatred against Serbs, is openly on sale in Tuzla. While it has not been possible to ascertain its circulation figures, it is readily available and evidently tolerated by the authorities. Several issues were obtained by the Special Rapporteur's field staff. One example of this incitement may illustrate the point. On 1 April 1993 an article was published with stated, "Instinctively every Muslim would wish to save his Serb neighbour instead of the reverse, however, every Muslim must name a Serb and take an oath to kill him."

The third problem faced by the Serbs in the Tuzla area is their fear for the future. The possibility of the social tension between the local population and the influx of displaced people has particular significance for the Serbs there. In the light of their treatment last summer these fears may seem reasonable. The prospect of a further large influx of displaced people from Srebrenica, people who have undoubtedly suffered greatly at the hands of Serb forces, is also fuelling their concern over possible future developments. One group of Serbs who were interviewed

emphasized that they were hostages; they felt that non-Serbs did not want Serbs to live with them, while the authorities would not allow them to leave. This group, especially those who are separated from their families, was not daunted by the prospect of giving up their possessions and asserted that they were prepared to go "on foot and in pyjamas".

V

FACTS ON CRIMES COMMITTED IN THE VILLAGE OF CELEBICI NEAR KONJIC IN JUNE 1992

About 200 people of Serb nationality from Konjic and Bradina were brought to the village of Brdjani and held captive in manholes of an oil reservoir 6-7 metres deep, 1.5 metres wide and 2 metres long.

That same evening new prisoners of Serb nationality were transferred to Celebici, to a hanger 30 metres long and about 15 metres wide in which there were already about 200 people, men from Bradina, Bjelovcina, Donje Selo, Brdjani and Celebici. The people had been beaten, their bones broken and were sitting on the concrete floor staring straight ahead.

The camp commander was Pavo (father Janko) Mucic, and his deputy Azim (father Ibro) Delic from the village of Orahovice, between 33 and 35 years old. According to the released prisoners, Delic decided on all the torturing and killing, and he himself occasionally tortured people. When the inmates asked him why they had been imprisoned and brought to the camp he replied that it was because they were Serbs.

Statements were extorted from prisoners by torture in front of the cameras of an Arabian TV crew, with Delic himself kicking the prisoners in the loins with his boots.

Azim Delic ordered the prisoners to beat each other, e.g., a son to beat his father with his shoe or a stick and vice versa. In particular he tortured prisoners by forbidding them to sleep, ordering the guards to see to it that no-one fell asleep.

Scepo Gotovac, an old man from the village of Bjelovcine, was first beaten and then killed by rifle butts. When he was already dead they cut out a badge on his body with the symbols of the Serbian Democratic Party and finally left the body unburied until the stench began to spread.

According to the testimony of Simo (father Todor) Jovanovic who was also in the camp, Bosko Samoukovic from Bradina was killed in front of his sons Nedjo and Milan, who helplessly looked on.

While someone in the camp was being beaten all the inmates in the camp, curled up on the floor, would close their ears so as not to listen to the sounds of people being tortured.

The most notorious torturer in the Celebici camp is Zijo (Nurka) Landjo from Konjic, nicknamed "Zenga", a youth of about 20, Muslim by nationality. He took part in all the killings in the camp, carrying out Delic's orders. Zijo would pour petrol and powder on the prisoners and set them on fire causing severe burns and wounds which healed slowly. Zijo pulled the tongue of Mirko (Nedjo) Djordjic with red-hot tweezers and pushed them into his ears in front of all the inmates. He prescribed ampoules of petrol to several prisoners and set fire to them. He poured petrol in the palm of Momir (Strajo) Kuljanin's hand and made him hold it until it burned completely. He mutilated the faces of prisoners and then brought mirrors making them look at themselves. He made them wear gas masks and would shut off the air supply, thus extorting confessions. He made them engage in oral sex with one another.

All the survivors agree that the aim of the torture in the camp was to physically destroy as many people as possible, or make them mental and physical cripples for life.

All this torture happened in the camp in Celebici, which was not visited by any international humanitarian organization, nor was any humanitarian relief delivered to it.

The Helsinki Watch (in its 1993 Report) also concluded that the Muslim side in Bosnia and Herzegovina is largely responsible. On page 263 it said: "*Muslim and Croatian forces also are using intimidation, harassment and violence against Serbs in some parts of Bosnia and Herzegovina and Croatia to force the flight of Serbs from areas under their control.*"

Thank you, Mr. President.

The PRESIDENT: Thank you very much Mr. Lopicic.

Professor Rosenne, would you like to begin or would you prefer that we take our break now and have your presentation in one piece.

Mr. ROSENNE: Mr. President I am entirely at your hands but I would prefer if we could take a break now.

The PRESIDENT: Very well, thank you we shall do that.

The Court adjourned from 11.05 to 11.30 a.m.

The PRESIDENT: Professor Rosenne.

Professor ROSENNE: Thank you, Mr. President. May it please the Court.

May I start with a word of congratulation and best wishes to the newly elected Member of the Court, Judge Herczegh.

May I also express our wishes for a speedy recovery to Judge Ago.

As is customary, Mr. President, I will ask the Registrar to be so kind as to include in the transcript the detailed citations and notes which I will not rehearse in the course of this statement. I shall be concentrating for the most part on the new material introduced by the Applicants. Where, as is often the case, there has been repetition of the arguments and contentions adduced last April, I shall refer back to statements which I made then.

At the outset let me say, with respect, that the statements which we heard yesterday were for the most part nothing more than attempts to reopen matters already decided by the Court in the Order of 8 April last. I shall be amplifying this in the course of this statement, but I would like to add this. There is nothing in the Statute or in the Rules of Court which permits the reopening of earlier decisions. Article 75, paragraph 3, of the Rules of Court refers to a fresh request based on new facts. A document of 1992, such as was circulated on 24 August, two days ago, ought to have been introduced last April. It cannot be regarded as a new fact. In my submission it comes within the scope of the doctrine set forth by the Court in its Judgment of 1985 in the revision and interpretation phase of the case concerning *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*.

Mr. President, I am going to supplement the written communications sent to the Court by the distinguished Agent of the Federal Republic of Yugoslavia on 9 and 23 August and the oral statements delivered today.

