

## DECLARATION OF JUDGE TARASSOV

The appalling atrocities which have taken place in the territory of the former State of Yugoslavia move me no less than they move my colleagues. Nevertheless I have not been able to join with them in voting for all the operative paragraphs of the Order, and I wish to say why.

I am generally in agreement with the *consideranda* and conclusions of the Order, including its exclusion of the many elements of the request for provisional measures which go far beyond the limited jurisdiction of the Court under Article IX of the Genocide Convention. I support the provisional measures indicated by the Court in paragraph 52 A (1) and paragraph 52 B. I agree that the Government of the Federal Republic of Yugoslavia "should immediately . . . take all measures within its power to prevent commission of the crime of genocide" — meaning, of course, measures within its *real* power. In my opinion, the same measures should be taken under the same understanding in respect of the Government of the Republic of Bosnia and Herzegovina, which has responsibility over acts committed on its territory. Unfortunately, the Court did not find it necessary to so provide. I agree that the Government of the Federal Republic of Yugoslavia and the Government of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of genocide or render it more difficult of solution. Accordingly I have voted for these operative paragraphs of the Order.

However, I regret that I have not been able to vote for the provision of paragraph 52 A (2) that the Government of the Federal Republic of Yugoslavia should in particular "ensure" that any military, paramilitary or irregular armed units which "may" be directed or supported by it, and organizations or persons which "may be subject to its control, direction or influence" do not commit any acts of genocide, "of conspiracy to commit genocide", of incitement to genocide or of "complicity in genocide". In my view, these passages of the Order are open to the interpretation that the Court believes that the Government of the Federal Republic of Yugoslavia is indeed involved in such genocidal acts, or at least that it may very well be so involved. Thus, on my view, these provisions are very close to a pre-judgment of the merits, despite the Court's recognition that, in an Order indicating provisional measures, it is not entitled to reach determinations of fact or law. Moreover, these passages impose practically un-

limited, ill-defined and vague requirements for the exercise of responsibility by the Respondent in fulfilment of the Order of the Court, and lay the Respondent open to unjustifiable blame for failing to comply with this interim measure. The lack of balance in these provisions is the clearer in view of the way in which the Court has singled out one element of the population of Bosnia and Herzegovina. The Applicant when referring to the measures that it sought (paragraph 3 of the Order) and the legal rights that it sought to have protected (paragraph 36 of the Order) did not specify a particular group for protection, but rather and quite properly used such terms as "the citizens" or "the People" of Bosnia and Herzegovina.

Moreover, these objectionable provisions lack not only balance but practicality. Is it really within the realm of the practical for the Yugoslav Government to "ensure" that all persons who may claim to be subject to its influence do not conspire to commit genocide or incite genocide? Particularly when the persons who are accused of such acts are not its citizens and not within its territorial jurisdiction? Someone may affirm that he is under the influence of the Yugoslav Government without that being the fact. I am convinced that the Court should not imply that the Yugoslav Government may have responsibility for the commission of acts which in fact may be beyond its control.

*(Signed)* Nikolai K. TARASSOV.

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