DISSENTING OPINION OF JUDGE KREĆA

The Order of 13 September 1993 constitutes the reaffirmation of the Court's earlier decision of 8 April 1993, both in the formal and in the material sense.

Noteworthy for an assessment of such a decision is the fact that the Court has rejected the proposed provisional measures requested by the Applicant noting *inter alia*,

> "whereas the rights listed at *(a)* to *(g)* were asserted in almost identical terms, and their protection was claimed to be necessary, in the first request of Bosnia-Herzegovina for provisional measures, filed on 20 March 1993; whereas of the rights listed only that indicated in paragraph *(c)* is such that it may prima facie to some extent fall within the rights arising under the Genocide Convention; and whereas it was therefore in relation to that paragraph and for the protection of rights under the Convention that the Court indicated provisional measures in its Order of 8 April 1993 . . ." (Order, para. 39).

The fact that the Court took such a position and that the first and second request of the Applicant are virtually identical in substance, raises a question of crucial significance — what were the grounds that served as a basis for the Court's decision of 8 April 1993?

I

In the case at hand, the Court based its prima facie jurisdiction on the fact that both Parties to the dispute are contracting parties to the Convention on the Prevention and Punishment of the Crime of Genocide (1948), which, *inter alia*, provides that

> "Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute." (Art. IX.)

Hence, in its Order issued on 8 April 1993, the Court decreed:

> "Whereas the Court, having established the existence of a basis on which its jurisdiction might be founded, ought not to indicate

> measures for the protection of any disputed rights other than those which might ultimately form the basis of a judgment in the exercise of that jurisdiction; whereas accordingly the Court will confine its examination of the measures requested, and of the grounds asserted for the request for such measures, to those which fall within the scope of the Genocide Convention" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 19, para. 35).

The Genocide Convention extends protection to a "national, ethnical, racial or religious group" (Art. II), which in practical terms means that the "respective rights" in terms of Article 41 of the Statute are *in concreto* the right of a "national, ethnical, racial or religious group, as such to be protected from acts committed with intent to destroy it, in whole or in part".

As can be seen from the wording of paragraph *(c)*, it does not relate to rights of "national, ethnical, racial or religious groups, as such" but to "the right of the People and State of Bosnia-Herzegovina". Broadly speaking, the term "people" could, in principle, be related to "national or ethnical groups" as the object of protection of the Genocide Convention. I say "in principle", since in this specific instance there are no reasonable grounds for such an interpretation. The expression "people" in this case does not refer to an actual homogeneous national, ethnic, or religious entity, for the phrase "People of Bosnia and Herzegovina" used by the Applicant, in fact, covers three ethnic communities. Therefore, a broad interpretation of the term "people" according to which it would extend to or imply "a national, ethnical, racial or religious group" in terms of the Genocide Convention, especially in the view of the content of the Applicant's requests for provisional measures, would in this case lead to an absurd outcome.

Anyway, the Applicant himself tacitly admits that in Bosnia-Herzegovina there is no single national *corpus*, for the proposal for the provisional measure under paragraph 2 of the first request, and to a certain extent also under paragraph 2 of the second request, is that a ban be imposed on aid (etc.) "to any nation . . . in Bosnia-Herzegovina".

The actual formulation of rights under paragraph *(c)* consists of two parts: the first is more of a rhetorical statement than a right formulated by the Convention ("right . . . to be free at all times") and the second is a classic example of an interim judgment ("from genocide and other genocidal acts perpetrated . . . by Yugoslavia (Serbia and Montenegro), acting together with its agents and surrogates in Bosnia and elsewhere").

In my opinion, the primary condition which a request for provisional measures must satisfy is that these measures should be "regarded as solely

designed to protect the subject of the dispute and the actual object of the principal claim" (*Polish Agrarian Reform and German Minority, Order of 29 July 1933, P.C.I.J., Series A/B, No. 58*, p. 178). In the *United States Diplomatic and Consular Staff in Tehran* case, the Court has stressed in imperative form that the request for the indication of provisional measures

> "*must by its very nature relate to the substance of the case* since, as Article 41 [of the Statute] expressly states, their object is to preserve the respective rights . . ." (*I.C.J. Reports 1979*, p. 16, para. 28).

