

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING APPLICATION OF
THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE

(BOSNIA AND HERZEGOVINA
v. YUGOSLAVIA (SERBIA AND MONTENEGRO))

FURTHER REQUESTS FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER OF 13 SEPTEMBER 1993

1993

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

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))

NOUVELLES DEMANDES EN INDICATION
DE MESURES CONSERVATOIRES

ORDONNANCE DU 13 SEPTEMBRE 1993

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of the Crime of Genocide, Provisional Measures, Order of 13 September 1993,
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FURTHER REQUESTS FOR THE INDICATION
OF PROVISIONAL MEASURES

ORDER

Present: President Sir Robert JENNINGS; *Vice-President* ODA; *Judges* SCHWEBEL, BEDJAOU, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDDEEN, AGUILAR MAWDSLEY, WEERAMANTRY, AJIBOLA, HERCZEGH; *Judges ad hoc* LAUTERPACHT, KREĆA; *Registrar* VALENCIA-OSPINA.

In the case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide,

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 35, 36, 41 and 48 of the Statute of the Court, and to Articles 73, 74, 75 and 76 of the Rules of Court,

Having regard to the Order made by the Court on 8 April 1993,

Makes the following Order:

1. Whereas by an Application by the Republic of Bosnia and Herzegovina (hereinafter called "Bosnia-Herzegovina") filed in the Registry of the Court on 20 March 1993, instituting proceedings against the Federal Republic of Yugoslavia (Serbia and Montenegro) (hereinafter called "Yugoslavia"), Bosnia-Herzegovina, basing the jurisdiction of the Court on Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 (hereinafter called the "Genocide Convention"), recounts a series of events in Bosnia-Herzegovina from April 1992 up to the date of Application which, in its contention, amount to acts of genocide within the definition given in the Genocide Convention; and whereas Bosnia-Herzegovina claims that the acts complained of have been committed by former members of the Yugoslav People's Army (YPA) and by Serb military and paramilitary forces under the direction of, at the behest of, and with assistance from Yugoslavia, and that Yugoslavia is therefore fully responsible under international law for their activities;

2. Whereas on the basis of the facts alleged in the Application Bosnia-Herzegovina requests the Court to adjudge and declare as follows:

- “(a) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the People and State of Bosnia and Herzegovina under Articles I, II (a), II (b), II (c), II (d), III (a), III (b), III (c), III (d), III (e), IV and V of the Genocide Convention;
- (b) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the People and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law;
- (c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina;
- (d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so;
- (e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is con-

tinuing to violate, its solemn obligations under Articles 1 (3), 55 and 56 of the United Nations Charter;

- (f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2 (1), 2 (2), 2 (3), 2 (4), and 33 (1), of the United Nations Charter;
- (g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina;
- (h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:
 - armed attacks against Bosnia and Herzegovina by air and land;
 - aerial trespass into Bosnian airspace;
 - efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina;
- (i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina;
- (j) that Yugoslavia (Serbia and Montenegro), in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty obligations under Article 2 (4) of the United Nations Charter, as well as its obligations under general and customary international law;
- (k) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend itself and its People under United Nations Charter Article 51 and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States;
- (l) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under United Nations Charter Article 51 and customary international law to request the imme-

diate assistance of any State to come to its defence, including by military means (weapons, equipment, supplies, troops, etc.);

- (m) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;
- (n) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of United Nations Charter Article 51 and the rules of customary international law;
- (o) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming thereof must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24(1) and 51 of the United Nations Charter and in accordance with the customary doctrine of *ultra vires*;
- (p) that pursuant to the right of collective self-defence recognized by United Nations Charter Article 51, all other States parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina — at its request — including by means of immediately providing It with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.);
- (q) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately :
 - from its systematic practice of so-called ‘ethnic cleansing’ of the citizens and sovereign territory of Bosnia and Herzegovina;
 - from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;
 - from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina;

- from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
 - from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;
 - from the starvation of the civilian population in Bosnia and Herzegovina;
 - from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;
 - from all use of force — whether direct or indirect, overt or covert — against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;
 - from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;
 - from all support of any kind — including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina;
- (r) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as *parens patriae* for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro)”;

3. Whereas by a request filed in the Registry on 20 March 1993 immediately after the filing of the Application, Bosnia-Herzegovina, invoking Article 41 of the Statute of the Court and Articles 73, 74, 75 and 78 of the Rules of Court, and relying on the facts alleged in the Application, urgently requested that the Court indicate the following provisional measures to be in effect while the Court is seised of this case:

“1. That Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, must immediately

cease and desist from all acts of genocide and genocidal acts against the People and State of Bosnia and Herzegovina, including but not limited to murder; summary executions; torture; rape; mayhem; so-called 'ethnic cleansing'; the wanton devastation of villages, towns, districts and cities; the siege of villages, towns, districts and cities; the starvation of the civilian population; the interruption of, interference with, or harassment of humanitarian relief supplies to the civilian population by the international community; the bombardment of civilian population centres; and the detention of civilians in concentration camps or otherwise.

2. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support — including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement, militia or individual engaged in or planning to engage in military or paramilitary activities in or against the People, State and Government of Bosnia and Herzegovina.

3. That Yugoslavia (Serbia and Montenegro) itself must immediately cease and desist from any and all types of military or paramilitary activities by its own officials, agents, surrogates, or forces in or against the People, State and Government of Bosnia and Herzegovina, and from any other use or threat of force in its relations with Bosnia and Herzegovina.

4. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to seek and receive support from other States in order to defend Itself and its People, including by means of immediately obtaining military weapons, equipment, and supplies.

5. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to request the immediate assistance of any State to come to its defence, including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.).

6. That under the current circumstances, any State has the right to come to the immediate defence of Bosnia and Herzegovina — at its request — including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, and airpeople, etc.)”;

4. Whereas in written observations, submitted to the Court on 1 April 1993, on the first request of Bosnia-Herzegovina for the indication of provisional measures, the Government of Yugoslavia

“recommends that the Court, pursuant to Article 41 of its Statute 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 strictly 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 related to the delivery of humanitarian aid, against the Serb population in the ‘Republic of Bosnia and Herzegovina’”;

5. Whereas by its Order of 8 April 1993 the Court indicated certain provisional measures which ought to be taken by Yugoslavia, and further indicated that the Government of Yugoslavia and the Government of Bosnia-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;

6. Whereas by a second request filed in the Registry on 27 July 1993, Bosnia-Herzegovina, invoking Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court, and relying on the facts alleged in the Application and in the first request for provisional measures, and on further facts alleged in the second request, requested urgently that the Court indicate the following additional provisional measures to be in effect while the Court is seised of this case:

“1. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support — including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement, military, militia or paramilitary force, irregular armed unit, or individual in Bosnia and Herzegovina for any reason or purpose whatsoever.

2. That Yugoslavia (Serbia and Montenegro) and all of its public officials — including and especially the President of Serbia, Mr. Slobodan Milosevic — must immediately cease and desist from any and all efforts, plans, plots, schemes, proposals or negotiations to partition, dismember, annex or incorporate the sovereign territory of Bosnia and Herzegovina.

3. That the annexation or incorporation of any sovereign territory of the Republic of Bosnia and Herzegovina by Yugoslavia (Serbia and Montenegro) by any means or for any reason shall be deemed illegal, null, and void *ab initio*.

4. That the Government of Bosnia and Herzegovina must have the means ‘to prevent’ the commission of acts of genocide against its own People as required by Article I of the Genocide Convention.

5. That all Contracting Parties to the Genocide Convention are obliged by Article I thereof ‘to prevent’ the commission of acts of genocide against the People and State of Bosnia and Herzegovina.

6. That the Government of Bosnia and Herzegovina must have the means to defend the People and State of Bosnia and Herzegovina from acts of genocide and partition and dismemberment by means of genocide.

7. That all Contracting Parties to the Genocide Convention have the obligation thereunder ‘to prevent’ acts of genocide, and partition and dismemberment by means of genocide, against the People and State of Bosnia and Herzegovina.

8. That in order to fulfil its obligations under the Genocide Con-

vention under the current circumstance, the Government of Bosnia and Herzegovina must have the ability to obtain military weapons, equipment, and supplies from other Contracting Parties.

9. That in order to fulfil their obligations under the Genocide Convention under the current circumstances, all Contracting Parties thereto must have the ability to provide military weapons, equipment, supplies and armed forces (soldiers, sailors, airpeople) to the Government of Bosnia and Herzegovina at its request.

10. That United Nations Peace-keeping Forces in Bosnia and Herzegovina (i.e., UNPROFOR) must do all in their power to ensure the flow of humanitarian relief supplies to the Bosnian People through the Bosnian city of Tuzla”;

7. Whereas on 27 July 1993, the day on which the second request for the indication of provisional measures was received in the Registry, the Deputy-Registrar notified the Government of Yugoslavia of the filing of the request, and sent a certified copy of the request to it in accordance with Article 73, paragraph 2, of the Rules of Court;

8. Whereas by a letter dated 28 July 1993 the Agent of Yugoslavia requested that the Court, when setting the date for a hearing on the second request for provisional measures, bear in mind the need for Yugoslavia, in view of the seriousness and extensiveness of that request, to be able adequately to prepare its response; whereas on 29 July 1993 the Deputy-Registrar informed the Parties that the President of the Court had fixed 25 August 1993 as the date for the opening of that hearing; whereas the Agent of Bosnia-Herzegovina, by letter of 30 July 1993, urged the President to reconsider the date; and whereas on 31 July 1993 the Deputy-Registrar informed the Parties that the President of the Court nevertheless considered it appropriate to maintain the date of 25 August 1993 for the opening of the hearing;

9. Whereas by a letter dated 4 August 1993, the Agent of Bosnia-Herzegovina stated that he was amending the second request for provisional measures by submitting a “request for an immediate Order without hearing pursuant to the Second Request” for provisional measures, in reliance on Article 75, paragraph 1, of the Rules of Court; and whereas a copy of this communication was forwarded to the Agents of Yugoslavia as soon as received;

10. Whereas the President of the Court addressed a message, dated 5 August 1993, to both Parties, referring to Article 74, paragraph 4, of the Rules of Court, which enables him, pending the meeting of the Court, to “call upon the parties to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects”, and stating:

“I do now call upon the Parties so to act, and I stress that the provisional measures already indicated in the Order which the Court made after hearing the Parties, on 8 April 1993, still apply.

