

APPLICATION INSTITUTING PROCEEDINGS

SUBMITTED BY

THE REPUBLIC OF BOSNIA AND HERZEGOVINA

30 March 1993

To His Excellency, the President, to the Judges of the International Court of Justice, the undersigned being duly authorized by the Republic of Bosnia and Herzegovina:

I have the honor to refer to Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 (hereinafter referred to as the "Genocide Convention"). Under the jurisdiction thereby conferred upon the Court, and in accordance with Article 36(1) and Article 40(1) of the Statute of the Court and Article 38 of the Rules of Court, I hereby submit on behalf of the Republic of Bosnia and Herzegovina, an Application instituting proceedings against Yugoslavia (Serbia and Montenegro) for violating the Genocide Convention in the following case.

I. STATEMENT OF FACTS

A. Introduction

1. Not since the end of the Second World War and the revelations of the horrors of Nazi Germany's "Final Solution" has Europe witnessed the utter destruction of a People, for no other reason than they belong to a particular national, ethnical, racial, and religious group as such. The abominable crimes taking place in the Republic of Bosnia-Herzegovina at this time can be called by only one name: genocide. Genocide is the most evil crime a state or human being can inflict upon another state or human being. The sheer enormity of this crime requires that the nations of the world stand together as one, and with a single voice stop the destruction of the Bosnian People.

2. The nations of the world, reeling from and outraged at the crimes of the Nazis, sought to create laws which would prevent genocide and punish those who would commit genocide. To wit, in 1948 the United Nations General Assembly adopted the Convention of the Prevention and Punishment of the Crime of Genocide (78 U.N.T.S. 277, adopted Dec. 9, 1948, entered into force Jan. 12, 1951). By its terms, the contracting parties sought to undertake measures which would end the crime and punish the transgressors. The People and State of Bosnia and Herzegovina have suffered and are now suffering from the effects of genocide imposed upon them by

Yugoslavia (Serbia and Montenegro) and its agents and surrogates in Bosnia and elsewhere, whose ultimate goal is no less than the destruction of both the State of Bosnia and its People. The Bosnian People cry out to the world and pray that the civilized nations of Earth will lend its wisdom and grace and save the Bosnian State and People from annihilation.

3. This Statement of Facts seeks to establish that the People and State of Bosnia and Herzegovina have suffered from a crime no less than genocide, as defined by the 1948 Genocide Convention. In this brief Application, Bosnia and Herzegovina cannot possibly hope to catalog all the available evidence related to the acts of genocide that have been perpetrated upon its People by Yugoslavia (Serbia and Montenegro) and its agents and surrogates. Nevertheless, the collection of evidence listed below clearly indicates that under the terms of the Genocide Convention, Bosnia and Herzegovina has created a prima facie case that the international crime of genocide has been inflicted upon its people by Yugoslavia (Serbia and Montenegro) and its agents and surrogates.

4. Those who are committing these unspeakable acts listed below are attempting to effectuate the complete and utter destruction of the State of Bosnia and Herzegovina as well as the extermination of its People. By the terms of the Genocide Convention, these are the very same acts that its contracting parties sought to "prevent and to punish." Therefore, the People and State of Bosnia and Herzegovina charge that Yugoslavia (Serbia and Montenegro) and its agents and surrogates have committed genocide, and will continue to commit genocide unless they are stopped. The Bosnian People pray that as the world learns of the atrocities committed in Bosnia and Herzegovina, humanity, justice, and rule of law will prevail. Their only hope is that the world will undertake to end the bloodshed against the People and State of Bosnia and Herzegovina and bring the transgressors to justice.

B. The History of Bosnia and Herzegovina.

5. Throughout centuries Bosnia and Herzegovina was a theater of constant fighting for supremacy of the world powers: Venice-Italy, the Ottoman Empire, the Austro-Hungarian Empire and others. Her People were used for the goals of the powerful, being sometimes willing, most of the time unwilling, participants in their strategic conquests of lands and historic power plays. Yet, the People of Bosnia and Herzegovina managed to preserve their identity amidst the din of powerful armies and arms, the identity of tolerance and coexistence. The testimony to the preservation of their identity is the preservation of their common language, common culture, and respect for each other. The testimony to the tolerance and respect have been numerous cultural objects, Catholic churches and Islamic mosques, standing untouched next to each other for centuries until now, when the enemy of the culture and the civilization annihilated them all. Over 50% of all marriages in

former Yugoslavia are mixed marriages. These marriages are also a powerful testimony of the tolerance, respect and the caring that the People of Bosnia and Herzegovina have held for each other.

6. Bosnia and Herzegovina is centuries old. The first recorded name of Bosnia appeared in the writings of the Byzantine emperor and author, Constantine Porphyrogenitus in the 10th century. From that time on many historically acknowledged rulers in that geographic region incorporated the name of Bosnia into their titles:

- the "Ban" (Governor) of Bosnia, the more widely known being, e.g. Ban Boric (1154-1163);
- Ban Kulin (1180-1203);
- Ban Stjepan Kotromanic (1322-1353) whose governorship extended over the area of Hum (today's Herzegovina);
- the King of Bosnia, e.g. Tvrtko I (1353-1391), crowned in Mile near Visoko in 1377 (he also ruled over the areas of today's Serbia (Raska), Croatia and Maritime Dalmatia-- his full title being "King of Bosnia, Raska, Dalmatia, Croatia and Primorje (Maritimes));
- Tvrtko II (1421-1443)--during his reign the Serbian Despot (title of Serbian rulers) Stefan Lazarevic attacked Bosnia with his armies, specifically the region of the Srebrenica, trying to capture the strategic silver mine in the region in 1432-1433; subsequent to Srebrenica's capture by the Serbs, the Bosnian King Tomas liberated it in 1440;
- King Stjepan Tomasevic (1461-1463).

7. In 1463 the Ottoman Empire conquered Bosnia together with Serbia, Montenegro, Slavonia and Lika. Bosnia's distinctiveness was reconstituted in the form of the "Bosnian Pasha-dom (Pashaluk)" that was founded in 1580. This was the largest Turkish military-administrative unit in the Ottoman Empire, consisting of most of Serbia, Montenegro, Slavonia, Lika, Bosnia and Herzegovina and Dalmatia. The Bosnian Pasha-dom functioned in that form without any changes until the War of Vienna (1683-1699) between the Ottoman Empire and the Austro-Hungarian Empire. In 1703 the Vizier of Bosnia moved the seat of the Pasha-dom from Sarajevo to Travnik. From then and up until 1878, these borders would shift due to incursions by the Austro-Hungarian Empire and other ethnic armed formations.

8. At the Berlin Congress of 1878, the European military powers gave the mandate to conquer Bosnia and Herzegovina to the Austro-Hungarian Empire, which stipulated that the Turkish Sultan's sovereignty be formally "recognized." In 1908 the Austro-Hungarian Empire annexed Bosnia and Herzegovina, which then became an administrative unit of the Austro-Hungarian Empire. Nevertheless, the proclamation of Bosnia and Herzegovina's statehood was embodied within the Bosnian Sabor (Parliament), which became functional in 1916 at Sarajevo. In 1918 Bosnia and Herzegovina was made a part of the newly created Kingdom of Serbs, Croats and Slovenes, which

was later renamed into the Kingdom of Yugoslavia in 1933. During the Second World War Bosnia and Herzegovina was a part--"Governndom of Bosnia and Herzegovina"--of the Independent State of Croatia. In 1945 Bosnia and Herzegovina became a federal unit within the former Yugoslavia and had the elements of statehood (administrative government, tax collection, social and welfare state programs etc.).

9. Throughout the centuries Bosnia and Herzegovina offered refuge to all who needed it; e.g., the Sephardic Jews who escaped the Spanish Inquisition and Pogroms of the King Ferdinand and Queen Elizabeth settled in Bosnia and Herzegovina and in 1565 and formed their first municipality in Sarajevo. Bosnia and Herzegovina guarded its heritage with its own life. In Bosnia, the human rights of all were respected centuries before the Universal Declaration of Human Rights came into being. Now Bosnia is being punished for being open, universal and human, for trying to restore human and democratic values after decades of communist rule. The Bosnian People want to live together, as they did for centuries, regardless of ethnic background, religion or political affiliations. As one of the youngest sovereign democracies in the World and a Member of the United Nations Organization, the Republic of Bosnia and Herzegovina is experiencing the most difficult crisis in her thousand year history. Aggression brought upon her by Yugoslavia (Serbia and Montenegro), the former Yugoslav army, and extreme militant factions of the Serbian Democratic Party operating in conjunction with them has created this human tragedy.

C. Historical Account of the Current Violence in Bosnia and Herzegovina

10. The breakup of the former Yugoslavia and subsequent aggression against the newly independent states is the genesis of the genocide currently taking place in the Balkans. Since that time, the atrocities of Serbian forces committed against Bosnians and Croats have now been documented in many human rights reports. These recent acts of genocide are rooted in part due to the collapse of The League of Communists in early 1990. It was soon thereafter in April and May of 1990 that Slovenia and Croatia, which had always feared and resented Serbian nationalism, held free elections. Non-communist governments were elected in both states that vowed to convert the former Yugoslavia into a confederation or, if this were blocked by Serbia, to secede. After fruitless negotiations, both republics carried out this pledge on 25 June 1991.

11. Fighting between Serb guerrillas and Croatian forces, which had been occurring for months, intensified after Croatia's declaration of independence. Inexperienced and outgunned Croatian forces suffered heavy casualties and lost about one-third of Croatia's territory to Serbian insurgents acting in conjunction with the former Yugoslav People's Army (YPA). These agents and surrogates of the former Yugoslavia proclaimed the "union" of the

areas they inhabited with Serbia. In January of 1992, Croatia agreed to the deployment of a U.N. peacekeeping force in the areas of conflict inside Croatia.

12. The next former Yugoslav republic to be engulfed in the fighting was Bosnia and Herzegovina. Elections in Bosnia and Herzegovina in November and December 1990 led to the victory of three ethnically based parties representing Serbs, Croats, and Muslims. These three parties formed a coalition government with the Party of Democratic Action leader, His Excellency Alija Izetbegovic as head of the collective Republic Presidency.

13. Nevertheless, From September to November 1991, the Serbian Democratic Party declared that several Serbian so-called autonomous regions within Bosnia and Herzegovina would secede from the Republic if the Republic declared its independence from the former Yugoslavia. Some of these regions had Serbian majorities, while others had relatively few Serbs, but were strategically located between the Serb majority areas and Serbia itself.

14. In December of 1991, Bosnia and Herzegovina applied to the European Community (EC) for recognition as an independent state. Its Government also announced that a referendum would be held on Bosnia and Herzegovina's independence on February 29 and March 1, 1992. Independence was overwhelmingly approved by 99.4% of those voting. Turnout was 63.4%, largely because ethnic Serbs (who make up about 31% of the Republic's population) boycotted the vote. In other words, almost 63% of the electorate opted for independence. Nevertheless, this referendum was valid under the then applicable constitutional law. The sovereign state of the Republic of Bosnia and Herzegovina proclaimed its independence on 6 March 1992. The Presidency of the Republic of Bosnia and Herzegovina has seven elected members--two Muslim representatives, two Croat representatives, two Serb representatives and one member representing other and undeclared citizens of the Republic. This body, which represents all of the citizens of Bosnia and Herzegovina, including the Bosnian Serbs, has envisioned a constitutional and administrative framework very similar to the one found in the United States of America and the other Western democracies.

15. Accordingly, the European Community decided to recognize the Republic of Bosnia and Herzegovina on 6 April 1992. But on 4 April 1992, Serb militia forces acting at the behest of and in cooperation with the former Yugoslav People's Army (YPA), including its air forces, had launched military attacks throughout the Republic of Bosnia and Herzegovina. The attacks intensified after EC recognition was extended on April 6.

16. On April 7, Serb militia forces, acting at the behest of and in cooperation with the former YPA, announced that they had somehow created the so-called "Serbian Republic of Bosnia and Herzegovina." These former YPA military and paramilitary forces and militias quickly seized about two-thirds of the territory of

the Republic of Bosnia and Herzegovina. These former YPA military, paramilitary, and militia forces rapidly conquered ethnically mixed areas and Muslim-majority areas in central and eastern Bosnia.

17. In an unsuccessful attempt to head off U.N. economic sanctions against Yugoslavia (Serbia and Montenegro) for their support and direction of Serb military and paramilitary forces in Bosnia and Herzegovina, the former YPA announced in May that it was withdrawing from the Republic. Nevertheless, the former YPA also announced that the former YPA soldiers who were born in Bosnia and Herzegovina (whom they estimated to be about 80%) could stay in the Republic with the former YPA's weapons, equipment, and supplies. As of today, these Serbian military and paramilitary forces and militias in Bosnia and Herzegovina operate under the direction of, at the behest of, and with assistance from Yugoslavia (Serbia and Montenegro). For this reason, the Respondent is fully responsible under international law for all of their activities as well as the activities of the former YPA.

18. Respondent's military and paramilitary forces and its militias even bombarded and laid siege to Sarajevo, the capital of the Republic of Bosnia and Herzegovina. The United Nations received permission from these warring forces to send a peacekeeping contingent from the U.N. force in Croatia to secure the Sarajevo airport on June 29 in order to open a humanitarian aid pipeline into the city. Nevertheless, the Respondent's siege and bombardment of Sarajevo, by means of military and paramilitary forces and militias and agents and surrogates, ruthlessly, brutally, callously, and inhumanely continues today.

