

Non-Corrigé
Uncorrected

Traduction
Translation

ARCHIVES

CR 99/30 (traduction)

CR 99/30 (translation)

Mercredi 12 mai à 15 h 45

Wednesday 12 May at 3.45 p.m.

06 Le VICE-PRESIDENT, faisant fonction de président : La Cour entendra l'argumentation de l'Italie dans l'affaire qui oppose cet Etat à la Yougoslavie. La présentation des conclusions de l'Italie commencera dans quelques minutes. J'invite le juge *ad hoc* de l'Italie à prendre place sur le siège. J'invite l'agent de l'Italie, M. Leanza, à prendre la parole.

Mr. LEANZA: Mr. President, Members of the Court.

The Italian Republic, which I have the great honour to represent in this case, would like to place a few further observations before you following the reply given this morning by the Federal Republic of Yugoslavia.

With your permission, I should like to give Mr. Luigi Daniele, Professor of International Law at the University of Trieste, the occasion to present his comments as counsel for the Italian Government. Mr. Daniele will emphasize that Article IX of the Genocide Convention is manifestly inapplicable to the present case, and therefore that *prima facie* this distinguished Court does not have jurisdiction. At the end of his statement, he will reiterate the submissions of the Italian Government. I therefore ask you to be kind enough to call on Mr. Daniele, and I thank you for your attention.

Le VICE-PRESIDENT, faisant fonction de président : Je vous remercie. Je donne la parole à Monsieur Daniele.

Mr. DANIELE: Mr. President, Members of the Court.

I have the privilege to address a few additional comments to you on behalf of the Italian Government in response to some of the arguments presented this morning by counsel for the Federal Republic of Yugoslavia.

First of all, the Italian Government wishes to stress that far and away the most dominant element in the Yugoslav Application is the question of the legality of the use of force by the NATO States. It is nevertheless indisputable that *prima facie* the Court has no jurisdiction to deal with that question, however central it may be, since there is no jurisdictional title in existence between the Italian Republic and the Federal Republic of Yugoslavia on which, *ratione materiae*, the Court's

07 jurisdiction could be based. The Federal Republic of Yugoslavia is nevertheless seeking to impose jurisdiction on the Court by invoking Article IX of the Genocide Convention in regard to the entire dispute.

In the opinion of the Italian Government, not only can Article IX in no event found the Court's jurisdiction in regard to the whole of the Yugoslav Application, but also it is inapplicable to those aspects of the Application in which the Federal Republic of Yugoslavia appears, albeit implicitly, to refer to the Genocide Convention. It is perfectly clear that, in the present case, there can be no question of accusing the NATO Member States of genocide. Manifestly, both the subjective element and the objective element of the crime of genocide are lacking. The action taken by the NATO Member States is directed at the territory of the Federal Republic of Yugoslavia and not at its people. As the Secretary-General, Mr. Solana, said on 23 March last, NATO has no recriminations to lay against the Yugoslav people. The Yugoslav population as a whole is of course affected by that action, since it takes place in the territory in which it lives. But that, Mr. President, cannot alter the nature of things, which is that the action by NATO is directed against the Federal Republic of Yugoslavia and not against its population, and even less, I would point out, against a specific national, racial, ethnical or religious group forming part of that population.

As far as the subjective element is concerned, I shall confine myself to observing that even counsel for Yugoslavia was not so bold this morning as to maintain that it exists in the present case. The total absence of the elements which, according to Article II of the Convention, constitute and characterize the crime of genocide totally precludes any notion that the Court has before it a dispute falling within the terms of Article IX of that Convention. The Court cannot accept that a State, simply by invoking an alleged violation of the Genocide Convention, has established the existence of a dispute under Article IX of the Convention, when the facts charged have no relationship with that crime. In such circumstances, the indication of provisional measures under Article 41 of the Statute could itself be seen as endorsing the manifest abuse by the Federal Republic of Yugoslavia of Article IX and of the jurisdiction of this distinguished Court.

08 I should like to add, with your permission, a further remark regarding the object of the Yugoslav request for provisional measures, namely the immediate cessation of all action by NATO

in Yugoslav territory. It is clear that that object is identical with the object of one of the claims put forward by Yugoslavia in its Application.

Were the Court to accede to the Yugoslav request, there is the danger that it would be granting the applicant State forthwith — that is to say, at the conclusion of what are by their nature summary proceedings — something which only the judgment on the merits could grant it. The Court's decision would then be so anticipatory as to make it pointless to pursue the case any further.

Mr. President, Members of the Court, I should now like to remind you of the submissions made by the Agent of the Italian Government yesterday:

May it please the Court,

1. to order that the case be removed from the General List pursuant to Article 38, paragraph 5, of the Rules of Court;

2. in the alternative, to refuse the request for the indication of provisional measures filed by the Federal Republic of Yugoslavia on 29 April 1999;

3. in any event, to refrain from indicating in respect of the Italian Republic the provisional measures specified in the Yugoslav request, or any other provisional measure.

Mr. President, Members of the Court, thank you for your kind attention.

Le VICE-PRESIDENT, faisant fonction de président : Je vous remercie. The Court will now take an adjournment for 15 minutes.

L'audience est levée à 15.55.
