SEPARATE OPINION OF JUDGE PARRA-ARANGUREN

While endorsing the operative paragraphs in the Judgment, I have decided to append this separate opinion to emphasize the following points that I consider of great importance:

1. The fact that Bosnia and Herzegovina became a party to the Genocide Convention was expressly admitted by Yugoslavia on 10 August 1993 when requesting the Court to indicate the following provisional measures:

> "The Government of the so-called Republic of Bosnia and Herzegovina should immediately, *in pursuance of its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide of December 1948*, take all measures within its power to prevent commission of the crime of genocide against the Serb ethnic group." (Emphasis added.)

Therefore, Yugoslavia admitted that Bosnia and Herzegovina was a party to the Genocide Convention and consequently that the Court has jurisdiction on the basis of its Article IX; a declaration that is particularly important because it was made almost two months after the Secretary-General of the United Nations received, on 15 June 1993, the communication from Yugoslavia objecting to the notification of succession made by Bosnia and Herzegovina in respect of the Genocide Convention.

2. The declaration made by Bosnia and Herzegovina expressing its wish to succeed to the Convention with effect from 6 March 1992, the date on which it became independent, is wholly in conformity with the humanitarian nature of the Genocide Convention, the non-performance of which may adversely affect the people of Bosnia and Herzegovina. In my opinion the Judgment should have remarked on and developed this point, taking into account that the importance of maintaining the application of such conventions of humanitarian character had already been recognized by the Court in its Advisory Opinion of 21 June 1971, when determining "the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)"; resolution that had declared invalid and illegal all acts taken by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate. In that case it was recalled that member States were under an obligation to abstain from entering into treaty relations with South Africa in all cases in which the

Government of South Africa purported to act on behalf of or concerning Namibia; and immediately after the Court added:

> "With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation. With respect to multilateral treaties, however, the same rule cannot be applied to certain general conventions such as those of a humanitarian character, the non-performance of which may adversely affect the people of Namibia." (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), I.C.J. Reports 1971*, p. 55, para. 122.)

Similar ideas are sustained by Article 60, paragraph 5, of the 1969 Vienna Convention on the Law of Treaties when providing that its rules on termination or suspension of a treaty as a consequence of its breach

> "do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties".

It is not easy to understand why the same conclusion was not accepted by the Court in this case relating to the application of the Genocide Convention.

(Signed) Gonzalo PARRA-ARANGUREN.