This primary condition is not fulfilled in the concrete case. Namely, as evidenced by paragraph 39 of the latest Order, in passing the Order of 8 April, the Court relied solely on paragraph *(c)* — which means that it did not accept any one of the provisional measures proposed by the Applicant but it found a basis for passing the Order in the part of the request dealing with the "Legal rights sought to be protected by the indication of provisional measures". This part of the request, however, is an explanation of the reasons behind the request for provisional measure ("reasons therefor") to use the terminology of Article 73, paragraph 2, of the Rules, so that even if it were to be perfectly worded it would be no more than one element of the request.

According to Article 73, paragraph 2, of the Rules of Court, the Court decides to indicate provisional measures on the basis of a request which "shall specify the reasons therefor, the possible consequences if it is not granted, and the measures requested".

In view of the fact that the Applicant's first request had contained a proposal for the indication of provisional measures, it follows that the Court deemed those provisional measures, as had also been the case with respect to the provisional measures proposed in the second request, inappropriate to the object of the dispute and it passed the Order on the basis of the formulation of rights whose protection was requested.

That being so, as confirmed by paragraph 39 of the Order of 13 September 1993, in my opinion, the question emerges whether the Court should have decreed the Order of 8 April 1993?

What are the reasons behind the flagrant discrepancy between the measures the Applicant is proposing on the one hand and the prima facie established jurisdiction of the Court to decide only on those measures and grounds "which fall within the scope of the Genocide Convention" (*I.C.J. Reports 1993*, p. 19, para. 35) on the other? I deem the answer to this question to be relevant in the circumstances of the case because in itself, and even more in the context of the case, it cannot but affect both the wording and the substance of the pronounced provisional measures.

Correct interpretation of the documents of the case suggests that it is the Applicant's intention to extend the dispute. Namely: the request for the indication of provisional measures of protection submitted by the Applicant on 27 July contains *inter alia* that *ratio* behind the submission of such a request:

> "This request for additional measures of protection is motivated by the desire to have the Court protect the 'rights' of the People and State of Bosnia and Herzegovina. Moreover, this request for additional measures of protection is also motivated by the desire to have the Court protect the very existence of the People and State of Bosnia and Herzegovina from extermination by means of genocide, partition, dismemberment, annexation and incorporation by the Respondent. Since the Court has the legal power to protect the 'rights' of Bosnia and Herzegovina, then *a fortiori* the Court must have the legal power to protect Bosnia and Herzegovina itself." (Request for the indication of provisional measures of protection submitted by the Government of the Republic of Bosnia and Herzegovina, Preamble.)

In the part of the request titled "D. The Consequences Sought to be Avoided by Provisional Measures" which, pursuant to the provision of Article 73, paragraph 2, is an obligatory and integral component of the request in which a party "shall specify the reasons therefor", the Applicant states:

> "The overriding objective of this request is to prevent the further loss of human life and further acts of genocide against the People of Bosnia and Herzegovina, as well as to prevent the partition, dismemberment, annexation, incorporation and final destruction of the Republic of Bosnia and Herzegovina itself, a sovereign State and Member of the United Nations Organization."

Such a position on the part of the Applicant which in concrete terms means a request for the indication of provisional measures, made it incumbent upon the Court, in my opinion, to look into two things:

(1) the meaning of such an act within the framework of the actual opening proceedings and in the light of the provisional measure under paragraph 52 B, Order of 8 April 1993, which, *inter alia*, says that the Applicant "should not take any action . . . which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide . . ."; and

(2) the particular meaning of such an act in the context of the efforts being invested by the Conference in Geneva to seek out a political settlement to the tragedy of Bosnia-Herzegovina. For, on the basis of the Applicant's submissions, the conclusion may be drawn that the purpose of the provisional measures is also to prevent the adoption of the Owen-Stoltenberg Peace Plan for Bosnia. The Applicant's written submission of 10 August states, *inter alia*:

> "it is obvious that the Owen-Stoltenberg Plan is a diktat that is the legal equivalent to what Hitler presented to Czechoslovakia at Munich in 1938. The Plan is based upon the assumption that the Republic of Bosnia and Herzegovina — a Member State of the United Nations — will be carved up into three independent States and deprived of our United Nations membership",

and

> "we most respectfully request the Court to grant immediately all of the relief specified in (1), (2), (3) and (4) above and, in particular but not limited to, the ten measures of provisional protection set forth in our second request as well as all of the measures *proprio motu* suggested therein." (Letter of the Agent of Bosnia and Herzegovina to the Court, dated 7 August 1993.)