Accordingly I call upon the Parties to take renewed note of the Court’s Order and to take all and any measures that may be within their power to prevent any commission, continuance, or encouragement of the heinous international crime of genocide”;

11. Whereas written observations by Yugoslavia on the second request for provisional measures, as modified by the Agent of Bosnia-Herzegovina on 4 August 1993, were received in the Registry on 10 August; and whereas the submissions therein were as follows:

“The Federal Republic of Yugoslavia requests the Court to reject the Amended Second Request for the reasons stated above and because it is not based on the Rules of the Court. As well as because it is contrary to the well-established practice of the Court”;

12. Whereas on 10 August 1993 a request, dated 9 August 1993, for the indication of provisional measures was filed in the Registry by Yugoslavia, whereby Yugoslavia requested the Court to indicate the following provisional measure:

“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 9 December 1948, take all measures within its power to prevent commission of the crime of genocide against the Serb ethnic group”;

13. Whereas by a letter of 11 August 1993 in response to the letter of 4 August 1993 from the Agent of Bosnia-Herzegovina (paragraph 9 above), the Registrar, on the President’s instructions, reiterated the view of the Court, already conveyed to the Agent of Bosnia-Herzegovina in the context of the previous requests for provisional measures, by a letter of 24 March 1993, that the Court did not consider that the question arose of the exercise of its powers under Article 75, paragraph 1, of the Rules of Court

“where, as in the present case specific requests for the indication of provisional measures . . . have been made by each of the Parties”,

and that, in its view,

“those powers do not in any event extend to indicating measures without affording both Parties the opportunity of being heard”;

14. Whereas by a series of communications, dated 6 August, 7 August, 8 August, 10 August, 13 August, 22 August, 23 August and 24 August 1993 the Agent of Bosnia-Herzegovina stated that he was further amending or supplementing the second request for provisional measures, as well as, in some cases, the Application instituting proceedings; and whereas copies of these communications were transmitted to the Agents of Yugoslavia as soon as received;

15. Whereas on 23 August 1993, Yugoslavia presented further written observations on the second request of Bosnia-Herzegovina for provisional measures, and made the following submissions:

“the Federal Republic of Yugoslavia requests the Court to reject all requests for indication of provisional measures, contained in all submissions of the Applicant State, because they are outside the jurisdiction of the Court, and for reasons expressed in the Observations of 9 August 1993”;

16. Whereas, since the Court does not include upon the bench a judge of the nationality of either of the Parties, the Government of Bosnia-Herzegovina has chosen Mr. Elihu Lauterpacht, Q.C., and the Government of Yugoslavia Mr. Milenko Kreća, to sit as judges *ad hoc* in this case;

17. Whereas oral observations of the Parties on the request of each Party for provisional measures were presented, at public hearings held, pursuant to Article 74, paragraph 3, of the Rules of Court, on 25 and 26 August 1993, by the following representatives:

on behalf of Bosnia-Herzegovina:

H.E. Mr. Muhamed Sacirbey and
Mr. Francis A. Boyle, *Agents*;

on behalf of Yugoslavia:

Mr. Rodoljub Etinski and
Mr. Djordje Lopacic, *Agents*;
Mr. Miodrag Mitic,
Mr. Shabtai Rosenne;

18. Whereas at the public hearings questions were put by judges to both Parties, and replies were given either orally at the hearings, or subsequently in writing;

19. Whereas at the final stage of the hearings the Agent of Bosnia-Herzegovina confirmed the request for provisional measures set out in paragraph 6 above; and whereas the Agent of Yugoslavia then presented the following submissions:

“The Federal Republic of Yugoslavia asks the Court to reject all provisional measures requested by the Applicant State
— because the Court has no jurisdiction to indicate them;

- because they are not founded on the new legally relevant facts;
- because of the abuse of rights of the request for provisional measures;
- because they would cause irreparable prejudice to the rights of the Federal Republic of Yugoslavia that the so-called Republic of Bosnia and Herzegovina fulfils its obligations under the Genocide Convention concerning the Serb people in Bosnia and Herzegovina;
- because they look to the past not to the future;
- because they mean an interim judgment;
- because the clarification of the provisions of the Genocide Convention cannot be the subject-matter of the provisional measures; and
- because they are ill-founded on Article 75, paragraph 1, of the Rules of Court.