I will accordingly be dealing in the main with three aspects: (1) the new ground for jurisdiction introduced on 6 August together with its amplification introduced on 22 August; (2) the new request by the Applicant Party for an indication of provisional measures; and (3) the request by the Respondent Party for the indication of provisional measures. Much of parts (2) and (3) was discussed by the Parties last April and has already been dealt with by the Court in its Order of 8 April, and again I repeat, in order to save the time of the Court, I would respectfully request that what we said then be regarded as incorporated by reference, to use a phrase of the other Party, where relevant in this statement.

The Federal Government of Yugoslavia on 9 and 23 August has submitted its observations on the new request and some of its amendments. It has also on 9 August submitted its own request for the indication of provisional measures. In the circumstances of this case, it was felt that it would be preferable to embody this in a separate document and not incorporate it, as was done last April, in the observations envisaged in Article 74 of the Rules of Court.

* * *

Mr. President, I have to say now something about this unending stream of documents which we keep on receiving from the Applicant Party, much of which, as I have said, has been "incorporated by reference" into the statements we heard yesterday. The same thing happened last March and it is happening again now. The second request of 27 July, just about

a month ago, has been followed by a series of communications of 29 and 30 July, and in August on 4, 6 (three communications), 7, 10, 13, 22 (three communications), 23 and 24 August, quite a lot. I know that the Application instituting these proceedings of 20 March in paragraph 135 (p. 124) reserved the right "to revise, supplement or amend the Application"; and a similar reservation appears on page 3 of the second request which we are now considering. I really must, with respect, request the Court to give some directive of where the line is to be drawn, how many more revisions can be accepted. I do not know how a party is expected to be able to prepare its pleadings when there is this unending flood of sometimes heavy documentation flowing in all the time. On entering the Peace Palace this morning, we were handed another memorandum of law which was filed in the Court yesterday. I would respectfully ask the Court to hold this to be inadmissible in these proceedings and direct the Applicant to include it in its Memorial if it wants it to be considered.

Having said that, Mr. President, I want to dispose briefly of two new documents about jurisdiction.

With regard to the Applicant's letter of 10 August, none of the instruments mentioned there contains a provision conferring jurisdiction on this Court.

With regard to the further additional supplementary amendment of 13 August, which, by the way, merely embellishes the earlier communication of 7 May, itself a belated reply to the question put by Judge Guillaume in the hearings of last April, the Court has dealt with the letter of 8 June 1992 to the President of the Arbitration Commission of the International Conference for Peace in Yugoslavia in paragraphs 27 to 32 of the Order of 8 April. That Order has left open the right of the Parties to raise jurisdictional questions in the proper way at the proper time, in due course. In this incidental phase, I have nothing to add to what I said on page 28 and following of the transcript of the Court's meeting on 2 April (CR 93/13), and I would respectfully urge the Court to maintain the position as set out in the Order of 8 April.

With regard to the extremely long Memorandum of Law, rather difficult to read because it is so badly reproduced, submitted on 22 August regarding Articles VIII and IX of the Genocide Convention, I fail to see what this has to do with any request for the indication of provisional measures, and certainly not with this second request. The question of Article VIII was argued adequately last April and led the Court to include paragraph 47 on page 22 of the Order of 8 April. I do not know why this issue has been reopened. The remainder of that memorandum has absolutely no relevance today. We have not challenged the Court's finding that it has prima facie jurisdiction sufficient to support an indication of provisional measures, while reserving our rights to raise full jurisdictional questions later when the time comes. The Applicants have performed a useful service for which I thank them by indicating the points requiring special attention and facilitating our research into the complicated documentation of the drafting of the

Genocide Convention. It goes without saying that perhaps it is better to say it, that I do not accept the conclusions which are drawn in that memorandum, but then in the 36 hours which have elapsed since we received that document we could not possibly have had the time to undertake any further research into the legislative history of the Convention.

One other remark is required at this stage, however. I understand that early in August the Applicant's Permanent Mission to the United Nations in New York deposited a purported declaration of succession to the Vienna Convention of 1978 on Succession of States in Respect of Treaties. That Convention is not yet in force, and I have nothing to add to what I said on this aspect last April. This issue, along with others, can be pleaded in the proper way in due course, and will be replied to in the proper way in due course. Provisional measures proceedings, incidental to the mainline proceedings, are not the proper time or the proper place for argument and judicial decision on these delicate matters of State succession.

In this general context, it is difficult to escape the impression that what the Applicant is really doing in this phase is to launch what looks like an appeal or a request for reconsideration of the Order of 8 April or even an interim judgment, as I said, the Applicant seems to be trying to reopen matters already decided. No new hard facts of relevance have been brought, on which an indication of provisional measures depends. Masses of documents, memoranda and argumentation have been laid before us. All this properly belongs to a memorial on the merits in which the issues of jurisdiction, including the interpretation and the status of the various advisory opinions of the Badinter Commission, should be properly pleaded, giving the respondent a proper opportunity to answer them as contemplated in the Rules of Court.

* * *

Mr. President, I now turn to the new request itself of 27 July and by way of preface I would say this. The Applicant's actions in this and in other respects recall the actions of Nicaragua as applicant in the well-known *Military and Paramilitary Activities in and against Nicaragua* case. There, too, shortly after the Order of 10 May 1984 indicating provisional measures of protection, Nicaragua submitted a second request. I recall - I was working on that case but I have not had access to my papers at this present time - that the President of the Court, the late Judge Elias, in the name of the Court gave short shrift to that request which was not even formally considered by the Court, either because it reopened matters already decided by the Court or was manifestly beyond the competence of the Court. A reference to this appears in paragraph 287 of the Judgment of the Court of 1986 on the Merits in that case (*I.C.J. Reports 1986*, p. 144). I respectfully suggest that the Court might find guidance in that precedent for the present case.

I now want to look at the amendment of 6 August, which I understand was incorporated by reference in yesterday's statement, so I have to deal with it at a little bit of length.

That amendment purports to find a basis of jurisdiction in the Treaty of Saint-Germain-en-Laye of 10 September 1919 between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State (as Yugoslavia was then called). That Treaty was made pursuant to and in implementation of Article 51 of the Treaty of Peace with Austria of the same date.

Chapter I of that Treaty deals with various matters concerning different individuals in Yugoslavia affected by the Peace Settlement with Austria, Hungary and Bulgaria. It is often classified amongst the Minorities Treaties characteristic of the Versailles Peace Settlement.