There is no doubt that this is a question which is outside the jurisdiction of the Court. To my mind, however, the fact that it is does not exclude the Court, but on the contrary, should prompt the Court, bearing in mind the crucial importance of the peace negotiations as the only way to end the inferno of civil war and the massive suffering of the innocent population, to find a way to urge the Applicant to continue the peace negotiations in Geneva with the Croat and the Serb side (*per analogiam* with the Court in *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 20, para. 35).

II

More than 30 years ago, Sir Hersch Lauterpacht wrote: "A substantial part of the task of judicial tribunals consists in the examination and the weighing of the relevance of facts." (H. Lauterpacht, *The Development of International Law by the International Court*, 1958, p. 48.)

If the examination of facts is of crucial importance in court proceedings, and there can be no doubt it is, then it is *a fortiori* important in the process of indication of provisional measures. In a procedure that is characterized by urgency, the Court's possibilities for making an unbiased and critical assessment of the factual situation are necessarily limited. In each particular case, the Court is in actual fact seeking to strike a fine and delicate balance between Scylla — the need to respond to the urgency of the provisional measures — and Charybdis — the imperative requirement not to distort the facts in doing so.

The procedure of indication of provisional measures relies heavily on refutable assumptions *(presumptio juris tantum)*, e.g., the refutable assumption that the Court has jurisdiction in the merits of the case in

which provisional measures are adopted. The logic of presumption is also expressed in the terminology used, since Article 41 of the Statute uses the term "parties", although strictly speaking the parties affected by provisional measures need not be the actual parties to the dispute which is to be resolved by a judgment concerning the rights which the provisional measures are supposed to protect (*exempli causa*, the *Anglo-Iranian Oil Co.* case).

Prima facie, an assessment is justified in cases when the Court establishes its competence in the procedure of indicating provisional measures. And that, in my view, is the absolute limit for the application prima facie of presumption in the incidental procedure of provisional measures. For even an incorrect assessment of jurisdiction, in the final analysis, does not affect legal security, in fact it enhances it in view of the inherent advantages of the judicial settlement of disputes over other modes of resolving disputes.

However, an incorrect assessment of facts necessarily leads to the erroneous application of law which is the ontological antipode of the ideal of judicial proceedings. And a prima facie assessment of facts necessarily entails a very high risk of mistake.

There is not, nor should there be, any substantial difference between the establishment of facts in an incidental procedure, regardless of the particular incidental procedure involved, and the establishment of facts in the merits of the case. Being established by decision of the Court, orders indicating provisional measures have a real and objective value, although orders do not create *res judicata* — in other words, the *differentia specifica* between these two kinds of Court decisions being that provisional measures may be re-examined in the merits of the case.

If the term "fact" is taken in its ordinary meaning as "a thing certainly known to be true" then the only clear and recognizable fact is the apocalyptic tragedy of the Muslims, Serbs and Croats in the war-devastated parts of Bosnia-Herzegovina. Aside from that fact there is a vast expanse of subjectivism which feeds on media propaganda, television and newspaper reports teeming with generalizations, imprecise and vague expressions such as "many observers", "diplomats suggested . . .", "he noted intelligence report indicating . . ." and the like which cannot, even if liberal criteria *ad absurdum* were to be applied, be accepted as evidence.

Subjectivism has an intolerable tendency of spreading easily. It leads to expressions with an ordinary meaning being imbued with a meaning that is in the interest of one party in the dispute. In the process, in the interest of

obtaining the expected result, the fact is neglected that interpretation in good faith implies that "if the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter" (*Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, p. 8).