19. The focus of international concern about the situation in Bosnia and Herzegovina soon expanded beyond Sarajevo, as a result of accumulating reports from the nearly 2 million Muslim and Croat refugees expelled from these Serb-held territories. Victims spoke of the use of intimidation and violence to induce them to leave their homes. Most appalling, however, were reports of Serb-run detention camps. Witnesses told of summary executions, gang rapes of female prisoners, beatings, torture and starvation of prisoners.

20. On August 7, Bosnian diplomats released a July 8 Memo from U.N. peacekeepers in Croatia, which stated that Serb militia forces in the Republic of Bosnia and Herzegovina had intensified so-called "ethnic cleansing" operations in May 1992. According to U.N. General Assembly Resolution 47/121 (18 December 1992), below, Respondent's "ethnic cleansing" against the Bosnian People "... is a form of genocide." Indeed, Bosnia and Herzegovina submits that in fact "ethnic cleansing" is really a euphemism for acts of genocide within the meaning of the Genocide Convention.

21. Thus, from the very moment of its birth as an independent state on 6 March 1992, until the present hour, the People and State of Bosnia and Herzegovina have been under the constant threat of extermination by Yugoslavia (Serbia and Montenegro) acting in conjunction with its agents and surrogates and military,

paramilitary and militia forces under its control in sovereign Bosnian territory. Accordingly, the People and State of Bosnia and Herzegovina charge that acts of genocide have been, and are still being perpetrated upon them by Yugoslavia (Serbia and Montenegro) and its agents, and surrogates, as well as by military, paramilitary and militia forces that it still controls in sovereign Bosnian territory. Consequently, the People and State of Bosnia and Herzegovina invoke the norms and standards of international law, and rely upon this Court, to bring them immediate, effective, and definitive relief.

D. Planning for a "Greater Serbia."

22. As previously explained, much of the earliest violence (predating recognition) was caused by paramilitary units from Serbia and Montenegro in the former Yugoslavia, which carried out acts of terror and intimidation against non-Serbs. The war did not break out spontaneously but was consciously stimulated from the outside in the absence of any significant threat to the safety of the Serbian population in Bosnia. The greatest atrocity--the systematic shelling and starvation by siege of large cities--was carried out by Yugoslav/Serbian forces, which alone had both the means and the will to carry out such crimes against humanity. Civilians were the primary targets of military action, making a mockery of the Geneva Conventions. Accompanying abuses of individuals and groups of non-Serbs took almost every conceivable form of torture, humiliation, and killing. The policy of driving out innocent civilians of a different ethnic or religious group from their homes, so-called "ethnic cleansing," was practiced by Yugoslav/Serbian forces in Bosnia on a scale that dwarfs anything seen in Europe since Nazi times.

23. Considering the manner of the aggression, confiscation of documents and the consequences manifested by the aggression, it is clear that the Yugoslav/Serb aggression has been planned in advance, with the objective of destroying Muslims within the nation and occupying areas where they live. Yugoslavia (Serbia and Montenegro) has been and is continuing today to implement longstanding plans to create a so-called "Greater Serbia" that go back for almost 150 years.

24. The Respondent's concept of the "Greater Serbia" is based upon the "Nacertanije (Plan)" published by the Serbian priest Garasanin in 1844. More recently, this plan to create a "Greater Serbia" was forthrightly articulated in a "Memorandum" published by the Serbian Academy of Sciences and Arts in Belgrade in 1984. The current President of Yugoslavia (Serbia and Montenegro) was the guiding hand behind the drafting of that "Memorandum," which calls for the creation of a "Greater Serbia."

25. For example, the Respondent's plan to create a "Greater Serbia" also goes back to a 20 December 1941 proclamation by General Draza Mihajlovic, the commander of the Royal Chetniks. The

proclamation was a directive to Serbian military commanders in the field stating the following war aims, in relevant part:

- "creation of a Great Yugoslavia with the Greater Serbia which ought to be ethnically pure within the boundaries of Serbia, Montenegro, Bosnia and Herzegovina, Srijem and Backa
- cleansing of the state territory of all national minorities and non-national elements
- creation of joint borders between Serbia and Montenegro and between Serbia and Bosnia by way of cleansing of Sanjak of Muslim population and Bosnia of Muslim and Croat population
- struggle to incorporate into our state all of the Slovene territories under Italy and Germany as well as Bulgaria and Northern Albania with Shkoder."

26. Respondent has also incorporated the policy of Captain Milos N. Jovanovic, the commander of the Ozren core, who instructed Golub Mitrovic, the commander of the Zenica Chetnik column in his letter of 13 February 1943: "Not a single Muslim is going to remain amongst us. All those Catholics who have sinned against our people, as well as all the intellectuals and all those economically superior we shall destroy mercilessly." Likewise, another historical figure who contributed to Respondent's plan for a Greater Serbia was Mile Santic, the Chetnik military commander attending the Chetnik assembly at the end of June 1942 in Trebinje, where he stated: "The Serbian lands must be cleansed from Catholics and Muslims. They will be populated by Serbs only. The cleansing will be done thoroughly. We shall push them all and destroy them without exceptions and without mercy. That shall be the starting point of our liberation. That must be done very quickly and with a revolutionary fervour."

27. It is obvious that Respondent's longstanding plans to create a "Greater Serbia" are currently being implemented in Bosnia and Herzegovina. In the period of the aggression until now, hundreds of thousands of citizens have been killed; hundreds of thousands have been severely injured; many hundreds of thousands have been confined to concentration and extermination camps; millions have been driven out of their homes--"ethnically cleansed"--to other regions and countries. In one such instance of genocide, Dr. Filipovic--a member of the Bosnian Government--in his press release on 16 October 1992, stated that as many as 5,000 bodies were cremated in a furnace at the Tomasica iron ore mine, according to eight eyewitness accounts. Some witnesses report that people were burned alive in the furnace (identities of the witnesses are known to the Bosnian Government). People who have escaped from the Prijedor mine report that some 20,000 people were killed there and that the bodies were covered with mining debris.

28. Among the victims, there is a large number of children who have suffered in their homes, on the streets, in hospitals, and in maternity wards. Bosnian officials have numerous documented

cases where the aggressor has carved with knives or burned with hot irons humiliating symbols on the bodies of living people. Victims have been tortured by thirst, starvation and beatings until they died. Some have been forced to give blood until completely drained of blood. Girls are being raped, and breasts of women have been dissected after they have been raped. People are being burned, crucified and thrown into pits.

29. All symbols that identify national and religious sites are being destroyed; centuries old religious buildings and cemeteries are being dug up. Hundreds of communities, dozens of cities with the most vital industrial plants, apartments and other buildings are being demolished. Most of the industries and factories have been dismantled and stolen; the most modern factories have been transferred to Yugoslavia (Serbia and Montenegro). Bosnia and Herzegovina is defending itself, but with inadequate arms. The Bosnian People are unable to stop the crimes conducted by the better equipped military machine of Yugoslavia (Serbia and Montenegro) acting in concert with its agents and surrogates in Bosnia and elsewhere.

E. The Convention of the Prevention and Punishment of the Crime of Genocide

30. For the sake of convenience, specific factual allegations of genocide by Yugoslavia (Serbia and Montenegro) and its agents, surrogates, military and paramilitary forces and militias that it controls, will hereinafter be organized in accordance with the relevant provisions of the Genocide Convention, which read as follows:

The Contracting Parties

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world;

Recognizing that at all periods of history genocide has inflicted great losses on humanity; and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required:

Hereby agree as hereinafter provided.

Article I. 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.

Article II. In the present Convention, genocide means any of the following acts committed with intent to

destroy, in whole or in part, a national, ethnical, racial or religious group as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article III. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV. Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

31. The People and State of Bosnia and Herzegovina declare the following evidence to be good and sufficient to constitute a prima facie case of genocide against the Respondent, and request that all appropriate actions be taken forthwith by this Court in accordance with the standards of the Convention and the norms of international law. Listed below are specific instances of acts of genocide as organized in accordance with the relevant provisions of the Genocide Convention quoted above. With respect to each claim examined, Applicant submits that as long as the circumstances of the situation indicate that the actors "intended to destroy, in whole or in part, a national, ethnical, racial, or religious group," the actor has committed an act of genocide, within the meaning of the Genocide Convention. These acts, which have been confirmed by the public record, are sufficient to charge and establish against the Yugoslavia (Serbia and Montenegro) and its agents and surrogates a prima facie case of genocide within the meaning of the Convention.

F. Specific Factual Allegations of Acts of Genocide.

32. Shortly after the former Yugoslavia army swept into eastern Bosnia in April of 1992, a bearded soldier climbed the minaret of the Rijecanska mosque in the town of Zvornik, hung a skull-and-crossbones flag out the window, and placed a cassette on

the recorder. From the tower, where the Muslim call to prayer formerly sounded five times a day, blood curdling Serbian nationalist songs blared forth: "If you're not with us, we will kill you. We will slit your throats" and "You're a liar if you say Serbia is small."

33. An official list of 115 destroyed and damaged mosques and other objects, obtained by Newsday from Behar, a new Bosnian cultural affairs monthly, covered only the first six weeks of the war. See New York Newsday, Sept. 2, 1992:

"It is terrible. It is unbelievable from the point of view of the history of art and architecture," commented Bogdan Bogdanovic, a Serbian architect and ex-mayor of Belgrade. "Beautiful cities have been completely destroyed, and an enormous number of historic buildings. It is a great crime against civilization, a disgrace for my people and for the army which does that."

The destroyed or damaged treasures include the oldest, the most famous, and the most beautiful mosques in Bosnia, according to the official Bosnian list, and numerous other sources. All 14 mosques in and around Foca, among them the Aladza (the colored mosque), built in 1550 and said to be one of the most beautiful mosques in Europe, were destroyed, as was the Ustikolina Mosque near Foca, built in 1448, the oldest mosque in Bosnia; 13 mosques in Mostar all built between 1528 and 1631--among them the Karadjoz-Begova mosque, built in 1557.

Priceless treasures in Sarajevo have been damaged or destroyed including the Gazi Husref Beg Mosque, built in 1530, the Imperial Mosque, founded in 1450 and rebuilt in 1565, the Ali Pasha Mosque from the same period, and a dozen smaller mosques of similar age. Serb artillery badly damaged the Gazi Husref Beg library, from about 1530, and the century-old city hall, which contained the national library, and completely destroyed the library of the Oriental Institute and the new Islamic seminary and also assaulted nearly every library at Sarajevo University.

....

The pattern is repeated across Bosnia.... 200 mosques were destroyed and another 300 damaged between April and late July. in areas of Serb occupation, 90 percent of the mosques have been destroyed.

.... the Aladja [Aladza] mosque was damaged by mortars during the Serb assault in mid-April but survived because of its stone construction. Early in July, the Serbs planted dynamite around the site and blew it up. Then they bulldozed the rubble... ..Today grass is growing on the site. The Serbs also blew up Ustikolina with dynamite at the end of June, and destroyed Ferhadija in Banja Luka in May.

"Our clear impression is that they are not destroying some historical monuments but every historical

monument which represents the culture, tradition and continuity of a people," said Zehrid Ropic, a Tuzla architect....

.... mosques were used by Serbs as prisons, slaughterhouses and morgues. Alija Luinovic, 53, who was one of the witnesses quoted... "They didn't let us go to the toilet. We had to relieve ourselves in the sacred ablution basin, ..."

Killing Members of a Group

34. On 16 May 1992, at least 83 Muslims were summarily executed by Serbian paramilitary units in the village of Zaklopaca, which had been an almost exclusively Muslim village. By the account of one witness, Najla Hodzic, the Serbian paramilitary units (Cetniks) clearly committed acts of genocide. At 4:30 pm Serbian soldiers approached Hodzic's house, and called Hodzic's brother-in-law Haso, an "Ustasa." The Serb units ordered Haso to give up his weapons (Haso was unarmed at the time) and when he did not comply immediately, he was shot and killed on the spot. This is an act of genocide: the soldiers labelled Haso an Ustasa, indicating their identification of him as a Muslim, and killed him immediately after identifying him as a Muslim. These are the very acts the Convention sought "to prevent and to punish" (Interviewed by Helsinki Watch, War Crimes in Bosnia-Herzegovina 35, 35-37 (1992) (personal testimony of summary executions by Serbian soldiers against Bosnian citizens)).

35. There are many other reports of Serbian soldiers who have intentionally killed helpless Muslims located in non-military targets. For instance, in the city of Bihac, where there are no significant military targets, daily shelling occurs. In this city, a director of a hospital stated that 51 children have been killed. (UNITED NATIONS DOCUMENTATION: COMMISSION ON HUMAN RIGHTS, UN Doc. E/CN.4/1992/S-1/9, 24 August 1992, page 4).

36. The U.S. State Department also confirms the existence of intentional killings of Muslims and Croats by Serbian paramilitary forces in the Republic of Bosnia and Herzegovina. (A STAFF REPORT TO THE COMMITTEE ON FOREIGN RELATIONS OF THE US SENATE, THE ETHNIC CLEANSING OF BOSNIA-HERZEGOVINA, August 15, 1992) State Department spokesman Richard Boucher confirmed reports of the existence of detention centers in Bosnia and Herzegovina where citizens are being tortured and killed (Id Page 5). Furthermore, Serbian unit snipers opened fire on a bus transporting orphans out of a city which resulted in the death of an infant and toddler (Id). In the town of Kozaracs and surrounding villages (a predominantly Muslim area), Serb unit forces attacked on May 24 with mortar and artillery in an attack that lasted all night. The townspeople eventually surrendered after hiding in the woods. They were released once they had forfeited their weapons. The next day, however, the Serb units showed up again and shelled the now defenseless villagers and townspeople (Id Page 8).