Articles 2 to 8 relate to the whole territory of Yugoslavia as established by the 1919 Peace Treaties, and in so far as those Articles dealt with the nationality of persons resident in transferred territories I think are transitional provisions. This is particularly the case as regards Articles 3, 4 and 5 of the Treaty. Article 9 applied only to territory transferred to Serbia since 1 August 1913, and I suppose, if we are to follow the Applicant's thinking, could now be regarded as binding only on Bosnia and Herzegovina. Article 10 contained special provisions for the Muslims and Article 11 was the clause dealing with the supervision of those provisions and the settlement of differences of opinion relating to them. I shall be returning to that.

The remaining Articles are contained in Chapter II and dealt with some miscellaneous issues arising out of the dissolution of the Austro-Hungarian Empire.

Article 16, which is cited in the supplementary memorandum of 6 August at page 3, is included in Chapter II. Article 11, the compromissory clause, does not extend up to Chapter II. It is limited to Chapter I of the Treaty and there is no dispute settlement clause applicable to Chapter II. Accordingly, even if the Court, contrary to our view, should find that the new title of jurisdiction advanced by the Applicant can be accepted, it could, of course, only be accepted in accordance with its own terms and, by its own terms, that clause does not extend to differences of opinion on questions of law or of fact relating to Article 16.

Having said that, it is certainly not clear to us what this amendment is about, what it is intended to achieve, what is its function in the present case, why, indeed, this Treaty has been brought into the case at all. The amendment is presented as "an addition to the jurisdictional bases that have already been set forth" but we have not been given the slightest indication to show how this affects the case or the *petita* of the Application instituting the proceedings of 20 March last, all of which relates to the application of the Genocide Convention and to that instrument alone. Those *petita* are set out in paragraph 2, on page 4 of the Order of 8 April and it is by them, and by them alone, that the admissibility of the newly introduced title of jurisdiction is to be assessed. The Treaty does not provide a basis of jurisdiction in respect of requested measures which are not within the competence of the Court under Article 9 of the Genocide Convention.

Since its inception, this case has always been entitled case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*. No objection to that title has

been made by the other side. Indeed, the covering letter of the Applicant's Party general Agent of 27 July, and the text of the second Application itself, as well as of the deluge of documents received since, all use that title for the case.

If the case concerns the application of the Genocide Convention and the jurisdiction is based on Article 36, paragraph 1, of the Statute, it is appropriate that the compromissory clause of that Convention - Article 9 of the 1948 Genocide Convention - serves as the title of jurisdiction for the case. Quite frankly, I fail to see how a compromissory clause in a Treaty of 1919 - assuming for the moment, for the sake of argument, that this Treaty is still in force and that its compromissory clause can be applied without doing violence to its terms, something which I strongly doubt - could be the title of jurisdiction for a case concerning the appplication of a Convention concluded in 1948. From the start, therefore, we are faced with a heap of obstacles.

There are others.

Can it seriously be contended that this Treaty is still in force without change? That Treaty formed an integral part of the Peace Settlement of 1919. It was made pursuant to and in order to complete Article 51 of the Treaty of Saint-Germain-en-Laye with Austria. It reflected the political situation of that time. One of the "Principal Allied and Associated Powers" of that Treaty did not ratify it, in fact it was not even submitted to the constituent organs of that country for ratification. Two of the "Principal Allied and Associated Powers" named in that Treaty became allied to Germany during the Second World War. The British Empire has become the British Commonwealth of Nations. The Serb-Croat-Slovene State, as it is named in that Treaty, has itself

undergone many fundamental changes since 1919, which cannot be without relevance, as the Study of the Secretariat on the Legal Validity of the Undertakings concerning Minorities (E/CN.4/367) points out at page 64.

One other remark. On page 14 of the supplementary memorandum of 6 August, it is alleged that the Minorities Treaties of the League of Nations have been relied upon since World War II and reference is made to a case concerning Austria in the European Commission on Human Rights. No other support is given for the statement that "State practice since World War II indicates that the minority treaties did not lapse". Here a parenthetical is required. We are not concerned with the Minorities Treaties in general, nor with the specific obligations of Austria, a third State in these proceedings. We are not concerned with the provisions for the protection of minorities in the Treaty of Saint-Germain. We are only concerned with the compromissory clause of that Treaty and its admissibility as a title of jurisdiction for the case as instituted by the Applicant Party on 20 March last.

Now I have examined that decision of the European Commission in the case which is named *Isop against Austria*. It is correct that the Austrian Peace Treaty of 1919 is mentioned *en passant* in the submission of the individual applicant in that case. As I understand it, in that document, which is recited in the decision of the European Commission, the history of the equality of languages in the area concerned from 1867 is traced (*Yearbook of the European Convention on Human Rights* 1962, p. 108 at p. 112). There is no mention whatsoever of the Treaty of 1919 with the Serb-Croat-Slovene State in that decision of the European Commission.

I therefore fail to see the relevance of this particular reference in the supplementary memorandum.

I will not say anything more about that now, when at most we are concerned with the threshold jurisdiction of the Court to indicate provisional measures of protection in a case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, and, as the Order of 8 April last so convincingly shows, exclusively with that.

Nevertheless, for the limited purposes at hand, I have to draw the Court's attention to the precise wording of the compromissory clause, Article 11, of the Treaty. A simple reading of the text of the clause itself is quite enough to show that Article 11 does not confer any jurisdiction *ratione materiae* on the Court, acting under Article 36, paragraph 1, of the Statute, in relation to the case which was instituted by the Application of 20 March last. Here I would respectively request the Registrar to include the full text of that provision in the transcript of today's proceedings because it is only rendered in part on page 4 of the supplementary memorandum of 6 August, so that I can economize on the Court's time.

> "The Serb-Croat-Slovene State agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the consent of the Council of the League of Nations. The United States[1], the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

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[1]The United States did not ratify this Treaty, which was never submitted to the Senate (Ch. L. Wiktor (ed.), *5 Unperfected Treaties of the United States of America 1776-1976* 403 (1980)).

The Serb-Croat-Slovene State agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

The Serb-Croat-Slovene State *further* agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Serb-Croat-Slovene State and any one of the Principal Allied and Associated Powers[1] or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Serb-Croat-Slovene State hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice [now the present Court by virtue of Article 37 of the Statute of 1945]. The decision of the Permanent Court shall be final and shall have the same form and effect as an award under Article 13 of the Covenant." (Emphasis added.)

