

International Court in The Hague orders Serbia to halt genocide

In an emergency ruling issued on March 8, the International Court of Justice in The Hague ordered Serbia and Montenegro to cease all acts of genocide against the Muslim population of Bosnia-Herzegovina.

The "Order of Provisional Measures" directed that Yugoslavia (Serbia and Montenegro) "should immediately . . . take all measures within its power to prevent the commission of the crime of genocide," and further, that it should ensure "that any military, paramilitary, or irregular armed units which may be directed or supported by it," as well as "other persons subject to its control," do not commit acts of genocide or conspire or incite acts of genocide.

The Hague court did not rule on the legality of the arms embargo against Bosnia declared by the U.N. Security Council. However, its ruling holding Serbia responsible for acts of genocide is expected to give powerful support to proponents of lifting the arms embargo, and allowing the nation of Bosnia-Herzegovina to defend itself.

Bosnia's case

A week earlier, on April 1, the Republic of Bosnia-Herzegovina, through its agent Prof. Francis Boyle of Illinois University, and its ambassador to the U.N., Mohammed Sacirbey, addressed the court in the matter of its application for emergency relief under the 1948 Genocide Convention. Bosnia's plea, in the form of a lengthy memorandum containing detailed allegations on acts perpetrated by Serbia-Montenegro against Bosnia, was sent to the court on March 20 (see *EIR*, April 9, p. 46); within three working days, the court, with unheard of speed, signified that it would hear the case on April 1; Serbia-Montenegro's request for postponement until May—the time it needs to conquer eastern Bosnia—was denied.

The application for emergency relief centered on the issue of the lawfulness of the arms embargo against Bosnia, which issue, stated Professor Boyle, cannot be put off, due to the danger of extinction in which the republic finds itself. The court is to sit at a later date to hear witnesses on the substance of the case for war crimes and crimes against humanity.

Both Bosnia, by its Notice of Succession to the 1948 Genocide Convention, dated December 1992, and rump Yugoslavia (Serbia-Montenegro), have acceded to the terms of that convention. Under Article I of the convention, the

contracting parties have an international legal obligation to prevent and punish acts of genocide; under Article V, those parties undertake to *punish* persons guilty of genocide; under Article VIII, any contracting party may call upon the "competent organs of the U.N."—here, the International Court of Justice—to act to suppress or prevent genocide.

The crux of Bosnia's argument is that the Genocide Convention guarantees the inherent right of both individual and collective self-defense, and that U.N. Security Council Resolutions, notably Resolution 713, imposing upon Bosnia a weapons embargo, are *ultra vires*. In other words, they are outside the council's powers, as the embargo constitutes a clear violation of Article 51 of the U.N. Charter (right to self-defense) and of the Genocide Convention.

Bosnia, said Professor Boyle, is not a successor state to Yugoslavia, but an entirely new state in international law, which, unlike Serbia-Montenegro, never agreed to the embargo.

To establish jurisdiction, Professor Boyle cited not only the adhesion of rump Yugoslavia to all relevant treaties, but produced a personal letter to Robert Badinter, then president of the European Arbitration Commission, signed by Slobodan Milosevic and Momir Bulatovic, respectively, Presidents of Serbia and Montenegro, and dated June 8, 1992, stating that "all legal disputes" between Serbia-Montenegro and the former Yugoslavian Republics "should be taken to the International Court of Justice." In this matter, he also submitted *prima facie* evidence that the Federal Army of Yugoslavia was directly involved in the fighting in Bosnia.

'You can stop World War III'

Professor Boyle, in what can only be described as a majestic presentation, concluded: In the absence of relief, "the dispute between Bosnia and the rump Yugoslavia will be aggravated and extended. The gravest consequences cannot be excluded for the peace of the entire world. Remember that World War I began at Sarajevo in 1914." Departing from the prepared text, he added, in the midst of absolute silence: "You, gentlemen of the court, have it in your power to stop World war III."

In fact, the court is being asked to strike down resolutions of the U.N. Security Council, which means, as Maurizio Blondet put it in the Milan daily *Avvenire*, a "conflict between

two sovereign powers of the U.N.: the court versus the Security Council, or, the basic requirements of justice versus the Yalta order of the winning powers who conceived Yugoslavia as a cage for the small Balkan nations.”