By the nature of its function, in searching for the material truth, the Court naturally cannot and may not *a priori* exclude any source of information but, at the same time, it is duty bound to subject each and every report to critical scrutiny as that is the only way to avoid it becoming anybody's hostage except the hostage of facts and the truth.

The term "evidence" covers "real evidence, documentary proofs and the testimony of witnesses and experts, advanced by a party either on its own motion or at the invitation of the Court" (M. Hudson, *The Permanent Court of International Justice, 1920-1942*, 1972, p. 565).

If we abide by this definition of the term "evidence", it is my impression that the Court has not devoted due attention to those proofs which contain names, testimony of witnesses, research findings, etc., as stipulated by the provisions of the Rules of Court (*exempli causa*, Arts. 65, 66 and 67).

Media information may not *per se*, in my opinion, be taken as evidence and still less as irrefutable, hard proof of the existence of the relevant fact. At best it can be taken as evidence tending to establish fact.

In my opinion in this particular matter, the Court is not in possession of hard facts. That is one side of the coin. The other is the obvious need of the Court, in view of the fact that in this particular dispute it has prima facie established its jurisdiction, to react to the suffering and persecution of all three peoples in Bosnia-Herzegovina in an appropriate manner that would be in harmony with the current phase of the proceedings. The humanitarian dimension of the Court's decision is of fundamental importance in this case.

The humanitarian dimension of the Court's decision, as I see it, is not derived from what might conditionally be called the humane concerns shaping public opinion, which are both genuine and emotional, but from the humaneness inherent in the substance of the law applied by the Court.

Hence, it would appear that in this specific case and proceeding from the fact that

> "the essential object of provisional measures is to ensure that execution of a future judgment on the merits shall not be frustrated by the actions of one party *pendente lite*" (*I.C.J. Reports 1976*, separate opinion of President Jiménez de Aréchaga, p. 15),

two facts are of special importance:

(1) That the jurisdiction of the Court was established prima facie. The urgency of the provisional measures may not *a priori* presume the jurisdiction of the Court in the merits. As Judge Gros pointed out in the *Nuclear Tests* case:

> "In the decision which the Court has to take on any request for provisional measures, urgency is not a dominant and exclusive consideration; one has to seek, between the two notions of jurisdiction and urgency, a balance which varies with the facts of each case." (*Nuclear Tests (Australia* v. *France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973,* dissenting opinion of Judge Gros, p. 120.)

In this case this applies in particular to the jurisdiction of the Court *ratione materiae.*

(2) The distinctive nature of the crime of genocide. As a *delictum juris gentium* the crime of genocide implies the cumulation of two elements — the material (the commission of the acts indicated *a limine* in Article II of the Convention) and the subjective (the intention *(dolus specialis)* to "destroy, in whole or in part, a national, ethnical, racial or religious group, as such").

In the absence of conclusive evidence and on the grounds of what I have said, it is my view that the Court should move away from the uncertain terrain of offered evidences to the hard, precise concept of notoriety. The concept of notoriety *in concreto* is in full harmony with what Judge Bedjaoüi pointed out in his dissenting opinion in the Lockerbie case:

> "The present phase allows [the Court] only to entertain a provisional and merely prima facie idea of the case, pending later consideration of the merits in a fully comprehensive way." (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom, Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992,* p. 33.)

The principal elements of the concept of notoriety, logically and empirically irrefutable, would in this particular case imply:

(a) the places where mass destruction of people occurs;
(b) under whose jurisdiction those places are; and
(c) who is prima facie responsible in the light of obligations imposed by relevant Articles of the Genocide Convention.

I hold that in the interest of justice, effective jurisdiction should be taken as a second element of notoriety in spite of the fact that before the Human Rights Committee the Applicant confirmed that

> "the Republic of Bosnia-Herzegovina considers itself legally responsible for whatever has taken place not only in that part of its territory on which it has factual and effective control but also in other parts of its territory" (United Nations, *Human Rights Committee, International Covenant on Civil and Political Rights*, CCPR/C/79/Add.14, 28 December 1992).