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[1]The Principal Allied and Associated Powers are listed in the Treaty as the United States of America [which, as indicated, did not ratify the Treaty], the British Empire, France, Italy and Japan. The British Empire then included, as signatories in its name, the representatives of the Kingdom of Great Britain and Ireland, Canada, Australia, the Union of South Africa, New Zealand and India.

Even if, for the sake of argument, a case can be made out for saying that the United Nations now takes the place of the League of Nations in the protection of minorities - although, Mr. President, care is needed before drawing analogies with the role of the United Nations in the Mandates system and the *South West Africa* litigation, owing to the presence of Article 77 in the Charter (Article 77 indicates that the trusteeship system shall apply to territories at the time, 1945, were held under mandate as may be placed under a trusteeship system by means of a trusteeship agreement. Provision which was pivotal in the proceedings regarding Namibia). As I said, although care is needed before drawing analogies with the mandate system, this and the 1946 resolutions of the United Nations General Assembly and of the concluding Assembly of the League of Nations which have been cited by the other Party, do not operate to amend in any way the substantive provisions of Article 11 of the Treaty of Saint-Germain.

Furthermore, no difference of opinion as to questions of law or of fact between any one of the countries designated as Principal Allied and Associated Powers or any other Power a member of the non-existent Council of the League of Nations and Yugoslavia, arising out of the Treaty, or of a demand by that other Power that the difference of opinion should be referred to this Court, has been brought to our notice. Some of those Powers are active in the Security Council and in the European Community under whose combined auspices the International Conference on the former Yugoslavia (ICFY) is looking for a solution of the conflict, and units of their armed forces are serving in the United Nations Protection Force - UNPROFOR to give it its correct name.

The Applicant certainly does not come within the category of States mentioned in the compromissory clause. The Treaty does not confer any jurisdiction *ratione personae* on the Court in relation to the proceedings instituted on 20 March last. Not by the wildest stretch of imagination can the Applicant in this case be regarded, by some process of State succession, as having become a party to the Treaty of Saint-Germain, again assuming, for the sake of argument that the Treaty is still in force and that the depositary Government, the Government of France, is able and willing to accept and circulate to the States concerned some form of notification by the Applicant Party that it accedes to the Treaty. Incidentally, I will also point out that the Treaty is drawn up in three languages, the French to prevail. Although registered under Article 18 of the Covenant of the League of Nations, the Treaty is not being reproduced in the League of Nations *Treaty Series*. We may wish to compare all three language versions in the process of interpreting that Treaty, if the question should arise, and we would therefore be grateful if the Applicant would be so kind as to furnish us with a legible text in Italian. We have not been able yet to locate it in that language.

But let us assume that the Treaty was in force for the Socialist Federal Republic of Yugoslavia and therefore comes within the scope of the instruments of the Federal Republic of Yugoslavia cited by the Court in paragraph 22 of the Order of 8 April. That would not help the Applicant. The rule of law, carefully enunciated in the ninth edition of *Oppenheim's International Law* (Sir Robert Jennings and Sir Arthur Watts, Vol. 1, Book 1 at 240 (1992)), is that where a separation or secession leaves the predecessor State continuing in existence, anything that was in force in respect of the predecessor State

continues in force *in respect of its remaining territory*. There is no way in which the Applicant State can rely on it or make any claims based on it.

Quite simply, the compromissory clause of the 1919 Treaty is irrelevant to this case, and its purported introduction as a title of jurisdiction is either misleading, or an attempt to broaden the jurisdiction of the Court and the scope of the case beyond what the Court has already itself established provisionally in the Order of 8 April. This ground for jurisdiction is accordingly not acceptable.

The attempt to introduce this as a basis of jurisdiction is flawed for another reason. This is a case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide. That is the basis on which the Application instituting the proceedings has been framed. That is the basis on which the case has been argued in the past. That is the basis, the exclusive basis I might add, on which the Court grounded its Order of 8 April last.

The introduction of the 1919 Treaty brings an entirely new element into the case. It is not a simple introduction of a complementary foundation for the Court's jurisdiction such as was accepted by the Court in the *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility* case, where as I understand it, the Court was satisfied that the amendment did not transform the dispute into another dispute (*Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 392 at p. 426, paras. 77 to 80).

We do not have here a simple amendment which the Court might be able to accept as a matter of principle, as is suggested in paragraph 27 of the Order of 8 April when it was dealing with its threshold jurisdiction under Article 41 of the Charter.

The amendment fairly and squarely fits into the type of amendment which the case-law of the Court does not accept, for the simple reason that it transforms the case into another case altogether, which does not fit in with the case as it was originally formulated by the Applicant and as it has subsequently been addressed by the Respondent and then by the Court.

Through this amendment we are no longer faced with a straightforward case concerning the application of the Genocide Convention. We now have another case altogether, one relating to the application of the Treaty of Saint-Germain. It is not clear whether this is being tacked on to the original case, or is in substitution for it. May I therefore quote from the recent Judgment of the Court in the case concerning *Certain Phosphate Lands in Nauru, Preliminary Objections*:

> "69. Article 40, paragraph 1 of the Statute of the Court provides that the 'subject of the dipuste' must be indicated in the Application; and Article 38, paragraph 2, of the Rules of Court requires 'the precise nature of the claim' to be specified in the Application. These provisions are so essential from the point of view of legal security and the good administration of justice that they were already, in substance, part of the text of the Statute of the Permanent Court of International Justice, adopted in 1920 (Art. 40, first paragraph), and of the text of the first Rules of that Court, adopted in 1922 (Art. 35, second paragraph), respectively. On several occasions the Permanent Court had to indicate the precise significance of these texts."

This Court then referred to the Order of the Permanent Court of 4 February 1933 in the *Prince von Pless Administration*, Preliminary Objections, case and to the well-known *Société Commerciale de Belgique* case, and concluded that a certain claim advanced by the applicant party in that case in its Memorial was "inadmissible inasmuch as it constitutes, both in form and in substance, a new claim, and the subject of the dispute originally submitted to the Court would be transformed if

it entertained that claim" *Certain Phosphate Lands in Nauru, Preliminary Objections*, *I.C.J. Reports 1992*, p. 240 at pp. 266-267, paras. 69-71).

I would like to stress the reference there to "legal security and the good administration of justice".

