

DECLARATION OF VICE-PRESIDENT ODA

The Court should in my view have responded specifically in the operative paragraphs to the request filed by Yugoslavia on 10 August 1993 for the indication of provisional measures. While the Court responds to the second request of Bosnia-Herzegovina by reaffirming the provisional measures indicated in its Order of 8 April 1993, it does not, in the operative part of this Order, take any position on the request of Yugoslavia.

Yugoslavia has asked the Court to indicate the following provisional measure:

“The Government of the so-called Republic of Bosnia and Herzegovina should immediately, in pursuance of its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide against the Serb ethnic group.”

These words reflect almost exactly the measure indicated by the Court on 8 April 1993 in paragraph 52 A (1), which was addressed to Yugoslavia. Yugoslavia has now asked the Court to indicate a similar measure, to be addressed to Bosnia-Herzegovina. Yugoslavia filed its request on the basis of the evidence contained in the reports of Yugoslavia to the Commission of Experts established pursuant to Security Council resolution 780 (1992) of 6 October 1992 and in the “Memorandum on War Crimes and Crimes of Genocide in Eastern Bosnia (Communes of Bratunac, Skelani and Srebrenica) Committed against the Serbian Population from April 1992 to April 1993” (which is included in United Nations document A/48/77 - S/25835, annexed to Yugoslavia’s request for the indication of provisional measures).

In its Order the Court has pointed out that

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

And the Court goes on to say that it:

“does not find that the circumstances, as they now present themselves to the Court, are such as to require a more specific indication of measures addressed to Bosnia-Herzegovina so as to recall to it both its undoubted obligations under the Genocide Convention, and the need to refrain from action of the kind contemplated by paragraph 52 B of the Court’s Order of 8 April 1993” (para. 46).

I do not find that these considerations provide grounds for the Court to avoid a direct response to the Yugoslav request, as paragraph 52 B of the Court’s Order of 8 April 1993, though addressed also to Bosnia-Herzegovina, concerned only the need for the Parties to refrain from action tending to the aggravation or extension of the existing dispute.

(Signed) Shigeru ODA.