Prof. Shabtai Rosenne of Haifa University in Israel, a renowned specialist in the jurisprudence of the court in The Hague, appeared as the agent for the government of Serbia-Montenegro. The learned doctor’s eagerness to take up the cudgels for Serbia was, however, felt to be in something worse than mere bad taste. Although many observers believe that the atrocities and acts of genocide (such as systematic rape) being committed by the Serbs are far worse than anything done by Nazi Germany, Rosenne went so far as to argue that “to any person who has direct knowledge of what the Holocaust was and what it was intended to achieve, such statements are nothing short of blasphemous.”

Bosnia, Rosenne said, “by calling upon the court to rectify, unilaterally, decisions of the Security Council, is abusing the court’s powers; the court must take care not to enter into conflict with the Security Council.”

Interview: Francis Boyle

‘A smashing victory’

Professor Boyle, the legal representative of Bosnia in the suit for genocide against Serbia in The Hague, gave the following telephone interview to Umberto Pascali on April 8, after the International Court issued its Order of Provisional Measures.

EIR: Professor Boyle, what are the meaning and the implications of today’s International Court decision?

Boyle: It was a smashing victory, I think, for the people of Bosnia and Hercegovina. The International Court made a finding that it appears the rump Yugoslavia has committed acts of genocide against the people of Bosnia and Hercegovina and has ordered them to stop, and also that they are responsible for agents and surrogates in Bosnia, and ordered them to stop. The rump Yugoslavia tried to turn the tables on Bosnia, to get an order against Bosnia, but the court refused to do that and did not really indicate measures per se against Bosnia-Hercegovina, like it did against Yugoslavia.

Note that the vote on the first point [that “Yugoslavia” should take all measures in its power to prevent the commission of genocide—ed.] was unanimous. It is very rare for the court to vote on anything unanimously. On the second point [that “Yugoslavia” should ensure that no military or paramilitary or irregular units supported by it commit geno-

cide—ed.], it was 13 to 1. Only the Russian judge, Tarassov, voted against. And even he, in his separate declaration, said: “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.” I think that this is a first rate interpretation of precisely the significance of this order.

EIR: What is the next step?

Boyle: What will happen now from here is that the order get transmitted to the Security Council for enforcement. So at this point the ball shifts to New York, to the General Assembly, to the Security Council, to the foreign ministers of the world. Now the International Court has effectively found that this is genocide, the same crime that was inflicted upon the Jewish people by the Nazis. The question will be: Is the world going to look the other way, like it did with the Jews, or is it going to say, “Enough is enough, we are going to stop this”?

So the ball is in everyone else’s court now, and we will have to see. However, we do have the right to go back to the court for more Provisional Measures, in the event that the extermination of Bosnians continues. I have indicated to the president of the court that we are prepared to do this, and I have indicated it to the lawyers on the other side as well.

EIR: The lawyer for Serbia, Professor Rosenne of Tel Aviv, argued that the court had no standing to deliberate on the issue. Professor Rosenne did not enter at all into the substance of the matter, i.e., the genocide. He just argued at the level of technicalities.

Boyle: Yes, that was a ridiculous argument. The court rejected it. Professor Rosenne did not get at all into the substance; it was only a technical attack, and as you know, despite his technical objections to the court doing what it did, the court agreed with us and made this ruling, and indicated these two measures against Yugoslavia, so we won basically all the technical arguments. That is a victory in its own right.

EIR: An Italian daily, *Avvenire*, reported the other day, in an article on The Hague case, that you did not accept any fee in representing Bosnia. Others noted that it is indeed striking that an Israeli law professor like Rosenne could represent the perpetrators of genocide.

Boyle: Well, I am here without any fee and my expenses are being paid by voluntary contributions from the Bosnian community in Canada. Professor Rosenne, I think, is going to have to account for himself, as to why he is representing a group of mass murderers, war criminals, and people who are inflicting genocide. You have to ask Professor Rosenne why he did that.