Wishing to protect its rights by making the so-called Republic of Bosnia and Herzegovina to fulfil all its obligations concerning the protection of the Serb ethnic group according to the Genocide Convention,

the Federal Republic of Yugoslavia asks the Court to indicate the following provisional measure:

The Government of the so-called Bosnia-Herzegovina should immediately, in pursuance of its obligation under 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 against the Serb ethnic group”;

*

20. Whereas, during the oral proceedings, the Agent of Bosnia-Herzegovina presented to the Court a further written communication, dated 25 August 1993, directed to supplementing and amending the second request for provisional measures and the Application instituting proceedings; whereas at the hearing of 26 August 1993 counsel for Yugoslavia protested at “the unending flood of sometimes heavy documentation” from the Agent of Bosnia-Herzegovina, and asked the Court to declare the communication of 25 August 1993 inadmissible; and whereas on 26 August 1993 the Agent of Bosnia-Herzegovina presented to the Court a further written communication supplementing the second request;

21. Whereas the submission by the Applicant of a series of documents, up to the eve of, and even during, the oral proceedings, in the circumstances set out in paragraphs 14 and 20 above, is difficult to reconcile with an orderly progress of the procedure before the Court, and with respect

for the principle of equality of the Parties; whereas however Article 74, paragraph 3, of the Rules of Court provides that "The Court shall receive and take into account any observations that may be presented to it before the closure of the oral proceedings"; whereas the Court, taking into account the urgency and the other circumstances of the matter, considers it possible to receive the documents in question as being in this case "observations" under that provision to the extent that they relate to the requests for the indication of provisional measures;

* *

22. Whereas by its Order of 8 April 1993 the Court gave its decision on a first request for the indication of provisional measures presented by Bosnia-Herzegovina, and on a similar request by Yugoslavia, and indicated certain provisional measures; whereas an Order indicating, or declining to indicate, provisional measures may be revoked or modified, as stated in Article 76 of the Rules of Court; whereas however according to that text, the Court cannot revoke or modify an Order unless, "in its opinion, some change in the situation justifies" doing so, and where a request for measures has been rejected, any fresh request must, according to Article 75, paragraph 3, of the Rules of Court, be "based on new facts"; whereas the same applies when additional provisional measures are requested; whereas it is therefore for the Court to satisfy itself that the second request by Bosnia-Herzegovina, and that of Yugoslavia, are based upon new circumstances such as to justify their being examined; whereas, taking into account the development of the situation in Bosnia-Herzegovina in recent months, this condition should be regarded as satisfied;

23. Whereas Yugoslavia has disputed "the legitimacy of the Applicant" and contends, as it did at the time of the first request for provisional measures, that the President and Government of Bosnia-Herzegovina have no status to conduct proceedings before the Court; whereas the Court has been seised of the second request for provisional measures under essentially the same conditions as the first request; whereas therefore the objection of Yugoslavia should be rejected for the same reasons as the Court stated in paragraph 13 of its Order of 8 April 1993;

* *

24. Whereas on a request for provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, yet it ought not to indicate such measures unless the provisions invoked by the Applicant appear,

prima facie, to afford a basis on which the jurisdiction of the Court might be established;

25. Whereas in its Order of 8 April 1993 the Court considered that Article IX of the Genocide Convention, to which both the Applicant and the Respondent are parties, appeared to the Court

“to afford a basis on which the jurisdiction of the Court might be founded to the extent that the subject-matter of the dispute relates to ‘the interpretation, application or fulfilment’ of the Convention, including disputes ‘relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III’ of the Convention” (*I.C.J. Reports 1993*, p. 16, para. 26);

26. Whereas Bosnia-Herzegovina also submitted to the Court, in support of its first request, as an additional basis of jurisdiction, a letter dated 8 June 1992 addressed to the President of the Arbitration Commission of the International Conference for Peace in Yugoslavia; whereas the Court concluded that it was “unable to regard” that letter “as constituting a prima facie basis of jurisdiction in the present case”, and considered that it had to

“proceed therefore on the basis only that it has prima facie jurisdiction, both *ratione personae* and *ratione materiae*, under Article IX of the Genocide Convention” (*ibid.*, p. 18, para. 32);

27. Whereas the Agent of the Applicant has, both in its Application instituting proceedings and in its second request for the indication of provisional measures, reserved “the right to revise, supplement or amend” the Application and the request respectively; whereas in reliance on these reservations, by letters dated 6 August, 10 August and 13 August 1993, he submitted that the Court’s jurisdiction is grounded not only on the jurisdictional bases previously put forward but also on certain additional texts, specified in the letters referred to;

28. Whereas the Applicant cannot, simply by reserving “the right to revise, supplement or amend” its Application or requests for provisional measures, confer on itself a right to invoke additional grounds of jurisdiction, not referred to in the Application instituting proceedings; whereas it will be for the Court, at an appropriate stage of the proceedings, to determine, if necessary, the validity of such claims; whereas however, as the Court has recognized, “An additional ground of jurisdiction may . . . be brought to the Court’s attention” after the filing of the Application,

“and the Court may take it into account provided the Applicant makes it clear that it intends to proceed upon that basis . . . and provided also that the result is not to transform the dispute brought before the Court by the application into another dispute which is different in character . . .” (*Military and Paramilitary Activities in and*

against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 427, para. 80);

whereas the Court thus concludes that, for the purposes of a request for indication of provisional measures, it should therefore not exclude *a priori* such additional bases of jurisdiction from consideration, but that it should consider whether the texts relied on may, in all the circumstances, including the considerations stated in the decision quoted above, afford a basis on which the jurisdiction of the Court to entertain the Application might *prima facie* be established;