I submit that this is exactly what is happening here. We have been presented with a new ground for the jurisdiction of the Court, without any indication of how that alleged ground for jurisdiction is linked to the Application instituting the proceedings, how it affects the case which the Court has been invited to entertain.

In my submission, this amendment to the Application of 20 March last and to the requests for the indication of provisional measures is frivolous and vexatious. It is palpably unarguable and should be rejected by the Court out of hand. It is the type of pleading which I believe in many internal systems of litigation would entitle the adverse party to an award of costs, regardless of the outcome of the case as a whole.

I do not want to say anything more about that Treaty now, nor do I want to enter into any discussion about the Secretariat's study, if it is relevant at all, which in our view it is not, that would be in connection with the Merits.

* * *

Mr. President, Members of the Court, I now return to the new request for the indication of provisional measures of protection submitted on 27 July last. This has been the subject of observations submitted on 9 and 23 August by the distinguished Agent for the Federal Republic of Yugoslavia, and I will limit myself to a few additional remarks.

As we see it and as I have said, the whole exercise is nothing more than a renewed attempt to obtain from the Court indications which the Court refused to make last April. It is something like an appeal or an application for a re-hearing or some other recourse. The Applicant is taking two bites at the cherry. There is virtually no difference of

substance between the measures requested now and those requested last March in so far as relates to the application of the Genocide Convention. There are some additional measures requested, but these go far beyond the application of the Genocide Convention, which is what this case is about, and do not come within the jurisdiction of the Court under the Genocide Convention or under any other title of jurisdiction in force between the Parties.

Leaving aside the verbiage and personal insinuations unworthy of the Bar found in that document, a key to this new approach could be found in the extraordinary set of requests contained in Section E, *Provisional Measures requested*, on page 52 of the typescript of the new request. I would like to draw your attention particularly to No. 4:

> "The Government of Bosnia and Herzegovina must have the means [and then in quotation marks, I am not quite sure why] 'to prevent' the commission of acts of genocide against its own People as required by Article 1 of the Genocide Convention."

This is in effect repeated in No. 8. This is exactly the same as the requests made last April that the Court should interpret or re-interpret paragraph 6 of Security Council resolution 713 of 1991, that is, you will recall, the basic arms embargo, and the re-interpretation which is requested is to exempt Bosnia and Herzegovina from the scope and thrust of paragraph 6 of that resolution. This was made perfectly clear yesterday. I do not propose to repeat now what I said in April about this, and I would respectfully refer the Court to my remarks at page 19 and following of the session of 2 April (CR 93/13, pp. 19 ff.).

It is significant, Mr. President, that since the Order of 8 April the Security Council, acting under Chapter VII of the Charter, has not given the slightest sign that it is prepared to accede to that demand of

the Applicant. I do not think that differences of opinion among the Members of the Security Council are the only reason for that.

Now, another question arises, who are the addressees of the proposed measures? I was puzzled about that but after hearing the explanations yesterday, it seems that Nos. 5, 6, 7, 8 and 9 are presumably to be addressed to all the Contracting Parties of the Genocide Convention. But those Contracting Parties are not parties to this litigation, and the Court cannot address any indications of provisional measures to them. The explanation we heard yesterday, and the emphasis then placed on the word "clarify", indicates that what is wanted is an advisory opinion addressed to the world at large. Provisional measures proceedings in a contentious case under limited jurisdiction between defined parties are not a proper or adequate vehicle for obtaining an advisory opinion, and I respectfully submit that the Court cannot grant the requested measures. No. 10, Mr. President, relates to the activities of the United Nations Protection Force, UNPROFOR. But this is a matter for the Security Council, acting under Chapter VII of the Charter, and for the States which have contributed units of their armed forces to UNPROFOR. Is it being seriously contended, Mr. President, that the Court can, through an indication of provisional measures, give orders to be implemented by UNPROFOR? Is it being seriously contended that the Court can, through the mechanism of an indication of provisional measures of protection, give indications about how the Force is to act, how the contingents which make it up and which are made available by individual States are to comport themselves, what decisions the Security Council and the individual States supplying contingents to the Force are to take?

But the most significant aspect of the new Application is that long section commencing on page 53 of the typescript under the heading:

"*F. The Court should also Indicate Provisional Measures Proprio Motu*", something which we regard in the circumstances of this case as *ultra vires* the competence of the Court.

Here the Court is first asked "to fashion whatever type of relief" the distinguished Members of the Court might deem to be "necessary and sufficient" to protect the people and the State of Bosnia and Herzegovina from extermination and annihilation by means of genocide.

There is only one interpretation of this, that the Court is being invited to take political decisions, to substitute itself for the political judgment of other competent organs, the Security Council on the international plane and the individual States on the national level.

This is far beyond the competence of the Court, which has in the past repeatedly refused, when faced with an issue of political choice, to substitute its judgment for that of the interested States. Such a choice could only be made on considerations of political expediency, not on legal considerations.

That curious request is followed by a catalogue of acts which are categorized as being "genocidal acts" for this purpose. These include "partition, dismemberment, annexation and incorporation by the respondent". I do not find any of those acts - which are not easily given to abstract legal definition or qualification - listed in the Genocide Convention. They are all political processes, which might or might not be acceptable to the international community or to individual States. This is indeed confirmed by the penultimate paragraph on page 55 of the typescript. Here the Court is invited to contact the responsible authorities of Yugoslavia and the President of the Republic of Serbia - I think, but I am open to correction, that this means the Republic of Srpska, not a party to this case ....

Professor BOYLE: Mr. Milosevic.

Professor ROSENNE: I accept that correction or clarification.

- ..., and inform them that they and their governments

> "must immediately cease and desist from planning, preparing, proposing, conspiring and negotiating (*and negotiating*, Mr. President) to partition, dismember, annex or incorporate any portion of the sovereign territory of the Republic of Bosnia and Herzegovina" (emphasis added).