It seems almost superfluous to note that the concept of notoriety is not ideal. The shortcomings of this concept are evident. Basically, they are the antipodes of its inherent advantages. While its constituent elements rest on firm logical and empirical grounds, they are at the same time generalized and relatively ill-adapted to specific events and cases. That is precisely why notoriety constitutes a kind of reserve reliance for the Court in cases when it is not in possession of irrefutable evidence.

This very defect of notoriety, in cases such as this one, turns into an invaluable advantage. A dominant characteristic of this case is that humanitarian reasons require the Court's reaction even though, in terms of law, the fundamental identity between the proposed provisional measures, on the one hand, and the subject-matter of the case, on the other, would suggest extreme restraint in the reaction because of the danger of falling into the trap of an interim judgment.

Notoriety, as a basis of the Court in the indication of provisional measures, provides a chance for those measures to be tailored to the characteristics of this case as I have described them. In other words, to be worded in the form of general measures or, alternatively, as specific measures designed to remove or at least mitigate the effects of the causes, i.e., the facts which have resulted in the tragedy of civil war in Bosnia-Herzegovina.

III

Bearing in mind what I said earlier, including the concrete proposals made, I shall briefly outline my opinion regarding the provisional measures contained in the Order.

My views on the Order are determined both by the content of the individual provisional measures and, at least as much, by the fact that I see the Order as an organic unity, an integral act.

The measure under A (1) prima facie is a declaration of the general obligation of the contracting parties to the Genocide Convention and therefore the Respondent as well, to "take all measures within [their] power to prevent commission of the crime of genocide".

However, the general nature of the obligation that applies to all contracting parties is derogated both by the one-sided nature of the measure

— it is addressed to the Respondent alone — and by the wording used. The conclusion suggested is that the Respondent is failing to honour the commitment made in signing the Genocide Convention and that hence the Respondent "should immediately ... take all measures within its power to prevent commission of the crime of genocide", or that the Respondent has certain special obligations deriving from the Genocide Convention.

The provisional measure under A (2) is extremely ambiguous and suggestive. By wording and content, it is dangerously close to or could even be said to incorporate elements of an interim judgment both in its present form and potentially.

In its present form because it is

> "open to the interpretation that the Court believes that the Government of the Federal Republic of Yugoslavia is indeed involved in such genocidal acts, or at least that it may very well be so involved" (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, declaration of Judge Tarassov, p. 26).

The potential prejudicial effect of this provisional measure is to be found in the stipulation that the Government of the Federal Republic of Yugoslavia should in particular "ensure" that any military, paramilitary or irregular armed units which "may" be directed or supported by it and 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 ... incitement to commit genocide" or of "complicity in genocide". These passages open

> "practically unlimited, ill-defined and vague requirements for the exercise of responsibility by the Respondent in fulfilment of the Order of the Court, and lay the Respondent open to unjustifiable blame for failing to comply with this interim measure" (*ibid.*, pp. 26-27).

In fact, the potential prejudical meaning of the cited formulation has *de facto* been realized by this Order. For, by issuing this Order, the Court has, *inter alia*, proceeded from the position that it is not satisfied that all that might have been done has been done to prevent commission of genocide in the territory of Bosnia-Herzegovina (Order, para. 57).

The elements of an interim judgment contained in the first two provisional measures become clearly identifiable if their contents are interpreted on the basis of *argumentum a contrario*. It appears that the Applicant is not under any specific obligation to "immediately ... take all measures within its power to prevent commission of the crime of genocide", nor should the Applicant

> "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-Herzegovina or against any other national, ethnical, racial or religious group".