*

29. Whereas the first additional basis of jurisdiction relied on by the Applicant is the Treaty between the Allied and Associated Powers (the United States of America, the British Empire, France, Italy and Japan) and the Kingdom of the Serbs, Croats and Slovenes, on the Protection of Minorities, signed at Saint-Germain-en-Laye on 10 September 1919 (hereinafter called the "1919 Treaty"), which came into force on 16 July 1920; whereas Chapter I of the 1919 Treaty concerns protection of minorities, and includes an Article 11 whereby that protection was placed under the guarantee of the League of Nations; whereas that Article provides (*inter alia*):

"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 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. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant";

whereas Chapter II of the 1919 Treaty, concerning succession to treaties, commerce, treatment of foreign vessels, and freedom of transit, contains an Article 16 which provides *inter alia*:

“All rights and privileges accorded by the foregoing Articles to the Allied and Associated Powers shall be accorded equally to all States Members of the League of Nations”;

and whereas the Applicant contends that the effect of these two Articles is that a dispute to which Article 11 of the 1919 Treaty applied could be referred to the Permanent Court of International Justice by any State which was a Member of the League of Nations; whereas the Applicant contends further that the jurisdiction conferred on the Permanent Court of International Justice by the 1919 Treaty is exercisable by the present Court by virtue of Article 37 of the Statute of the Court;

30. Whereas the Applicant contends further that Yugoslavia has succeeded to the rights and obligations of the Kingdom of the Serbs, Croats and Slovenes under the 1919 Treaty; and whereas, as regards its own right to invoke the 1919 Treaty, the Applicant contends that, in the light of, *inter alia*, General Assembly resolution 24 (I), the United Nations has assumed the functions and powers of the League of Nations regarding, *inter alia*, the 1919 Treaty, and the General Assembly has substituted itself for the Council of the League in that respect, and concludes that

“Bosnia-Herzegovina, as a member State of the United Nations, thus is in the position of the States described in Articles 11 and 16 of the Serb-Croat-Slovene Treaty, namely, the member States of the League, and thus its dispute with Yugoslavia (Serbia and Montenegro) is one over which this Court has jurisdiction”;

31. Whereas in order to reach a decision on the contentions of Bosnia-Herzegovina as to the 1919 Treaty as a basis of jurisdiction, the Court will not have to pronounce on the question whether Articles 11 and 16 of the 1919 Treaty are still in force, nor on their interpretation; whereas the 1919 Treaty on the face of its text imposes an obligation on the Kingdom of the Serbs, Croats and Slovenes to protect minorities within its own territory; whereas accordingly, if, and in so far as, Yugoslavia is now bound by the 1919 Treaty as successor of that Kingdom, its obligations under it would appear to be limited to the present territory of Yugoslavia; whereas Bosnia-Herzegovina has put forward no claim in its Application concerning the treatment of minorities in Yugoslavia, and has requested no provisional measures in that respect; whereas therefore the Court considers that, in any event, the 1919 Treaty is irrelevant to the present request for provisional measures;

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32. Whereas the second of the additional bases of jurisdiction put forward by the Applicant is the letter, dated 8 June 1992, addressed to the

President of the Arbitration Commission of the International Conference for Peace in Yugoslavia by Mr. Momir Bulatovic, President of the Republic of Montenegro, and Mr. Slobodan Milosevic, President of the Republic of Serbia, already referred to in paragraph 26 above; whereas in its Order of 8 April 1993 the Court, after examining this letter, concluded that it was unable to regard it "as constituting a prima facie basis of jurisdiction in the present case" (*I.C.J. Reports 1993*, p. 18, para. 32); whereas the Applicant has not put forward any new fact which might lead the Court to reopen the question; whereas the Applicant's submission on the point must be rejected;

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33. Whereas it is claimed by the Applicant that

"the Court's jurisdiction is also grounded in the Customary and Conventional International Laws of War and International Humanitarian Law, including but not limited to the four Geneva Conventions of 1949, their First Additional Protocol of 1977, the Hague Regulations on Land Warfare of 1907, and the Nuremberg Charter, Judgment, and Principles";

whereas however the Applicant has not brought to the attention of the Court any provision in the texts enumerated conferring upon the Court jurisdiction to deal with a dispute between the Parties concerning matters to which those texts relate; whereas such jurisdiction is not prima facie established;

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34. Whereas, in the context of the first request made by the Applicant for the indication of provisional measures, the Respondent also, by a communication of 1 April 1993, recommended that such measures, listed in paragraph 9 of the Court's Order of 8 April 1993, be indicated; whereas some of the measures so requested might be directed to the protection of rights going beyond those covered by the Genocide Convention; and whereas the question thus arises whether, by requesting such measures, the Respondent might have agreed that the Court should have a wider jurisdiction, in accordance with the doctrine known as that of *forum prorogatum*; whereas however the provisional measure requested by Yugoslavia in a subsequent request, dated 9 August 1993 (paragraph 12 above), was directed solely to protection of asserted rights under the Genocide Convention; whereas moreover the Respondent has constantly denied that the Court has jurisdiction to entertain the dispute, on the basis of that Convention or on any other basis; whereas in the circumstances the communication from Yugoslavia cannot, even prima facie, be interpreted

as “an unequivocal indication” of a “voluntary and indisputable” acceptance of the Court’s jurisdiction (cf. *Rights of Minorities in Upper Silesia (Minority Schools)*, P.C.I.J., Series A, No. 15, p. 24; *Corfu Channel, Preliminary Objection, Judgment*, I.C.J. Reports 1947-1948, p. 27);