It is quite clear what lies behind this. Nothing more than that the Court, through an indication of provisional measures of protection having as its object to protect the respective rights of the Parties in the case instituted on 20 March last, should embroil itself in the peace process

of the International Conference on the former Yugoslavia in Geneva, in which incidentally the Applicant State is also participating; that the Court should attempt to dictate to the reponsible Government of Yugoslavia, and perhaps some other participants in that Conference, *how* they should participate, *how* they should negotiate, in the strenuous attempts which are being made to reach a negotiated settlement of this tragic civil war in Bosnia-Herzegovina, which all of us would like to see brought to a negotiated end as quickly as possible. Is that consistent with the function of the Court as it has been set out in Article 38, paragraph 1, of the Statute of the Court? Is it seriously to be expected that the principal judicial organ of the United Nations would try and prevent - I would even go further and use the word "thwart" - the successful negotiation of the end of an armed conflict, an objective to which other principal organs of the United Nations, above all the Security Council and the Secretary-General, as well as such autonomous bodies as the United Nations High Commissioner for Refugees, are exerting so much energy?

Difficile est satiram non scribere! I find it difficult not to be satirical!

I venture to suggest, with all respect, that an indication of provisional measures along the lines suggested by the Applicant would not facilitate the achievement of a negotiated settlement of the civil war and conflict. It would exacerbate the conflict and postpone the end of the sufferings of the people to the Greek calends.

It is in this context that I would invite the Court to take due note of another passage in the new request. In the third paragraph on page 54 of the typescript, the general Agent for the Applicant appeals to the Court to keep the situation under "active and constant review for as long as this case shall appear on the General List". The general Agent adds:

> "And in regard to this latter point, I must today most respectfully request in advance that the Court thoroughly and carefully examine and enquire into any request or attempt to remove this case from the General List for any reason..."

Does this mean that the Court is being invited to indicate, as a provisional measure of protection, that no attempt is to be made to settle the case out of court or to discontinue it in any way? Discontinuance of a pending case can only be done through the duly appointed authority of the State in question, and it ranks as an act of State, similar to that which is explained in paragraph 13 of the Order of 8 April. Is it an acceptable concept that discontinuance is to be prohibited through an indication of provisional measures, on the ground that the discontinuance might adversely affect the right of the State concerned to proceed to a trial of that case? Mr. President, do I need to answer that question?

I am sure that if there should be any agreement to discontinue the case or any attempt to remove this case from the General List the Court will act in accordance with the appropriate provisions of the Statute and the Rules of Court. These are sufficient to protect the rights of all parties in such an eventuality. For it must not be forgotten that the Respondent too has rights in an instance of discontinuance, as is recognized in Article 89, paragraph 2, of the Rules of Court.

To summarize this part of my argument, there is no need for any of the provisional measures suggested in the new request. Where they are not already covered by the terms of the Order of 8 April, part of which was addressed to the Applicant Party (by the way, an aspect which was overlooked yesterday), they are not within the jurisdiction of the Court or it would not be appropriate for the Court as a judicial organ and as

the principal judicial organ of the United Nations to indicate them. For they would harm the delicate negotiations now in progress aimed at bringing the armed conflict to an end.

* * *

Mr. President, I now turn to the last part of my argument, relating to the request by the Respondent for an indication of provisional measures to be observed by the Applicant so as to protect the rights of the Respondent while this litigation is in progress. The matter is clearly set out in the Application of 9 August last and the supporting evidence is annexed, so I do not need to repeat that now. However, following yesterday's statement, further clarification is required.

In my statement of 2 April last, I made it clear that all the rights of the Government of the Federal Republic of Yugoslavia under the Statute and the Rules of Court, "including but not limited to its right to present counter-claims, are reserved" (CR 93/13 at p. 36). During those hearings the other side complained that the Respondent had not presented the Court with any facts. This would have been done in the Counter-Memorial had the case reached that procedural stage, a matter, by the way, itself open to conjecture. However, following the new request for provisional measures, of which notice was received only on 27 July and not, as alleged, on 8 April last, the Respondent has filed with the Court an initial - I repeat an initial - presentation of facts. This presentation is based on the results of competent investigation, not on newspaper reports. The Applicant State obviously does not like that.

These facts certainly show that there is, in the words of paragraph 45 of the Order of 8 April (at p. 22), " a grave risk of acts of genocide being committed" and that Bosnia-Herzegovina too is under a clear obligation to do all in its power to prevent the commission of such acts in the future.

The Court gave effect to that finding in operative paragraph B on page 24 of that Order, again conveniently overlooked yesterday. The Court agreed that there was a grave risk of acts of genocide being committed against the Serb population of Bosnia and Herzegovina. As we have heard this morning, that grave risk still exists.

Now Article 41 of the Statute refers to the respective rights of either party, or, in its French text, *le droit de chacun*. There is an element of mutuality or reciprocity in the power of the Court to indicate provisional measures of protection. The Statute itself does not proceed from any presumption that only rights claimed by the applicant party can be in need of protection through provisional measures. This approach is continued in the Rules of Court: Article 73, paragraph 1, very clearly commits "a party" to make a request for the indication of provisional measures "at any time". I recall that the possibility of a discrepancy between the English and the French texts of Article 41 of the Statute was noted by Judge *ad hoc* Thierry in his dissenting opinion in the provisional measures phase of the *Arbitral Award of 31 July 1988* case (*I.C.J. Reports 1990*, p. 64 at p. 79, footnote 1). Now that discrepancy does not affect the point I am making, that the Court's power to indicate provisional measures is not a one-way street, that it is equally open to the respondent to make a request to protect its rights, whatever they are, and that includes the rights which the respondent is entitled to seek to protect through presenting a counter-claim in accordance with Article 80 of the Rules of Court. However, that discrepancy between the English and French texts might be found to be relevant to some of the arguments about Article 41 which we heard yesterday.

The practice of the Court has two requirements before the Court will indicate provisional measures of protection. One is the matter of urgency, and the second is the anticipation that if the provisional

measures are not indicated, irreparable harm will be caused to the rights which a party is seeking to protect. The facts which have now been presented to the Court clearly demonstrate, if indeed any demonstration were needed given the wide coverage of the situation in all the media (on which the other side is relying so intensively), that the same degree of urgency, and the same unhappy prospect of irreparable harm, exist in the case of the Serb ethnic group in Bosnia and Herzegovina as is being alleged with regard to other groups in that population.

The facts which the Respondent State has submitted to the Court certainly indicate that the respondent has a prima facie right to bring counter-claims in accordance with Article 80 of the Rules of Court, and that this right is as much in need of protection as any possible rights of the Applicant Party.

I also have to emphasize what is contained in paragraph 3 of the Application of 9 August. In paragraph 51 of its Order of 8 April 1993 the Court stated:

> "the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case, or any questions relating to the admissibility of the Application, or relating to the merits themselves, and leaves unaffected the right of the Governments of Bosnia-Herzegovina and Yugoslavia to submit arguements in respect of those questions ...".