37. This Report also documents the killing of elderly persons (Id). Recreational killings of Muslims and Croats occurred in the Serb-run detention camps. Paramilitary groups from Serbia would enter the camps at night and make the prisoners sing Serbian nationalist songs. Those judged insufficiently enthusiastic would be pulled outside and made to fight in what was effectively a human cockfight. Two men would take turns slapping each other. The man judged to be the weaker slapper would be killed. A witness testified that one time the Serbian paramilitaries cut off the loser's ears and nose before slitting his throat (Id Page 11). The Report also states that the main victims of Serbian unit aggression are civilians, not combatants, (Id Page 12). There are explicit incidences of Serbians making a conscience effort to kill Muslims. One witness recounts the events preceding the killing of a Muslim as follows: "They asked the man: 'What is your religion?' Then they killed him." (Id Page 17) In fact, Muslim places of worship are routinely treated as military targets. A witness states that seven Muslims were killed at a mosque, and that the mosque was subsequently destroyed (Id Page 18).

38. Additional U.S.State Department findings are detailed in the US Department of State publication Dispatch. ("Supplemental Report on War Crimes in the Former Yugoslavia," US Department of State Dispatch. Nov.2, 1992. Vol.3, No.44. Page 802). This Report described the point blank killing of Muslim refugees by Serb militia forces; how more than 200 Muslim men and boys were systematically massacred by Serbian militia forces on a narrow mountain track, their bodies thrown over the edge once they were killed (Id Page 802). One witness who was captured by Serb forces gave the following account of his captivity: He saw at least 30 people taken to sewage canals where their throats were cut; he saw a doctor slit the throats of healthy young persons, cut the organs and pack them in plastic bags, and then put them in a refrigerator truck; he also saw how the guards broke a prisoner's head with gun butts to spill the brains. They then called the dogs to eat the brains (Id Page 803).

39. Another example of the intent to kill Muslims specifically is the killing of Imam Mustafa Mojkanovic of Bratunac. He was tortured to death at the town's soccer stadium in front of thousands of Muslim children, women and the elderly. Serb unit guards ordered him to cross himself. When Mojkanovic refused, they beat him, stuffed his mouth with sawdust and beer, and slit his throat (Id Page 804).

40. Killings of Muslims by Serb forces are quite sadistic in nature as well. One Muslim prisoner of a Serb-run detention camp told of three prisoners beaten unconscious and then revived with cold water. Then, one of the prisoners was forced to bite the testicles off another. That prisoner died of blood loss that evening (Id Page 827).

41. Prisoners at the death camps are often killed for things such as not singing Serbian national songs loudly enough (Id).

Many Muslims at these camps are killed by knife carvings in the shape of a cross in their chests (Id Page 828). This Report also said that 36 Muslim adult patients and 27 Muslim children were taken out of the hospital and shot on the hospital grounds in order to make room for wounded Serbian soldiers (Id).

42. Reports of mass killings of Muslims and Croats in Bosnia and Herzegovina have also been reported by the International Society for Human Rights. (Dobinson, Jon. "Human Rights in the Former Yugoslav States: Report 2 - Ethnic Cleansing," ISHR. July 1992). This report cited how US Representative Frank McCloskey was one of a number of foreign observers who in January of 1992 inspected the bodies of 43 Croats killed in a massacre in the city of Vucin. He observed that people had been burned to death, killed with axes or a chain saw, or shot at close range. Noses, fingers, and ears had been cut off, and eyes had been gouged out. (Id Page 7) The report also documents how many Muslim residents of the town of Sarajevo and Visegrad had been kidnapped and killed. (Id Page 8). Further, buses filled with Muslim and Croat refugees were set on fire by Serbian militia members, and then shot up with a machine gun. Many of those on the buses were women and children (Id Page 10).

43. Additional reports of killings of Muslims are detailed in witness accounts recorded by "Save the Humanity." (Statements of Witnesses, "Save the Humanity." Danijela Ozme 7, 71000 Sarajevo, Bosnia and Herzegovina) Here, accounts are given of Muslims killed with wooden crosses tied to their bodies. (Witness 1, 30 May 1992) Another witness testifies that after Muslim houses were robbed, the men were beaten for 4 to 6 hours, while the women and children were forced to listen to their screams for help. After this, 35 of the men were shot to death. (Witness 2, 1 June 1992) Other witnesses also testify that these were organized murders. (Witness 3, 28 May 1992; Witness 6, 31 May 1992).

44. All of the above accounts clearly establish violations of Genocide Convention, Article II, paragraph (a), "Killing members of the group."

Causing Serious Bodily or Mental Harm to Members of the Group

45. Article II(b) of the Genocide Convention defines genocide as "Causing serious bodily or mental harm to members of the group" if committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such." In the war against Bosnia and Herzegovina by the Respondent, rape is being used as a weapon of war. The rapes of Bosnian women are not sporadic incidents, but rather are part of a calculated plan of destruction of the Muslim people in Bosnia.

46. "Rape and sexual abuse as forms of torture or cruel, inhuman or degrading treatment are clearly in contravention of international human rights standards, as well as of international

humanitarian law, which apply in the conflict in Bosnia-Herzegovina." (Amnesty International, "Bosnia-Herzegovina - Rape and sexual abuse by armed forces," January, 1993, p.2) [hereinafter "Amnesty International Report"]. In particular, rape and sexual abuse are in direct violation of the Genocide Convention because they cause "serious bodily" and "mental harm."

47. According to investigations by both Amnesty International and the European Council, the rapes and sexual abuses that are occurring in Bosnia and Herzegovina are part of a deliberate and organized plan of destruction of the Muslim people. This constitutes genocide under the terms of the Convention.

48. In its report, "Bosnia-Herzegovina: Rape and sexual abuse by armed forces," Amnesty International found that "abuses against women, such as rape, have been widespread in Bosnia-Herzegovina" and that "Muslim women have been the chief victims and the main perpetrators have been members of Serbian armed forces." (Amnesty International Report, p. 3.). Amnesty International concluded that the rapes and sexual abuse of Muslim women in Bosnia and Herzegovina ha[ve] been carried out in an organized or systematic way, with the deliberate detention of women for the purpose of rape and sexual abuse. Such incidents would seem to fit into the wider pattern of warfare, involving intimidation and abuses against Muslims and Croats which have lead thousands to flee or to be compliant when expelled from their home areas out of fear of further violations.

(Id. p. 4.).

49. The European Council reached similar conclusions regarding the genocidal acts of the Serbian forces:

[R]ape is part of a pattern of abuse, usually perpetrated with the conscious intention of demoralizing and terrorizing communities driving them from their home regions and demonstrating the power of the invading forces. Viewed in this way, rape cannot be seen as incidental to the main purpose of the aggression but as serving a strategic purpose in itself.

(EC Investigative Mission Into the Treatment of Muslim Women in the Former Yugoslavia - Report to EC Foreign Ministers). The Council found that the thrust of the Serb attacks in Bosnia and Herzegovina have concentrated on areas with a large Muslim population including the Brcko region (44% Muslim), the Drina valley (Zvornik - 60%, Bratunac - 64%, Srebrenice - 74% Visegrad - 63%, Gorazde 70% & Foca - 51%) and the Prijedor area (44% Muslim) "in an effort to carve out ethnically homogenous territory between Serbia and the Serbian areas of occupied Bosnia-Herzegovina and Croatia." (Id.) The specific targeting of these highly Muslim areas shows a clear intent to harm this particular religious group.

On the basis of its investigations the Mission is satisfied that the rape of Muslim women has been - and perhaps still is - perpetrated on a wide scale and in such a way as to be part of a clearly recognizable pattern sufficient to form an important element of war strategy.

(Id).

50. Confirming reports and obtaining statistics of the rapes in the Bosnia-Herzegovina conflict is difficult for several reasons. Because the war continues, there are numerous practical obstacles impairing the systematic collection of data. In addition, the social stigma of rape discourages women from coming forward with accounts of the abuses they have suffered.

51. However, reliable estimates and confirmed accounts exist. According to investigations by the European Council, over 20,000 Muslim women and girls in Bosnia have been raped. EC Report. The Bosnian government estimates the number at closer to 50,000. (Time, "Behavior: Rape and War," Vol. 141, No. 8, February 22, 1993, p. 48).

52. In May, 1992, 40 Muslim women were captured and raped by Serbian forces in Brezovo Polje. One of victims, 23 year old Mirsada, told a reporter that her Serbian abductor had told her, "We have orders to rape the girls. I am ashamed to be a Serb. Everything that is going on is a war crime." Another victim, 23 year old Hafiza, stated that she tried to talk her attacker out of raping her, but he replied, "I must. I must." ("Supplemental Report on War Crimes in the Former Yugoslavia" submitted by the United States to the United Nations Security Council, Vol. 3, No. 46, November 16, 1992, p. 831) [hereinafter "Supplemental Report"].

53. Dr. Milika Kreitmayer, leader of the gynecological team that examined 25 of the 40 victims from Brezovo Polje, concluded that the object of the rapes was "to humiliate Muslim women, to insult them, to destroy their persons and to cause shock. These women were raped not because it was the male instinct. They were raped because it was the goal of the war. My impression is that someone had an order to rape the girls." (Gutman, Roy. "Bosnian Women Terrorized by Serbs," New York Newsday, Sunday, August 23, 1992). In addition, Dr. Kreitmayer reported that practically every woman in the Muslim town of Liplje was raped. These incidents occurred at the end of May, 1992, while more than 400 of the villagers were held in a large house by Serbian forces. The reports were confirmed by both local police officials and the gynecological institute doctors after examining and questioning the victims. (Id).

54. In September, 1992, at least 150 pregnant Muslim women and teenage girls were brought into Bosnian government held areas of Sarajevo. All of these women reported being raped by Serbian nationalist soldiers. These women reported being imprisoned for

months in order to keep them from terminating their pregnancies. One Serbian soldier told the women, "When we let you go home, you'll have to give birth to a Chetnik. We won't let you go while you can have an abortion." (Supplemental Report, p. 830).

55. In the district of Grbavica in May, 1992, approximately 20 girls were seized by Serbian fighters. A fifteen year old girl stated that they were held in a small room and ordered to undress:

We refused, then they beat us and tore our clothes off. They pushed us on the floor. Two of the men held me down while two others raped me. I shouted at them and tried to fight back but it was no use. As they raped me they said they'd make sure I gave birth to a Serbian baby, and they kept repeating that during the rest of the time that they kept me there.

(Id.)

56. In the Muslim town of Kijuc, in May or June, 1992, eight women were raped by a group of Serbians in front of the house they took shelter in. One of the victims, a sixty year old woman, reported that she was raped by three men. One man first forced his hand into her vagina at knife-point and then made her lick her own blood. Two of the women then had their throats slit. (Amnesty International Report, p. 7).

57. In the Serb-run concentration camp in the Bosnian town of Trnopolje, on May 31, 1992, a Bosnian woman was raped by eight different soldiers. Afterwards, one of the soldiers slashed her breasts with his knife. The woman had joined a group of fifteen women on a line for water. They were approached by the Serbian soldiers who separated out six young women and led them to a small house. While shouting obscenities, the soldiers ordered the women to undress and walk around in a circle. After fifteen minutes, the soldiers began to rape several of the women at a time at gunpoint. (Complaint of Jane Doe I and Jane Doe II against Radovan Karadzic, U.S. District Court for the Southern District of New York, Submitted, February 11, 1993).

58. The above accounts are only a few of the confirmed cases of rapes committed against Muslim women in Bosnia and Herzegovina. In the Bosnian conflict, rape is being used as a widespread means to destroy the Muslim people. As a form of revenge and humiliation, the mass rapes are being used to intentionally destroy the national, religious and cultural identity of the Muslim people in Bosnia. This constitutes genocide.

59. In addition to evidence of rapes and sexual abuse, there are many examples of Serb forces intentionally causing severe physical and mental harm to Croats and Muslims within the Bosnian Republic. A United Nations report describes several such instances. (UNITED NATIONS DOCUMENTATION: COMMISSION ON HUMAN RIGHTS, UN Doc. E/CN.4/1992/S-1/9, 24 August 1992) Oftentimes,

many villagers are taken by Serb forces to the local police station for interrogation where they are beaten and tortured by the police or forced to beat each other. (Id Page 2) The UN report also says that Sarajevo is shelled on a regular basis in order to deliberately spread terror amongst the population. (Id Page 4).

60. The United States Senate Committee on Foreign Relations has also documented the severe physical and psychological abuses that have occurred in the Nazi-style, Serb-run detention centers. (A STAFF REPORT TO THE US SENATE COMMITTEE ON FOREIGN RELATIONS, "THE ETHNIC CLEANSING OF BOSNIA-HERZEGOVINA," August 15, 1992) The report documents how women and children are kept in large numbers in small rooms where the sanitary conditions are appalling. According to many accounts, detainees had no toilets and, in some areas, defecated and urinated in the same room as they slept. (Id Page 10). Serbian guards would extinguish cigarettes on the women's hands. (Id Page 16). Further, this reports documents the rapes that occur of girls and young women. In some cases, the guards would kill the women after raping them. (Id Page 10). The treatment of male prisoners is also quite brutal. Almost all men prisoners were beaten. In some of the prison camps, the prisoners were provided with little or no food. (Id). Father and sons were forced by Serbian guards to beat each other at one camp. At the same camp, a paralyzed man was beaten unconscious and revived with water. (Id Page 17). The report also mentioned how a young man's hands were beaten with a hammer until they swelled. (Id Page 26). Mental harm included forcing Muslim prisoners to bow and cross themselves. (Id Page 17).