*

35. Whereas the power of the Court to indicate provisional measures under Article 41 of the Statute of the Court has as its object to preserve the respective rights of the parties pending the decision of the Court, and presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute in judicial proceedings; and whereas it follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by the Court to belong either to the Applicant or to the Respondent;

36. Whereas the Court, having established the existence of one basis on which its jurisdiction might be founded, namely Article IX of the Genocide Convention, and having been unable to find that other suggested bases could prima facie be accepted as such, 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 the jurisdiction thus prima facie established;

* *

37. Whereas by its Order of 8 April 1993 the Court indicated,

“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 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” (*I.C.J. Reports 1993*, p. 24, para. 52);

38. Whereas the legal rights sought to be protected by the indication of provisional measures are enumerated in the second request of Bosnia-Herzegovina for the indication of such measures as follows:

- “(a) the right of the citizens of Bosnia and Herzegovina physically to survive as a People and as a State;
- (b) the rights of the People of Bosnia and Herzegovina to life, liberty, security, and bodily and mental integrity, as well as the other basic human rights specified in the 1948 Universal Declaration of Human Rights;
- (c) the right of the People and State of Bosnia and Herzegovina to be free at all times from genocide and other genocidal acts perpetrated upon Them by Yugoslavia (Serbia and Montenegro), acting together with its agents and surrogates in Bosnia and elsewhere;
- (d) the right of the People and State of Bosnia and Herzegovina to be free at all times from the use or threat of force directed against Them by a foreign State acting in conjunction with its agents and surrogates on Their sovereign territory and elsewhere;
- (e) the right of Bosnia and Herzegovina to conduct its affairs and to determine matters within its domestic jurisdiction without interference or intervention by any foreign State acting directly or by means of agents and surrogates, or both;
- (f) the right of self-determination of the People of Bosnia and Herzegovina;
- (g) the basic right of sovereign existence for the People and State of Bosnia and Herzegovina;

- (h) the right of the Republic of Bosnia and Herzegovina to continue to exist as a Member State of the United Nations Organization itself”;

39. Whereas however, with respect to the measures requested, the Court is, for the reasons explained above, confined to the consideration of such rights under the Genocide Convention as might form the subject-matter of a judgment of the Court in the exercise of its jurisdiction under Article IX of that Convention; 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; whereas accordingly it is for Bosnia-Herzegovina, having filed a second request for the indication of provisional measures, to show that such further measures are necessary for the protection of those rights;

40. Whereas the list of measures which the Applicant now requests the Court to indicate, set out in paragraph 6 above, includes certain measures (and in particular those numbered 5, 7, 9 and 10 on that list) which would be addressed to States or entities not parties to the proceedings; whereas the Applicant has explained that it is not asking for an Order binding upon any State other than the Parties, but for a clarification of the Applicant's rights “which can be used in the Security Council and the General Assembly and elsewhere”; whereas the judgment in a particular case by which disputed rights may be adjudged by the Court to belong to the Applicant or to the Respondent has, in accordance with Article 59 of the Statute of the Court, “no binding force except between the parties”; whereas accordingly the Court may, for the preservation of those rights, indicate provisional measures to be taken by the parties, but not by third States or other entities who would not be bound by the eventual judgment to recognize and respect those rights; whereas consequently the Court cannot, in the exercise of its power to indicate provisional measures, indicate by way of “clarification” that those States or entities should take, or refrain from, specific action in relation to the acts of genocide which the Applicant alleges are being committed in Bosnia-Herzegovina;

41. Whereas three of the measures requested by the Applicant (those numbered 4, 6 and 8 on the list in paragraph 6 above) provide that the Government of Bosnia-Herzegovina “must have the means” to prevent the commission of genocide, and to defend its people against genocide,

and “must have the ability to obtain military weapons, equipment, and supplies” from the other parties to the Genocide Convention; whereas the Applicant has made it clear in its written and oral observations that it bases these proposed measures on the Genocide Convention and on the right of self-defence referred to in Article 51 of the United Nations Charter, and on its claim that because of the arms embargo laid down by the Security Council by resolution 713 (1991), the Applicant is unable to protect its people from genocide; whereas a similar claim was before the Court when it examined the first request for provisional measures, when some of the requested measures were directed to the question of self-defence, but were not regarded by the Court as within the scope of the jurisdiction under Article IX of the Genocide Convention; whereas Article 41 of the Statute empowers the Court to indicate measures “which ought to be taken to preserve the respective rights of either party”, and for the reasons given in paragraph 39 above this means measures which ought to be taken by one or both parties to the case; whereas however it is clear that the intention of the Applicant in requesting these measures is not that the Court indicate that the Respondent ought to take certain steps for the preservation of the Applicant’s rights, but rather that the Court make a declaration of what those rights are, which “would clarify the legal situation for the entire international community”, in particular the members of the United Nations Security Council; whereas accordingly this request must be regarded as outside the scope of Article 41 of the Statute;

