



INTERNATIONAL COURT OF JUSTICE

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Communiqué

unofficial
for immediate release

No. 93/9
8 April 1993

Application of the Convention on the Prevention and
Punishment of the Crime of Genocide
(Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))

Order of Provisional Measures

The Hague, 8 April 1993 - The International Court of Justice today issued an Order which calls upon Yugoslavia (Serbia and Montenegro) to "immediately ... take all measures within its power to prevent commission of the crime of genocide". The Court's Order of provisional measures states that Yugoslavia

"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".

The Court also held that neither Party should "aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution".

The Court issued these provisional measures in response to a suit initiated by Bosnia-Herzegovina on 20 March 1993. The Court found that it had prima facie jurisdiction to issue its Order under the Convention on the Prevention and Punishment of the Crime of Genocide concluded by the United Nations in 1948, to which Yugoslavia and Bosnia-Herzegovina are parties. The Genocide Convention describes as genocide acts "committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group".

While the Court acted speedily to issue its provisional measures, a judgment on the merits of the case will be handed down only after the Parties fully brief and argue it. The Court's Order emphasized that the facts and law of the dispute meanwhile remain unsettled. Under its Statute, the Court has the power to indicate provisional measures which ought to be taken to preserve the rights of either Party, pending judgment on the merits of the case. The Court noted that it was not able to indicate measures for the protection of any disputed rights which fell outside the scope of the Genocide Convention.

The 15-member Court is the principal judicial organ of the United Nations. Its contentious jurisdiction is confined to disputes between countries. Accordingly, unlike a national court or the international criminal tribunal whose creation is currently being considered by the United Nations Security Council, it could not itself try individuals accused of acts of genocide.

The full text of the operative paragraph of the Order reads as follows:

"52. For these reasons,

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;

IN FAVOUR: President Sir Robert JENNINGS;
Vice-President ODA; Judges AGO, SCHWEBEL, BEDJAQUI, NI,
EVENSEN, GUILLAUME, SHAHABUDEEN, AGUILAR MAWDSLEY,
WEERAMANTRY, RANJEVA, AJIBOLA.

AGAINST: Judge TARASSOV.

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."

Judge Tarassov appended a declaration to the Order.