61. U.S. State Department reports also confirm the existence of purposeful attempts to physically and mentally wound the Muslims and Croats. One prisoner was taken out of the detention center by a Serb guard who later returned with the prisoner's severed head. ("Supplemental Report on War Crimes in the Former Yugoslavia," US Department of State Dispatch. November 2, 1992. Vol.3, No.44, Page 803.) This report also documents how young girls are being raped in front of their mothers, undeniably causing tremendous mental and physical suffering for the mother and daughter (Id Page 804). Torture of prisoners is also discussed in this report. One prisoner testified in regard to the severe beatings that he sustained, as well as sexual torture administered on the prisoners. He said that several men had been forced by the guards to have intercourse with each other, and that guards cut off some prisoner's hands and penises as a punishment to frighten the other men. (Id Page 804).

62. Reports from witnesses at the Omarska camp also described torture administered by Serbian guards. One witness described how guards would pour acid on the fresh wounds of prisoners after some of the public beatings and laugh as the prisoners screamed from pain (Id Page 805). This witness also described how a Muslim man from Kozarac, who had owned a motorcycle, was tortured in front of other witnesses. He was severely beaten all over his body and his teeth were knocked out. The guards then tied one end of a wire

tightly around his testicles and tied the other end to the victim's motorcycle. A guard then got on the motorcycle and sped off. (Id Page 805).

63. This report also describes how a 33 year old Muslim woman who was interned in the Manjaca camp near Banja Luka was interrogated. During her interrogation, two guards beat her and burned her with a cattle prod. They then raped her in front of her children, a 12-year old daughter and a 9 year old son. Her daughter was raped twice. (Id Page 806).

64. At the town of Vlasica, similar atrocities occurred. Here, one 16-year-old witness testified that after beatings, the Serbian guards forced the prisoners to drink glasses of urine. (Id Page 829) At the Luka-Brcko camp, Muslim prisoners had crosses engraved into their forehead with knives by the Chetniks. They gave them Orthodox names like Alexander, and forced the Muslims to say "I am Alexander" or face beatings. (Id Page 829).

65. A report by the International Society for Human Rights also documented acts of Serbian aggression directed toward causing physical and mental injury to Muslim and Croatian residents of Bosnia. (Dobinson, Jon. "Human Rights in the Former Yugoslav States," ISHR. July 1992) In a Serb-run camp near the Prijedor area of Bosnia, witnesses report that girls as young as 13 said that they had been raped by camp guards. (Id Page 7).

66. Similar reports were printed in a publication entitled "Save the Humanity." ("Report on War Destructions, Violation of Human Rights and Crimes Against Humanity in Bosnia & Herzegovina," Save the Humanity. Sarajevo, June 3, 1992.) According to various statements gathered by the publication, the report concludes: "The treatment with captured civilians, Muslims and Croats, according to witnesses, can be compared with the treatment of Hitler concentration camps from the Second World War. The features of mistreatment are torture, beating up and other physical maltreatment. There are a lot of executions, too, and mostly young men are executed. Lately we are getting information that blood is being taken from the captured." (Id Page 8).

67. Part II of the "Save the Humanity" report details similar accounts of mistreatment and torture, and also includes details of rape committed by Serb forces against women prisoners. Girls over the age of twelve and women are forced to be prostitutes, and very often the women are raped. ("Report on War Destructions, Violation of Human Rights and Crimes Against Humanity in Bosnia & Herzegovina, Part II," Save the Humanity. Sarajevo, July 7, 1992. Page 6.)

68. The foregoing evidence is sufficient to establish violations of Genocide Convention Article II(b), "Causing serious bodily or mental harm to members of the group." The Peoples and States of the world should be especially horrified at the rape of

the Bosnian Women. And all the world community should be aghast at the crimes inflicted upon the Bosnian People.

Deliberately Inflicting on the Group Conditions of Life Calculated to Bring About its Physical Destruction in Whole or in Part

69. Under the terms of this section, there are two elements which if found would constitute genocide. There must be the deliberate infliction of conditions of life coupled with a calculation that such acts would bring about the physical destruction of the group in whole or in part. Thus by the language of the Convention the actor need not believe, for instance, that his or her acts would destroy all Muslims or even all Bosnian Muslims. For example, if the conditions are inflicted on the Muslim section of a small town, this would be enough to satisfy the definition of genocide under this section of the Convention. Below are instances of acts which fulfil the Article II(c) definition of genocide.

70. Perhaps the most widespread genocidal act inflicted on the People of Bosnia by the Serb forces has been the destruction of entire villages in which Muslims and Croats lived. This practice was documented in UN reports (UNITED NATIONS DOCUMENTATION: COMMISSION ON HUMAN RIGHTS, UN Doc. E/CN.4/1992/S-1/9, August 28, 1992.) In the town of Bosanka Dobinca, every night houses were burnt. (*Id* Page 2). In the village of Celinac, 17 houses occupied by Muslim families were blown up in a single night, after reports were received that some soldiers from the village had been killed in combat. (*Id* Page 3). The delivery of food and humanitarian aid is also jeopardized by the constant shelling of United Nations Protection Forces' barracks and headquarters, as well as the airport itself. All inhabitants of the city are seriously affected by such attacks. (*Id* Page 4). There are no significant military targets in Sarajevo, and the purpose of the shelling seems to be that of terrorizing the population. (*Id*). Further, the siege has had a dramatic effect on the economy of the region, making this previously prosperous region dependent on foreign aid provided by the international community. (*Id* Page 5). The report also documents the conditions at Serb-run detention centers. Many prisoners are in a poor state of health, with signs of malnutrition and in some cases torture. One man detained in the Manjaca camp who was recently taken to the hospital weighed only 34 kilograms.

71. A report to the United States Senate Foreign Relations Committee has detailed similar genocidal practices by the Serbs. (A STAFF REPORT TO THE COMMITTEE OF FOREIGN RELATIONS OF THE US SENATE - THE ETHNIC CLEANSING OF BOSNIA-HERZEGOVINA, August 15, 1992) Prisoners in these Serb-run camps were given little or no food. (*Id* Page 10). A witness from Kozarac described conditions in the camp where he was detained. More than 150 persons were kept in a garage where only a little air was allowed to enter the room from a small window. He also described how the persons were forced to urinate in and around the building because many prisoners were shot

when they tried to use the toilet located outside the building. There was practically no food. In the morning, prisoners were given just a little tea with no sugar. At lunch, there was only soup, and there was only wheat for dinner. The children got diarrhea. There was a doctor, but he could do nothing because of a lack of medicine. (Id Page 29).

72. On May 1, 1992, Serbians in the area of the Village of Skelani in the municipality of Srebrenica declared the city to be a Serbian village. On May 7, the village fell into the hands of Serbian forces. By 3:00 pm, all Muslims in the area were ordered to relinquish their firearms, which were mostly hunting rifles and the like. Vahida Selimovic was attempting to go to work, when the following events occurred:

- A. The Serbian forces refused her passage, claiming she required a "permit".
- B. On May 8th, Serbians wearing Cetnik garb came into her house and shot all the male adults in the house. Afterwards, the Serbs cursed at the women, calling them Turks and threatening to kill them. Some time later the women were transferred to Novi Pazar.
- C. On May 9th, the independent Serbian news agency Borba reported that after Skelani fell, 550 Muslims (mostly women, children, and the elderly) were expelled from the village. Serbian forces declared Skelani to be a Serbian village and refused to allow any Muslims access into the area.

(Interviewed by Helsinki Watch, War Crimes in Bosnia-Herzegovina 41, 41-43 (1992) (personal testimony of the Serbian takeover of the Bosnian village of Skelani).

As described by Vahida Selimovic, all three of these acts by Serbian forces are genocidal. Requiring the "permit" and expelling the Muslims fulfills Article II(c)'s definition that a group (here the Muslims) were being treated in such a way as to effectuate the physical destruction of them as a people. The Muslim citizens were turned into refugees by the Serbians, and driven from their homes in Bosnia. The Serbs manifested their intent to do so on May 1 and again on May 9, when the forces declared Skelani to be a Serbian village, quite without regard to the Muslim population residing therein. Thus the Serbs committed genocide by declaring Skelani to be "Serbian", manifesting their intent to destroy the Muslim population residing therein, and afterwards carrying out the policy by murdering members of the group and then expelling the rest. Also, note that the murder of Vahida Selimovic's husband constitutes a genocidal act under Article II(a). The soldiers' labelling of the survivors as "Turks" also indicates their identification and hatred of the Muslims, and manifests their clear intent to massacre as many male Muslims as possible, thereby helping destroy in part the Muslim ethnic group inside Skelani. In

sum, the grisly Serbian activities in Skelani represent a very clear example of the genocide occurring within Bosnia.

73. The concentration camps inside Bosnia and the former Yugoslavia also provide evidence of genocide. These prisons are run by Serbs for the express purpose of detaining Bosnian non-Serbs. There are at least 100 such camps in existence, creating appalling living conditions for the non-Serbs imprisoned inside. (Information compiled from Bosnian governmental sources and forwarded to Helsinki Watch, War Crimes in Bosnia-Herzegovina 44, 44-48 (1992) (describing the existence and conditions of concentration camps in Bosnia-Herzegovina). UN documents provide additional evidence that the camps' purpose is to detain, torture and possibly execute non-Serbs. (Id pp 44-48). The practice of creating concentration camps for the purpose of holding ethnic groups falls under Article II(c) of the Convention. The Serbian intent to destroy non-Serbs is obvious; the camps' sole purpose is for the mass incarceration of Bosnian ethnics which are not Serbian. By deliberately inserting non-Serbs into the camps, the Serbs are imposing conditions of life which make it impossible for those imprisoned to assert their nationality. As Serbian military officials in Banja Luka stated, the prisoners are categorized, including a category for "Muslim combatants." The following is a partial list of U.N. findings regarding some of the camps:

In Bosanski Novi: a football field is used as a holding grounds for Muslims while their houses are being searched by the Serbian forces and the men of fighting age are transported to concentration camps.

In Xeraterm (Termokerm): UN officials stated that between 100 and 200 Muslims were imprisoned under "extremely bad conditions."

In Omarska: A camp used with apparently the primary purpose of holding Muslim governmental officials, especially from the town of Prijedor.

In Manjaca: The UN reported that Muslims being held in the camps received regular beatings, deprivation of food and water, and poor shelter.

(Id pp. 46-47).

74. At this time, it is impossible to verify whether actual executions are taking place in these camps. It is clear, however, that on the basis of the evidence available, the Serbian camps qualify under Article II(c) as deliberate inflictions of conditions of life calculated to bring about the physical destruction of Muslims and other non-Serbs in whole or part. The conditions in the camp indicate the Serbs have no regard for the life of the prisoners and as such the camps themselves appear to have no other purpose than to inflict genocide on those detained within. There can be little doubt that the camps are designed to

destroy the Muslims and other non-Serbs as a people. Note that should executions be verified in the camps, this would constitute prima facie evidence of Article II(a) genocide. Torture and physical violence against inmates would fall under Article II(b) and would also constitute prima facie evidence of genocide. Even without these conditions, the existence of the camps themselves are enough to establish that the crime of genocide has been committed by Serbians against Bosnian non-Serbs.

75. The creation by former Yugoslavian forces of ghettos for non-Serbs in Bosnia have the same purpose as the concentration camps and are therefore genocidal in nature. Ghettos for non-Serbs appear to be similar to the Nazi Warsaw ghetto created for Jews and seem to have the same purpose, namely to inflict conditions of life which will destroy those inside as a people. The Muslim ghetto in Brezovo Polje is but one example. There 1500 people have been detained in this Muslim village, which is surrounded by Serbian villages and armed forces. (Interview by Helsinki Watch, War Crimes in Bosnia-Herzegovina, 48, 48-49 (1992) (personal testimony regarding confinement in a ghetto)).

76. Forcible deportations have been documented also. (See Interviews by Helsinki Watch, War Crimes in Bosnia-Herzegovina 49, 49 (1992) (personal testimony describing the forcible deportation of Bosnian citizens)). Forcible deportations also constitute evidence of genocide under Article II(c). 50 Muslims claimed to have been deported from their homes in the Zvornik and Bijeljina municipalities in Bosnia by Serbs, and forcibly deported to the city of Subotica on the Hungarian and Serbian border. They alleged that Serbs were committing these acts for the express purpose of allowing Serbian refugees from Janja to occupy their homes (Id Page 49). These acts by Serbian forces have the effect of depriving Bosnian citizens of the right to live in their own country and in their own homes. The most damning commentary was made by UN High Commissioner Sadako Ogata, who stated that creating Bosnian refugees "seems not to be just the result, but the goal of the fighting..." (Quoted from an article written by Ms. Ogata in the German Newspaper Die Zeit and transcribed by Blaine Harden, UN Pleads for Help for Bosnian Refugees, " The Washington Post, July 23, 1992). These acts constitute a clear effort by the Serbs to destroy the Bosnian people of Zvornik and Bijeljina and are thus genocidal under the terms of the Convention.

77. Similar to the forcible deportation claim is that of forcible displacement. In effect, former Yugoslavian forces or their surrogates, who force Bosnians to "scatter to the four winds," are depriving the Bosnians of their right to live as Bosnians and thus are guilty of genocidal practices. Mortar attacks are common against non-Serbian areas, even those which have no Bosnian military forces in the area. (Interviews by Helsinki Watch, War Crimes in Bosnia-Herzegovina 50, 50-52 (1992) (personal testimony of forcible displacement of Bosnian citizens)). Under the terms of Article II(c), this effort to destroy the Bosnians by forcing them to leave their homes and their country is genocide.