42. Whereas two of the measures requested by the Applicant (those numbered 2 and 3 on the list in paragraph 6 above) relate to the possibility of “partition and dismemberment”, annexation or incorporation of the sovereign territory of Bosnia and Herzegovina (and this question is also referred to in measures numbers 6 and 7); whereas it appears to the Court, from the definition of genocide in Article II of the Genocide Convention (set out, so far as relevant, in paragraph 39 of the Court’s Order of 8 April 1993), that its essential characteristic is the intended destruction of “a national, ethnical, racial or religious group”, and not the disappearance of a State as a subject of international law or a change in its constitution or its territory; whereas, accordingly, the Court is unable to accept, for the purpose of the present request for the indication of provisional measures, that a “partition and dismemberment”, or annexation of a sovereign State, or its incorporation into another State, could in itself constitute an act of genocide and thus a matter falling within the jurisdiction of the Court under Article IX of the Genocide Convention; whereas, on the other hand, in so far as it is the Applicant’s contention that such “partition and dismemberment”, annexation or incorporation will result from genocide, the Court, in its Order of 8 April 1993 has already indicated that Yugoslavia should

“take all measures within its power to prevent commission of the crime of genocide”, whatever might be its consequences;

43. Whereas the remaining measure requested by the Applicant (that numbered 1 in the list in paragraph 6 above), which does not refer to the Genocide Convention, is almost identical in wording with the second measure requested in Bosnia-Herzegovina’s first request for provisional measures (set out in paragraph 3 above), save that it is wider in scope; whereas in its Order of 8 April 1993 the Court, having found that it ought not to indicate measures for the protection of disputed rights other than those which might form the basis of a judgment in the exercise of its jurisdiction under Article IX of the Genocide Convention, indicated measures which did not specify the measure then requested; whereas the same considerations continue to govern;

* *

44. Whereas the request of Yugoslavia for the indication of the provisional measure set out in paragraph 12 above is based upon the contention that the facts presented to the Court demonstrate

“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”;

and that accordingly it would be appropriate that a measure be indicated, addressed to Bosnia-Herzegovina, in the terms set out in paragraph 12 above, parallel to that addressed to Yugoslavia in paragraph 52 A (1) of the Court’s Order of 8 April 1993;

45. Whereas the measure requested by Yugoslavia would be appropriate to protect rights under the Genocide Convention, which are accordingly within the prima facie jurisdiction of the Court; whereas, on the evidence and information available to it, the Court must also recognize the existence of some risk to the persons whose protection Yugoslavia seeks; whereas however the question for the Court is whether the circumstances are such as to “require” the indication of provisional measures, in accordance with Article 41 of the Statute;

46. Whereas by paragraph 52 A of its Order of 8 April 1993 the Court, having indicated that Yugoslavia should take all measures within its power to prevent genocide, indicated what “in particular” were the appropriate measures to be taken by Yugoslavia in the circumstances of the case, where the risk was of genocide not on Yugoslav territory but in

Bosnia-Herzegovina; whereas furthermore, as the Court noted in paragraph 45 of its Order of 8 April 1993, both Yugoslavia and Bosnia-Herzegovina are under a clear obligation to do all in their power to prevent the commission of any acts of genocide, and by paragraph 52 B of that Order the Court indicated that both Bosnia-Herzegovina and Yugoslavia should not take any action and should ensure that no action is taken which might aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution; whereas the Court does not find that the circumstances, as they now present themselves to the Court, are such as to require a more specific indication of measures addressed to Bosnia-Herzegovina so as to recall to it both its undoubted obligations under the Genocide Convention, and the need to refrain from action of the kind contemplated by paragraph 52 B of the Court's Order of 8 April 1993;

* *

47. Whereas Article 75, paragraph 2, of the Rules of Court recognizes the power of the Court, when a request for provisional measures has been made, to indicate measures that are in whole or in part other than those requested;

48. Whereas the Court, in the context of the present proceedings on a request for provisional measures, has in accordance with Article 41 of the Statute to consider the circumstances drawn to its attention and to determine whether those circumstances require the indication of further provisional measures to be taken by the Parties for the protection of rights under the Genocide Convention; whereas however the Court cannot make definitive findings of fact or of imputability, and the right of each Party to dispute the facts alleged against it, to challenge the attribution to it of responsibility for those facts, and to submit arguments in respect of the merits, must remain unaffected by the Court's decision;

49. Whereas in paragraph 45 of its Order of 8 April 1993 the Court concluded that there was 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, were under a clear obligation to do all in their power to prevent the commission of any such acts in the future;

50. Whereas Article I of the Genocide Convention, quoted by the Court in the same paragraph of its Order of 8 April 1993, provides that:

