

SEPARATE OPINION OF JUDGE PARRA-ARANGUREN

1. Notwithstanding my agreement with the operative part of the Order, I consider it necessary to make the following observations.

2. Article IX of the Genocide Convention is in force between the Parties. It prescribes:

“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.”

3. Yugoslavia maintains that the Respondent has violated:

“the obligation contained in the Convention on the Prevention and Punishment of the Crime of Genocide not to impose deliberately on a national group conditions of life calculated to bring about the physical destruction of the group . . .” (Application of Yugoslavia, p. 12).

Furthermore, during the public hearings Yugoslavia stated “in the circumstances the intensive bombing of Yugoslav populated areas constitutes a breach of Article II of the Genocide Convention” (CR 99/25, p. 12, Brownlie).

4. The Respondent considers that it has not violated the Genocide Convention, because no genocide crimes have been committed during or as a result of the military intervention of the NATO countries in Yugoslavia.

5. In its Judgment of 11 July 1996 the Court admitted *prima facie* the existence of a legal dispute between the Parties because of the existence of:

“‘a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations’ (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74)

and that, by reason of the rejection by Yugoslavia of the complaints formulated against it by Bosnia and Herzegovina, ‘there is a legal dispute’ between them (*East Timor (Portugal v. Australia), I.C.J. Reports 1995*, p. 100, para. 22)” (*Application of the Convention on*

the Prevention and Punishment of the Crime of Genocide. Preliminary Objections, I.C.J. Reports 1996 (II), pp. 614-615, para. 29).

6. Consequently, taking into account the allegations of the Parties in these incidental proceedings, there appears to exist, prima facie, a “legal dispute” between them regarding the interpretation and application of the Genocide Convention. For this reason, Article IX of the Genocide Convention is applicable and, in my opinion, the Court has prima facie jurisdiction to entertain the request for provisional measures presented by Yugoslavia.

7. Article IX of the Genocide Convention is the only prima facie basis for jurisdiction of the Court in the present case. Therefore the only provisional measures that it can indicate are those aiming to guarantee the rights of the Applicant under the Genocide Convention.

8. Yugoslavia is requesting the Court to indicate that the Respondent “shall cease immediately the acts of use of force and shall refrain from any act of threat or use of force against the Federal Republic of Yugoslavia” (CR 99/14, p. 63, Etinski). However, the threat or use of force against a State cannot in itself constitute an act of genocide within the meaning of the Genocide Convention. Consequently the provisional measures requested by Yugoslavia do not aim to guarantee its rights under the Genocide Convention, i.e., the right not to suffer acts which may be qualified as genocide crimes by the Convention. Therefore, in my opinion, the measures requested by Yugoslavia shall not be indicated.

(Signed) Gonzalo PARRA-ARANGUREN.