78. Another aspect of former Yugoslavian genocide has been the indiscriminate use of force against non-Serbs in Bosnia. (Helsinki Watch, War Crimes in Bosnia-Herzegovina 71, 71-76 (1992) (lists instances of indiscriminate use of force against Bosnian citizens)). UNHCR stated that Sarajevo was being systematically destroyed by Serbian fire. Other sources noted that villages were being attacked for the sole purpose of driving its inhabitants away. (See Laura Silber and Judy Dempsey, "EC Withdraws Its Monitors from Bosnian Capital", The Financial Times, May 13, 1992). For the same reasons that forcible displacement and forcible deportation constitute genocide, the indiscriminate use of force on Bosnian villages represents an effort to destroy them as a People and constitutes genocide.

79. The Bosnian government has actual recordings of former Yugoslavian staff officers plotting to destroy Sarajevo on May 27, 1993. Serbian general Ratko Mladic instructed two colonel subordinates to attack residential districts of Sarajevo with heavy artillery in an effort to "burn it all". (See John F. Burns, "Taped Order Loud and Clear: 'Burn It All,'" The New York Times, June 9, 1992). To effectuate this policy, General Mladic ordered his troops to use the heaviest mortar shells in the entire army. This is a clear cut example of an Article II(c) violation. It can be proved that there were deaths and serious mental and bodily harm caused to residents of Sarajevo by the subsequent artillery bombardments launched after these instructions. Thus, Mladic and his surrogates are guilty of violating Article II(a) and (b) as well.

80. Former Yugoslavian military forces or their surrogates have also violated Article II(c) by attacking and raiding international relief convoys aimed at alleviating the suffering in Bosnia. By depriving the Bosnian People of food and medicine necessary for their survival as human beings, the Serbs are in effect deliberately inflicting those conditions of life which are calculated to bring about the destruction and submission of the Bosnian People. UN officials have documented Serbians who have committed Article II(c) violations by delaying, diverting, and stealing trucks which have food and medicine. ("Aid Convoys are Suspended", The New York Times, May 23, 1992). Furthermore, after several hijackings, the UN was forced to suspend relief convoys to Bosnia, causing additional grief and suffering.

81. As to medical materials, Serbs have been documented as willfully withholding medicine and other medical necessities as bargaining chips. (David Brauchli, "Wounded by Shrapnel in Sarajevo, A Photographer's Story," The Associated Press, May 25, 1992). This crime follows the same logic as the hijacked food convoys and constitutes Article II(c) genocide.

82. Thus the People and State of Bosnia and Herzegovina can establish the fact that Yugoslavia (Serbia and Montenegro) and its surrogates and agents have attempted to destroy the Muslims and Croats in Bosnia and Herzegovina by deliberately inflicting on

these groups conditions of life calculated to bring about their physical destruction in whole or in part. These acts constitute genocide within the meaning of Convention Article II(c).

Imposing Measures Intended to Prevent Births Within the Group

83. This prohibited conduct consists of forcible and calculated measures taken by an actor with the intention of preventing the birth of children and thus the continuation of the national, ethnical, racial, or religious group. Most of the evidence of acts by Yugoslavia (Serbia and Montenegro) and its surrogates and agents that would fall under this section of the Genocide Convention have already been documented above. See especially the documentation of the rapes of Bosnian women to produce Serbian or "Chetnik" babies, and the condition of the Serb-run concentration camps and sexual torture above. All crimes charged in these paragraphs are also Article II(d) crimes and therefore constitute genocide.

G. U.N. General Assembly Resolution 47/121 of 18 December 1992

84. Finally, as recently as 18 December 1992, the United Nations General Assembly adopted Resolution 47/121 on The situation in Bosnia and Herzegovina by a recorded vote of 102-0-57. Therein, the General Assembly made a large number of factual determinations that are directly relevant to this dispute between Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro). The precise text of Resolution 47/121 reads as follows:

47/121. The situation in Bosnia and Herzegovina

Date: 18 December 1992 Meeting: 91
Vote: 102-0-57 (recorded) Draft: A/47/L.47/Rev.1

The General Assembly,

Having considered the item entitled "The situation in Bosnia and Herzegovina",

Taking note of the report of the Secretary-General, 125/ [125/ A/47/747.]

Reaffirming its resolution 46/242 of 25 August 1992,

Recalling all the resolutions adopted by the Security Council regarding the Republic of Bosnia and Herzegovina, and other parts of the former Yugoslavia,

Appreciating all the ongoing international efforts to restore peace in the Republic of Bosnia and Herzegovina, particularly those being pursued by the United Nations, the European Community, the International

Conference on the Former Yugoslavia, the Conference on Security and Cooperation in Europe and the Organization of the Islamic Conference,

Commending the untiring efforts and bravery of the United Nations Protection Force in securing relief operations in the Republic of Bosnia and Herzegovina, as well as the efforts of the Office of the United Nations High Commissioner for Refugees and other relief and humanitarian agencies, and expressing its condemnation of the recent attacks on the United Nations Protection Force in Sarajevo by Serbian forces resulting in loss of life and injuries to some of its personnel,

Taking note of the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia dated 6 November 1992, 126/ [126/ A/47/635-S/24766, annex.] in which he stated, inter alia, that "ethnic cleansing" did not appear to be the consequence of the war, but rather its goal,

Taking note also of the report of the Special Rapporteur dated 17 November 1992, 127/ [127/ A/47/666-S/24809, annex.] in which he stated, inter alia, that another factor which had contributed to the intensity of "ethnic cleansing" in areas under Serbian control was the marked imbalance between the weaponry in the hands of the Serbian and the Muslim population of Bosnia and Herzegovina,

Gravely concerned about the deterioration of the situation in the Republic of Bosnia and Herzegovina owing to intensified aggressive acts by the Serbian and Montenegrin forces to acquire more territories by force, characterized by a consistent pattern of gross and systematic violations of human rights, a burgeoning refugee population resulting from mass expulsions of defenceless civilians from their homes and the existence in Serbian and Montenegrin controlled areas of concentration camps and detention centres, in pursuit of the abhorrent policy of "ethnic cleansing", which is a form of genocide,

Strongly condemning Serbia and Montenegro and their surrogates in the Republic of Bosnia and Herzegovina for their continued non-compliance with all relevant United Nations resolutions,

Deeply regretting that the sanctions imposed by the Security Council have not had the desired effect of halting the aggressive acts by Serbian and Montenegrin irregular forces and the direct and indirect support of

the Yugoslav People's Army for the aggressive acts in the Republic of Bosnia and Herzegovina,

Recalling that the Government of the Republic of Bosnia and Herzegovina has accepted the constitutional principles proposed by the Co-Chairman of the International Conference on the Former Yugoslavia,

Convinced that the situation in the Republic of Bosnia and Herzegovina warrants the implementation of decisive actions under Chapter VII of the Charter of the United Nations to oblige Serbia and Montenegro and their surrogates in the Republic of Bosnia and Herzegovina to comply with the relevant Security Council resolutions,

Reaffirming the principle of inadmissibility of the acquisition of territory by force and the right of all Bosnian refugees to return to their homes in conditions of safety and honour,

Reaffirming also that the Republic of Bosnia and Herzegovina has the inherent right to individual or collective self-defence in accordance with Chapter VII, Article 51, of the Charter of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security,

Determined to restore peace in the Republic of Bosnia and Herzegovina as well as to preserve its unity, sovereignty, political independence and territorial integrity,

1. Reaffirms its support for the Government and people of the Republic of Bosnia and Herzegovina in their just struggle to safeguard their sovereignty, political independence, territorial integrity and unity;

2. Strongly condemns Serbia, Montenegro and Serbian forces in the Republic of Bosnia and Herzegovina for violation of the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina, and their non-compliance with existing resolutions of the Security Council and the General Assembly, as well as the London Peace Accords of 25 August 1992;

3. Demands that Serbia and Montenegro and Serbian forces in the Republic of Bosnia and Herzegovina immediately cease their aggressive acts and hostility and comply fully and unconditionally with the relevant resolutions of the Security Council, in particular resolutions 752 (1992) of 15 May 1992, 757 (1992) of 30 May 1992, 770 (1992) and 771 (1992) of 13 August 1992, 781 (1992) of 9 October 1992, and 787 (1992) of 16

November 1992, General Assembly resolution 46/242 and the London Peace Accords of 25 August 1992;

4. Demands that, in accordance with Security Council resolution 752 (1992), all elements of the Yugoslav People's Army still in the territory of the Republic of Bosnia and Herzegovina must be withdrawn immediately, or be subject to the authority of the Government of the Republic of Bosnia and Herzegovina, or be disbanded and disarmed with their weapons placed under effective United Nations control;

5. Demands also that, in accordance with Security Council resolution 752 (1992), all elements of the Croatian Army that may be in the Republic of Bosnia and Herzegovina and that are already not operating in accord with the authority of the Government of the Republic of Bosnia and Herzegovina must be withdrawn immediately, or be subject to the authority of the Government of the Republic of Bosnia and Herzegovina, or be disbanded and disarmed with their weapons placed under effective United Nations control;

6. Supports the consideration by the Security Council of the immediate enforcement of resolution 781 (1992) banning all military flights over the Republic of Bosnia and Herzegovina;

7. Urges the Security Council, within its responsibility to maintain international peace and security, to again call upon the Serbian and Montenegrin forces to comply with all relevant resolutions and to bring to an end the aggressive acts against the Republic of Bosnia and Herzegovina, to implement and enforce all existing resolutions with respect to the Republic of Bosnia and Herzegovina and the former Yugoslavia and, specifically, further to consider measures, including the following, on an urgent basis, but no later than 15 January 1993:

(a) In the event that Serbian and Montenegrin forces fail to comply fully with all relevant resolutions of the Security Council, under the provisions of Chapter VII of the Charter, to authorize Member States, in cooperation with the Government of the Republic of Bosnia and Herzegovina, to use all necessary means to uphold and restore the sovereignty, political independence, territorial integrity and unity of the Republic of Bosnia and Herzegovina;

(b) To exempt the Republic of Bosnia and Herzegovina from the arms embargo as imposed on the former Yugoslavia under Security Council resolution 713 (1991);

8. Also urges the Security Council to consider taking measures to open more airports/airfields for international humanitarian relief flights, to pursue emergency airdrops as a stop-gap measure and to study the possibility of and the requirements for the promotion of safe areas for humanitarian purposes;

9. Further urges the Security Council to consider what resources may be required to improve the implementation of all relevant resolutions, and calls upon Member States to notify the Secretary-General regarding the availability of personnel and material to assist and facilitate in this effort;

10. Urges the Security Council to consider recommending the establishment of an ad hoc international war crimes tribunal to try and punish those who have committed war crimes in the Republic of Bosnia and Herzegovina when sufficient information has been provided by the Commission of Experts established by Security Council resolution 780 (1992);

11. Requests the Co-Chairmen of the International Conference on the former Yugoslavia to conclude expeditiously the work of the Working Group on the Republic of Bosnia and Herzegovina, to report on the reasons for the lack of progress and to submit proposals to overcome obstacles in the fulfilment of their mandate by 18 January 1993;

12. Requests the Secretary-General to report to the General Assembly by 18 January 1993 on the implementation of the present resolution;

13. Decides to remain seized of the matter and to continue the consideration of this item.

85. Bosnia and Herzegovina hereby affirms, repeats, and incorporates by reference each and every factual determination made by the General Assembly in Resolution 47/121 (18 December 1992) in this Application and in its accompanying Request for an Indication of Provisional Measures of Protection of today's date. When considered in their entirety, the numerous factual determinations made by the General Assembly in Resolution 47/121 fully support and substantiate this Application and our accompanying Request for provisional measures. Bosnia and Herzegovina respectfully asks the Court to take judicial notice of all the factual determinations made by the General Assembly in Resolution 47/121 for the purpose of these proceedings and in support of our Request for provisional measures as well.

H. Conclusion.

86. The Republic of Bosnia and Herzegovina wishes to conclude this Statement of Facts by reciting a relevant portion from a plea for help made by the Bishop and Priests of Banja Luka Diocese as recently as 17 February 1993:

"....

3. We have all sensed a clear peace-loving attitude within majority of the faithful of our diocese, and a sincere willingness for a life of equality with others in harmony, peace and respect. Despite this, the priests, religious priests, religious sisters and especially our faithful have felt the heavy burden caused by suppression of our basic human rights. For example:

- the right to the unviolated life with freedom of speech, thought and movement,
- the right to equality and democracy,
- the right to employment,
- the right to a home,
- the ability to satisfy basic needs, especially health care.

We should like to make known the most grievous instances

- the killing and massacring of innocent civilians; elderly women, children and men,
- the taking to prison camps of hundreds of our faithful and five priests, one of whom died as a result of torture. Two other totally innocent priests were murdered after having to endure great torture,
- great psychological and physical torture of religious sisters and the forceful expulsion from their convents,
- the raping of women and girls,
- the unjustified sacrilegious acts culminating in destruction within 83% of our churches and 33% of other church buildings,
- the constant burning and demolish(ing) of residential and public buildings(s) belonging to our faithful,
- the dramatic expulsion of tens of thousands of our faithful (some of our parishes have now been totally emptied of Catholic populace),
- the on-going planned ethnic cleansing (almost 50% of our faithful have been forced to live [sic: leave] their life-long homes),
- the sacking of vast number from their employment causing total existential damage for the majority of our people, especially those living in urban areas,
- the forceful mobilization of our people to fight against their own and other nationals,

- the forceful exclusion of our people from the political decision-making of their country including matters of their faith,
- the inability for adult man to move freely,
- lack of health care due to inability to pay doctor's bills, and other medical services including medicines and exclusion from hospital care,
- the stopping of urgent humanitarian aid deliveries by Banja Luka CARITAS, thus endangering the lives of 1000 families who depend exclusively on CARITAS' assistance in providing food, medicines, etc."