The present request by Yugoslavia for the indication of provisional measures of protection to protect the Serb ethnic group from the commission of acts of genocide being perpetrated by the authorities of the Applicant Party is entirely without prejudice to all the rights of the Respondent under the Statute and the Rules of Court, as to its future conduct of the case. This includes its rights to raise objections to the jurisdiction of the Court and to the admissibility of the Application, to present counter-claims, and to take whatever position it finds appropriate at the time should agreement be reached on the discontinuance

of these proceedings, or should the Applicant inform the Court in writing that it is not going on with these proceedings, under Article 88 or Article 89 of the Rules of Court. And I would respectfully ask the Court to recall this standard rule always applied in the exceptional and incidental proceedings on requests for the indication of provisional measures of protection.

Mr. President and Members of the Court, in the peroration to its Judgment on the merits in the *Nicaragua* case the Court recalled the Contadora Process then in progress in trying to settle the political problems of that area. May I quote:

> "the Court could not but take cognizance of this effort, which merits full respect and consideration as a unique contribution to the solution of the difficult situation in the region. The Court is aware that considerable progress has been achieved in the main objective of the process ..." (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, I.C.J. Reports 1986*, pp. 14 and p. 145, para. 291).

How apt, how appropriate to the situation now reached in the International Conference on the Former Yugoslavia. I am sure that the Court would not wish to disturb the progress that has been achieved there.

I thank you, Mr. President, and distinguished Members of the Court, for your patience and I would once again like to express my appreciation to the distinguished and learned Registrar for the courtesies he has shown me. Professor Etinski, as Co-Agent, has asked me to tell you that he will present his conclusions during this afternoon's session. Thank you, Mr. President.

The PRESIDENT: Thank you very much, Professor Rosenne. And now, as I think the Parties are already aware, two Judges wish to ask questions of both Parties and I will ask them to proceed with their questions now. First is Judge Bola Ajibola.

Judge AJIBOLA: The Court, on the first request for an indication of provisional measures presented to it by the Applicant in this case, issued on 8 April 1993 the following order:

"The Court

Indicates, pending its final decision in the proceedings instituted on 20 March 1993 by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia (Serbia and Montenegro), the following provisional measures:

A. (1) Unanimously,
The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide;

(2) By 13 votes to 1,
The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group;

...

B. Unanimously,
The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is 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."

What steps have been taken by each Party to ensure compliance with this Order?

[Traduction]

A l'occasion de la première demande en indication de mesures conservatoires présentée par la Partie requérante en la présente affaire, la Cour a rendu, le 8 avril 1993, l'ordonnance suivante:

"La Cour

Indique à titre provisoire, en attendant son arrêt définitif dans l'instance introduite le 20 mars 1993 par la République de Bosnie-Herzégovine contre la République fédérative de Yougoslavie (Serbie et Monténégro), les mesures conservatoires suivantes:

A. 1) A l'unanimité,

Le Gouvernement de la République fédérative de Yougoslavie (Serbie et Monténégro) doit immédiatement, conformément à l'engagement qu'il a assumé aux termes de la convention pour la prévention et la répression du crime de génocide du 9 décembre 1948, prendre toutes les mesures en son pouvoir afin de prévenir la commission du crime de génocide;

2) Par treize voix contre une,

Le Gouvernement de la République fédérative de Yougoslavie (Serbie et Monténégro) doit en particulier veiller à ce qu'aucune des unités militaires, paramilitaires ou unités armées irrégulières qui pourraient relever de son autorité ou bénéficier de son appui, ni aucune organisation ou personne qui pourraient se trouver sous son pouvoir, son autorité, ou son influence ne commettent le crime de génocide, ne s'entendent en vue de commettre ce crime, n'incitent directement et publiquement à le commettre ou ne s'en rendent complices, qu'un tel crime soit dirigé contre la population musulmane de Bosnie-Herzégovine, ou contre tout autre groupe national, ethnique, racial ou religieux;

...

B. A l'unanimité,

Le Gouvernement de la République fédérative de Yougoslavie (Serbie et Monténégro) et le Gouvernement de la République de Bosnie-Herzégovine doivent ne prendre aucune mesure et veiller à ce qu'il n'en soit prise aucune, qui soit de nature à aggraver ou étendre le différend existant sur la prévention et la répression du crime de génocide, ou à en rendre la solution plus difficile."

Quelles dispositions chacune des Parties a-t-elle prises pour assurer le respect de cette ordonnance?

The PRESIDENT: Thank you very much, Judge Bola Ajibola. And now the second question comes from Judge Lauterpacht.

Judge LAUTERPACHT: Thank you, Mr. President.

1. This question relates to the letter dated 1 April 1993 from Mr. Vladislav Jovanovic, Federal Minsiter for Foreign Affairs of Yugoslavia to the Registrar of the Court. The question requires some introduction.

2. The relevant portion of the Foreign Minister's letter is in paragraph 4, the terms of which are set out almost in full in paragraph 9 of the Court's Order of 8 April 1993. The passage as there quoted may be completed by the following words of introduction which preceded it:

> "The Yugoslav Government welcomes the readiness of the Court to discuss the need of ordering provisional measures to bring to an end inter-ethnic and inter-religious armed conflicts within the territory of the 'Republic of Bosnia and Herzegovina', and in this context it"

and the rest of the passage is as quoted by the Court:

> "recommends that the Court, pursuant to Article 41 of its Sttute and Article 73 of its Rules of Procedure, order the application of provisional measures, in particular:
>
> - to instruct the authorities controlled by A. Izetbegovic to comply stricly with the latest agreement on a cease-fire in the 'Republic of Bosnia and Herzegovina' which went into force on 28 March 1993;
>
> - to direct the authorities under the control of A. Izetbegovic to respect the Geneva Conventions for the Protection of Victims of War of 1949 and the 1977 Additional Protocols thereof, since the genocide of Serbs living in the 'Republic of Bosnia and Herzegovina' is being carried out by the commission of very serious war crimes which are in violation of the obligation not to infringe upon the essential human rights;

- to instruct the authorities loyal to A. Izetbegovic to close immediately and disband all prisons and detention camps in the 'Republic of Bosnia and Herzegovina' in which the Serbs are being detained because of their ethnic origin and subjected to acts of torture, thus presenting a real danger for their life and health;

- to direct the authorities controlled by A. Izetbegovic to allow, without delay, the Serb residents to leave safely Tuzla, Zenica, Sarajevo and other places in the 'Republic of Bosnia and Herzegovina', where they have been subject to harassment and physical and mental abuse, and having in mind that they may suffer the same fate as the Serbs in eastern Bosnia, which was the site of the killing and massacres of a few thousand Serb civilians;

- to instruct the authorities loyal to A. Izetbegovic to cease immediately any further destruction of Orthodox churches and places of worship and of other Serb cultural heritage, and to release and stop further mistreatment of all Orthodox priests being in prison;

- to direct the authorities under the control of A. Izetbegovic to put an end to all acts of discrimination based on nationality or religion and the practice of 'ethnic cleansing', including the discrimination relating to the delivery of humanitarian aid, against the Serb population in the 'Republic of Bosnia and Herzegovina'."

