Bosnia demands International Court enforce genocide convention

by Katharine Kanter

In the face of unabated aggression and mayhem by the rump state of Yugoslavia, on July 27, the government of the Republic of Bosnia, represented by Prof. Francis Boyle as plenipotentiary agent to the International Court at The Hague, filed an emergency application to demand enforcement of the 1948 Genocide Convention, and, further, to demand urgent conservatory measures to prevent partition of Bosnia-Hercegovina and its extinction as a member state of the United Nations. Among these measures is the lifting of the arms embargo, which, be it continued, will lead to the fall of Tuzla and her province where over a million Muslims are now concentrated. On April 8, the court found that the rump Yugoslavia had violated the 1948 Genocide Convention in the war against Bosnia, but, as expected, the court, even as the war was raging, did not see fit to call for steps to enforce its ruling in any way at that time.

After having rejected repeated requests from Professor Boyle, a specialist in international law from the University of Illinois, for an immediate audience, the International Court of Justice finally met on Aug. 25 to consider Bosnia's case. Serbia-Montenegro, for its part, made a claim for countermeasures, based on the court's statement of April 8, that "both sides" should refrain from acts of genocide.

As the Aug. 25 hearing was being opened, the Bosnian Presidency was heading back to Sarajevo from the negotiations at Geneva, to put before the Bosnian Parliament and military leadership the so-called Owen-Stoltenberg plan, which, as we showed in our last two issues, is nothing but a plan to dismember Bosnia.

Telling the court the truth

The first to address the court was Mohammed Sacirbey, Bosnia's ambassador to the United Nations. Departing from his wonted, somewhat cautious manner, Dr. Sacirbey startled the court by opening his remarks with a vitriolic attack on the ongoing Geneva "peace" talks.

Three issues, he said, had to be dealt with by the court:

- first, whether the right to self-defense, under Article 51 of the U.N. Charter, can be abridged by the Security Council;
- second, whether the Security Council can be allowed to limit the obligation on those countries who signed the Genocide Convention, to actively intervene to stop this crime;
- third, whether any agreement signed by the Republic of Bosnia, under "the compulsion and threat of continuing genocide," could be held as binding upon that republic.

"The genocide continues," said Dr. Sacirbey. "We, the government of the Republic of Bosnia, are now being forced to negotiate with the perpetrators of this crime, while the threat of ongoing genocide is held as a loaded gun to our head. . . .

"Certain influential members of the European Community and certain powerful permanent members of the Security Council, have unduly used their influence to maintain an unjust and genocide-abetting arms embargo on the Republic of Bosnia, and to effectively prevent third countries from taking the necessary measures to confront the Serbians. . . .

"Certain members of the international community have offered the services of mediators to assist in the negotiations. Lacking the means and/or will to compel the Serbians to comply with the resolutions and orders of the Security Council, the General Assembly, the London Conference, and this court, the mediators effectively legitimize the ambitions, pretenses, and ultimately, the consequences of the crime. The rule of law is overridden by the rule of force. The more brutal, determined and criminal the force, it seems, the less will there is to confront it.

"Because of a clear lack of will to confront the perpetrator, the Bosnians must pursue negotiations as a substitute for justice. . . . [But] should we even expect that an agreement delivered under such inequitable circumstances would be durable?"

Raising the stakes, Ambassador Sacirbey put the court itself on notice: "The court is faced with the prospect, that the failure to implement its order of April 8, 1993 has, in fact, been utilized as means to coerce the victim to accept, rather than resist, the consequences of the crimes that this court has already condemned. Despite some reasons to fear that this court may become subject to political pressure, we, the Bosnians, must deliver our confidence in the independence of the court. . . . A failure by this court to confront

the Serbian aggression . . . and the consequences thereof, would not only be a tragedy for Bosnia, but also a denigration of the international legal system."

Ambassador Sacirbey concluded by drawing the court's attention to the fact that the Government of Serbia-Montenegro actually sent documents to the court, denying the existence of the plaintiff, by referring to the "so-called" Republic of Bosnia-Hercegovina. These documents, unbelievably, were *accepted* by the court.