See Bishop's Chancellory - Banja Luka, A Dramatic Cry for Help by the Bishop and Priests of the Banja Luka Diocese, Prot. No. 564a/93, Banja Luka, 17 Feb. 1993.

87. The Republic of Bosnia and Herzegovina respectfully asks the Court to take judicial notice of this Cry for Help by the Bishop and Priests of the Banja Luka Diocese.

II. JURISDICTION OF THE COURT

88. Article 36(1) of the Statute of the Court provides that the Court's jurisdiction "comprises ... all matters specially provided for ... in treaties and conventions in force." As Members of the United Nations Organization, the Republic of Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) are Parties to the Statute, which forms an integral part of the Charter. These issues will be more fully addressed below.

89. The Republic of Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) are also Parties to the Genocide Convention, which has been continuously in force with respect to both contracting parties throughout the period of time relevant to this case.

90. Article IX of the Genocide Convention provides as follows:

"Disputes between the Contracting Parties relating to the interpretation, application or fulfillment 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."

91. On 29 December 1992, His Excellency Muhammed Sacirbey, Ambassador and Permanent Representative of the Republic of Bosnia and Herzegovina to the United Nations, transmitted a letter to the Secretary General of the United Nations, His Excellency Dr. Boutros Boutros-Ghali, that enclosed the original of a Notice of Succession with respect to the Genocide Convention, dated 17 December 1992,

which was executed by His Excellency Dr. Haris Silajdzic, Minister for Foreign Affairs of the Republic of Bosnia and Herzegovina. The U.N. Secretary General is the depository for the Genocide Convention. In this Notice of Succession, H.E. Dr. Silajdzic declared "...that the Government of the Republic of Bosnia and Herzegovina, having considered the Convention on the Prevention and Punishment of the Crime of Genocide, of December 9, 1948, to which the former Socialist Federal Republic of Yugoslavia was a party, wishes to succeed to the same and undertakes faithfully to perform and carry out all the stipulations therein contained with effect from March 6, 1992, the date on which the Republic of Bosnia and Herzegovina became independent."

92. This effective date for the Notice of Succession is in accordance with the normal rules of customary international law relating to state succession with respect to treaties. These rules have been codified in Articles 17, 22, 23 and 34, among others, of the Vienna Convention on Succession of States in Respect of Treaties of 23 August 1978. The former Yugoslavia signed this Vienna Convention on 6 February 1979, and deposited an instrument of ratification for this Vienna Convention on 28 April 1980. Therefore, Bosnia and Herzegovina has been a Party to the Genocide Convention (without any reservation) from 6 March 1992.

93. The former Yugoslavia signed the Genocide Convention on 11 December 1948, and deposited an instrument of ratification without reservation on 29 August 1950. Therefore, and for reasons previously explained, Bosnia and Herzegovina succeeded to the obligations of the former Yugoslavia with respect to the Genocide Convention on 6 March 1992, and without any reservations whatsoever. Thus both the Applicant and the Respondent are, and have been, Parties to the Genocide Convention continuously at all times relevant to these proceedings.

94. Article 3 of the United Nations Charter provides that: "The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco ... sign the present Charter and ratify it in accordance with Article 110." The former Yugoslavia took part in the San Francisco Conference and therefore became an original member of the United Nations and a Party to its Charter.

95. On 27 April 1992, a joint session of the rump Parliamentary Assembly of the former Socialist Federal Republic of Yugoslavia, the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro, adopted a declaration supposedly expressing the will of their citizens "to stay in the common state of Yugoslavia" and proclaiming the so-called "Federal Republic of Yugoslavia," in the following language:

"1. The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall

strictly abide by all the commitments that the SFR of Yugoslavia assumed internationally."

See A/46/915 Annex II (7 May 1992).

For the sake of convenience, this so-called entity will hereinafter be referred to as "Yugoslavia (Serbia and Montenegro)."

96. This purported state "continuity" has been vigorously contested by the entire international community, and including by the United Nations Security Council in Resolution 757 (1992) and Resolution 777 (1992) as well as by the General Assembly in Resolution 47/1 of 22 September 1992. The Republic of Bosnia and Herzegovina fully agrees with and supports these three resolutions.

97. Nevertheless, this declaration of 27 April 1992 clearly indicates that "The Federal Republic of Yugoslavia ... shall strictly abide by all the commitments that the SFR of Yugoslavia assumed internationally."

98. This intention by Yugoslavia (Serbia and Montenegro) to honor the international treaties of the former Yugoslavia was also confirmed in an official Note dated 27 April 1992 from the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary General, in the following language:

"Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia."

See A/46/915, Annex I (7 May 1992).

Therefore, Yugoslavia (Serbia and Montenegro) has expressed its intention to be bound by the terms of the Genocide Convention without reservation.

99. A Letter dated 29 September 1992 from the Under-Secretary-General, the Legal Counsel, addressed to the Permanent Representatives of Bosnia and Herzegovina and Croatia to the United Nations attempted to discuss the "practical consequences" of General Assembly Resolution 47/1 of 22 September 1992. In relevant part, this Letter stated:

"....
On the other hand, the resolution neither terminates nor suspends Yugoslavia's membership in the Organization. ... The resolution does not take away the right of Yugoslavia

to participate in the work of organs other than Assembly bodies. ...
...."

See A/47/485, Annex (30 September 1992).

100. In light of the facts described above, and as will be more fully developed in subsequent submissions, it is clear that a dispute exists between the Republic of Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) "relating to the interpretation, application, or fulfilment of the present [Genocide] Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III," within the meaning of Article IX of the Genocide Convention.

101. Wherefore, Bosnia and Herzegovina submits that the Court has jurisdiction to hear its claims against Yugoslavia (Serbia and Montenegro) arising under the Genocide Convention.

III. THE CLAIMS OF BOSNIA AND HERZEGOVINA

102. In submitting this dispute to the Court, Bosnia and Herzegovina claims as follows:

103. Article I of the Genocide Convention 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. Bosnia and Herzegovina claims that Yugoslavia (Serbia and Montenegro) has breached its solemn obligations under Article I. The Respondent has planned, prepared, conspired, promoted, encouraged, aided and abetted and committed genocide against the People and State of Bosnia and Herzegovina. The Respondent has refused to prevent or to punish those who are responsible for such acts. By performing such unlawful and criminal activities, Yugoslavia (Serbia and Montenegro) has incurred an international legal responsibility and is bound to cease and desist from such activities immediately and to pay Bosnia and Herzegovina reparations for the damage and prejudice suffered.

104. Article II of the Genocide Convention defines the international crime of "genocide" as follows:

Article II. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

For the reasons indicated in the Statement of Facts, and as will be demonstrated in future submissions, Bosnia and Herzegovina claims that Yugoslavia (Serbia and Montenegro), its public officials, agents and surrogates have expressly violated, and are currently violating, and threaten to continue violating Article II, paragraphs (a), (b), (c), and (d), of the Genocide Convention with respect to the People and State of Bosnia and Herzegovina.

105. Article III of the Genocide Convention provides that the following acts shall likewise all be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide. As indicated in the above Statement of Facts, as well as during the course of its subsequent submissions, Bosnia and Herzegovina claims that Yugoslavia (Serbia and Montenegro), its public officials, agents, and surrogates have committed numerous, gross, and consistent violations of Article III, paragraphs (a), (b), (c), (d) and (e) of the Genocide Convention with respect to the People and State of Bosnia and Herzegovina.

106. According to Article IV of the Genocide Convention, persons committing genocide or any of the other acts enumerated in Article III shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals. As indicated above in the Statement of Facts, as well as during the course of its subsequent submissions, Bosnia and Herzegovina claims that "constitutionally responsible rulers" and "public officials" of Yugoslavia (Serbia and Montenegro) have personally violated Article II and Article III, paragraphs (a), (b), (c), (d), and (e) of the Genocide Convention by themselves and also by means of agents and surrogates acting under their direct control or with their cooperation, support, encouragement or approval. Yet, so far, Yugoslavia (Serbia and Montenegro) has refused to punish them in breach of its own obligations under Article III and Article IV.

107. Furthermore, Bosnia and Herzegovina also claims that certain "private individuals," acting under the control of or in cooperation with "constitutionally responsible rulers" or "public officials" of Yugoslavia (Serbia and Montenegro) have violated Article III, paragraphs (a), (b), (c), (d), and (e) of the Genocide Convention. Such behavior and acts create personal responsibility under international law for them as well as state responsibility for Yugoslavia (Serbia and Montenegro). Yet so far Yugoslavia (Serbia and Montenegro) has refused to punish these "private

individuals" and has thus violated its own obligations under Article III and Article IV of the Genocide Convention.

108. According to Article V of the Genocide Convention, the Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III. So far, Yugoslavia (Serbia and Montenegro) has not provided for effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III of the Genocide Convention, and has thus violated its own obligations under Article V thereof.

109. Article VIII of the Genocide Convention provides that any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III. The Genocide Convention expressly confers international legal competence upon all Organs of the United Nations Organization, and especially upon the International Court of Justice, to take effective action to prevent and suppress all acts of genocide and all the other acts enumerated in Article III that have been perpetrated by Yugoslavia (Serbia and Montenegro) and its agents and surrogates against the People and State of Bosnia and Herzegovina. The Applicant most respectfully claims that the Court must act immediately and effectively to do whatever it can to prevent and suppress all acts of genocide and all other genocidal acts enumerated in Article III that have been perpetrated by Yugoslavia (Serbia and Montenegro) and its agents and surrogates against the People and State of Bosnia and Herzegovina, as required by Article VIII of the Genocide Convention. In particular, Bosnia and Herzegovina most respectfully claims that Genocide Convention Article VIII requires this Court to grant its Request for the Indication of Provisional Measures of Protection of today's date, and in the manner specified therein.

110. Bosnia and Herzegovina also claims that it has the inherent right under the Genocide Convention to defend itself and its People against the acts of genocide and the other genocidal acts enumerated in Article III currently being perpetrated upon Us by Yugoslavia (Serbia and Montenegro) and its agents and surrogates in Bosnia and elsewhere. This right of self-defense against genocide includes within itself the right to seek and receive support from other Contracting Parties to the Genocide Convention. Pursuant thereto, Bosnia and Herzegovina has the basic right under the Genocide Convention immediately to seek and receive from the other Contracting Parties military weapons, equipment, supplies, troops and financing in order to defend itself and its People from the acts of genocide and the other genocidal acts currently being inflicted upon Us by Yugoslavia (Serbia and Montenegro) and its agents and surrogates.

111. Article I of the Genocide Convention makes it quite clear that all states that are Contracting Parties have an international legal obligation "to prevent" the commission of acts of genocide against the People and State of Bosnia and Herzegovina by Yugoslavia (Serbia and Montenegro) and its agents and surrogates. This obligation includes within itself the obligation of the other Contracting Parties to provide support to Bosnia and Herzegovina, including military weapons, equipment, supplies, troops and financing as indicated. This support will lawfully enable Bosnia and Herzegovina to defend itself and its People from the acts of genocide and other genocidal acts that are currently being perpetrated upon Us by Yugoslavia (Serbia and Montenegro) and its agents and surrogates.

112. Bosnia and Herzegovina also claims that as a Party to the Genocide Convention and as a Member of the United Nations Organization and a Party to its Charter, that It possesses the inherent right of both individual and collective self-defense recognized by Article 51 of the United Nations Charter in order to defend itself and its People from the armed attacks, armed aggressions, and acts of genocide that have been and are currently being inflicted upon It and its People by Yugoslavia (Serbia and Montenegro) and its agents and surrogates. Article 51 of the U.N. Charter provides in relevant part as follows:

Article 51

"Nothing in the present charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security...."

Pursuant to U.N. Charter Article 51, Bosnia and Herzegovina has the right to seek and receive support from the other 179 Member States of the United Nations, including the right to seek and receive military weapons, equipment, supplies, troops, and financing from them in order to defend itself and its People from the armed attacks, armed aggressions and acts of genocide against Us currently being perpetrated by Yugoslavia (Serbia and Montenegro) and its agents and surrogates in gross violation of the Genocide Convention as well as of its solemn obligations found in Article 2, paragraphs 2, 3, and 4 and in Article 33, paragraph 1 of the United Nations Charter.

113. Thus, additionally, Bosnia and Herzegovina also claims that Yugoslavia (Serbia and Montenegro) by itself and by means of its agents and surrogates in Bosnia and elsewhere has wantonly violated U.N. Charter Article 2, paragraphs 1, 2, 3, and 4, and Article 33, paragraph 1, which provide as follows:

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

....

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

....

114. Bosnia and Herzegovina also claims that so far the Security Council and its Member States have not yet taken effective measures to prevent or to punish or to suppress acts of genocide perpetrated by Yugoslavia (Serbia and Montenegro) against the People and State of Bosnia and Herzegovina as required by Articles I and VIII of the Genocide Convention. Therefore, Bosnia and Herzegovina has the right under the Genocide Convention to seek and receive support from the Member States of the United Nations, including military weapons, equipment, supplies, troops, and financing in order to defend itself and its People from the acts of genocide currently being inflicted upon Us by Yugoslavia (Serbia and Montenegro) and its agents and surrogates.

115. Bosnia and Herzegovina also claims that so far the U.N. Security Council has not yet taken effective measures necessary to maintain international peace and security with respect to It and Its People within the meaning of U.N. Charter Article 51. Therefore, Bosnia and Herzegovina's inherent right of individual and collective self-defense against the armed attack and armed aggressions against It and its People by Yugoslavia (Serbia and

Montenegro) and its agents and surrogates remains intact. Thus, Bosnia and Herzegovina has the basic right under Article 51 to seek and receive support, including military weapons, equipment, supplies, troops, and financing from all other U.N. Member States in order to defend itself and its People from the armed attacks, armed aggressions and acts of genocide currently being perpetrated upon us by Yugoslavia (Serbia and Montenegro) and its agents and surrogates.