3. The questions that I would like to put to both Parties are the following:

(*a*) Do all the requests in the letter fall within the scope of the prevention of "genocide" as is defined in Article II of the Genocide Convention?

(*b*) If the answer to Question 1 is No, which requests are regarded as not falling within that definition?

(*c*) If the answer No is given in relation to any of the requests, on what basis is the Court said to have jurisdiction in respect of them and, in particular, is the concept of *forum prorogatum* relevant here?

[Traduction]

1. La question concerne la lettre du 1er avril 1993 adressée au Greffier de la Cour par M. Vladislav Jovanovic, ministre fédéral des affaires étrangères de la Yougoslavie. Elle nécessite quelques mots d'introduction.

2. La partie pertinente de la lettre du ministre des affaires étrangères est le paragraphe 4, dont le contenu est rapporté presque intégralement au paragraphe 9 de l'ordonnance de la Cour du 8 avril 1993. Le passage cité dans l'ordonnance peut être complété par les mots d'introduction suivants, qui le précédaient :

> "Le Gouvernement yougoslave se félicite de ce que la Cour soit prête à examiner s'il est nécessaire d'indiquer des mesures conservatoires afin de mettre un terme aux conflits armés interethniques et inter-religieux ayant lieu à l'intérieur du territoire de la 'République de Bosnie-Herzégovine' et, dans ce contexte,...",

la suite du passage étant telle que citée par la Cour :

> "recommande à la Cour d'indiquer, conformément à l'article 41 de son Statut et à l'article 73 de son Règlement, des mesures conservatoires, et en particulier :
>
> - de donner des instructions aux autorités sous le contrôle de M. A. Izetbegovic pour qu'elles se conforment strictement au dernier accord sur le cessez-le-feu dans la 'République de Bosnie-Herzégovine' qui est entré en vigueur le 28 mars 1993;
>
> - d'ordonner aux autorités sous le contrôle de M. A. Izetbegovic qu'elles respectent les conventions de Genève de 1949 pour la protection des victimes de la guerre et les protocoles additionnels de 1977 à ces conventions, étant donné que le génocide des Serbes vivant dans la 'République de Bosnie-Herzégovine' est en train d'être perpétré par des crimes de guerre très graves qui enfreignent l'obligation de ne pas violer les droits essentiels de la personne humaine;
>
> - de donner des instructions aux autorités loyales à M. A. Izetbegovic afin qu'elles ferment et démantèlent immédiatement toutes les prisons et tous les camps de détention se trouvant dans la 'République de Bosnie-Herzégovine' et où les Serbes sont détenus en raison de leur origine ethnique et font l'objet d'actes de torture, ce qui met en sérieux danger leur vie et leur santé;

- d'ordonner aux autorités sous le contrôle de M. A. Izetbegovic de permettre sans tarder aux habitants serbes de quitter en toute sécurité Tuzla, Zenica, Sarajevo et les autres localités de la 'République de Bosnie-Herzégovine' où ils ont fait l'objet de harcèlements et de mauvais traitements physiques et mentaux, en tenant compte de ce qu'ils risquent de subir le même sort que les Serbes en Bosnie orientale, qui a été le théâtre de meurtres et de massacres de quelques milliers de civils serbes;

- de donner des instructions aux autorités loyales à M. A. Izetbegovic pour qu'elles mettent immédiatement fin à la destruction des églises et lieux de culte orthodoxes et d'autres éléments du patrimoine culturel serbe, et pour qu'elles libèrent et cessent de maltraiter tous les prêtres orthodoxes détenus;

- d'ordonner aux autorités sous le contrôle de M. A. Izetbegovic de mettre un terme à tous les actes de discrimination basés sur la nationalité ou la religion ainsi qu'aux pratiques de 'purification ethnique', y compris la discrimination exercée en ce qui concerne l'acheminement de l'aide humanitaire, à l'encontre de la population serbe dans la 'République de Bosnie-Herzégovine'".

3. Les questions que je désire poser aux deux Parties sont les suivantes :

A) Toutes les demandes contenues dans la lettre entrent-elles dans le cadre de la prévention du "génocide", tel que défini à l'article II de la convention sur le génocide ?

B) Si la réponse à la première question est négative, quelles demandes sont-elles considérées comme n'entrant pas dans cette définition ?

C) Si une réponse négative est apportée pour l'une quelconque des demandes, sur quelle base la Cour aurait-elle compétence pour en connaître et, en particulier, le concept de *forum prorogatum* est-il pertinent en l'occurrence ?

Thank you, Mr. President.

The PRESIDENT: Thank you very much, Judge Lauterpacht.

Those are the two questions asked of both Parties. They should be available immediately in writing to both Parties. For the replies, the Court considered the matter this morning and decided that the replies could be given orally this afternoon if either Party wishes to do so but if either Party prefers to make a written answer, then could we have it please by 11 o'clock tomorrow morning? That is perhaps a little tight if the answers involve other materials and the Court added that any supplementary material that a Party wishes to add to the answer to the question may be given to us by about the middle of next week.

Perhaps I should add that any supplementary material, please, should be absolutely strictly concerned with the answer to these questions that have been put to the Parties.

Now I think that concludes the business for this morning. This afternoon we will meet again at 3 o'clock to hear the reply of Bosnia and then at 5 o'clock to hear the reply of Yugoslavia unless indeed they wish to reply earlier than that time.

Thank you very much.

The Court rose at 12.45 p.m.