'Legal equivalent to Munich'

Francis Boyle, assisted by the English barrister Dr. Khawar Qureshi (*pro bono*), by the Cambridge jurist Dr. Marc Weller, and by Mr. Phon van den Biesen of The Hague, then addressed the court. He noted that Bosnia's July 27 request for provisional measures had been accompanied by 30 pages of single-spaced documentation on what has been done to Bosnia since the court's ruling of April 8, documentation that had been gathered by bodies not associated with the government of Bosnia.

In their counterstatement read the following day by Professor Lopicic, the government of Serbia-Montenegro baldly stated that their own "documentation" of alleged "crimes of genocide" by the Republic of Bosnia had been gathered by the "Army of the Republic of Srpska," i.e., the Chetnik militiamen of Serbian puppet Radovan Karadzic.

Taken as a whole, Professor Boyle's peroration was extremely far-reaching in the way it put on the same plane as a blueprint for genocide both the plan to partition Bosnia and the individual acts constituting war crimes by the Serbians:

"We have asked the court," he said, "to issue a cease-and-desist order to public officials in [Serbia-Montenegro] and especially Mr. Milosevic, concerning all schemes, proposals, plans, and negotiations to partition, dismember, annex or incorporate the sovereign territory of Bosnia-Hercegovina. In the event that the partition, etc. is actually carried out, there will inevitably occur further acts of genocide against the staggering figure of almost 1 million more human beings. . . . [But] the annexation or incorporation of even one centimeter of the sovereign territory of Bosnia shall be illegal, null, void *ab initio* . . . that cannot be recognized by the international community for any reason or at any time for the rest of eternity.

"The so-called Owen-Stoltenberg plan is a diktat that is the legal equivalent to what Hitler presented to Czechoslovakia at Munich in 1938."

Attempting to force the court to come out of hiding on the fundamental issue, Professor Boyle demanded that it state clearly the precise legal responsibility of all those countries which signed the Genocide Convention, and which are, therefore, under an absolute legal obligation to act to prevent genocide, all public statements by their leading officials notwithstanding. This necessarily and unavoidably means raising the arms embargo unlawfully imposed upon Bosnia.

Few members of the general public are aware that none of the U.N. resolutions re-affirming the arms embargo has ever dealt with the question of whether that embargo can lawfully be applied to the Republic of Bosnia, because Resolution 713, instituting the embargo, came into force in 1991 before that republic, admitted to the U.N. only in May 1992, had ever been proclaimed! Not one of the relevant resolutions even mentions the republic's name.

Last among the measures of protection called for by Professor Boyle, which include forcibly cutting off the Serbian supply lines, was his demand that the court order the U.N. Protection Forces (Unprofor) in Bosnia's Tuzla province, to supply relief without let or hindrance. "I have been advised by my government," he said, "that the Unprofor in Tuzla have been obstructing the delivery of relief. . . . Some believe that this is a measure of compulsion designed to coerce the government of Bosnia into going along with the so-called partition plan."

Professor Boyle warned that, although specious reasons may always be found to punt in a case of such strategic import, the court cannot evade its responsibility in this case: It was specifically decided in 1948 that the Security Council *should not* be given exclusive jurisdiction to deal with the Genocide Convention, while that jurisdiction should be granted to the International Court. He continued, "We ask the court to take judicial notice of the serious political disagreements among the Permanent Members of the Security Council that have so far prevented them from taking decisive action. . . . In default of such action by the Security Council, it now becomes incumbent upon the court to prevent the people of Bosnia from being massacred before the completion of proceedings instituted with the International Court of Justice."

He ended: "This will be the last opportunity this court shall have to save both the people and the state of Bosnia from extermination and annihilation by the respondent. God will record your response to our current request for the rest of eternity."

This was one of the rare occasions where truth has been spoken in a court of law.

Serbian arrogance, Serbian lies

The second day of the audience was accorded to Serbia's replies, to which very little thought and attention had been given; the Serbians know they are winning the war and nothing that happens in the court — so they think — can make any difference.

In their pleadings, the government of rump Yugoslavia deliberately adopted a testy tone of having their "finger on the trigger," to see whether the court would throw their spokesmen out for contempt. But they were not. Thus, Miodrag Mitic, legal adviser to the Foreign Ministry at Belgrade, referred to the Serbian invasion as a "civil and reli-

gious war"; Bosnia's declaration of independence as "forcible and illegal secession"; Bosnian borders as "internal administrative boundaries of the former Yugoslavia"; the Bosnian government as a "so-called government"; its republic, a "so-called republic," and so forth.