116. In this regard, on 25 September 1991, the Security Council adopted Resolution 713 (1991), at the express request of and with the permission by the representative of the former Yugoslavia. See U.N. Doc. S/PV. 3009, at 17 (Sept. 25, 1991). Consequently, acting pursuant to its powers under Chapter VII of the Charter, the Security Council decided to impose an arms embargo upon the former Yugoslavia, in the following language:

"6. Decides, under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise following consultation between the Secretary-General and the Government of Yugoslavia; ..."

Indeed, the Preamble to Resolution 713 (1991) made it quite clear that the Security Council premised the adoption of this resolution upon the express acquiescence of the former Yugoslavia:

"The Security Council,
Conscious of the fact that Yugoslavia has welcomed the convening of a Security Council meeting through a letter conveyed by the Permanent Representative of Yugoslavia to the President of the Security Council (S/23069),
"

In this regard: "The Yugoslav communication formally stating the federal presidency's support for a meeting was elicited from the central authorities in Belgrade at the very last minute, when it appeared that some members of the Council would have otherwise raised objections under Article 2(7)." See Weller, The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia, 86 American Journal of International Law 569, at 577-78 (July 1992).

117. During the course of the debate on the adoption of Resolution 713 (1991), Members of the Security Council made it quite clear that the legal validity of the resolution depended upon the consent of the former Yugoslavia to the arms embargo:

"The delegate from Belgium spoke next, introducing the joint draft resolution and placing the peacemaking

efforts of the CSCE and EC firmly within the context of chapter VIII of the Charter.... Zimbabwe confirmed that, in the absence of a request from Yugoslavia, it would have been "very concerned" about the prospect of a Council meeting and the draft resolution. The delegation from Zimbabwe still urged caution upon the Council, as "whatever action [it] has to take must be taken properly and within the terms of the Charter and the practice of this body.^{60/} [60. UN Doc. S/PV. 3009 at 32 (1991).] India was more explicit, expressing the view that

a formal request by the State concerned is an essential requirement in such cases before the Council can take up the matter. At the same time, we must not forget [Article 2(7)] of the time tested Charter of the United Nations.... Let us therefore note here today in unmistakable terms that the Council's consideration of the matter relates not to Yugoslavia's internal situation as such, but specifically to its implication for peace and security in the region.^{61/} [61. *Id.* at 46.]

China, too, reserved its position on the understanding that "this discussion is being carried out in the special circumstances of the explicit agreement given by the Yugoslav Government." The Chinese delegate reiterated and emphasized "the consistent position of the Chinese Government that a country's internal affairs should be handled by the people in that country themselves.^{62/} [62. *Id.* at 59-60.]"

See Weller, op. cit., 86 Am. J. Int'l L. 569, 578 (1992).

118. Notice that the Security Council imposed the arms embargo upon the former Yugoslavia only; and at its express request and with its consent. Yet the Republic of Bosnia and Herzegovina had not yet come into existence as an independent state until 6 March 1992, as indicated above. Thus, the Security Council's arms embargo upon the former Yugoslavia did not and could not by its own words apply to the Republic of Bosnia and Herzegovina. Furthermore, Bosnia and Herzegovina has never consented to or acquiesced in the extension of this arms embargo to itself. To the contrary, the Republic of Bosnia and Herzegovina claims that the extension of this arms embargo from the former Yugoslavia to itself would violate its inherent right of individual and collective self-defense as recognized by customary international law and U.N. Charter Article 51.

119. The Security Council reaffirmed this arms embargo against the former Yugoslavia in paragraph 5 of Resolution 724 (1991) on 15 December 1991. But for similar reasons, this arms embargo continued to apply only to the former Yugoslavia. By its own words, and for reasons already explained above, Resolution 724

(1991) did not and could not apply to the Republic of Bosnia and Herzegovina.

120. Once again, the Security Council reaffirmed this arms embargo against the former Yugoslavia in paragraph 6 of Resolution 727 (1992) of 8 January 1992. But for reasons already explained above, this arms embargo against the former Yugoslavia did not and could not apply to the Republic of Bosnia and Herzegovina, which did not become an independent state until 6 March 1992.

121. On 22 May 1992, the United Nations General Assembly admitted the Republic of Bosnia and Herzegovina to Membership in Resolution 46/237. Immediately thereafter, the Republic of Bosnia and Herzegovina was subject to all the responsibilities, privileges, duties, and rights of the United Nations Charter, including and especially Article 51 thereof:

Article 51

Nothing in the present charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security....

As of its date of independence as a sovereign state on 6 March 1992, and in any event certainly no later than 22 May 1992, the Republic of Bosnia and Herzegovina had, and still has, the inherent right to defend itself, both individually and collectively, under customary international law and as incorporated into Article 51 of the United Nations Charter.

122. Therefore, all subsequent Security Council Resolutions that routinely reaffirmed the arms embargo imposed upon the former Yugoslavia by paragraph 6 of Resolution 713 (1991), paragraph 5 of Resolution 724 (1991), and paragraph 6 of Resolution 727 (1992) cannot properly be construed to apply to the Republic of Bosnia and Herzegovina. Rather, all such Security Council resolutions must be construed in a manner consistent with Article 51 of the United Nations Charter. Thereunder, the Republic of Bosnia and Herzegovina has and still has the inherent right of individual and collective self-defense, including the right immediately to seek and receive from other states military weapons, equipment, supplies, troops and financing necessary in order to defend itself and its people from the armed attacks, armed aggressions, and acts of genocide that have been and are continuously being perpetrated upon us by Yugoslavia (Serbia and Montenegro) and its agents and surrogates.

123. Therefore, none of these numerous Security Council resolutions imposing or routinely reaffirming an arms embargo upon the former Yugoslavia under Chapter VII of the Charter can be properly interpreted to apply to the Republic of Bosnia and

Herzegovina. To do otherwise would "impair the inherent right of individual or collective self-defence" of the Republic of Bosnia and Herzegovina, and thus violate U.N. Charter Article 51, and furthermore render these Security Council resolutions ultra vires: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence...." (Emphasis added.)

124. Furthermore, U.N. Charter Article 24, paragraph 2 provides:

....
 2. In discharging these duties [maintaining international peace and security] the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

Therefore, even when it acts under Chapter VII of the Charter, the Security Council must "act in accordance with the Purposes and Principles of the United Nations" that are set forth in Chapter I, which consists of Articles 1 and 2 of the Charter.

125. Bosnia and Herzegovina claims that the arms embargo imposed upon the former Yugoslavia by the Security Council in Resolution 713 (1992) and its successors legally did not apply and could not apply to the Republic of Bosnia and Herzegovina at any time. Otherwise, the Security Council would not be acting "in accordance with the Purposes and Principles of the United Nations" and thus would be in breach of Charter Article 24(2). Such an improper interpretation of Resolution 713 (1991) and its successors would render Resolution 713 (1991) ultra vires the Security Council under both Article 24(2) and Article 51 of the Charter.

126. In order to avoid these results, Bosnia and Herzegovina claims that this Court must interpret Security Council Resolution 713 (1991) and its successors to mean that there is not, has never been, and is still not as of today, a mandatory arms embargo applicable to Bosnia and Herzegovina under Chapter VII of the Charter. This is a straightforward question of interpreting the terms of the United Nations Charter that clearly falls within the powers, competence, and purview of the Court. Indeed, no other organ of the United Nations but this Court can clarify this matter and thus vindicate the "inherent right" of Bosnia and Herzegovina under Article 51. According to Charter Article 92, it is the Court--not the Security Council or the General Assembly--that is "the principal judicial organ of the United Nations."

127. Unless and until this Court definitively rules against its claims, Bosnia and Herzegovina remains free under Article 51 and customary international law to defend itself notwithstanding the terms of any Security Council resolutions adopted so far. Thus, Bosnia and Herzegovina has the basic right under international law to immediately seek and receive from other states

military weapons, equipment, supplies, troops and financing in order to defend itself from armed attacks, armed aggressions, and acts of genocide that are currently being perpetrated upon Us by Yugoslavia (Serbia and Montenegro) and its agents and surrogates, continuously from our date of independence as a sovereign state on 6 March 1992 until today and beyond.

128. In addition, pursuant to the right of collective self-defense recognized by U.N. Charter Article 51 as well as to the holding of this Court in Case Concerning Military And Paramilitary Activities To And Against Nicaragua (Nicaragua v. United States of America) (Merits), 1986 I.C.J. 14, the Republic of Bosnia and Herzegovina has the right to ask other States to come to its defense against the armed attacks, armed aggressions, and acts of genocide currently being perpetrated upon It and its People by Yugoslavia (Serbia and Montenegro) and its agents and surrogates. The same result would also flow from Article I of the Genocide Convention: "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." (Emphasis added.) Thus, all Parties to the Genocide Convention are obligated to prevent Respondent's acts of genocide and armed aggression even, if necessary, by means of military intervention at the request of Bosnia and Herzegovina, as indicated. Such military intervention by other states at the request of Bosnia and Herzegovina would be permitted by U.N. Charter Article 51 and the Genocide Convention, and is not and has never been expressly prohibited by the terms of any Security Council resolution.

129. This claim too is a straightforward question of Charter Interpretation that clearly falls within the powers, competence, and mandate of the Court as "the principal judicial organ of the United Nations" as established by Charter Article 92. Bosnia and Herzegovina respectfully requests the Court to affirm and to clarify our right of individual and collective self-defense under Charter Article 51, customary international law, and jus cogens under the unique circumstances of this case involving armed attacks, armed aggression, and acts of genocide being perpetrated upon It and its People by Yugoslavia (Serbia and Montenegro) and its agents and surrogates. Time is of the essence for the People and State of Bosnia and Herzegovina!

130. Furthermore, many of the acts of genocide specified above also constitute or include within themselves war crimes under the laws of war and international humanitarian law. Bosnia and Herzegovina claims that Yugoslavia (Serbia and Montenegro) and its agents and surrogates have committed numerous violations and grave breaches of the Four Geneva Conventions of 12 August 1949, their Additional Protocol I of 8 June 1977, the customary international laws of war including the Hague Regulations on Land Warfare of 1907, and fundamental principles and rules of international humanitarian law.

131. In this regard, in a letter dated 29 December 1992, His Excellency Ambassador Muhammed Sacirbey transmitted a Notice of Succession with respect to the Four Geneva Conventions of 1949 and their Two Additional Protocols of 1977 on behalf of the Republic of Bosnia and Herzegovina, that was executed by H.E. Dr. Haris Silajdzic, the Bosnian Minister of Foreign Affairs, on 17 December 1992, without any reservations and effective as of 6 March 1992, its date of independence, to H.E.M. Johannes J. Manz, Ambassador Extraordinary and Plenipotentiary of the Permanent Observer Mission of Switzerland to the United Nations. Switzerland is the depository of the Geneva Conventions and Protocols. In a letter dated 19 January 1993, H.E. Paul Seger, Chargé d'affaires of the Swiss Permanent Mission to the United Nations, informed Mr. Zlatko Batistich of the Permanent Mission of Bosnia and Herzegovina to the United Nations, that the Bosnian instrument of succession to the Four Geneva Conventions of 1949 and the Two Additional Protocols of 1977 were deposited with the Swiss government on 31 December 1992, with the effective date of succession being 6 March 1992, the date of Bosnia's independence. Therefore, for reasons previously explained above, both Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) have continuously been Parties to the Four Geneva Conventions and their Two Additional Protocols at all times relevant to these proceedings.

132. Finally, many of the acts of genocide and genocidal acts specified above also constitute gross violations of the Universal Declaration of Human Rights of 10 December 1948. Bosnia and Herzegovina claim that Yugoslavia (Serbia and Montenegro) and its agents and surrogates have perpetrated a gross and consistent pattern of violations of the most fundamental human rights of Bosnian citizens. No point would be served here by reciting the thirty Articles of the Universal Declaration that have been set at naught by the Respondent with respect to the citizens of Bosnia and Herzegovina. But the Applicant would like to draw the Court's special attention to 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 thereof. Bosnia and Herzegovina claims that Yugoslavia (Serbia and Montenegro) and its agents and surrogates have sought to circumvent, negate, overturn and destroy the entirety of the Universal Declaration of Human Rights with respect to the citizens of Bosnia. Yet these fundamental human rights protected by the Universal Declaration are considered to be binding upon all states of the World Community as a matter of customary international law and jus cogens, and in accordance with the requirements of U.N. Charter Article 1(3), Article 55, and Article 56. Has Yugoslavia (Serbia and Montenegro) no shame?

133. Bosnia and Herzegovina also claims that Yugoslavia (Serbia and Montenegro) and its agents and surrogates in Bosnia or elsewhere, including their public officials and private individuals, are obligated under the Genocide Convention to immediately cease and desist from committing all acts of genocide and other prohibited acts specified in Articles II and III of the Genocide Convention against the People and State of Bosnia and

Herzegovina. Yugoslavia (Serbia and Montenegro) is also obliged to immediately cease and desist from committing any armed attack, armed aggression or any other act of aggression as defined by the U.N. General Assembly's Definition of Aggression, by itself or by means of its agents and surrogates, against the People and State of Bosnia and Herzegovina. Yugoslavia (Serbia and Montenegro) and its agents and surrogates in Bosnia or elsewhere are also obligated immediately to cease and desist from committing any and all violations of the Four Geneva Conventions of 1949, its Additional Protocol I of 1977, the Hague Regulations on Land Warfare of 1907, the Universal Declaration of Human Rights of 1948, U.N. Charter Articles 1, 2, 33, 55, and 56, among others, as well as of many other international treaties and agreements and basic principles of customary international law, the laws of war, international humanitarian law, international criminal law, and principles of jus cogens, which are too numerous to list in this Application but will be developed in greater detail during the course of Bosnia's further submissions in these proceedings.