And this at a stage of the proceedings when the Court cannot make definitive findings of fact or of imputability and when, at the same time, it is evident that "where the risk of genocide was not in Yugoslav territory but in Bosnia-Herzegovina" and when it was equally evident that both on the grounds of general international law and on the grounds of its explicit admission, the Applicant prima facie is primarily responsible for acts of genocide alleged to have been committed in Bosnia-Herzegovina, and when the Human Rights Committee, after having

> "welcomed the . . . affirmation that the Republic of Bosnia-Herzegovina considers itself legally responsible for whatever has taken place not only in that part of its territory on which it has factual and effective control but also in the other parts of its territory",

recommended that the measures already undertaken by the Applicant

> "should be further intensified and systematically monitored so as to ensure that 'ethnic cleansing' does not take place, whether as a matter of revenge or otherwise; . . ." (United Nations, *Human Rights Committee, International Covenant on Civil and Political Rights*, CCPR/C/79/Add.14, 28 December 1992).

What is more, that the measures should be of such a nature is, to a certain extent, in disharmony with the reasoning of the Court. For in paragraph 45 of the Order of 8 April 1993, it is stated *expressis verbis* that the Court concluded that

> "there is a grave risk of acts of genocide being committed [and that] Yugoslavia and Bosnia-Herzegovina, whether or not any such acts in the past may be legally imputable to them, are under a clear obligation to do all in their power to prevent the commission of any such acts in the future".

It is obvious that this premise has not been legally and technically implemented in the operative part of the Order of 8 April 1993.

A possible explanation might be found in the position that the obligation of prevention of genocide for a State as regards acts or threatened acts on its own sovereign territory is evident and its implications do not need to be spelled out or explained in the form of provisional measures.

However, such a position does not appear to be tenable and for two principal reasons:

(1) In this particular dispute, the Court has linked its prima facie jurisdiction in the indication of provisional measures to the Convention on Genocide. With respect to the obligation of prevention of the crime of genocide, the Convention does not contain the principle of universal repression. It has firmly opted for the territorial principle of the obligation of prevention and "the only action relating to crimes committed outside the territory of the Contracting Party is by organs of the United Nations within the scope of the general competence" (Nehemiah Robinson, *The Genocide Convention, Its Origins and Interpretation*, The Institute of Jewish Affairs, World Jewish Congress, New York, 1949, pp. 13-14).

(2) The commission of acts in the territory of another State, be it recognized or unrecognized, would mean violation of the norm of the prohibition of intervention which is, by its nature, *jus cogens*.

Provisional measures such as those indicated under A (1) and A (2) are risky even from the standpoint of the Court itself. The party that appears to gain from them may be tempted to repeatedly submit fresh requests for provisional measures whereby the Court may find itself in a position of making an estoppel in terms of the facts presented by that party. The dangers emanating from such a situation are all the greater in the event of a close link existing between the provisional measures, on the one hand, and the actual subject-matter of the case, on the other.

As far as the provisional measure under B is concerned, viewed *in abstracto* in technical legal terms it is a perfect expression of the Court's practice with respect to provisional measures.

The formulation, however, is not appropriate in view of the circumstances of the case. It places both Parties on an equal footing though it is clear from the Applicant's submissions that by insisting on extending the Court's jurisdiction beyond the Genocide Convention, on the one hand, and by the inappropriate content of the request, on the other, its consequence objectively is to "extend the existing dispute over the prevention or punishment of the crime of genocide" and to "render it more difficult of solution".

It is my opinion that in the light of the relevant circumstances, two models of provisonal measures are indicated:

(a) the model of provisional measures which Judge Bedjaoui referred to in the Lockerbie case as "a general, independent measure, in the form of an appeal to the Parties . . ." (*Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom), Provisional Measures, Order of 14 April 1992, I.C.J. Reports 1992*, dissenting opinion of Judge Bedjaoui, p. 48) which in substance corresponds to the message addressed by the President of the Court to both Parties on 5 August 1993;

(b) the model of specific provisional measures which would use as a pivotal point the premise of notoriety and which would be in line with the necessity of seeking a peaceful solution to the civil war in Bosnia-Herzegovina, on the one hand, and the undertaking of all measures which could contribute to the prevention of any commission, continuance or encouragement of the heinous international crime of genocide, on the other.

The specific provisional measures could be indicated either alternatively or cumulatively in relation to the general provisional measure.

In view of the fact that the provisional measures indicated in the Order differ substantially, it is with regret that I avail myself of the right to express a dissenting opinion.

(Signed) Milenko KREĆA.