

Immediate and effective military action

We remind our readers that these provisional measures of April 8, 1993, were highly unfavorable to the government of Yugoslavia, namely, that that government should take all measures within its power to prevent commission of the crime of genocide, and ensure that "any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, or direct and public incitement to commit genocide, or of complicity in genocide. . . ."

The new element is the words, "*immediate and effective implementation of these measures.*" This can mean anything, including an implicit recommendation to the U.N. Security Council for immediate and effective military action against Serbia.

The ball is in the court of the Security Council.

However, the International Court of Justice *refused* to grant what was, essentially, a demand by Bosnia-Herzegovina that the court make a declaration clarifying the position in international law under the Genocide Convention, to the effect, that upholding the current arms embargo against her constitutes, by every nation which signed that convention, a manifest violation of the convention, and further, that every such nation is legally *bound* to obey her call for succor, by intervening militarily in her favor. The court avoided making what would be, in fact, a completely new departure in international law, by saying that the court may indicate provisional measures to be taken by the parties before the court, but *not* by third states or other entities who would not be bound by the eventual judgment.

The court also said that it was unable to accept Bosnia's contention, in its request for provisional measures, that partition and dismemberment or annexation of a sovereign state could in itself constitute an act of genocide. This is not surprising, given the fact that the dissenting opinions of Russia and Serbia explicitly support the Geneva negotiations. Judge Tarassov of Russia went so far as to say that the court should have "encouraged" both sides to "make a positive contribution to the success of the Geneva peace negotiations."

Not some piffling dispute

Opinions qualified as "separate," but which were in fact dissenting opinions in Bosnia's favor, were delivered in writing by Judge Elihu Lauterpacht, the *ad hoc* judge named by Bosnia, and by Judges Shahabuddeen (Guyana) and Christopher Weeramantry (Sri Lanka). As these are lengthy and somewhat technical, we can only summarize the line of argument here. All three judges noted, in varying ways, that the Bosnian petition cannot be compared to some piffling dispute over sea lanes or international business legislation, but that the court is faced with the worst case ever put before it in its 70-year history. In Judge Weeramantry's view, the life-or-

death issue for Bosnia raises the question as to whether the court can issue legal obligations on the respondent which are *binding*.

Because of the acuteness of the crisis, he said, this has become a central issue for the international legal system. Unless the court is prepared to consider its own orders as binding, and to seek the means by which its orders can be enforced, Weeramantry concludes in essence, the court will bring complete discredit upon itself and upon international law; in the current case, "noncompliance with that order endangers the very subject of the dispute before the court." The same question was raised by Judge Shahabuddeen, who, in the body of his argument, attacked the credibility of all of Yugoslavia's counter-claims. Judge Lauterpacht, named by the government of Bosnia, is a professor of international law at Cambridge University. Writing in an intense and personal tone, he argued in a 30-page statement that, *inter alia*, the court had erred in not calling for lifting the arms embargo and in not specifically demanding that all Yugoslavian aid to the Serbian war effort in Bosnia be cut off.

European bishops on Bosnia

From an appeal for peace in Croatia and Bosnia-Herzegovina launched by the participants in the eighth symposium of the Council of European Bishops Conferences in Prague on Sept. 12, 1993 "to the leaders of the international community and public opinion":

Among the various and grave situations which compromise freedom and solidarity in Europe, we are particularly struck by the sufferings of the populations of ex-Yugoslavia, hit by a war which has lasted far too long. This war involves countless losses of human lives and the collapse of human and religious values. . . .

We are perplexed in the face of the difficulties in obtaining objective news about what is occurring in those regions. . . . We are especially surprised by the prospect by which the aggressor force may finally prevail over the rights of individuals, families, and of ethnic and religious groups. . . . We cannot accept such a prospect, because in this way, in Bosnia-Herzegovina, Europe dies as a community based on rights and not on violence.

We are distressed by the brutality of the military forces which are struggling to conquer territory.

We cannot understand the ineffectiveness of international organizations, which appear incapable of stopping the bloodshed, the destruction, and the untold sufferings of innocent and defenseless men, women, and children. One has the impression that once again, the weakest are being sacrificed for the interests of the powerful of this world. . . .