134. Finally, Bosnia and Herzegovina claims that reparations must be paid by Yugoslavia (Serbia and Montenegro) to the Applicant for all the death, destruction, physical and mental injury, property damage and environmental harm that have been inflicted upon it and its People by the Respondent and its agents and surrogates in violation of all the sources of international law specified above and in particular for grossly violating the Genocide Convention, the United Nations Charter, the Four Geneva Conventions of 1949 and their Additional Protocol I of 1977, the Hague Regulations on Land Warfare of 1907, the Universal Declaration of Human Rights of 1948, and numerous other international treaties and agreements, principles of customary international law, the laws of war, international humanitarian law, international criminal law, and jus cogens that will be specified in further submissions by Bosnia.

IV. JUDGMENT REQUESTED

135. Accordingly, while reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence and legal arguments, Bosnia and 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 continuing 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 U.N. 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 U.N. Charter Article 51 and customary international law to request the immediate assistance of any State to come to its defense, 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-defense of Bosnia and Herzegovina under the terms of U.N. 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-defense of Bosnia and Herzegovina under the terms of U.N. 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-defense recognized by U.N. Charter Article 51, all other state parties to the Charter have the right to come to the immediate defense 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 centers in Bosnia and Herzegovina, and especially its capital, Sarajevo;
- from continuing the siege of any civilian population centers 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).

V. CONCLUSION

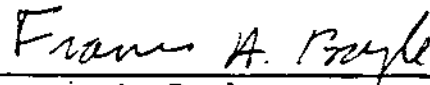
136. THE PEOPLES AND THE STATES OF THE WORLD COMMUNITY MUST NOT TURN THEIR EYES AWAY IN SHAME FROM BOSNIA AND HERZEGOVINA AS

HUMANKIND APPROACHES THE DAWN OF THE NEXT MILLENNIUM OF ITS PARLOUS EXISTENCE. AS BOSNIA AND HERZEGOVINA GOES, SO GOES THE ENTIRE WORLD!

137. Because of the importance and urgency of the matters raised by this suit, and in order to avoid further loss of life, as well as physical and mental harm, for hundreds of thousands of Bosnian People, and in order to prevent a human catastrophe of dimensions unprecedented since the Second World War of 1939 to 1945, pending a final determination of its claims, Bosnia and Herzegovina hereby requests that the Court immediately indicate interim measures of protection, as set forth in a separate Request filed concurrently with this Application of today's date.

138. The Government of Bosnia and Herzegovina has designated the undersigned as its Agent for the purpose of these proceedings.

Respectfully submitted by,



Francis A. Boyle
Professor of International Law
Agent for the Republic of
Bosnia and Herzegovina

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES OF
PROTECTION SUBMITTED BY THE GOVERNMENT OF
THE REPUBLIC OF BOSNIA AND HERZEGOVINA

20 March 1993

To His Excellency the President, to the Judges of the International Court of Justice, the undersigned being duly authorized by the Republic of Bosnia and Herzegovina:

1. I have the honor to refer to the Application submitted to the Court this day instituting proceedings by Bosnia and Herzegovina against Yugoslavia (Serbia and Montenegro). On behalf of Bosnia and Herzegovina, I request urgently, in accordance with Article 41 of the Statute of this Court and Articles 73, 74, 75, and 78 of the Rules of Court, that the Court indicate provisional measures immediately, which ought to be taken forthwith to preserve the rights of Bosnia and Herzegovina pending the determination of the issues raised by our Application.

A. Compelling Circumstances Requiring Indication of Provisional Measures of Interim Protection.

2. The facts set forth in the Statement of Facts in the Application of today's date by the Republic of Bosnia and Herzegovina are hereby incorporated by reference into this Request, and each and every factual allegation and determination set forth therein is hereby affirmed and reasserted. The rapidly escalating human catastrophe in Bosnia and Herzegovina is so enormous, monstrous, and unacceptable, that it cannot be adequately described in the Application and Request of today's date. Therefore, Bosnia and Herzegovina respectfully asks the Court to take judicial notice of the facts on the ground as they develop and are reported by reputable news media sources when the Court considers this Request for the Indication of Provisional Measures of Protection.

3. These facts show that Yugoslavia (Serbia and Montenegro) is committing acts of genocide and other genocidal acts against the People and State of Bosnia and Herzegovina, both directly and by means of its agents and surrogates operating in Bosnia and elsewhere, in gross violation of the Genocide Convention. The facts also show that Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, are perpetrating an armed attack and an armed aggression, upon the People and State of Bosnia and Herzegovina in gross violation of the United Nations Charter and basic principles of customary international law, including the laws of war and international humanitarian law. The facts also show that Yugoslavia (Serbia and Montenegro), together with its agents and surrogates operating in Bosnia and elsewhere, have perpetrated a gross and consistent pattern of violations of the Four Geneva Conventions of 1949, their

Additional Protocol I of 1977, and the Hague Regulations on Land Warfare of 1907, upon the People and State of Bosnia and Herzegovina. The facts also show that Yugoslavia (Serbia and Montenegro), together with its agents and surrogates operating in Bosnia and elsewhere, have perpetrated a gross and consistent pattern of violations of the Universal Declaration of Human Rights of 1948 upon the citizens of Bosnia and Herzegovina. The urgency, gravity, and immediacy of the situation in Bosnia and Herzegovina could not be more obvious for the entire world to see.

4. The illegal, criminal, and morally reprehensible activities by Yugoslavia (Serbia and Montenegro), together with its agents and surrogates operating in Bosnia and elsewhere, perpetrated against the People and State of Bosnia and Herzegovina constitute flagrant violations of the most elementary and fundamental principles of international law and of the basic provisions of the Genocide Convention, the United Nations Charter, the Four Geneva Conventions and Additional Protocol I, the Hague Regulations, the Universal Declaration of Human Rights, and other treaties prohibiting the threat or use of force in the conduct of international relations, as well as of basic rules of customary international law, the laws of war, international humanitarian law, international criminal law, and jus cogens.

5. The illegal and criminal activities of Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, and the consequences for the People and State of Bosnia and Herzegovina have persisted now for approximately one year despite repeated efforts by Bosnia and Herzegovina and disinterested third parties--including the appropriate Organs of the United Nations (e.g., the Security Council, the General Assembly, the Secretary General, the Human Rights Commission and its Special Rapporteur, the U.N. High Commissioner for Refugees, etc.), the European Community (EC), the Conference on Security and Co-Operation in Europe (CSCE), the International Conference on the Former Yugoslavia, and the Organization of the Islamic Conference, among others--to initiate procedures for the peaceful settlement of any and all differences between Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) as required by the United Nations Charter. Despite its pious proclamations, Yugoslavia (Serbia and Montenegro) and its agents and surrogates in Bosnia and elsewhere have consistently refused, and continue to refuse, to terminate their illegal and criminal activities against the People and State of Bosnia and Herzegovina. Based upon their barbarous behavior during the past year, there is absolutely no reason whatsoever to believe that Yugoslavia (Serbia and Montenegro), together with its agents and surrogates, will voluntarily desist from their illegal course of conduct while this case is pending before the Court.

B. The Consequences Sought to be Avoided by Provisional Measures.

6. The overriding objective of this Request is to prevent further loss of human life in Bosnia and Herzegovina. The continuance of the situation that is the subject of the present Request will expose hundreds of thousands of innocent human beings to the certainty of death, starvation, malnutrition, severe bodily injury, torture, physical and mental harm, as well as the mass rape of women and the systematic abuse of children.

7. The legal rights to be protected by the requested indication of provisional measures are:

- (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, and security, 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 acts of 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 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.

The provisional measures to be indicated are thus compelled by the most fundamental humanitarian concerns.

8. The Respondent's gross, systematic, and consistent violation of these basic international legal rights pertaining to the People and State of Bosnia and Herzegovina can never be adequately compensated for by the payment of monetary reparations should the Court ultimately decide in favor of Bosnia and Herzegovina's claims as set forth in the Application of today's date.

9. Pending the Court's decision, it is imperative that the Respondent's illegal and criminal behavior be terminated forthwith by provisional measures. Otherwise, Yugoslavia (Serbia and Montenegro) and its agents and surrogates will inflict immediate and irreparable harm upon the People and State of Bosnia and Herzegovina. Only by granting the provisional measures set forth below can the rights of the People and State of Bosnia and Herzegovina be protected and preserved. Failure to grant provisional measures will prevent the vindication of the rights asserted by Bosnia and Herzegovina in this case if the Court should ultimately decide in favor of Bosnia and Herzegovina on the merits of its claims.

10. By the same reasoning, provisional measures are urgently required in order to cause Yugoslavia (Serbia and Montenegro) and its agents and surrogates to abstain from any further actions capable of having a prejudicial effect on the Court's decision in this case, as well as to refrain from taking any step that might aggravate or extend the dispute between Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro).

C. The Urgency of the Request.

11. The foregoing recitals sufficiently indicate the urgent need for the provisional measures requested below to be granted forthwith by the Court. The very lives, well-being, health, safety, physical, mental and bodily integrity, homes, property and personal possessions of hundreds of thousands of People in Bosnia and Herzegovina are right now at stake, hanging in the balance, awaiting the order of this Court.

12. Yugoslavia (Serbia and Montenegro) and its agents and surrogates have given no indication that they are willing to desist from their criminal and illegal actions. At this very moment, the Respondent is seeking the resources to continue and intensify its unlawful activities. The situation has already resulted in a dangerous level of tension, not only between Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro), but among all of the States and Peoples living in the immediate vicinity of the Balkans Peninsula. The situation in Bosnia and Herzegovina has already produced serious implications for international peace and security in this region of the world. It is clear that, in the absence of an indication of provisional measures, the dispute between Bosnia and Herzegovina and Yugoslavia (Serbia and Montenegro) will be aggravated and extended. The gravest consequences cannot be excluded for world peace itself.

13. Twentieth century history testifies that the First World War began in 1914 with an assassination at Sarajevo, which is now the capital of the Republic of Bosnia and Herzegovina. Perhaps at that time if Austria had accepted Serbia's offer to submit the entire dispute arising out of this assassination to "the International Tribunal of The Hague," the entire First World War

could have been avoided. But the Permanent Court of Arbitration was constitutionally incapable of acting on time to prevent this monumental catastrophe for humankind. Not so for the International Court of Justice! The grant of the provisional measures set forth below could very well prevent the development of World War III.

D. Provisional Measures Requested.

14. Given that the Court's jurisdiction in this case is prima facie established under the Genocide Convention, Bosnia and Herzegovina submits that there are no impediments to indicating provisional measures. Accordingly, Bosnia and Herzegovina respectfully requests that the Court indicate the following provisional measures to be in effect while the Court is seized 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 centers; 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 defense, 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 defense 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.).

E. Conclusion.

15. In view of the seriousness of the present situation in Bosnia and Herzegovina, the Applicant urges that this Request be treated as a matter of the most extreme urgency. Accordingly, Bosnia and Herzegovina respectfully requests that the Court convene immediately upon receipt of this Request, and that immediately upon the convening of a quorum of the Court, that the Court grant proprio motu any or all of the above-mentioned provisional measures against the Respondent and its agents and surrogates before any oral proceedings are held, pursuant to the powers of the Court under article 75, paragraph 1 of the Rules of Court. This extraordinary procedure should be followed because of the urgent and compelling reasons set forth above in this Request and in the Application of today's date. Time is of the essence for the People and State of Bosnia and Herzegovina!

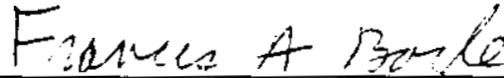
16. If for some reason this immediately preceding request proves to be impossible to fulfill, then Bosnia and Herzegovina respectfully requests that the Court, pursuant to Articles 74(1) and 74(3) of the Rules of the Court, set a hearing on this Request at the earliest date possible and, in any event, no later than a couple of days after the filing of this Request and the Application of today's date.

17. In the meantime, Bosnia and Herzegovina respectfully requests that pursuant to the terms of Article 74, paragraph 4 and Article 34, paragraph 1 of the Rules of Court, that the President of the Court immediately and personally contact the President and Foreign Minister of Yugoslavia (Serbia and Montenegro) and inform them that their government must do nothing that would prejudice, prejudice, or interfere with these legal proceedings, and, especially, that their government must cease and desist immediately from all illegal and criminal activities perpetrated by their government and its agents and surrogates against the People and State of Bosnia and Herzegovina in violation of the Genocide

Convention, the United Nations Charter, the Four Geneva Conventions of 1949 and their Additional Protocol I of 1977, the Hague Regulations on Land Warfare of 1907, and the Universal Declaration of Human Rights of 1948.

18. Finally, Bosnia and Herzegovina will nominate a Judge ad hoc for the purpose of these proceedings as soon as feasible. But in view of the gravity of the current situation caused by the actions taken and threatened by Yugoslavia (Serbia and Montenegro) and its agents and surrogates, Bosnia and Herzegovina respectfully requests that the Court act upon this Request for the Indication of Provisional Measures of Protection of today's date immediately. Once again: Time is of the essence for the People and State of Bosnia and Herzegovina!

Respectfully submitted by,



Francis A. Boyle
Professor of International Law
Agent for the Republic of
Bosnia and Herzegovina