Mitic's provocation was succeeded by the truly scandalous presentation of Djordje Lopicic, chargé d'affaires at the Serbian embassy in Holland. His catalogue of falsehoods is best characterized by one glaring slip of the tongue, when he averred that "3,000 *Serbian Muslims* attacked the town of Bradina and burned it to the ground." Unless he is referring to the oppressed Muslims in the Serbian region of Sandzjak, suddenly falling upon Bosnia, who in heaven's name *is* he talking about?

Finally, the Serbians rolled out their big gun, Dr. Shabtai Rosenne of Jerusalem, possibly the world's leading authority in the jurisprudence of The Hague court. As Dr. Rosenne clearly does not want to go down in history as the elderly Jewish scholar who has boldly stood up for genocide, wherever and whenever it takes place, his deal with his Serbian employers appears to be that he will stick to shooting holes in the Bosnian case on pure technicalities. Droll, courtly, witty as always, Dr. Rosenne could charm the pants off just about everyone, so long as they are willing to forget this is mass murder we are dealing with.

After 90 minutes of juridical fireworks, just as he did to great effect on April 8, Dr. Rosenne pulled out the knife on the court, stressing that the court was being invited to take *political decisions,* to substitute itself for the Security Council and the nation-states involved. The court has always refused to substitute its judgment for those of the states before and should continue to do so, he argued, and concluded that according provisional measures would not *facilitate the negotiations,* but rather *harm the delicate measures now in progress* of negotiation.

Stinging rebuttal

Exercising his right of reply, Professor Boyle shook everyone present — one would hope also the court — as he ended the proceedings:

"The Security Council decides not under the rule of law, but according to *Realpolitik.* These are disputes between the great powers. Our rights are up to the highest bidder in the Security Council. We are going to be carved up and eaten for breakfast. So you of the court have to act. What the other contracting parties to the Genocide Convention do is up to them. But if you clarify our rights, the obligation will be undeniable. Dr. Rosenne insists upon the proper procedure. That's great! Come back in a year! We won't be here in a year!

"I'm not getting paid here. This is not a publicity stunt. Are people going to get away with partitioning us, dividing us, or exterminating us?"

A judgment is expected in early September.

Human rights lobby and a tale of two massacres

by Valerie Rush

The international human rights lobby and its "indigenous rights" offshoots have raised a hue and cry in recent weeks over a supposed massacre by Brazilian wildcat goldminers of somewhere between 70 and 100 Stone Age Yanomami Indians, which is alleged to have occurred somewhere in the Brazilian Amazon in July. Their charge is that government "indifference" to the Yanomamis' plight plus covert encouragement of the miners' aggressions makes the Brazilian state fully complicit in the bloody deed.

No bodies or physical evidence of mass killings were discovered at the massacre site, and a respected anthropologist hired to investigate the incident reports that no more than 16 were killed, and that this occurred on the *Venezuelan side of the border* in a series of separate incidents. But this has not deterred such organizations as Amnesty International, Survival International, Americas Watch, the World Wildlife Fund, Friends of the Earth, the United Nations Human Rights Commission, the Environmental Defense Fund, the Washington Office on Latin America, and others, including the U.S. State Department, from launching a full-scale assault on Brazilian sovereignty over its territory and resources.

The irony is that many of these same self-appointed "watchdogs" over the behavior of sovereign governments were inexplicably silent when another massacre of Indians, this time of Ashaninka tribesmen and women in the forests of Peru, came to light at approximately the same time. The difference was that the Peruvian massacre was carried out by the Shining Path narco-terrorists, in whose defense these international "human rights" organizations, and the State Department, have been highly vocal for years.

Where's the evidence?

The exaggeration of the Brazilian incident can be laid squarely at the door of Brazil's National Indian Foundation (FUNAI), a government-appointed agency infested with anthropologists who share the view that Indians should be preserved in their "pristine" and "natural" state of starvation, backwardness, and pagan superstition. FUNAI claimed to base its version of the massacre on the tales of two or three "survivors" who supposedly straggled into FUNAI's jungle office nearly a month later, bearing gory tales of beheadings.