“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”;

whereas all parties to the Convention have thus undertaken “to prevent and to punish” the crime of genocide;

51. Whereas, as the Court recorded in its Order of 8 April 1993, the crime of genocide “shocks the conscience of mankind, results in great losses to humanity . . . and is contrary to moral law and to the spirit and aims of the United Nations”, in the words of General Assembly resolution 96 (I) of 11 December 1946 on “The Crime of Genocide”;

52. Whereas, since the Order of 8 April 1993 was made, and despite that Order, and despite many resolutions of the Security Council of the United Nations, great suffering and loss of life has been sustained by the population of Bosnia-Herzegovina in circumstances which shock the conscience of mankind and flagrantly conflict with moral law and the spirit and aims of the United Nations;

53. Whereas, since the Order of 8 April 1993 was made, the grave risk which the Court then apprehended of action being taken which may aggravate or extend the existing dispute over the prevention and punishment of the crime of genocide, or render it more difficult of solution, has been deepened by the persistence of conflicts on the territory of Bosnia-Herzegovina and the commission of heinous acts in the course of those conflicts;

54. Whereas the Security Council of the United Nations in resolution 819 (1993) of 16 April 1993 took note of the Court’s Order of 8 April 1993 in which the Court indicated that the Federal Republic of Yugoslavia (Serbia and Montenegro) should take all measures within its power to prevent the commission of the crime of genocide, and whereas the Security Council in that resolution reaffirmed its condemnation of all violations of international humanitarian law, in particular the practice of “ethnic cleansing”;

55. Whereas the Security Council of the United Nations in resolution 859 (1993) of 24 August 1993 which, *inter alia*, affirmed the continuing membership of Bosnia-Herzegovina in the United Nations, reaffirmed the principle of the unacceptability of the acquisition of territory by force and recalled that of individual responsibility for the perpetration of war crimes and other violations of international humanitarian law;

56. Whereas the Security Council of the United Nations, by resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993, has established an international tribunal for the prosecution of persons responsible for serious violations of humanitarian law committed in the territory of the former Yugoslavia;

57. Whereas the Court, while taking into account, *inter alia*, the replies of the two Parties to a question put to them at the hearings as to what steps had been taken by them “to ensure compliance with the Court’s Order of 8 April 1993”, is not satisfied that all that might have been done has been

done to prevent commission of the crime of genocide in the territory of Bosnia-Herzegovina, and to ensure that no action is taken which may aggravate or extend the existing dispute or render it more difficult of solution;

58. Whereas, as the Court has previously found,

“When the Court finds that the situation requires that measures of this kind should be taken, it is incumbent on each party to take the Court’s indication seriously into account . . .” (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, *I.C.J. Reports 1986*, p. 144, para. 289);

whereas this is particularly so in such a situation as now exists in Bosnia-Herzegovina where no reparation could efface the results of conduct which the Court may rule to have been contrary to international law;

59. Whereas the present perilous situation demands, not an indication of provisional measures additional to those indicated by the Court’s Order of 8 April 1993, set out in paragraph 37 above, but immediate and effective implementation of those measures;

60. Whereas the decision given in the present proceedings in no way prejudices 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 arguments in respect of those questions;

* *

61. For these reasons,

THE COURT,

(1) By 13 votes to 2,

Reaffirms the provisional measure indicated in paragraph 52 A (1) of the Order made by the Court on 8 April 1993, which should be immediately and effectively implemented;

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Schwebel, Bedjaoui, Ni, Evensen, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ajibola, Herczegh; *Judge ad hoc* Lauterpacht;

AGAINST: *Judge* Tarassov; *Judge ad hoc* Kreča;

(2) By 13 votes to 2,

Reaffirms the provisional measure indicated in paragraph 52 A (2) of the Order made by the Court on 8 April 1993, which should be immediately and effectively implemented;

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Schwebel, Bedjaoui, Ni, Evensen, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ajibola, Herczegh; *Judge ad hoc* Lauterpacht;

AGAINST: *Judge* Tarassov; *Judge ad hoc* Kreća;

(3) By 14 votes to 1,

Reaffirms the provisional measure indicated in paragraph 52 B of the Order made by the Court on 8 April 1993, which should be immediately and effectively implemented.

IN FAVOUR: *President* Sir Robert Jennings; *Vice-President* Oda; *Judges* Schwebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ajibola, Herczegh; *Judge ad hoc* Lauterpacht;

AGAINST: *Judge ad hoc* Kreća.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of September, one thousand nine hundred and ninety-three, in four copies, one of which will be placed in the archives of the Court and the others transmitted respectively to the Government of the Republic of Bosnia and Herzegovina, the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), and to the Secretary-General of the United Nations for transmission to the Security Council.

(Signed) R. Y. JENNINGS,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Vice-President ODA appends a declaration to the Order of the Court.

Judges SHAHABUDEEN, WEERAMANTRY, AJIBOLA and *Judge ad hoc* LAUTERPACHT append separate opinions to the Order of the Court.

Judge TARASSOV and *Judge ad hoc* KREĆA append dissenting opinions to the Order of the Court.

(Initialled) R.Y.J.

(Initialled) E.V.O.